

**TOWN OF ORANGETOWN WORKSHOP MEETING**  
**Tuesday, April 17, 2018**

This Town Board Meeting was opened at \_\_\_\_\_ p.m.

Councilman Denis Troy \_\_\_\_\_

Councilman Thomas Diviny \_\_\_\_\_

Councilman Paul Valentine \_\_\_\_\_

Councilman Jerry Bottari \_\_\_\_\_

Supervisor Christopher Day \_\_\_\_\_

***Pledge of Allegiance to the Flag***

**ANNOUNCEMENTS :**

- RTBM of April 24, 2018 at 8:05 P.M. / Public Hearing / RE: Petition for Zone Change / **Town Plaza II** / Tax Map 74.07-1-6

- RTBM of April 24, 2018 at 8:15 P.M. / Public Hearing / RE: Proposed Amendment to Zone for Real Property Designated as 70 Hickory Hill Road, Tappan / **SAMI Construction**

- RTBM of May 8, 2018 at 8:15 P.M. / Continuation of Public Hearing for Proposed Local Law Amending Orangetown Town Code 6-5 Chapter 6, Building Construction Administration) and Orangetown Zoning Code Chapter 43 (**Performance Standards**) and (Administration and Enforcement).

- RTBM of May 15, 2018 at 8:15 P.M. / Continuation of Public Hearing for Proposed Law Amending Town Code Chapter 43, Entitled Zoning-Regulations of **Devices in Public Right-Of-Ways and Easements**

- RTBM of June 5, 2018 at 8:05 P.M. / Proposed Zoning Text Amendment / "CS" to a "PAC" District / **Galway Bay Contracting Inc.**

**PRESENTATIONS:**

**PUBLIC COMMENT:**

**AGENDA ITEMS:**

**TOWN BOARD**

**PROPOSED RESOLUTION TO OPEN PUBLIC HEARING /  
RTBM OF APRIL 24, 2018 AT 8:05 P.M. / PETITION FOR  
ZONE CHANGE / TOWN PLAZA II / TAX MAP 74.07-1-6**

1. *Proposed Text:* **RESOLVED**, that the public portion of the public hearing is hereby opened at the RTBM of April 24, 2018 at 8:05 P.M.

PRESENTATIONS: Affidavit of Publication and Notice of Posting

SUMMARY OF COMMENTS:

**PROPOSED RESOLUTION TO CONTINUE PUBLIC  
HEARING / RTBM OF APRIL 24, 2018 / PETITION FOR  
ZONE CHANGE / TOWN PLAZA II / TAX MAP 74.07-1-6**

2. *Proposed Text:* **RESOLVED**, that the public portion of the public hearing is hereby continued to **June 5, 2018, at 8:15 P.M.**

**PROPOSED RESOLUTION TO DECLARE LEAD AGENCY  
/ SEQRA DETERMINATION PROPOSED LOCAL LAW  
REGARDING ZONE CHANGE / 500 ROUTE 303,  
ORANGEBURG / TOWN PLAZA II**

3. (Place Holder – Town Attorney to provide language)

**PROPOSED RESOLUTION TO ADOPT PROPOSED  
LOCAL LAW AMENDING CHAPTER 43, 2.2, OF THE  
ZONING LAW OF THE TOWN OF ORANGETOWN TO  
CHANGE THE ZONING DISTRICT OF THE PROPERTY  
LOCATED AT 500 ROUTE 303, ORANGEBURG (TOWN  
PLAZA II), TAX LOT 74.07-1-6, FROM "CC" AND "LI" TO  
"CC" IN ITS ENTIRETY**

4. *Proposed Text:* **WHEREAS**, the Town Board of the Town of Orangetown (the "Town Board") is the duly elected legislative body of the Town, authorized to adopt zoning text amendments to the Town's Zoning Law; and

**WHEREAS**, the Town Board has considered the adoption of an amendment to Chapter 43, § 2.2 to change the zoning district of the entire parcel known as 500 Route 303 in the hamlet of Orangeburg, tax lot 74.07-1-6 being located in both the "CC" (Retail-Commerce) and "LI" (Light Industrial) zoning districts, to change the zoning classification of the entire property to that of "CC" (Retail-Commerce), a zoning district that already includes and directly abuts the

property

**WHEREAS**, by Resolution No. \_\_\_ of 2018, after notice duly given, and there being no other involved agency, by resolution duly adopted this \_\_\_ day of April, 2018, the Town Board assumed the role of Lead Agency under SEQRA for environmental review, and, acting in its capacity as such, concluded that there will be no significant environmental impact or effect caused or occasioned by the proposed change in the Town’s Zoning Law and determines the issuance of Negative Declaration is appropriate; and

**WHEREAS**, following due notice, a public hearing was conducted on the proposed zone change amendment; and

**WHEREAS**, the Board has concluded that the proposed zone change which simply changes the zoning classification of the subject parcel, which has already developed in accordance with the “CC” zoning district, is consistent with the Town’s Master Plan, and otherwise is in the best interests of the Town and the owner of the parcel, who has requested the change of zoning classification; and

**WHEREAS**, the Town Planning Board, pursuant to Town Code Chapter 43, § 10.5, and the County Planning Department, pursuant to General Municipal Law §§ 239 l & m, have each reviewed the proposed law; and

**WHEREAS**, the Town Planning Board, by Memorandum, dated \_\_\_\_\_, following due consideration at a public meeting held on the same date, has indicated \_\_\_\_\_; and

**WHEREAS**, the County Department of Planning, by letter review dated \_\_\_\_\_, has recommended \_\_\_\_\_;

**NOW, THEREFORE, BASED ON ALL OF THE INFORMATION BEFORE THE BOARD, AND THE FINDINGS MADE HEREIN, BE IT RESOLVED**, that the Town Board hereby adopts the within Local Law, amending the Town Zoning Law, and the Town Zoning Map made a part of the Town Code at Chapter 43, § 2.2., and changes the zoning classification of the referenced parcels to “CC” Retail-Commerce in its entirety.

The aforesaid was moved by \_\_\_\_\_, seconded by \_\_\_\_\_, and (adopted / rejected) by a roll call vote as follows:

- Aye Nay
- Supervisor Day \_\_\_ \_\_\_
- Councilman Troy \_\_\_ \_\_\_
- Councilman Diviny \_\_\_ \_\_\_
- Councilman Valentine \_\_\_ \_\_\_
- Councilman Bottari \_\_\_ \_\_\_

**PROPOSED LOCAL LAW AMENDING CHAPTER 43, § 2.2, OF THE ZONING LAW OF THE TOWN OF ORANGETOWN TO CHANGE THE ZONING DISTRICT OF THE PROPERTY LOCATED AT 500 ROUTE 303, ORANGEBURG, TAX LOT 74.07-1-6 FROM "CC" and "LI" to "CC" IN ITS ENTIRETY**

**BE IT ENACTED**, by the Town Board of the Town of Orangetown as follows:

Section 1: The Zoning Map of the Town of Orangetown, which establishes the areas and boundaries of the various Town zoning districts, is hereby amended to change the zoning district of the following property:

500 Route 303, Orangeburg, NY (Town Plaza II) (Tax Map Designation 74.07-1-6) from the partial "CC" (Retail-Commercial) and partial "LI" (Light Industrial) zoning districts to the "CC" (Retail-Commercial) zoning district, which metes and bounds description is as follows:

All that certain plot, piece or parcel of land with improvement erected thereon, situate lying and being in Orangeburg, Town of Orangetown, Rockland County, New York, being shown and designated as **a portion of Parcel 1** on a certain map entitled "**Seymour Koff**" filed in the Rockland County clerk's office on **November 16, 1967** as **Map No. 3646 Book 74 Page 16** being more particularly bounded and described as follows:

**BEGINNING AT A POINT** in the center of Mountainview Avenue (AKA Chamberlain Road) said point being the intersection of a line measured 250 feet westerly and perpendicular to the centerline of Route 303 with the center line of Mountainview Avenue and running **THENCE**:

North 70 degrees 39 minutes 00 seconds West 162.13 feet along the centerline of Mountainview Avenue

**THENCE** North 58 degrees 59 minutes 00 seconds West 8.64 feet along the centerline of Mountainview Avenue

**THENCE** North 15 degrees 40 minutes 00 seconds East 324.11 feet along the easterly line of lands now or formerly Church of the Lord

**THENCE** South 82 degrees 43 minutes 00 seconds East 54.88 feet along the aforementioned lands **THENCE** North 53 degrees 20 minutes 00 seconds East 52.61 feet along the aforementioned lands

**THENCE** South 03 degrees 27 minutes 00 seconds West 395.42 feet through parcel 1 and parallel with Route 303 to the centerline line of Mountainview Avenue the **POINT OR PLACE OF BEGINNING**.

Said property contains 1.04 Acres more or less.

Section 2: This law shall take effect immediately upon filing

**PROPOSED RESOLUTION TO OPEN PUBLIC HEARING /  
RTBM OF APRIL 24, 2018 AT 8:15 P.M. / RE: PROPOSED  
AMENDMENT TO ZONE FOR REAL PROPERTY  
DESIGNATED AS 70 HICKORY HILL ROAD, TAPPAN /  
SAMI CONSTRUCTION**

5. *Proposed Text:* **RESOLVED**, that the public portion of the public hearing is opened at RTBM of April 24, 2018 at 8:15 P.M.

PRESENTATIONS: Affidavit of Publication and Notice of Posting

SUMMARY OF COMMENTS:

**PROPOSED RESOLUTION TO CONTINUE PUBLIC  
HEARING / RTBM OF APRIL 24, 2018 / PROPOSED  
AMENDMENT TO ZONE FOR REAL PROPERTY  
DESIGNATED AS 70 HICKORY HILL ROAD, TAPPAN /  
SAMI CONSTRUCTION**

6. *Proposed Text:* **RESOLVED**, that the public portion of the public hearing is hereby continued to \_\_\_\_\_ at \_\_\_\_\_ P.M.

**PROPOSED RESOLUTION TO DECLARE LEAD AGENCY  
/ SEQRA DETERMINATION PROPOSED LOCAL LAW  
REGARDING ZONE CHANGE / 70 HICKORY HILL ROAD,  
TAPPAN**

7. (Place Holder – Town Attorney to provide language)

**PROPOSED RESOLUTION TO ADOPT THE  
PROPOSED LOCAL LAW AMENDING CHAPTER 43, §  
2.2, OF THE ZONING LAW OF THE TOWN OF  
ORANGETOWN TO CHANGE THE ZONING DISTRICT OF  
CERTAIN PROPERTIES IN THE HAMLET OF TAPPAN  
(70 HICKORY HILL ROAD, TAPPAN) / SAMI  
CONSTRUCTION**

8. Place Holder – Town Attorney to provide language

*Proposed Text:* **BE IT ENACTED** by the Town Board of the Town of

Orangetown as follows:

Section 1: The Zoning Map of the Town of Orangetown, which establishes the areas and boundaries of the various Town zoning districts, is hereby amended to change the zoning district of the following properties:

70 Hickory Hill Road (Tax Map Designation 77.09-1-25) from the "R-40" (Low-Density Residence) zoning district to the "R-15" (Medium-Density Residence) zoning district, which metes and bounds description is as follows:

**BEGINNING** at a point on the northerly right of way of Hickory Hill Road, where it is intersected by the easterly line of lands n/f Anderson (Tax Lot 77.09-1-26) and the westerly line of the lands described herein, and running thence:

1. Along said easterly line of lands n/f Anderson, N 20°01'05" W distant 84.25 feet; thence
2. Along the R-15 / R-40 zone line through lands n/f Muhammetaj, N 2°10'00" E distant 103.17 feet; thence
3. Continuing along the same, along the westerly boundary of said lands n/f Muhammetaj, N 2°10'00" E distant 161.77 feet; thence
4. Along the southerly line of lands n/f Spring Valley Water Works, N 88°20'08" E distant 119.47 feet; thence
5. Along the westerly line of lands n/f Tozer (Tax Lot 77.09-1-24), S 5°37'00" E distant 263.45 feet, to a non-tangent point on a curve on the northerly right of way of Hickory Hill Road; thence
6. Along said northerly right of way of Hickory Hill Road, southwesterly, on a curve to the left having a radius of 310.00 feet and an arc length of 153.99 feet, back to the point or place of BEGINNING.

Containing 41,478 square feet.

Section 2: This law shall take effect immediately upon filing with the Secretary of State.

**PROPOSED RESOLUTION TO ACCEPT PETITION /  
REQUEST FOR ZONE CHANGE AND DIRECT  
CIRCULATION OF PROPOSED LOCAL LAW, AMENDING  
TOWN ZONING MAP FROM CS TO PAC ZONE  
REGARDING PROPERTY LOCATED AT 14-16 NORTH  
MAIN STREET (aka 21 NORTH WILLIAM STREET),  
PEARL RIVER, TAX LOT 68.16-6-67 / GALWAY BAY  
CONTRACTING, INC.**

9. *Proposed Text.* **WHEREAS**, the owner of premises located at 14-16 North

Main Street (aka 21 North William Street), in the hamlet of Pearl River, Tax Lot 68.16-6-67 being located in the "CS" (Community Shopping) zoning district, has petitioned the Town Board to change the zoning classification of the property to the overlay district of "PAC" (Planned Adult Community), zoning district; and

**WHEREAS**, upon preliminary review, the Town Board is willing to consider the change to such PAC zone as the property is eligible for such a zone change pursuant to Town Code §4.62 as the property is located in the down town Pearl River area close to public transportation and shopping and currently located within a CS zoning district ; and

**WHEREAS**, the Town Board wishes to proceed with its consideration of the proposed action, toward which end it wishes to commence the environmental review process, as well as review by other interested agencies; and

**WHEREAS**, upon review of the Petition, and a Short Environmental Assessment Form prepared at the Town Board's request by the Office of Building, Zoning, Planning and Administration and Enforcement, and related documents and filings, the Board makes the following preliminary determinations:

1. The proposed action is one subject to review under the State Environmental Quality Review Act ("SEQRA");
2. The proposed action as an "Unlisted" action; and
3. The following are involved or interested or involved agencies in the review process:

- Orangetown Planning Board;
- Rockland County Department of Planning;
- Rockland County Highway Department

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Board hereby declares its intention to serve as Lead Agency for the purpose of environmental review under SEQRA, and directs that a Lead Agency Coordination Letter with relevant documents be circulated to and among the various above referenced agencies; and

**BE IT FURTHER RESOLVED**, that the circulation to the Rockland County Department of Planning further be for the purpose of review pursuant to General Municipal Law §§ 239- I & m; and

**BE IT FURTHER RESOLVED**, that, pursuant to Town Code Chapter 43, § 4.612(E), the Town Board hereby refers the said Petition and a proposed Local Law, amending the Town Zoning Map, to the Town Planning Board inviting its input regarding, among other things, the implications of such an amendment, and requesting a response within 30-days.

**PROPOSED MEMORIALIZING  
RESOLUTION REQUESTING SPEED LIMIT  
REDUCTION AND PLEDGING  
ENFORCEMENT ON ROUTE 9W IN  
PALISADES**

10. *Proposed Text:* **WHEREAS**, the hamlet of Palisades has seen a disproportionately high amount of accidents at and around the intersection of Route 9W and Oak Tree Road, to include fatalities, and
- WHEREAS**, the New York State Department of Transportation has funded the replacement and upgrade of the pedestrian and traffic signals at that intersection due in large part to such issues, and
- WHEREAS**, this area of Route 9W passes directly next to multiple residences, a child care center, a pool club, the geographic center and main street of the hamlet of Palisades, and a busy quick-service restaurant and shop, and
- WHEREAS**, this area of Route 9W see substantial pedestrian and bicycle traffic, particularly in warmer weather, and lacks any bicycle lanes or sidewalks, with the Town of Orangetown having installed new sidewalks to accommodate such need on the intersecting Oak Tree Road, as well as a blind downhill curve on the northbound area approaching this intersection to the south, and
- WHEREAS**, due to the location of exits on the Palisades Interstate Parkway, the intersection sees substantial commuter traffic, particularly northbound during the evening commute, as it serves as a gateway for residents of the adjacent hamlets of Tappan, Sparkill, and parts of Orangeburg, and also serves as an access route for New Jersey residents commuting northbound to the Tappan Zee Bridge, and
- WHEREAS**, the area of Route 9W to the immediate and adjacent south in New Jersey has a speed limit of 40 miles per hour, lower than the current speed limit in this section, despite that section of Route 9W having no buildings whatsoever for 1.7 miles and no comparable quantity of structure for 3 miles, and
- WHEREAS**, it is in the direct interest of the Town of Orangetown to maintain the safety of our residents in Palisades, and
- WHEREAS**, the Town of Orangetown Police and Highway Departments have, and regularly utilize both traffic counting and speed tracking equipment as well as targeted enforcement actions to address speeding at identified points throughout the town, and
- NOW, THEREFORE, BE IT RESOLVED**, that the Town Board of the Town of Orangetown hereby requests that the New York State Department of Transportation immediately lower the speed limit on Route 9W in both directions from the New Jersey border north to the driveway of the HNA Palisades Conference Center at 41°01'08"N 73°54'56"W to not more than 35



miles per hour, and

**BE IT FURTHER RESOLVED**, that the Town Board of the Town of Orangetown, in its capacity as the Police Commission and in concert with our Superintendent of Highways, commits to implementing traffic and speed analysis and targeted enforcement of speed limits and other moving violations through radar mobile radar signage, visible patrols, and ticketing as such analysis requires subsequent to the installation of said lower speed limit in order to ensure that drivers are made aware of it and it has the intended impact to lower vehicular speeds on that section of road, and

**BE IT FURTHER RESOLVED**, that the Town Clerk is hereby authorized and directed to send a copy of this resolution to the Hon. Andrew M. Cuomo, Governor of the State of New York; Hon. David Carlucci, Hon. William J. Larkin, Jr., New York State Senators; Hon. Kenneth P. Zebrowski, Jr., Hon. Ellen C. Jaffee, and Hon. James G. Skoufis, Members of the New York State Assembly; the President Pro Tem of the New York State Senate; the Speaker of the New York State Assembly; the Majority and Minority Leaders of the New York State Senate and Assembly; the Regional Traffic Safety and Mobility Engineer of the New York State Department of Transportation, Hudson Valley Region, and to such other persons as the Clerk, in her discretion, may deem proper in order to effectuate the purpose of this resolution.

**PROPOSED RESOLUTION TO APPOINT  
BRUCE BOND / ALTERNATE MEMBER /  
PLANNING BOARD / ONE-YEAR TERM**

11. *Proposed Text:* **RESOLVED**, that the Town Board hereby appoints Bruce Bond to the Town of Orangetown Planning Board as an Alternate Member for a term of one-year, effective January 1, 2018 through December 31, 2018.

**TOWN BOARD/IT**

**PROPOSED RESOLUTION TO  
AUTHORIZE AGREEMENT / VERIZON  
NETWORKFLEET / VEHICLE  
TELEMATICS**

12. *Proposed Text:* **RESOLVED**, that the Town is hereby authorized to enter into an agreement with Verizon Networkfleet to acquire telematics for 256 town owned vehicles at a one-time cost not to exceed \$30.23 per vehicle, plus, an additional monthly recurring cost of \$18.95 per vehicle.

**AND BE IT FURTHER RESOLVED**, that the Town Supervisor, or his designated representative, shall be authorized to sign the said Agreement and all related financing documents.

**TOWN ATTORNEY**

**PROPOSED RESOLUTION TO APPOINT  
LINO SCIARETTA / HEARING OFFICER  
/ DISCIPLINARY CHARGES AGAINST  
EMPLOYEE # 1027**

13. *Proposed Text:* **BE IT RESOLVED**, that the Town Board hereby appoints Lino Sciarretta to act as a Hearing Officer pursuant to §75 of the Civil Service Law of the State of New York with respect to certain disciplinary charges, dated March 19, 2018, preferred against Employee # 1027. The Hearing Officer is directed to conduct a hearing, making findings of fact and issue a recommendation of guilt or innocence, along with a recommended penalty, if appropriate, to the Town Board.

**BE IT FURTHER RESOLVED**, that the Town Board approves of the compensation of Hearing Officer Sciarretta, at a rate of \$225.00 per hour for services rendered.

**PROPOSED RESOLUTION TOWN ATTORNEY  
/ DEME FOR APPROVAL OF 2018  
CERTIFICATE OF SEWER REGISTRATION**

14. *Proposed Text:* **RESOLVED**, that upon the recommendation of the Town Attorney and the Commissioner of the Department of Environmental Management and Engineering, a Certificate of Registration for 2018 Sewer Work is approved to:

BELLVILLE LANDSCAPING, INC., 84 North Route 9W, Congers, NY 10920

HAUSER BROTHERS, INC., 17 Old Schoolhouse Lane, Orangeburg, NY 10962

HEWITT EXCAVATING, LLC., 18 Broad Street, Norwood, NJ 07648

WILLIAM KING AND SON CONSTRUCTION, 113 Lake Road, Valley Cottage, NY 10989

PRO-CUT LANDSCAPING, 11 Pineview Road, West Nyack, NY 10994

SDM INDUSTRIES, 21 South Park Terrace, Congers, NY 10920

**FINANCE**

**PROPOSED RESOLUTION AUTHORIZING INTER-MUNICIPAL AGREEMENT WITH ROCKLAND COUNTY / 2018 / REIMBURSEMENT OF THE COSTS TO THE TOWN / POLICE TRAINING IN PERSONAL RADIATION DETECTOR AND PACKEYE TRAINING / STC PROGRAM**

15. *Proposed Text:* **WHEREAS**, the Sheriff of Rockland County, in cooperation with the New York City Police Department “Securing the Cities Program” (STC) provided training to Town of Orangetown Police Officers in the areas of Personal Radiation Detector Training and Packeye Training in October, 2017, and

**WHEREAS**, the County of Rockland has agreed to reimburse the Town of Orangetown for the costs of the attendance to the Town of such training, pursuant to a proposed Intermunicipal Agreement, which is incorporated by reference herein, and

**WHEREAS**, the County of Rockland, pursuant to its Resolution No. 132 of 2018 has agreed to recommend to the County Executive to approve the aforesaid Inter-municipal Agreement and to reimburse the Town of Orangetown in the amount of \$6,463.84 for the above referenced training, and

**WHEREAS**, Article 5-G of the General Municipal Law authorizes municipal governments to perform together that which each government is authorized to perform individually and requires that any inter-municipal agreement be approved by each participating municipal corporation by a majority vote of its governing body, and

**WHEREAS**, the Town Board finds and determines that such agreement and reimbursement for training is in the best interests of the good and welfare of the Town in the operations of its governmental functions,

**NOW THEREFORE, BE IT RESOLVED**, that the Town Board hereby approves entering into the Inter-municipal Agreement between the Town of Orangetown and County of Rockland as set forth in the County’s Resolution No 132 of 2018 with respect to the reimbursement of the sum of \$6,463.84 for costs incurred for police training through STC in the areas of Personal Radiation Detector Training and Packeye Training, and authorizes the Supervisor to execute the aforesaid Inter-municipal Agreement and any and all documents necessary to effectuate same.

**OBZPAE**

**PROPOSED RESOLUTION  
TO APPROVE SUMMER  
HOURS / OBZPAE / APRIL  
15 - OCTOBER 15**

16. *Proposed Text:* **RESOLVED**, upon the recommendation of the Director of OBZPAE, approve a change to the basic work week for the employees of OBZPAE, from Monday to Friday, 8 am to 4 pm, to a four day work week (Monday to Thursday/Tuesday to Friday), 7:30 am to 5:15 pm. This flexible work schedule shall be in place yearly from April 15 to October 15. In accordance with Section 5.1.2 of the Collective Bargaining Agreement, the Town Board has the sole responsibility for establishing flexible hour schedules.

**HIGHWAY/POLICE**

**PROPOSED RESOLUTION TO LEND  
POLICE AND HIGHWAY DEPT.  
ASSISTANCE / 2018 PEARL RIVER  
MEMORIAL DAY PARADE / MAY 28**

17. *Proposed Text:* **RESOLVED**, upon the recommendation from the Superintendent of Highways, that the Town Board hereby authorizes the Town of Orangetown Highway & Police Departments to lend assistance which includes the use of barricades from the Highway Department and police detail from the Police Department for the Memorial Day Parade in Pearl River on Monday, May 28, 2018, from 9:45 am to 11:45 am.

**HIGHWAY/PARKS/POLICE**

**PROPOSED RESOLUTION TO LEND  
ASSISTANCE / POLICE, HIGHWAY DEPT. &  
PARKS AND RECREATION / 2018 GRAN  
FONDO NEW YORK BICYCLE RACE / MAY 20**

18. *Proposed Text:* **RESOLVED**, upon the recommendation from the Superintendent of Highways, Parks and Chief of Police, that the Town Board hereby authorizes these three departments to lend assistance which includes the use of cones, detour signs & barricades from the Highway Dept., police detail, from the Police Dept., and the use of Town roads, which includes the Rail Trail for Sunday, May 20, 2018, from 8 am - 3 pm.

**PARKS AND RECREATION**

**PROPOSED RESOLUTION TO  
APPROVE AID / THE DENNIS P.  
McHUGH FOUNDATION / RENTAL  
OF PORTO-JOHNS**

19. *Proposed Text:* **RESOLVED**, to authorize upon completion of all necessary paperwork the Superintendent of Parks and Recreation has forwarded for approval by the Town Board, the rental of 6 porto-john units (4 regular, 2 ADA compliant) for The Dennis P. McHugh Foundation on Saturday, April 28, 2018.

**HIGHWAY**

**PROPOSED RESOLUTION TO RECLASSIFY  
SENIOR CLERK STENO TO PRINCIPAL  
CLERK STENO / HIGHWAY DEPARTMENT**

20. *Proposed Text:* **RESOLVED**, Upon the recommendation of Rockland County Personnel, reclassify the position of Senior Clerk Stenographer, in the Highway Department, Grade 8, (520396) to the position of Principal Clerk Stenographer, Grade 10, effective April 25, 2018.

**PROPOSED RESOLUTION TO APPOINT HELEN  
WILSON / HIGHWAY DEPARTMENT / PRINCIPAL  
CLERK STENOGRAPHER / PROVISIONAL**

21. *Proposed Text:* **RESOLVED**, Appoint Helen Wilson to the position of Principal Clerk Stenographer, provisional, in the Highway Department, Grade 10, Step 6/7, at a salary of \$68,658.00, effective April 25, 2018.

**DEME**

**PROPOSED RESOLUTION  
TO APPOINT BART  
REEVES, DEME /  
LABORER /  
PROBATIONARY**

22. *Proposed Text:* **RESOLVED**, that upon recommendation of the Commissioner of DEME, appoint Bart Reeves to the position of laborer CSEA Grade 9 Step 1 at a salary of \$54,227.00 (probationary). This position was vacated due to the incumbent being promoted and is funded in the budget. This appointment is effective May 7, 2018.

**PROPOSED RESOLUTION TO RE-ALLOCATE POSITION / DEME / CHIEF OPERATOR FROM GRADE 23 TO GRADE 28**

23. *Proposed Text:* **RESOLVED**, that upon recommendation of the Commissioner of DEME, re-allocate the position of Chief Operator from grade 23, step 1 at a salary of \$100,537 to a grade 28, step 1 at a salary of \$127,364, effective April 30, 2018. This position is on the exclusion list of the CSEA contract and was formerly at grade 28 until last year.

**PERSONNEL**

**PROPOSED RESOLUTION TO INTRODUCE VOLUNTARY ORANGETOWN EMPLOYEE RETIREMENT INCENTIVE PROGRAM**

24. *Proposed Text:* **WHEREAS**, The Town of Orangetown (hereinafter the “Town”) has offered a voluntary Retirement Incentive Program (hereinafter the “Program”) to eligible employees to either participate in the Program and retire, subject to the conditions of the Program, or not to participate and continue to work; and

**WHEREAS**, Employees eligible to participate in the Program are full time, active employees of the Town, excluding all elected officials and Town Police Officers and who are or will be eligible to retire on or before December 31, 2018 based on a service retirement under their respective tiers of the New York State Retirement System and have completed 10 or more years of continuous service; and

**WHEREAS**, the Town reserves the right to limit the eligibility to the first 20 employees who elect to participate in the Program, to allow more than 20 employees to elect to participate in the Program in its sole and exclusive discretion; and

**WHEREAS**, as a Program participant, the employee will be eligible to receive \$1,000 for each completed year of continuous full-time service with the Town as of the effective date of his/her retirement, less applicable taxes and withholdings, up to a maximum of 30 years of continuous full-time service with the Town or \$30,000; and

**WHEREAS**, eligible employees shall not receive any payment under this Retirement Incentive for periods of employment with other employers and must comply with the Program Conditions described in the Retirement Incentive Program; now, therefore,

**BE IT RESOLVED**, that to be eligible to receive the Retirement Incentive, the employee must complete the Retirement Incentive Election Form by June 30, 2018 and must retire after July 1, 2018, but no later than close of business on August 30, 2018 and must execute a valid and enforceable release of claims against the Town in connection with his/her employment in the form of a Stipulation of Agreement and General Release;

**BE IT FURTHER RESOLVED**, that the Town reserves the right to change or discontinue the Program, in whole or in part, at any time, in its sole and exclusive discretion and does not promise or guarantee that this Program or any similar Program will be offered in the future; and

**BE IT FURTHER RESOLVED**, that the Town Supervisor is authorized to execute any documents necessary to implement this Program.

DEME

**RESOLUTION TO RE-ALLOCATE POSITION / DEME /  
SLUDGE PRESS OPERATOR / KEITH BRENNAN / FROM  
GRADE 12 TO GRADE 14**

*Proposed Text:* **RESOLVED**, upon recommendation of the Commissioner of DEME re-allocate the position of Sludge Processing Equipment Operator I from grade 12, step 25/29 (incumbent's current step) at a salary of \$91,540 to grade 14, step 19/24 at a salary of \$95,810 effective April 30, 2018. This position was formerly at grade 14 and is subject to acknowledgement and acceptance from CSEA.



STATE OF NEW YORK : COUNTY OF ROCKLAND  
TOWN BOARD OF THE TOWN OF ORANGETOWN

-----X  
In the Matter of the Application of

SAMI MUHAMETAJ,

for a zone change from R-40 to R-15 to Real Property  
designated as 70 Hickory Hill Road, Tappan, New York  
10983 and Town of Orangetown tax map section 77.09,  
Block 1, lot 25.

PETITION FOR  
ZONE CHANGE



-----X  
**TO THE HONORABLE TOWN BOARD OF THE TOWN OF ORANGETOWN:**

The Petition of SAMI MUHAMETAJ respectfully shows to this Honorable Board upon direct knowledge, and upon information and belief, as follows:

**SUMMARY**

1. Petitioner Sami Muhametaj ("Property Owner") owns a 43,549 square foot property located at 70 Hickory Hill Road, Tappan, New York 10983 with a tax map designation of section 77.09, Block 1, lot 25 (the "Premise", or "Property").
2. From 1969 until 1991, the premise was located wholly within an R-15 zone classification.
3. On or about May 21, 1991, a large portion of the Petitioner's parcel was rezoned by the Town Board to an R-40 zone, with a smaller portion of the same parcel remaining in the R-15 zone. (See, Exhibit "A").
4. The rezoning was inadvertently left off of the Orangetown Official Zoning Map, which, for the past twenty seven years, erroneously indicated the premise was completely in the R-15 zone. (See, Exhibit "B").

5. The Petitioner purchased the property in October of 2016 under the misunderstanding that the parcel was correctly depicted on the Official Town zoning map as being entirely in the R-15 zone.
6. In December of 2016, the Petitioner submitted a minor subdivision application to the Town of Orangetown seeking to divide the parcel into two lots, one containing the existing single family home on 16,822 square feet of land, and the other a vacant lot containing 26,727 square feet.
7. On or about February 8, 2017, while proceeding through the minor subdivision process, the Petitioner was advised by Orangetown that the parcel was mostly in the R-40 zone, but that "The Town's Zoning Map does not accurately reflect the (1991) zone change...". (See, Exhibit "B").
8. This Petition seeks to change the Zoning District for that section of the parcel which is in the R-40 zone back to the R-15 zone.
9. The property is more particularly described on the attached metes and bound description labelled "Exhibit "C". (See, also, Exhibit "A").
10. Public records show the adjoining property on the North side of this parcel as being owned by "Spring Valley Water Works".
11. The adjoining property on the Western border is in the R-15 zone. Exhibit "A".
12. The adjoining property to the East was issued a certificate of occupancy in 2010 based upon being in the R-15 zone. Exhibit "D".

#### **HISTORICAL ZONING AND 1991 REZONING OF PREMISES**

13. By local law number 4 of 1969 (Chapter 43 of the Code of the Town of Clarkstown) the property subject to this Petition was zoned R-15.

14. On or about May 13, 1991, the Town of Orangetown Town Board adopted resolution number 316, rezoning a portion of the premises to R-15. (See Exhibit "E").
15. During that 1991 rezoning, a total of forty (40) parcels, which were part of a larger development, were outlined by the Board for possible R-40 rezoning. (See, Exhibit "A").
16. Despite the 1991 rezoning, the Official Zoning Map of the Town of Orangetown was not modified to reflect that rezoning, and as of February 8, 2017 that map was still uncorrected, showing that Petitioner's parcel is still in the R-15 zone. (See, Exhibit "E").

#### **ZONING TREATMENT AND ACTIVITY SUBSEQUENT TO THE 1991 REZONING**

17. The 1991 rezoning encircled a part of a larger development which initially contained forty (40) parcels of land. (See, Exhibit "A").
18. As a result of certain language in that 1991 rezoning resolution, of those forty (40) parcels described in the resolution, ten (10) parcels were excluded from the R-40 rezoning as a consequence of being in some type of development process, leaving thirty parcels.
19. Of those thirty (30), two (2), including the property subject to this Petition, were only partially rezoned. (See, Exhibit "A").
20. In addition, after that 1991 rezoning, through the present day, sixteen (16) of the remaining thirty (30) parcels were issued building permits or otherwise received certificates of occupancy based on the prior R-15 zoning. (Exhibit "A").
21. Thus, only fourteen (14) parcels, or about 35%, of the originally selected forty (40) properties in the proposed R-40 zone were left within the R-40 designation, with Petitioner's and one other only partially in the R-40 rezoned.

22. Further to the above, five (5) of those parcels initially in the R-40 zone were granted variances based upon the R-15 zone, and one was the subject of litigation also based upon the R-15 zone. (Exhibit "A").
23. In sum, of the forty (40) parcels originally described in the 1991 proposed R-40 zone, none were zoned as such on the Official Town Zoning Map, and twenty six (26), or 65%, have been treated by the Town for various purposes as being in the R-15 zone between 1991 and the present.

#### **PETITIONER'S 2016 MINOR SUBDIVISION APPLICATION**

24. On or about December 5, 2016, the Petitioner herein under the name "SAMI CONSTRUCTION MINOR SUBDIVISION" applied for a minor subdivision based upon the R-15 zone.
25. As part of that application, Petitioner submitted the appropriate State Environmental Quality Review Act (SEQRA) forms, and both the Rockland County Department of Health and the Town of Orangetown Zoning Board of Appeals consented to the Town of Orangetown Planning Board acting as Lead Agency for the coordinated environmental review.
26. On February 2, 2017, the drainage consultant for the Town of Orangetown Planning Board, Brooker Engineering, issued an opinion approving the subdivision application, stating that the drainage and stormwater issues were able to be adequately mitigated.
27. The application proceeded until February 8, 2017, at which time the Orangetown Director of the Office of Building, Zoning and Planning advised the Planning Board of the 1991

rezoning, and the fact that such zoning change was not reflected on the Official Town Zoning Map. (See, Exhibit "B").

28. This Petition respectfully followed.

#### **ZONE CHANGE CONSIDERATIONS**

29. It is respectfully submitted that granting the Petition herein will not adversely affect any surrounding property owners, and will bring this parcel into uniformity with the adjoining property to the West.
30. The rezoning will serve the general welfare of the community and the Town in that it will correct the existence of a parcel or property subject to two different zoning classifications, again while having no detrimental effect on the nearby land owners.
31. Pursuant to applicable Town Law § 265, the requirements for this Petition to be granted are respectfully incorporated herein by reference.
32. The proposed rezoning to R-15 would be identical to the adjoining parcel to the West; would have no effect on the commercial/utility zoning to the North; and will have no adverse consequences to the health, safety and welfare of nearby Town of Orangetown property owners.
33. For these reasons, Petitioner believes that the granting of the request to amend the Zoning Ordinance will be beneficial to the public at large.
34. Additionally, as was the case with the prior minor subdivision application, a hard look at the potential environmental impacts of the requested rezoning by the Town Board will confirm that no significant adverse environmental impact will take place if the Petition is granted.

35. The Premises is within 500 feet of a State Highway, a County Park, a Town Boundary or a County Road and as such referral pursuant to GML Section 239 would apply.
36. Part 1 of the New York State SEQRA Short Environmental Assessment Form is included herewith as Exhibit "F".
37. No prior formal application for the relief sought herein has been made by Petitioner herein.

#### **CONCLUSIONS AND REQUEST FOR RELIEF**

38. The Petitioner purchased the parcel at issue here in October of 2016 under the reasonable but mistaken belief that the premise was located entirely in the R-15 zone.
39. The Official Town Zoning map erroneously showed the parcel as being wholly within the R-15 zone.
40. Sixteen (16) Certificates of Occupancy's, five (5) variances, and one (1) Court case were acted upon in this same zone as if they were in the R-15 zone between 1991 and 2017.
41. Part of Petitioner's parcel is still in the R-15 zone.
42. No adverse public safety, health, welfare or environmental impacts will result if the requested relief is granted.
43. It is respectfully requested that the portion of 70 Hickory Hill Road, Tappan, New York 10983, tax map designation of section 77.09, Block 1, lot 25, which is currently in the R-40 zone, be granted a zone change from R-40 to R-15.
44. Accordingly, the Town Board is respectfully requested to provide notice of any required Hearings or other proceedings as set forth in Town Law for this Petition to be lawfully considered.

WHEREFORE, Petitioner respectfully requests this Honorable Board to process this Petition and refer the same to any appropriate other Boards or bodies for any required recommendation on the matter and to take the remaining necessary steps, including a Public Hearing, for the purposes of amending the Zoning Code and Ordinance of the Town of Orangetown to rezone the property from its existing R-40 and R-15 mixed zone to the R-15 residential zoning district as requested herein.

DATED: May 15, 2017

Respectfully submitted,

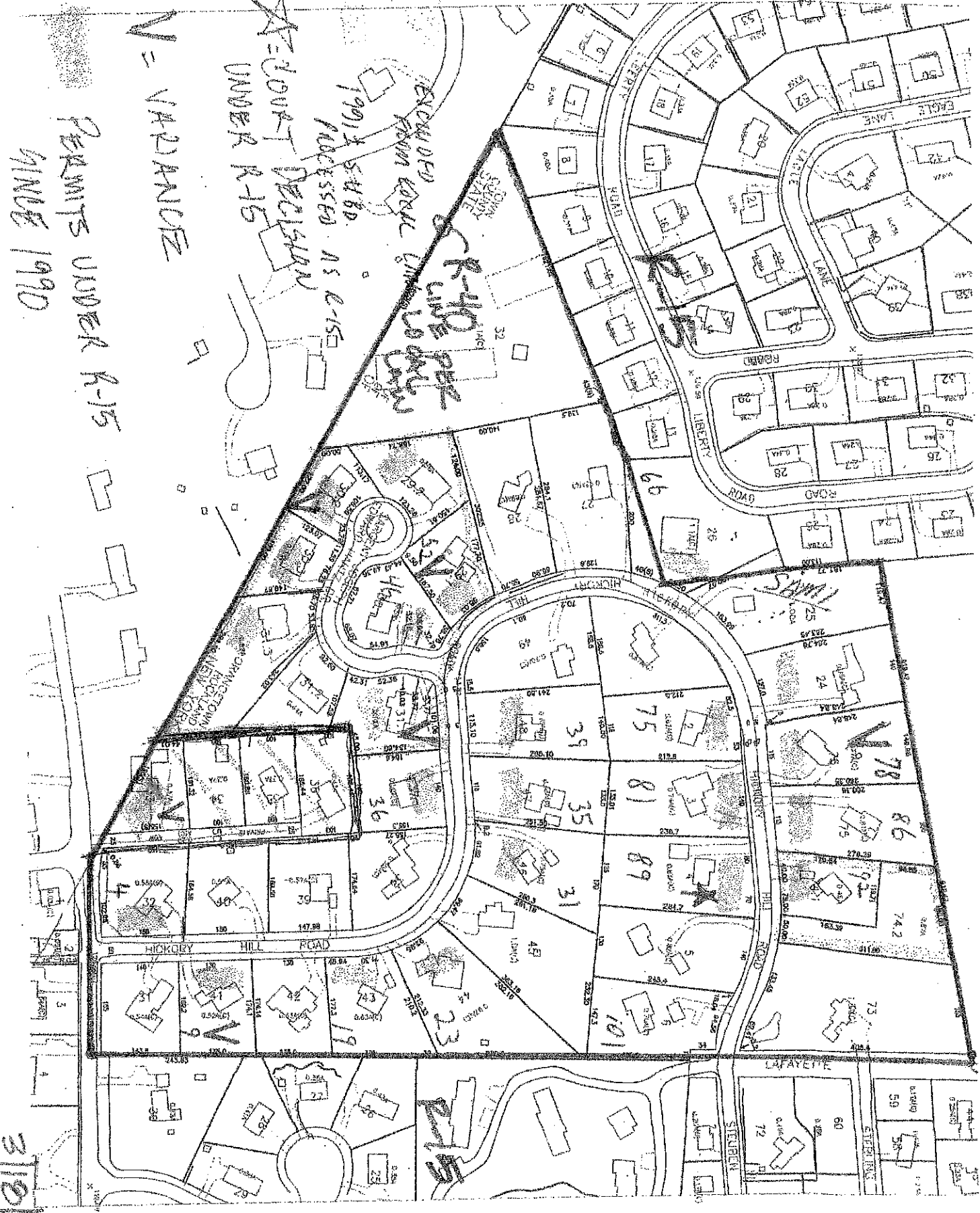
Sami Muhametaj, Petitioner

By. 

Dwight D. Joyce, Esq.

# **EXHIBIT A**





N = VARIANCE

\* = COURT DECISION UNDER R-15

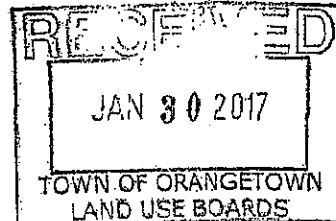
EXCLUDED ROOM LOCAL LIMITS ONLY  
 1991 F.S. 418D.  
 ADDED AS C-15

PERMITS UNDER R-15 SINCE 1990

3/18/17

# **EXHIBIT B**

OFFICE OF BUILDING, ZONING AND PLANNING  
ADMINISTRATION AND ENFORCEMENT  
TOWN OF ORANGETOWN  
MEMORANDUM



Date: February 8, 2017

To: Cheryl Coopersmith, Chief Clerk  
Planning Board

From: John Giardiello, PE  
Director O.B.Z.P.A.E. 

Subject: **Sami Construction Minor Subdivision Plan**  
Prepreliminary/Preliminary/Final Subdivision Plan and SEQRA Review  
70 Hickory Hill Road, Tappan  
PB#17-10; R-15 zoning district  
Section 77.09 Block 1 Lots 25

Submission reviewed: 1) Subdivision of property for Sami Construction dated  
December 5, 2016.  
2) Short EAF dated January 6, 2017.

- 1) Please be advised the property was rezoned from R-15 to R-40 by the Town Board on May 13, 1991 as Resolution # 316. The Town's Zoning Map does not accurately reflect the zone change, however resolution # 316 includes this property as part of an R-40 Zone District. Therefore the proposed subdivision map's bulk table needs to be amended to reflect the R-40 Zone District requirements. Attached are copies of the Town Board Resolution # 316 and Local Law 6, 1991 amending the Zoning Map.

JG/gr  
1/27/17

# **EXHIBIT C**

## Schedule A Description

Title Number FF-1566-R

Policy Number: B06 122275

Page 1

ALL that certain plot, piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being in the Town of Orangetown, County of Rockland, State of New York, and more particularly described as follows:

BEGINNING at a point on the northerly line of Hickory Hill Road where it is intersected by the westerly line of lands now or formerly Tozer and the easterly line of Jas;

THENCE North 5 degrees 37' 00" West 263.454 feet along the aforesaid lands of Tozer to a old iron pipe found and lands now or formerly the Spring Valley Water Company;

THENCE South 88 degrees 20' 08" West 119.47 feet along the aforesaid lands of the Spring Valley Water Company to a point, said point being located 1.75 feet West of the easterly line of "Prell Park - Section XII-B filed Map No. 3409,

THENCE South 2 degrees 10' 00" West 161.767 feet through the aforesaid lands to a point and the southerly line of "Prell Park - Section XII-B Filed Map No. 3409;

THENCE South 85 degrees 27' 21" West 40.420 feet along the aforesaid southerly line "Prell Park - Section XII-B Filed Map No. 3409 to a point and the easterly line of lands now or formerly Aronson;

THENCE South 20 degrees 01' 05" East 190.565 feet along the aforesaid lands of Aronson to the northerly line of Hickory Hill Road;

THENCE along the northerly line of Hickory Hill Road on a curve to the right having a radius of 310.00 and a central angle of 28 degrees 27' 38" an arc length of 153.987 feet to the point of BEGINNING.

# **EXHIBIT D**

**CERTIFICATE OF OCCUPANCY**  
**OFFICE OF BUILDING, ZONING AND PLANNING**  
**ADMINISTRATION AND ENFORCEMENT**  
**TOWN OF ORANGETOWN**

---

Permit Type : Res. Kitchen Certificate # : 38656  
Completion Date : 10/8/2010

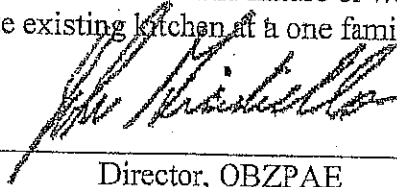
Location of Property : 74 Hickory Hill Rd, 74 Hickory Hill Rd  
Sec - Blk - Lot : 77.09-1-24 Zoned :

Owner of Property : Eliot Tozer  
Address of Owner : 74 Hickory Hill Rd

Construction Type : Occupancy Class :

THIS CERTIFIES THAT PERMISSION is hereby granted for the OCCUPANCY of the premises herein described, situated on the above mentioned premises for the purposes specified as follows.

Use and designation for the structure or land and nature of work for which this C.O. is issued :  
Renovate existing kitchen at a one family dwelling.

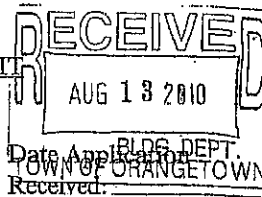


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Director, OBZPAE

APPLICATION FOR BUILDING/DEMOLITION PERMIT

Phone: (845) 359-8410 Office Hours: 8 to 4  
Fax: (845) 359-8526



Name of Municipality: Town of Orangetown

Inspector: <del>JP</del> <u>CS</u>	OFFICIAL USE ONLY	
Zoning District: <u>CS</u>	Acreage: _____	
Permit Information:		
Permit No.: <del>38656</del> <u>38656</u>	Date: <u>8.19.10</u>	
C.O. No.: _____	Date: <u>10-8-10</u>	
Check Amount: <u>470<sup>00</sup></u>	Check Date: <u>8/13/10</u>	Receipt #: _____
Check #: <u>8745</u>	From: <u>Creative Design</u>	Receipt #: _____
S.M.F. Ck. No.: _____	Receipt #: _____	
1st 6Mo Extension/Date: _____	Ck. # _____ Amt. _____	Receipt #: _____
2nd 6Mo Extension/Date: _____	Ck. # _____ Amt. _____	Receipt #: _____
GIS Fee: From <u>Creative Design</u>	Ck. # <u>8746</u> Amt. <u>20</u>	Receipt #: _____ Date: <u>8/13/10</u>

77.09-1-24

Rockland County Home Improvement - please submit a copy of license  
Workmen's Compensation and Disability Carrier - please submit a copy of the policy  
Note: See inside for instructions for completing this application

Property Location: 74 Hickory Hill Rd.

Section: ~~77.10~~ 77.09 Block 1 Lot ~~1183~~ 24

Property Owner: Eliot Tozer Phone # Home: 845-359-1293

Address: 74 Hickory Hill Road, Tappan NY 10983 Work: \_\_\_\_\_

Lessee: \_\_\_\_\_ Phone #: \_\_\_\_\_

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

Contact Person: Ravigh; Cathy Tozer Nicole Phone # 201-765-5813

Architect/Engineer: \_\_\_\_\_ NYS Lic # \_\_\_\_\_ Phone # \_\_\_\_\_

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

Builder/General Contractor: Creative Design Construction RC Lic # H-06401-A10-00-00

Address: 204 Livingston St Northvale NJ 07647 Phone # 201-768-5813

Plumber: Kabaci Properties LLC DBA Crossroads Plumbing & Heating RC Lic # 7162

Address: 14 Spring Street, Bergenfield NJ 07621 Phone # 201-324-3003

Heat/Cooling: \_\_\_\_\_ RC Lic # \_\_\_\_\_

Address: \_\_\_\_\_ Phone # \_\_\_\_\_

Electrician: Lightning Electric / R. Bella Corp RC Lic # 414

Address: 11 Wall Terrace, Bunnell NY 10913 Phone # 845-305-2285

Existing use of structure or land: Residential

Proposed Project Description: Remove existing kitchen, Replace Appliances  
New in existing location, new cabinets

Proposed Square Footage: \_\_\_\_\_ Estimated Construction Value (\$): 23,100.00

Board Decisions: \_\_\_\_\_

PLANS REVIEWED: \_\_\_\_\_

PERMIT REFERRED/DENIED FOR: \_\_\_\_\_

TOZER

# 38656



38656

**BULK**

Zone: <u>K15</u>	Group:	Use:	
	Required	Existing	Proposed
Floor Area Ratio			
Lot Area			
Lot Width			
Street Frontage	<u>N/A</u>		
Front yard setback			
Side yard setback			
Total side yard setback			
Rear yard setback			
Maximum building height in feet and inches per foot of distance from lot line			

**SIZE OF BUILDING**

	Existing	Proposed	Completed
Square feet floor area			
Front in feet			
Rear in feet	<u>N/A</u>		
Maximum depth in feet			
Number of stories			
Construction Type:		Occ. Class:	

**AFFIDAVIT**

IS PROPERTY LOCATED IN A FLOOD PLAIN?

State of New York  
 County of Rockland SS.:  
 Town/Village of Orangetown

YES  NO

I, Melissa Mancinelli, being duly sworn, deposes and says that is the owner (lessee, engineer, surveyor, architect, builder, or agent of the owner) in fee of the premises to which this application applies; that he (the applicant) is duly authorized to make this application and that the statements contained in the papers submitted herein are true to the best of his knowledge and belief, and that the work will be performed in the manner set forth in the application and in the plans and specifications filed therewith, and in accordance with the State Uniform Building Code and all other applicable laws, ordinances and regulations of the municipality. I also declare that the structure or area described in this application will not be occupied or used until I have obtained a Certificate of Occupancy.

**Signature and Mailing Address**

Melissa Mancinelli  
201 Livingston Str.  
Northvale, NJ 07647

SWORN to before me this 13 day of August, 2010

Witness: Colleen Pracolici

If not witnessed by Building Department personnel, Notary signature is required.

Notary Public

**OFFICIAL USE ONLY**

Checked by: <u>[Signature]</u>	Date: <u>8/16/10</u>
Permit Granted for: <u>Renovate Existing Kitchen at a One Family Dwelling</u>	
Signature: <u>[Signature]</u>	Date: <u>8/19/10</u>
Director, OHZPAE	

# **EXHIBIT E**

RTMB 5/13/91

Page 6

RESOLUTION NO. 315

CLOSE P/H ZONE CHANGE-  
HICKORY HILL

Councilman Connie O'Sullivan offered the following resolution, which was seconded by Councilman McLiverty and was unanimously adopted:

RESOLVED, That this public hearing is hereby closed.

Ayes: Councilmen Connie O'Sullivan, McLiverty, Niel O'Sullivan, Swift, Supervisor Pellegrini

Noes: None

\* \* \*

RESOLUTION NO. 316

TB DECISION RE ZONE CHANGE  
HICKORY HILL

Councilman Swift offered the following resolution, which was seconded by Councilman Swift and on roll call was unanimously adopted:

RESOLVED, That this public hearing to reconsider a local law amending Local Law No. 4, 1969 (Chapter 43 of the Code of the Town of Orangetown entitled "Zoning") (Hickory Hill) is hereby adopted; with current applicants who now have pending applications before the Planning Board be grandfathered to R-15.

Yes  
==

✱

Ayes: Councilmen Swift, Connie O'Sullivan, Niel O'Sullivan, McLiverty, Supervisor Pellegrini

Noes: None

\* \* \*

RESOLUTION NO. 317

APPROVE MINUTES

Councilman Niel O'Sullivan offered the following resolution, which was seconded by Councilman Connie O'Sullivan and was unanimously adopted:

RESOLVED, That the minutes of Special Town Board Meetings with Police of April 1, 1991, April 15, 1991, April 19, 1991 and April 22, 1991; and Audit and Regular Town Board meetings of April 22, 1991; and Special Town Board Meeting of April 29, 1991 are hereby approved.

Ayes: Councilmen Niel O'Sullivan, Connie O'Sullivan, McLiverty, Swift, Supervisor Pellegrini

Noes: None

\* \* \*

LOCAL LAW NO. 6, 1991  
TOWN OF ORANGETOWN

A LOCAL LAW AMENDING LOCAL LAW NO. 4, 1969 (CHAPTER 43 OF THE CODE OF THE TOWN OF ORANGETOWN ENTITLED "ZONING")

Be it enacted by the Town Board of the Town of Orangetown that Local Law No. 4, 1969 (Chapter 43 of the Code of the Town of Orangetown entitled "Zoning") and specifically §2.2 (Zoning Map) is amended as follows:

1. That the property described as follows in the hamlet of Tappan, New York, presently included in a R-15 zone is hereby changed from R-15 to zone R-40:

ALL that certain lot, piece or parcel of land, situate, lying and being in the Hamlet of Tappan, Town of Orangetown, County of Rockland and State of New York, as shown on a map of property of Estate of Peter McGillicuddy, Borough of Old Tappan and Northvale, Bergen County and State of New Jersey, and Tappan, Rockland County and State of New York, compiled by William A. YUDA, C. E. Palisades, New York, September 20, 1947, showing premises on Old Tappan Road, bounded and described as follows, viz:-

BEGINNING at the center line of Old Tappan Road and extending north 9 degrees 25 minutes east 1588.05 feet more or less to land of Spring Valley Water Works and Supply Company, thence south 88 degrees 55 minutes west 903.75 feet more or less to the lands of the United States of America, thence in a southerly line 3 degrees 30 minutes west 396.86 feet more or less to a point thence in a westerly direction south 89 degrees 15 minutes west 268.5 feet more or less to a point continuing in a westerly direction south 77 degrees 23 minutes west 540 feet more or less to the New York-New Jersey State line, thence extending in a south easterly direction along the New York-New Jersey State line 1490 feet more or less, thence extending in a southerly direction 20 feet more or less to the center line of Old Tappan Road, thence in an easterly direction along the center line of Old Tappan Road 350 feet more or less to the point or place of beginning.

Excepting all that lot piece or parcel of land beginning at a point on the northerly side of Old Tappan Road approximately 350 feet west of the point or place of beginning, thence running in a northerly direction 470 feet more or less, to a point and thence westerly 185 feet more or less to a point and thence southerly 330 feet more or less to the New York-New Jersey State line thence southeasterly along said line, 230 feet more or less, to the point or place of beginning.

SUBJECT to easement for sanitary sewer owned by the State of New York, which said easement is recorded in the office of the County Clerk of Rockland County in Liber 323 of Deeds at page 127.

SUBJECT to such a state of facts as an accurate survey would disclose.

BEING a portion of premises owned by the Estate of Henry Mc Gillicuddy deceased, and by Peter Mc Gillicuddy who died seized and possessed a 50% interest, leaving a last Will and Testament which was duly admitted to probate by the Surrogate of the County of Rockland, all the grantors herein being residuary legatees of said Peter F. Mc Gillicuddy, with the exception of Katherine F. Mc Gillicuddy.

2. Pending Planning Board Applications. All existing subdivision applications which are currently pending before the Orangetown Planning Board prior to the effective date herein shall continue in full force and effect, and all boards of the Town of Orangetown may process said subdivision applications which may be pending pursuant to the local law as it existed at the time said application was made without this local law amendment having effect as to the change from R-15 to R-40.

3. This local law shall take effect upon publishing, posting and upon filing a copy with the Secretary of State as required by law.

# EXHIBIT F

# Short Environmental Assessment Form

## Part 1 - Project Information

### Instructions for Completing

**Part 1 - Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 - Project and Sponsor Information</b>			
SAMI MUHAMETAJ			
Name of Action or Project: 70 Hickory Hill Road Zone Change			
Project Location (describe, and attach a location map): 70 Hickory Hill Road, Tappan, New York, 10983			
Brief Description of Proposed Action: Petition requesting the rezoning of the above described parcel from a mixed R-40 and R-15 zone, to R-15 zone.			
Name of Applicant or Sponsor: Dwight D. Joyce, Attorney at Law		Telephone: 845-429-9323	
		E-Mail: office@dwightjoycelaw.com	
Address: 2 Joyce Plaza			
City/PO: Stony Point		State: New York	Zip Code: 10980
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
			YES <input checked="" type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			NO <input checked="" type="checkbox"/>
			YES <input type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		1.0 acres	
b. Total acreage to be physically disturbed?		0 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		1.0 acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input type="checkbox"/> Parkland			





<p>18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)?          If Yes, explain purpose and size: _____          _____          _____</p>	<p>NO  <input checked="" type="checkbox"/></p>	<p>YES  <input type="checkbox"/></p>
<p>19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?          If Yes, describe: _____          _____          _____</p>	<p>NO  <input checked="" type="checkbox"/></p>	<p>YES  <input type="checkbox"/></p>
<p>20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?          If Yes, describe: _____          _____          _____</p>	<p>NO  <input checked="" type="checkbox"/></p>	<p>YES  <input type="checkbox"/></p>
<p><b>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b></p>		
<p>Applicant/sponsor name: <u>Dwight D. Joyce, attorney for Petitioner</u></p>	<p>Date: <u>May 15, 2017</u></p>	
<p>Signature: _____</p>		



**STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
OFFICE OF GENERAL SERVICES  
NEW YORK STATE PROCUREMENT SERVICES  
PIGGYBACK CONTRACT FOR GPS TELEMATICS AND RELATED SERVICES**

**New York State Contract #**

**PT66910**

**Master Contract #**

**GS-07F-5559R**

**THIS CONTRACT** for establishment of a “piggyback” contract is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter “State” or “OGS”) whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163(10)(e), and Networkfleet, Inc. (hereinafter “Contractor” or “Vendor” or “Offerer”), with its principal place of business at 6363 Greenwich Drive, Suite, San Diego, CA 92122. OGS and Contractor are hereby individually referred to as a “Party” and collectively referred to as “Parties”.

Whereas, in accordance with New York State Finance Law §163(10)(e), the Commissioner of OGS (hereinafter “Commissioner”) may authorize purchases required by New York State agencies or other authorized purchasers by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states (hereinafter “Issuing Agency”);

Whereas, OGS New York State Procurement Services (hereinafter “Procurement Services”), on behalf of the Commissioner, finds it necessary and desirable to enter into such a contract (hereinafter “Piggyback Contract” or “Contract”), with Contractor for the purchase of specified products or services under the terms and conditions established pursuant to GS-07F-5559R (hereinafter “Master Contract”); and

Whereas, OGS provided notification of its intention to enter into a single source contract with Contractor by placing a notice in the May 13, 2015 edition of the New York State Contract Reporter.

Therefore, by completing and signing this Piggyback Contract, Contractor is willing and able to enter into a contract and authorizes OGS to process the Piggyback Contract and provide notification regarding the availability of this Piggyback Contract.

## **1. PIGGYBACK CONTRACT SCOPE**

This document sets forth the terms and conditions governing acquisitions under this Piggyback Contract for use by Authorized Users. All the terms, conditions, covenants and representations contained herein and in the Master Contract, except as modified by this Piggyback Contract, are hereby incorporated by reference and deemed to be a part of this Piggyback Contract as if fully set forth at length herein. The terms and conditions of this Piggyback Contract shall supersede any conflicting terms and conditions set forth in the Master Contract.

The Master Contract is expressly amended as noted in Section 4, *Merger of Appendices/Conflict of Clauses*, below.

## **2. TERM**

The term of this Piggyback Contract shall be the last date of execution by the Parties through December 31, 2019.

### 3. CENTRALIZED CONTRACT MODIFICATIONS

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure.

The form contained within Appendix C is subject to change at the sole discretion of OGS.

E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §28.

### 4. MERGER OF APPENDICES/CONFLICT OF CLAUSES

This Piggyback Contract shall incorporate the following appendices as if set forth herein at length:

- I. Appendix A, *Standard Clauses for NYS Contracts*
- II. Appendix B, *OGS General Specifications*
- III. Appendix C, Contract Modification Procedure
- IV. Appendix D, The Networkfleet Installation Program Policy & Procedure (May 2014)
- V. Appendix E, Networkfleet Warranty Policy

Only documents expressly enumerated below shall be deemed a part of this Piggyback Contract, and references contained in those documents to additional Contractor documents not enumerated below shall be of no force and effect. Conflicts between these documents shall be resolved in the following descending order of precedence.

- VI. Appendix A, *Standard Clauses for NYS Contracts*
- VII. Piggyback Contract (This Document), including Appendix D, Networkfleet Installation Program Policy & Procedure (May 2014), and Appendix E, Networkfleet Warranty Policy
- VIII. Appendix B, *OGS General Specifications*
- IX. Appendix C, Contract Modification Procedure
- X. Resultant Purchase Orders
- XI. Master Contract, GS-07F-5559R

## 5. APPENDIX B (JUNE 2014) AMENDMENTS

Appendix B, Clause 17 (*Pricing*), Subsection b (*Net Pricing*) is hereby deleted and replaced with the following:

### 17. PRICING

#### b. Net Pricing

Unless otherwise required by the Bid Specifications, prices shall be net, not including transportation, customs, tariff, delivery and other charges.

Appendix B, Clause 17 (*Pricing*), Subsection f (*Best Pricing Offer*) is hereby deleted in its entirety:

Appendix B, Clause 20 (*Procurement Card*), is hereby deleted and replaced with the following:

### 20. PROCUREMENT CARD

The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing Purchase Orders or Purchase Authorizations. Authorized Users must provide documentation which details the content and quantity of the order and identifies Piggy Back Contract PT66910 as the contract vehicle. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card. Should an Authorized User elect to use a Purchasing Card, that Purchasing Card shall be the only allowable payment method associated with the Authorized User's account.

Appendix B, Clause 27 (*Participation in Centralized Contracts*), Subsection e (*Contract Migration*) is hereby deleted and replaced with the following:

### 27. PARTICIPATION IN CENTRALIZED CONTRACTS

#### e. Contract Migration

Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products or services shall be permitted to migrate to that Centralized Contract effective with its commencement date. This Contract migration opportunity is restricted exclusively to existing individual Authorized User Contracts which contain hardware and/or services as offered under this Contract. Individual Authorized User Contracts which contain bundle procurements or any other procurement option not identified in this Contract Price Schedule are not eligible for migration prior to the termination of the Period of Performance on the existing individual Contract.

Appendix B, Clause 35 (*Shipping / Receipt of Product*), Subsection b (*Shipping Charges*) is hereby deleted and replaced with the following:

### 35. SHIPPING/RECEIPT OF PRODUCT

#### b. Shipping Charges

Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (F.O.B.) Origin. Unless otherwise agreed, items purchased at a price F.O.B. Origin shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges.

Appendix B, Clause 36 (*Title and Risk of Loss*), is hereby deleted and replaced with the following:

### 36. TITLE AND RISK OF LOSS

Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within ten calendar days from receipt. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected. Absence of notification of acceptance or rejection by Authorized User within ten (10) calendar days will serve as acceptance for goods and services.

Appendix B, Clause 39 (*Rejected Product*), is hereby deleted and replaced with the following:

### 39. REJECTED PRODUCT

When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User or other timeframe mutually agreed upon by Authorized

User and Contractor. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification or the aforementioned mutually agreed upon time frame shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for commercially reasonable costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar-day period or the aforementioned mutually agreed upon time frame.

Appendix B, Clause 40 (*Installation*), is hereby deleted and replaced with Appendix D, *The Verizon Networkfleet telematics solution, Installation Program Policy & Procedure (May 2014)*.

Appendix B, Clause 56 (*Security*), is hereby deleted and replaced with the following:

#### 56. SECURITY

Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols as set forth in the Purchase Order in accordance with Section 7.2, Security Procedures, of the Piggyback Contract PT 66910.

Appendix B, Clause 59 (*Warranties*), is hereby deleted and replaced with Appendix E, *Networkfleet Warranty Policy*.

Appendix B, Clause 63 (*Limitation of Liability*), is hereby deleted and replaced with the following:

#### 63. LIMITATION OF LIABILITY

Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Third Party Rights clause, the limit of liability shall be as follows:

- a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in an amount equal to the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order).
- b. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
- c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which arise from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

Appendix B, Clause 64 (*Disputes*), is hereby deleted and replaced with the following:

#### 64. Disputes

It is the policy of the Office of General Services' Procurement Services to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to Procurement Services bid solicitations, contract awards and contract administration. Procurement Services encourages vendors to seek resolution of disputes through consultation with Procurement Services staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of Procurement Services' Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this Invitation for Bids or through the OGS Website at: <http://nyspro.ogs.ny.gov/content/dispute-resolution-procedures>. OGS reserves the right to change the procedures set forth in Procurement Services' Dispute Resolution Procedures for Vendors, in non-material and substantive ways without seeking a contract amendment.

Appendix B, Clause 65 (*Software License Grant*), is hereby deleted in its entirety.

Appendix B, Clause 66 (*Product Acceptance*), is hereby deleted in its entirety.

Appendix B, Clause 67 (*Audit of Licensed Product Usage*), is hereby deleted in its entirety.

Appendix B, Clause 68 (*Ownership / Title to Project Deliverables*), is hereby deleted in its entirety.

Appendix B, Clause 69 (*Proof of License*), is hereby deleted in its entirety.

Appendix B, Clause 70 (*Product Version*), is hereby deleted in its entirety.

Appendix B, Clause 71 (*Changes to Product or Service Offerings*), is hereby deleted in its entirety.

Appendix B, Clause 72 (*No Hardstop / Passive License Monitoring*), is hereby deleted in its entirety.

Appendix B, Clause 73 (*Source Code Escrow for Licensed Product*), is hereby deleted in its entirety.

## 6. APPLICABLE LAW

This Piggyback Contract shall be governed by and construed in accordance with the laws of the State of New York. Any claims or actions brought by Contractor against the State for monetary damages shall be brought in the New York State Court of Claims. See Section 14, *Governing Law*, in Appendix A.

## 7. AUTHORIZED USERS

This Piggyback Contract is for use by Authorized Users, which includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, Section 2(b), *Definitions*.

Upon request, all eligible non-State agencies must furnish the Contractor with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization's eligibility to purchase from New York State contracts may also be directed to OGS Procurement Services Customer Services at 518-474-6717 or at [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov).

### 7.1. CONTRACTOR DATA CENTER LOCATIONS:

At the beginning of this Contract, Contractor and OGS agree that the Authorized User's Data will be housed in the contractor's production data center at 5771 Copley Drive, San Diego, CA with a disaster recovery data center backup at 615 N. 48<sup>th</sup> Street, Phoenix, AZ. Should the business need arise, the Contractor agrees to follow standard industry practice in selecting future data center locations. Contractor agrees that the data center(s) hosting the Authorized User Data shall not be co-located within the same state. In the event of a data center location change, Contractor shall give written notice in accordance with § 8, Notices, sixty (60) Business Days of such change. Contractor agrees that under no circumstances shall the data center(s) hosting the Authorized User Data be located outside the continental United States

### 7.2 SECURITY PROCEDURES

Should Authorized User have specific Security Procedures to which Contractor shall be responsible for compliance, a detailed written description of the Security Procedures and the Contractor specific obligations derived from the requirement must be submitted to Contractor's Contract Compliance Team, [nwfcontractcompliance@verizon.com](mailto:nwfcontractcompliance@verizon.com) for review and determination of acceptability no later than twenty (20) business days prior to the anticipated date of Order Award. Contractor shall provide written notice of acceptance determination to Authorized User upon completion of review.

Any order which includes Authorized User specific Security Procedures will require a copy of Contractor's Contract Compliance Department written approval to be included with the submittal of the Order. Any Orders with Security Procedures included which do not include evidence of Contractor's Contract Compliance written approval will not be processed and will be returned to the Authorized User.

## 8. NOTICES

All notices, demands, designations, certifications, requests, reports, offers, consents, approvals and other instruments given pursuant to this Piggyback Contract shall be in writing and shall be validly given when mailed by registered, certified or overnight mail, or hand delivered and, (i) if to the State, addressed to the State at its address identified as indicated below, or (ii) if to the Contractor, addressed to Contract Administrator below: A Party may, from time to time, specify any address in the United States as its address for purposes of notices under this Piggyback Contract by giving fifteen (15)

days written notice to the other Party. The Parties mutually agree to designate individuals in their respective organizations for purposes of receiving notice pursuant to this Piggyback Contract. The representatives for the State and the Contractor will be identified, and updated, on the Contract Award Notification page associated with this Piggyback Contract.

Written notice of any alleged breach by one party to the other shall provide specific facts, circumstances and grounds upon which the breach is being declared.

**TO STATE:**

Michelle St. Jock  
 New York State Office of General Services  
 Procurement Services  
 Corning Tower Building, 38<sup>th</sup> Floor  
 Empire State Plaza  
 Albany, New York 12242  
 Telephone: (518) 474-3922  
 E-Mail: [michelle.stjock@ogs.ny.gov](mailto:michelle.stjock@ogs.ny.gov)

**TO CONTRACTOR:**

NWF Contract Compliance C/O Lauryn Crosby  
 Networkfleet  
 6363 Greenwich Dr., Ste. 200  
 San Diego, CA 92123  
 Telephone: (858) 768-7172  
 E-Mail: [NWFContractCompliance@verizon.com](mailto:NWFContractCompliance@verizon.com)

## 9. PROCESSING CONTRACT PAYMENTS

The Contractor acknowledges that a contract payment cannot be processed by an Authorized User until the contract Products have been delivered and accepted.

## 10. CONTRACT BILLINGS AND PAYMENTS

Appendix B, Section 49, *Contract Invoicing*, applies to this Piggyback Contract.

## 11. PAYMENTS OF INTEREST

Appendix B, Section 51, *Prompt Payments*, applies to this Piggyback Contract.

The Federal Prompt Payment Law (or any other law governing payment terms incorporated in the Master Contract) does not apply to the Piggyback Contract regardless of customer.

## 12. REPORT OF CONTRACT PURCHASES

Contractor agrees it shall furnish a report of purchases made from this Piggyback Contract by the fifteenth of the month following the end of each six-month period. The State reserves the right to seek alternate data and reporting elements and will work with Contractor if necessary to change. The report shall be in the following format:

Purchaser Name	Product or Catalog Number	Product/Service Description	Service Duration (m/yy-m/yy)	Total Quantity Shipped	Total \$ Value (List)	Total \$ Value (Invoiced)

The report is to be submitted to OGS in accordance with the notice provisions of this Piggyback Contract and shall reference the Group Number, New York State Contract Number, sales period, and Contractor's name.

Failure to submit the required report may constitute breach of this Piggyback Contract.

### 13. PRICE AND DISCOUNT

#### I. MINIMUM ORDER

If the Master Contract contains minimum order quantities or values, Contractor may elect to honor orders for less than the minimum order. For all orders less than the minimum order, at the Contractor's option, shipping costs from the shipping point may be added to invoice with a copy of the freight bill. Orders are to be shipped on an F.O.B. Origin basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the order by the Authorized User.

#### II. PRICE AND DISCOUNTS

Price shall be as provided in the Master Contract, which is available on the GSA website:

[https://www.gsaadvantage.gov/ref\\_text/GS07F5559R/0NUDON.33P4Q3\\_GS-07F-5559R\\_GS07F5559R.PDF](https://www.gsaadvantage.gov/ref_text/GS07F5559R/0NUDON.33P4Q3_GS-07F-5559R_GS07F5559R.PDF)

Price shall be F.O.B. Origin with delivery at any point in New York State. Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Master Contract will also be included in this Piggyback Contract.

### 14. OVERLAPPING CONTRACT ITEMS

Products/services available under this Piggyback Contract may also be available from other New York State contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements, and to document the basis for this selection in the procurement record.

### 15. CONTRACTOR'S INSURANCE REQUIREMENTS

The Contractor shall procure at its sole cost and expense, prior to this Piggyback Contract taking effect, and shall maintain in force at all times during the term of this Piggyback Contract, policies of insurance as herein below set forth, written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-" Class "VII" or better. 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 licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall deliver to OGS evidence of the coverage required by this Section in a form that is acceptable to OGS (i.e., a certificate of insurance that is promulgated by the insurer issuing the policy reference in the certificate of insurance or a standard certificate of insurance form issued by an industry standard-setting organization and approved for use by the Superintendent of the New York State Department of Financial Services or any other form approved for use by the Superintendent of the New York State Department of Financial Services or other documentation as agreed to by the parties). These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under this Piggyback Contract.

- I. **General Conditions Applicable to Insurance.** All policies of insurance required by this Piggyback Contract must meet the following requirements:
  - A. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Paragraph II Insurance Requirements below.
  - B. **Policy Forms.** Except as may be otherwise specifically provided herein or agreed to in writing by OGS, policies must be written on an occurrence basis.
  - C. **Evidence of Insurance (Certificates, Amendatory Endorsements and other documentation as agreed to by the parties).** Contractor shall provide OGS with a Certificate or Certificates of Insurance and all required endorsements and other documentation as agreed to by the parties, in a form satisfactory to OGS, prior to this Piggyback Contract taking effect, and within ten (10) business days of request.



1. Certificates shall reference the New York State Contract Number.
  2. **ALL OF THE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME:** The New York State Office of General Services, New York State Procurement Services (Procurement Services), 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).
  3. Requested documentation shall be submitted to:  
The New York State Office of General Services  
New York State Procurement Services (Procurement Services)  
Corning Tower- 38th Floor  
Empire State Plaza  
Albany, NY 12242
  4. Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without notice shall be provided as required by law to OGS, Attention: Procurement Services, Corning Tower – 38<sup>th</sup> Floor, Empire State Plaza, Albany, New York 12242. 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. Not less than ten (10) days' after the expiration date or renewal date, the Contractor shall supply OGS updated evidence of coverage.
  5. Certificates of Insurance shall:
    - a. Be in the form acceptable to by OGS (i.e.: a certificate of insurance that is promulgated by the insurer issuing the policy reference in the certificate of insurance or a standard certificate of insurance form issued by an industry standard-setting organization and approved for use by the Superintendent of the New York State Department of Financial Services or any other form approved for use by the Superintendent of the New York State Department of Financial Services);
    - b. Specify the Additional Insureds and Named Insured as required herein;
    - c. Refer to this Piggyback Contract by its New York State Contract Number and any other attachments on the face of the certificate; and,
    - d. Be signed by an authorized representative of the insurance carrier or producer.
  6. Only original documents or electronic forms that can be directly traced back to the insurance carrier, agent or broker via e-mail distribution will be accepted.
- D. Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from the Contractor's work under this Piggyback Contract, or as a result of the Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Contractor's insurance.
- E. Policy Renewal/Expiration.** Within ten (10) days' of the expiration of any policy required by this Piggyback Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the State than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph I.C. Evidence of Insurance (**Certificates, Amendatory Endorsements and other documentation as agreed to by the parties**), above. If, at any time during the term of this Piggyback Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Piggyback Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Should the Contractor fail to provide or maintain any insurance required by this Piggyback Contract, or proof thereof is not provided, OGS or Authorized Users may withhold further payments due under this Piggyback Contract or treat such failure as a breach or default of this Piggyback Contract. In the event of such a breach, the Contractor shall be subject to liability for damages, indemnification and all other legal remedies available to OGS. The Contractor's failure to obtain and/or keep in effect any and all required insurance shall also provide the basis for OGS' immediate termination of this Piggyback Contract, subject only to a five (5) business day cure period. Any termination by OGS or any delay, time lost or additional cost incurred as a result of the Contractor not having insurance required by this Piggyback Contract or not providing proof of same in a form acceptable to OGS, shall in no event constitute or be deemed a

breach of this Piggyback Contract and no liability shall be incurred or arise against OGS or any Authorized User, its agents and employees therefrom for lost profits or any other damages.

**F. Intentionally Omitted**

**G. Subcontractors.**

Any Subcontractor that is a Networkfleet Certified Installer is subject to the insurance requirements of Networkfleet's Certified Installer Program which can be found under the Certification Requirements section of Networkfleet's Installation Policy, located at

[http://info.networkfleet.com/rs/networkfleet/images/Installation\\_Policy.pdf](http://info.networkfleet.com/rs/networkfleet/images/Installation_Policy.pdf).

All insurance required by this Piggyback Contract excluding workers compensation, disability insurance, Telecommunications, Media & Technology Errors and Omissions and Data Breach and Privacy/Cyber Liability shall name The People of the State of New York, The New York State Office of General Services and any entity authorized by law or regulation to use the contract as an authorized user and their officers, agents, and employees as an additional insured as their interest may appear hereunder. The General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or the equivalent. Such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term. Additional Insured Endorsements shall be provided prior to execution of this Piggyback Contract and within ten (10) business days of request to OGS, Procurement Services, Corning Tower – 38<sup>th</sup> Floor, Empire State Plaza, Albany, New York 12242.

**II. Insurance Requirements.** The Contractor, throughout the term of this Piggyback Contract, or as otherwise required by this Piggyback Contract, shall 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 Piggyback Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

**A. Commercial General Liability Insurance (CGL) covering the liability of the Contractor for bodily injury and property damage arising out of or resulting from all work and operation under this Piggyback Contract. The limits under such policy shall not be less than the following:**

1. Each Occurrence limit - \$2,000,000.00
2. General Aggregate - \$2,000,000.00
3. Products/Completed Operations Aggregate - \$2,000,000.00
4. Personal/Advertising Injury - \$1,000,000.00
5. Damage to Rented Premises - \$50,000.00
6. Medical Expenses - \$5,000.00
7. Coverage shall include, but not be limited to, the following:
  - a. premises liability;
  - b. independent contractors;
  - c. blanket contractual liability, including tort liability of another assumed in a contract;
  - d. defense and/or indemnification obligations, including obligations assumed under this Piggyback Contract;
  - e. cross liability for additional insureds;
  - f. products/completed operations for a term of no less than one (1) year, commencing upon acceptance of the work, as required by this Piggyback Contract;
  - g. explosion, collapse, and underground hazards; and, contractor means and methods.
8. The following ISO forms or equivalent must be provided:
  - a. CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B)
  - b. Waiver of Subrogation

**Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile in connection with the work required under the agreement between the Contractor and OGS, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used,

required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident and shall name The People of the State of New York, The New York State Office of General Services, any entity authorized by law or regulation to utilize the Contract as an Authorized User and their officers, agents, and employees as additional insureds. The limits may be provided through a combination of primary and umbrella liability policies.

In the event that the Contractor does not own, lease, or hire any vehicles to fulfill the requirements of the Contract, the Contractor must attest to that fact and does not need to obtain business automobile liability insurance. If, however, during the term of the Contract, the Contractor acquires, leases, or hires a vehicle that will be used to fulfill the requirements of the Contract, the Contractor must obtain business automobile liability insurance that meets all of the requirements set forth in the Contract and provide evidence of such coverage no more than 10 days following the date automobile liability insurance coverage is bound.

**Waiver of Subrogation.** For the coverages required above, the Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, The New York State Office of General Services and any entity authorized by law or regulation to use the contract as an authorized user and their officers, agents, and employees. Waiver of Subrogation Endorsements shall be provided prior to this Piggyback Contract taking effect and within three (3) business days of request to OGS, Procurement Services, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

**Telecommunications, Media & Technology Errors and Omissions :** The Contractor shall procure and maintain Technology Errors and Omissions insurance including Cyber Liability with a limit of at least \$2,000,000.00 per claim and aggregate covering the negligent acts, errors or omissions of Contractor in the provision of professional service under this agreement, for damages arising from computer-related services including, but not limited to, the following failure to protect confidential information and other rights of privacy, and failure of the security of the Vendor's computer system, consulting, data processing, programming, system integration, hardware or software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, manufactured, distributed, licensed, marketed or sold cloud computing services. The limits may be provided through a combination of primary and excess/umbrella liability policies. The policy shall include coverage for third party fidelity if the same is not provided as part of the Data Breach and Privacy/Cyber Liability insurance. If the insurance is written on a claims-made basis, the Contractor shall purchase, at its sole expense, an Extended Discovery Clause ("tail coverage") providing coverage of up to one (1) year after the work is completed if coverage is cancelled or not renewed.

**Data Breach and Privacy/Cyber Liability:** The Contractor shall procure and maintain, during the term of this Piggyback Contract and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for a failure to protect confidential information and a failure of the security of the Vendor's computer systems or an Authorized User's computer systems due to the actions of the Contractor which results in unauthorized access to an Authorized User or their data. The insurance shall have a limit of at least \$2,000,000.00. The limits may be provided through a combination of primary and excess/umbrella liability policies. The insurance shall provide coverage for damages arising from, but not limited to, the following:

- a. Breach of a duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- b. Personally identifiable nonpublic information (i.e.: medical, financial or personal in nature in electronic and non-electronic form);
- c. Privacy notification costs;
- d. Regulatory defense and penalties;
- e. Website media liability; and
- f. Cyber theft of property, including, but not limited to money and securities.

If the policy does not provide the same, it must be endorsed to provide proof that it has an Extended Discovery Clause ("tail coverage") providing coverage for up to one (1) year after the work is completed in the event that the coverage is cancelled or not renewed.

### III. Workers' Compensation Insurance and Disability Benefits Requirements

New York State Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document that they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in Offerer/Contractor not being considered for this Piggyback Contract or renewal of same.

**A. Proof of Compliance with Workers' Compensation Coverage Requirements: An ACORD form is NOT acceptable proof of workers' compensation coverage.**

1. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:
  - a. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
  - b. Obtain such coverage from an insurance carrier; or
  - c. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.
2. A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services before this Piggyback Contract can be executed by the Commissioner.
  - a. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov)).
  - b. Certificate of Workers' Compensation Insurance:
    - i. Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or
    - ii. Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.
  - c. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
  - d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

**B. Proof of Compliance with Disability Benefits Coverage Requirements:**

1. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, a contractor shall:
  - a. Be legally exempt from obtaining disability benefits coverage; or
  - b. Obtain such coverage from an insurance carrier; or
  - c. Be a Board-approved self-insured employer.
2. A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services **before this Piggyback Contract can be executed by the Commissioner.**
  - a. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov)).
  - b. Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or
  - c. Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

**16. PURCHASE ORDERS**

Purchase Orders shall be effective and binding upon Contractor when placed in the mail or electronically transmitted during this Piggyback Contract period addressed to the Contractor at the address for receipt of orders designated in the

Master Contract or Contract Award Notification. Any discrepancies between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Piggyback Contract terms shall be resolved in favor of the terms most favorable to the Authorized User, this does not apply to clerical errors. . If an Authorized User of the Piggyback Contract adds written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Piggyback Contract, the Contractor may reject the Purchase Order within ten (10) business days of its receipt or fulfill the Purchase Order. Prior to rejection of any additional terms and conditions to the Purchase Order, the Contractor has an obligation to attempt to negotiate the additional written terms and conditions in good faith with the Authorized User. For more details on these provisions, see Appendix B, Section 32, *Purchase Orders*.

## **17. INDEFINITE DELIVERY, INDEFINITE QUANTITY CONTRACT**

This Piggyback Contract will be an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. Numerous factors could cause the actual volume of product purchased under the Piggyback Contract to vary substantially from the estimates in the Piggyback Contract or applicable Participation Agreement. Such factors include, but are not limited to, the following:

- Such Piggyback Contracts will be nonexclusive contracts;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of each Piggyback Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the contract period; and,
- The State reserves the right to terminate any Piggyback Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Piggyback Contract.

In Procurement Service's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. By execution of this Piggyback Contract, Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Piggyback Contracts could vary substantially from the estimates provided in this Piggyback Contract or applicable Participation Agreement.

## **18. CATALOGS AND PRICE SHEETS**

Catalogs and price lists shall be provided in accordance with the terms of the Master Contract. Upon request, Contractor shall also assist Authorized Users in the use of such documents.

## **19. NEW YORK STATE VENDOR RESPONSIBILITY**

The Contractor shall at all times during the Piggyback Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Piggyback Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. 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. Activity under the Piggyback Contract may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Piggyback Contract.

The Contractor agrees that if it is found by the State that the Contractor's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Piggyback Contract. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Piggyback Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-

responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Piggyback Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

## **20. CONTRACTOR OBLIGATIONS AND RESPONSIBILITY FOR SUBCONTRACTORS**

The Contractor is responsible for fully meeting all Contract obligations set forth in this Piggyback Contract and any resultant Purchase Order.

For purposes of this Piggyback Contract any entity and/or individual providing services and/or products for the fulfillment of resultant Purchase Order under this Piggyback Contract directly to Authorized Users as per a written agreement with Contractor shall be deemed a Subcontractor.

The following requirements shall supplement the requirements of Appendix B, § 42 and 44:

- The Contractor shall not in any way be relieved of any responsibility under the Contract by any subcontract.
- The Contractor shall be solely responsible to the State and Authorized User for the acts or defaults of its Subcontractor(s) and of such Subcontractors' officers, agents, and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.
- Any Deliverable provided or furnished by a Subcontractor shall be deemed for purposes of the Contract to be provided or furnished by the Contractor.
- The Contractor shall inform each of Contractor's Certified Installers fully and completely of all relevant provisions and requirements of the Contract necessary to ensure the Certified Installers performance under a Purchase Order.
- The Contractor shall pay all Subcontractors for and on account of Services and/or Deliverables provided by such Subcontractors in accordance with the terms of their respective subcontracts. If and when required by the State or Authorized User, the Contractor shall submit satisfactory evidence that it has made such payment.
- The Contractor shall, within five (5) business days of the State or Authorized User written request, file promptly with the requestor a copy of any subcontract providing services for an Authorized User under a Purchase Order. If Contractor is required to provide any such subcontracts by the State or an Authorized User, Contractor may, in accordance with New York Public Officers Law § 89(5), request that the State or Authorized User except certain records or portions thereof from disclosure under the New York Freedom of Information Law ("FOIL") because such records contain trade secrets or would cause substantial injury to a commercial enterprise if such records were disclosed.

## **21. USE OF RECYCLED OR REMANUFACTURED MATERIALS**

New York State supports and encourages contractors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Piggyback Contract. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, Section 15, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

## **22. SURPLUS/TAKE-BACK/RECYCLING**

- I. A State agency is reminded of its obligation to comply with the NY State Finance Law §§ 167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in

compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.

- III. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
- IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

### **23. BULK DELIVERY AND ALTERNATE PACKAGING**

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

### **24. MERCURY-ADDED CONSUMER PRODUCTS**

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Piggyback Contract.

### **25. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISES**

#### **I. General Provisions**

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") 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 agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. 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"). 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") or other applicable federal, State or local laws.

C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

D. 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 withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

## II. Contract Goals

A. For purposes of this procurement, OGS conducted a comprehensive search and determined that this contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

### B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

- (1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
- (2) A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- (3) Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
- (4) A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
- (5) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
- (6) Other information deemed relevant to the request.

## III. Equal Employment Opportunity (EEO)

A. Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and Subcontractors 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. Intentionally Omitted

B. Intentionally Omitted

C. Intentionally Omitted

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

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>



**26. TOLL-FREE NUMBER**

Contractor shall provide all telephone support by means of a toll-free number.

**27. PRICE INCREASES**

There shall be no increase in pricing during the term of the agreement except as otherwise provided for in the Master Contract.

**28. NEW YORK STATE FINANCIAL SYSTEM (SFS)**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.0 Bundle 18, operating on PeopleTools version 8.49.33. The State is planning to upgrade to PeopleSoft Financials version 9.2 sometime in 2015. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with centralized contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

**29. ENTIRE AGREEMENT**

This Piggyback Contract and the referenced appendices constitute the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Piggyback Contract shall not be changed, modified or altered in any manner except as provided in Section 3 of this Piggyback Contract.

**30. CAPTIONS**

The captions contained in this Piggyback Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

**31. SEVERABILITY**

If any provision of this Piggyback Contract is deemed invalid or unenforceable, such determination shall have no effect on the balance of the Piggyback Contract, which shall be enforced and interpreted as if such provision was never included in the Piggyback Contract.

**IN WITNESS WHEREOF**, the Parties therefore hereby execute their mutual agreement to the terms of this Piggyback Contract. This Piggyback Contract shall be a binding agreement between the Parties when executed and created as set forth in clause 26 of Appendix B, *Contract Creation/Execution*. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Contract, the approved signature page(s) will be affixed by the State to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Piggyback Contract, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

**CONTRACTOR**

**THE PEOPLE OF THE STATE OF NEW YORK**

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

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

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

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

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

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

Company Name: \_\_\_\_\_

NYS Office of General Services

Federal Tax ID: \_\_\_\_\_

NYS Vendor ID \_\_\_\_\_

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }

: **Sworn Statement:**

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared

\_\_\_\_\_, known to me to be the person who executed the foregoing

instrument, who, being duly sworn by me did depose and say that \_he maintains an office at

Town of \_\_\_\_\_

County of \_\_\_\_\_, State of \_\_\_\_\_; and further that:

**[Check One]**

**If an individual):** \_he executed the foregoing instrument in his/her name and on his/her own behalf.

**If a corporation):** \_he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

**If a partnership):** \_he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

**If a limited liability company):** \_he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that, \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_

Signature of Notary Public

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, licenser, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

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

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

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

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

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

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.



In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.**

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  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

the contract, the Department of Civil Service and the State Comptroller.

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

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

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

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

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

## **APPENDIX B**

# **GENERAL SPECIFICATIONS**

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**GENERAL**

**1. ETHICS COMPLIANCE** All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

**2. DEFINITIONS** Terms used herein shall have the following meanings:

**a. AGENCY OR AGENCIES** The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

**b. AUTHORIZED USER(S)** Authorized User shall have the meaning set forth in New York State Finance Law section 163(1)(k) and includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

**c. COMMISSIONER** Commissioner of OGS, or in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or his or her authorized representative.

**d. CONTRACT** The writing(s) which contain the agreement of the Commissioner and the bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

- 1. Agency Specific Contracts** Contracts where the specifications for a Product or a particular scope of work are described and defined to meet the needs of one or more Authorized User(s).
- 2. Centralized Contracts** Single or multiple award Contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency or competitive basis. Once established, procurements may be made from the selected Contractor(s) without further competition or Mini-Bid unless otherwise required by the Bid Specifications or Contract Award Notification.
- 3. Back-Drop Contracts** Multiple award Centralized Contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid

among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

**4. Piggyback Contract** A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.

**5. Contract Letter** A letter to the successful Bidder(s) indicating acceptance of its Bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a Contract but is not an order for Product, and Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized User(s).

**e. CONTRACT AWARD NOTIFICATION** An announcement to Authorized Users that a Contract has been established.

**f. CONTRACTOR** Any successful Bidder(s) to whom a Contract has been awarded by the Commissioner.

**g. DOCUMENTATION** The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, which are necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product.

**h. EMERGENCY** An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

**i. ENTERPRISE** The total business operations in the United States of Authorized User(s) without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Authorized User(s).

**j. ENTERPRISE LICENSE** A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

**k. ERROR CORRECTIONS** Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

**l. GROUP** A classification of Product, services or technology which is designated by OGS.

**m. INVITATION FOR BIDS (IFB)** A type of Bid Document which is most typically used for procurements where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder(s).

**n. LICENSED SOFTWARE** Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

**o. LICENSEE(S)** One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee(s)" shall be

deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

**p. LICENSE EFFECTIVE DATE** The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

**q. LICENSOR** A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.

**r. NEW PRODUCT RELEASES (Product Revisions)** Any commercially released revisions to the licensed version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

**s. OGS** The New York State Office of General Services.

**t. PRODUCT** A deliverable under any Bid or Contract which may include commodities, services and/or technology. The term "Product" includes Licensed Software.

**u. PROPRIETARY** Protected by secrecy, patent, copyright or trademark against commercial competition.

**v. PURCHASE ORDER** The Authorized User's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, electronic Purchase Order, or other authorized instrument).

**w. REQUEST FOR PROPOSALS (RFP)** A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law, to the responsive and responsible Bidder(s).

**x. REQUEST FOR QUOTATION (RFQ)** A type of Bid Document that can be used when a formal Bid opening is not required (e.g., discretionary, sole source, single source or emergency purchases).

**y. RESPONSIBLE BIDDER** A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

**z. RESPONSIVE BIDDER** A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the OGS Commissioner.

**aa. SINGLE SOURCE** A procurement where two or more Bidders can supply the required Product, and the Commissioner may award the contract to one Bidder over the other.

**bb. SITE** The location (street address) where Product will be executed or services delivered.

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**cc. SOLE SOURCE** A procurement where only one Bidder is capable of supplying the required Product.

**dd. SOURCE CODE** The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine Object Code.

**ee. STATE** State of New York.

**ff. SUBCONTRACTOR** Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

**gg. TERMS OF LICENSE** The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

**hh. VIRUS** Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

### **BID SUBMISSION**

**3. INTERNATIONAL BIDDING** All offers (tenders), and all information and Product required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

**4. BID OPENING** Bids may, as applicable, be opened publicly. The Commissioner reserves the right at any time to postpone or cancel a scheduled Bid opening.

**5. BID SUBMISSION** All Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their Bids to the location set forth in the Bid Specifications prior to the stated Bid opening date/time.

A Bid return envelope, if provided with the Bid Specifications, should be used with the Bid sealed inside. If the Bid response does not fit into the envelope, the Bid envelope should be attached to the outside of the sealed box or package with the Bid inside. If using a commercial delivery company that requires use of their shipping package or envelope, Bidder's sealed Bid, labeled as detailed below, should be placed within the shipper's sealed envelope to ensure that the Bid is not prematurely opened.

All Bids must have a label on the outside of the package or shipping container outlining the following information:

**"BID ENCLOSED** (bold print, all capitals)

- Group Number
- IFB or RFP Number
- Bid Submission date and time"

In the event that a Bidder fails to provide such information on the return Bid envelope or shipping material, the receiving entity reserves the right to open the shipping package or envelope to determine the proper Bid number or Group Number, and the date and time of Bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the Bid or the procurement.

Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

All Bids must be signed by a person authorized to commit the Bidder to the terms of the Bid Documents and the content of the Bid (offer).

**6. LATE BIDS REJECTED** For purposes of Bid openings held and conducted by OGS, a Bid must be received in such place as may be designated in the Bid Documents or, if no place is specified, in the OGS Mailroom located in the Empire State Plaza, Albany, New York 12242, at or before the date and time established in the Bid Specifications for the Bid opening. For purposes of Bid openings held and conducted by Authorized Users other than OGS, the term late Bid is defined as a Bid not received in the location established in the Bid Specifications at or before the date and time specified for the Bid opening.

Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of the Authorized Users. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with their specifications. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Authorized User, shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance, shall not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of the Commissioner.

**7. BID CONTENTS** Bids must be complete and legible. All Bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Commissioner or may be grounds for rejection of the Bid. Changes, corrections and/or use of white-out in the Bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by the Commissioner after the time specified for the Bid opening may not be considered.

**8. EXTRANEOUS TERMS** Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:

- a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
- b. The writing must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c. The Bidder shall enumerate the proposed addition, deletion, counter-offer, deviation, or modification from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and the Commissioner or Authorized User expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

#### **9. CONFIDENTIAL/TRADE SECRET MATERIALS**

**a. CONTRACTOR** Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The State's receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

**b. COMMISSIONER OR AUTHORIZED USER** Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties without the written consent of the Commissioner or Authorized User. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

**10. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS** If any portion of work being Bid is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

**a. PREVAILING WAGE RATE APPLICABLE TO BID SUBMISSIONS** A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

**b. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM** The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.

**c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS** In compliance with Article 8, Section 220 of the New York State Labor Law:

**i. Posting** The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

**ii. Payroll Records** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

**iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only** Contractors and Subcontractors on public works projects must submit monthly payroll transcripts to the Authorized User that has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For Mini-Bid solicitations, the payroll records must be submitted to the entity preparing the agency Mini-Bid project specification. For "agency specific" Bids, the payroll records should be submitted to the entity issuing the purchase order. For all other OGS Centralized Contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and the Authorized User, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: 1) the Contractor/Subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the Contractor or Subcontractor attesting to the truth and accuracy of the records accompanies the disk. This provision does not apply to Article 9 of the Labor Law building services contracts.

**iv. Day's Labor** No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life JUNE 2014

or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

**d. ARTICLE 9 BUILDING SERVICES CONTRACTS**

In compliance with Article 9, Section 230 of the New York State Labor Law:

**i. Payroll Records** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work site while work is being performed.

**ii. Overtime** Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

**11. TAXES**

**a.** Unless otherwise specified in the Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

**b.** Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. Non-State Authorized Users must offer their own proof of exemption upon request. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

**c.** Purchases by Authorized Users other than the State of New York may be subject to certain taxes which were not included in the Bid price, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such entity for payment.

**12. EXPENSES PRIOR TO CONTRACT EXECUTION** The Commissioner and any Authorized User(s) are not liable for any costs incurred by a Vendor, Bidder or Contractor in the preparation and production of a Bid, Mini-Bid, cost proposal revision, or for any work performed prior to Contract execution.

**13. ADVERTISING RESULTS** The prior written approval of the Commissioner is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of the Commissioner relative to the Bid or Contract for press or other media releases.

**14. PRODUCT REFERENCES**

**a. "Or Equal"** In all Bid Specifications the words "or equal" are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts,



descriptive literature, specifications and test data, etc. The Commissioner's decision as to acceptance of the Product as equal shall be final.

**b. Discrepancies in References** In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

**15. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS** Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the "Warranties" set forth below.

Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

**16. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS** Bids offering Products that are manufactured or produced in public institutions will be rejected.

**17. PRICING**

**a. Unit Pricing** If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item unless otherwise specified, in the Bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Commissioner, such unit pricing is obviously erroneous.

**b. Net Pricing** Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.

**c. "No Charge" Bid** When Bids are requested on a number of Products as a Group or Lot, a Bidder desiring to Bid "no charge" on a Product in the Group or Lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

**d. Educational Pricing** All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

**e. Third Party Financing** If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract Award to agree to the terms and conditions of a "Consent & Acknowledgment Agreement" in a form acceptable to the Commissioner.

**f. Best Pricing Offer** During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside JUNE 2014

of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

**g. Specific price decreases:**

**(i) GSA Changes:** Where NYS Net Prices are based on an approved GSA Schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA Schedule pricing decreases during the Contract term; or

**(ii) Commercial Price List Reductions:** Where NYS Net Prices are based on a discount from Contractor's list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

**(iii) Special Offers/Promotions Generally:** Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or Net Price otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

**(iv) Special Offers/Promotions to Authorized Users:** Contractor may offer Authorized Users, under either this Contract or any other Contracting vehicle, competitive pricing which is lower than the NYS Net Price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Bid Specifications, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order(s) from any Authorized User without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

**h. Cost Proposal Revisions** A Contractor may be solicited prior to contract award to propose the best possible offer for the Product or service being bid on, in accordance with State Finance Law § 163(9)(c). A cost proposal revision must be a lower price than the initial price.

**18. DRAWINGS**

**a. Drawings Submitted With Bid** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

**b. Drawings Submitted During the Contract Term** Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User's representative.

**c. Accuracy of Drawings Submitted** All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of Product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing Product, services or installation, or carrying out any other requirements of the intended scope of work.

**19. SITE INSPECTION** Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions for pre-existing deficiencies that may affect the installed Product, equipment, or environment or services to be provided and, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.

**20. PROCUREMENT CARD** The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing Purchase Orders or Purchase Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased Products have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty Product in accordance with other Contract requirements, the Contractor shall immediately credit a cardholder's account for Products returned as defective or faulty.

## **21. SAMPLES**

**a. Standard Samples** Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the Commissioner and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Specifications.

**b. Bidder Supplied Samples** The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of the Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Bid or Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period, the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the

Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

**c. Enhanced Samples** When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

**d. Conformance with Samples** Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Bid Specifications. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Specifications, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.

**e. Testing** All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.

**f. Requests For Samples By Authorized Users** Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

## **BID EVALUATION**

**22. BID EVALUATION** The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his/her sole discretion, may accept or reject illegible, incomplete or vague Bids and his/her decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the Bid.

**23. TIE BIDS** In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

**24. QUANTITY CHANGES PRIOR TO AWARD** The Commissioner reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Bid Specifications. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of

its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

**25. TIMEFRAME FOR OFFERS** The Commissioner reserves the right to make awards within sixty days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Where an award is not made within the sixty day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid.

### **TERMS & CONDITIONS**

**26. CONTRACT CREATION / EXECUTION** Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Bid Specifications, a Contract shall be deemed executed and created with the successful Bidder(s) upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

### **27. PARTICIPATION IN CENTRALIZED CONTRACTS**

**a. Agencies** All State Agencies may utilize and purchase under any Centralized Contract let by the Commissioner, unless the Bid Documents limit purchases to specific State Agencies.

**b. Non-State Agency Authorized Users** Authorized Users other than State Agencies are permitted to make purchases through Centralized Contracts where permitted by law, the Contract or the Commissioner.

**c. Voluntary Extension** Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the Bid Specifications shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163(3)(a)(iv) of the State Finance Law.

**d. Responsibility for Performance** Participation in Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-State Agency Authorized User and Contractor guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the non-State Agency Authorized User's or Contractor's failure to perform in accordance with its obligations under the Contract.

**e. Contract Migration** Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products or services shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter

or eliminate any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

**28. MODIFICATION OF CONTRACT TERMS** The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor may, however, offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User(s) and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

**29. SCOPE CHANGES** The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within thirty days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a proposal. Failure to agree to any adjustment shall be a dispute under the Disputes clause, provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

### **30. ESTIMATED / SPECIFIC QUANTITY CONTRACTS**

Estimated quantity contracts, also referred to as indefinite delivery / indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

With respect to any specific quantity stated in the contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

**31. EMERGENCY CONTRACTS** In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of

Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract(s), as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

**32. PURCHASE ORDERS** Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the Contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

If, with respect to an Agency Specific Contract let by the Commissioner, a Purchase Order is not received by the Contractor within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify in writing the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and without cost to the State, result in the cancellation of such requirement by the OGS Commissioner with a corresponding reduction in the Contract quantity and price.

**33. PRODUCT DELIVERY** Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User.

User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

**34. WEEKEND AND HOLIDAY DELIVERIES** Unless otherwise specified in the Bid Specifications or by an Authorized User, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Authorized User shall govern.

**35. SHIPPING/RECEIPT OF PRODUCT**

**a. Packaging** Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

**b. Shipping Charges** Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

**c. Receipt of Product** The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authorized User. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

**36. TITLE AND RISK OF LOSS** Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

**37. RE-WEIGHING PRODUCT** Deliveries are subject to re-weighing at the point of destination by the Authorized User. If shrinkage occurs which exceeds that normally allowable in the trade, the Authorized User shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the Authorized User.

**38. PRODUCT SUBSTITUTION** In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause), a Product deemed in writing by the Commissioner to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of

Product prior to the Commissioner's written approval may be cause for termination of Contract.

**39. REJECTED PRODUCT** When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar-day period.

**40. INSTALLATION** Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

**41. REPAIRED OR REPLACED PARTS / COMPONENTS** Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties, as set forth in the Warranties Clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturer's installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

**42. EMPLOYEES, SUBCONTRACTORS & AGENTS** All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Specifications or the Bid Documents, whichever is more restrictive, and must comply with all security and administrative requirements of the Authorized User. The Commissioner reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner reserves the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agents of the Contractor.

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**43. ASSIGNMENT** The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, notwithstanding anything in Section 138 of the State Finance Law to the contrary, any approval required thereunder shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

**44. SUBCONTRACTORS AND SUPPLIERS** The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior OGS Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do business; the Commissioner's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

**45. PERFORMANCE / BID BOND** The Commissioner reserves the right to require a Bidder or Contractor to furnish, without additional cost, a performance, payment or Bid bond, negotiable irrevocable letter of credit, or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

**46. SUSPENSION OF WORK** The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues or other circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner.

**47. TERMINATION**

**a. For Cause:** For a material breach that remains uncured for more than thirty calendar days or other specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively, at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

**b. For Convenience:** By written notice, this Contract may be terminated at any time by the Commissioner for convenience upon sixty calendar days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

**c. For Violation of Sections 139-j and 139-k of the State Finance Law:** The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

**d. For Violation of Section 5-a of the New York State Tax Law:** The Commissioner reserves the right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

**e. For Non-Responsibility:** The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**f. For refusal to testify, sign a waiver of immunity or answer questions** The Commissioner reserves the right in accordance with State Finance Law §139-a, to terminate the contract in the event it is found that a

member, partner, director or officer of Contractor refused, when called before a grand jury, head of a State department, temporary state commission or other State agency, or the organized crime task force in the department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor.

**48. SAVINGS/FORCE MAJEURE** A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any Force Majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the Force Majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the Force Majeure condition continues beyond thirty (30) days, the Parties shall jointly decide on an appropriate course of action that will permit fulfillment of the Parties' objectives hereunder.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor, under the Contract due to a Force Majeure occurrence:

a. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or

b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the Force Majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the Force Majeure event.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby

discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss. Failure of the Contractor to agree to any adjustment shall be a dispute under the Disputes clause; provided however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

#### **49. CONTRACT INVOICING**

a. **Invoicing.** Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in a commercially reasonable manner as requested by the Commissioner. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. **Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment** The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at [www.osc.state.ny.us](http://www.osc.state.ny.us), by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. **Payment of Contract Purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment** The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

#### **50. DEFAULT – AUTHORIZED USER**

a. **Breach by Authorized User.** An Authorized User's breach shall not be deemed a breach of the Centralized Contract; rather, it shall be deemed a breach of the Authorized User's performance under the terms and conditions of the Centralized Contract.

b. **Failure to Make Payment.** In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within thirty calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. **Notice of Breach.** Notwithstanding the foregoing, the Contractor shall, at least ten business days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

d. **Insufficient basis.** If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

#### **51. PROMPT PAYMENTS**

a. **State Agencies** Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by Agency may be made in accordance with State Finance Law §§179-d et. seq. and the implementing regulations (2 NYCRR §18.1 et seq.).

b. **By Non-State Agencies** Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

c. **By Contractor** Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

**52. REMEDIES FOR BREACH** It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

a. **Cover/Substitute Performance** In the event of Contractor's material, uncured breach, the Commissioner may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable service or acquire replacement Product of equal or comparable quality, the

Commissioner may acquire acceptable replacement service or Product of lesser or greater quality.

Such purchases may be deducted from the Contract quantity without penalty or liability to the State. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during a period where Contractor is making good faith efforts to cure a material breach.

**b. Withhold Payment** In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should Contractor and the Commissioner fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be a dispute under the Disputes clause.

**c. Bankruptcy** In the event that the Contractor files, or there is filed against Contractor, a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, be credited the amounts owed by the Contractor arising out of the same transactions.

**d. Reimbursement of Costs Incurred** The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees awarded by a court of competent jurisdiction, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may obtain substitute Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

**e. Deduction/Credit** Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, damages, etc., that arise from the administration of the Contract.

**53. ASSIGNMENT OF CLAIM** Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 USC Section 1, et. seq. and the antitrust laws of the State of New York, General Business Law Section 340, et. seq.

**54. TOXIC SUBSTANCES** Each Contractor furnishing a toxic substance, as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than two copies of a Material Safety Data Sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Authorized User representative.

**55. INDEPENDENT CONTRACTOR** It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment.

**56. SECURITY** Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

**57. COOPERATION WITH THIRD PARTIES** The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery or performance of Product.

**58. CONTRACT TERM - RENEWAL** In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by the Commissioner may be extended by the Commissioner for an additional period(s) of up to one year with the written concurrence of the Contractor and Comptroller. Such extension may be exercised on a month-to-month basis or in other stated periods of time during the one year extension.

**59. WARRANTIES**

**a. Product Performance** Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users.

In addition, Contractor hereby warrants and represents that the Products acquired by the Authorized User under the terms and conditions of this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

Contractor further warrants and represents that Products, components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be free from defects in material and workmanship and will conform with all requirements of the Contract for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period").

Unless recycled or recovered materials are available in accordance with the Remanufactured, Recycled, Recyclable or Recovered Materials clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered. Contractor further warrants and represents that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

**b. Title and Ownership** Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify Authorized Users and hold Authorized Users harmless from any damages and liabilities (including reasonable attorneys' fees and costs) awarded by a court of competent jurisdiction arising from any breach of Contractor's warranties as set forth herein.

**c. Product Warranty for Deliverables** During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be



repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the system requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees (“extended warranty”).

Where Contractor, the Independent Software Vendor (ISV), or other third-party manufacturer markets any project deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor’s warranty obligations during the Project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third-party manufacturer’s Product.

Where Contractor, ISV or other third-party manufacturer markets any Project Deliverable with a standard commercial warranty which goes beyond the Project warranty or extended warranty period(s), Contractor shall notify the Authorized User and pass through the manufacturer’s standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the third-party extended warranty after expiration of the Project warranty and extended warranty period(s).

The Commissioner agrees that Contractor is not responsible for any modification of the Products made by an Authorized User without Contractor’s approval.

**d. Replacement Parts Warranty** If during the regular or extended warranty periods, parts or components break or fail to perform as intended, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period(s) shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Any Product or parts thereof replaced by the Contractor under the Contract warranty shall be replaced at no cost to the Authorized User and guaranteed for the greater of: a) the Warranty Period set forth under paragraph (a) above; or b) if a separate warranty for that Product or parts thereof is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

**e. Virus Warranty** The Contractor represents and warrants that any Licensed Software acquired by the Authorized User does not contain any known viruses. Contractor is not responsible for viruses introduced at Licensee’s site.

**f. Date/Time Warranty** Contractor warrants that Product 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.

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  
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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 therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract as long as the Product is used by the governmental entity, or its successor, for whom the Product was originally purchased.” Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

**g. Workmanship Warranty** Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards. The Authorized User must notify Contractor of any services warranty deficiencies within ninety calendar days from performance of the services that gave rise to the warranty claim.

**h. Miscellaneous** The Authorized User shall promptly notify the Contactor and the Commissioner in writing of any claim of breach of any warranty provided herein.

The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

**60. LEGAL COMPLIANCE** Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

**61. INDEMNIFICATION** Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Commissioner shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor’s sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

**62. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS** The Contractor will also defend, indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, or by reason of an off-the-shelf component; and b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

At Authorized User's option, Contractor may be given the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

Such indemnity shall only be applicable in the event of claims, judgments, liabilities and/or costs that may be finally assessed against Authorized User in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, judgments, liabilities and/or costs arise solely from the Authorized Users negligent act, failure to act, gross negligence or willful misconduct.

If usage of a Product shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue Usage (ii) to modify the service or Product so that usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace such Product or parts thereof, as applicable, with non-infringing Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided that the Authorized User is given a refund for any amounts paid for the period during which usage was not feasible.

In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the Product under the Contract infringes any patent, copyright, JUNE 2014

trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and seek to secure a continuance to permit the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

**63. LIMITATION OF LIABILITY** Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Third Party Rights clause, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) five hundred thousand dollars (\$500,000), whichever is greater.

b. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

## 64. DISPUTES

### Informal Dispute Resolution Process

A. It is the policy of OGS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to OGS bid solicitations, contract awards or contract administration. If the Parties are not able to resolve their dispute between themselves as set forth below, OGS encourages vendors to seek resolution of disputes through consultation with OGS staff. Such consultation is voluntary. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the Dispute Resolution Procedures for Vendors may be obtained by contacting the person identified in the Contract as a designated contact or through the OGS website ([www.ogs.ny.gov](http://www.ogs.ny.gov)).

B. 1. In the event there is a dispute or controversy under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to

perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

2. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute or controversy, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result.

3. If negotiation between such persons fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

4. The Contractor shall extend the dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

C. This clause does not apply to any breach by an Authorized User of Contractor's or its licensor's intellectual property rights.

#### Formal Disputes

##### A. Definitions

1. Filed means the complete receipt of any document by OGS before its close of business.
2. Dispute means a written objection by Contractor to any of the following:
  - a. A solicitation or other request by OGS for offers for a contract for the procurement of commodities or services.
  - b. The cancellation of the solicitation or other request by OGS.
  - c. An award or proposed award of the Contract by OGS.
  - d. A termination or cancellation of an award of the Contract by OGS.
  - e. Changes in the Scope of the Centralized Contract by the Commissioner.
  - f. Determination of "materiality" in an instance of nonperformance or contractual breach.
  - g. An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

##### B. Submission of Disputes

1. A formal dispute by Contractor must be filed in writing to OGS by mail, email or facsimile.
2. The dispute must include:

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- a. Name, address, e-mail address, fax and telephone numbers of the filer.
- b. Solicitation or Contract number.
- c. Detailed statement of the legal and factual grounds for the dispute, including a description of resulting prejudice to the filer.
- d. Copies of relevant documents.
- e. Request for a ruling by the agency.
- f. Statement as to the form of relief requested.
- g. All information establishing that the filer is an interested party for the purpose of filing a dispute.
- h. All information establishing the timeliness of the dispute.

Disputes must be filed with the Director of OGS New York State Procurement (NYSPPro) at the following address:

#### **New York State Office of General Services**

##### **Director, NYSPPro**

38th Floor, Corning Tower  
 Empire State Plaza  
 Albany, NY 12242  
 Facsimile: (518) 474-2347

3. Disputes concerning the administration of the Contract after award must be filed within twenty (20) business days by Contractor after the Authorized User and Contractor fails to reach resolution through the Informal Dispute Resolution Process.

##### C. Agency Response

1. OGS will consider all information relevant to the dispute, and may, at its discretion, suspend, modify, or cancel the disputed procurement/Contract action prior to issuance of a formal dispute decision.
2. OGS reserves the right to require the Contractor to meet or participate in a conference call with OGS to discuss the dispute when, in its sole judgment, circumstances so warrant.
3. OGS reserves the right to waive or extend the time requirements for decisions and final determination on appeals herein prescribed when, in its sole judgment, circumstances so warrant.
4. OGS reserves the right to consider or reject the merits of any dispute.
5. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the dispute.

##### D. Appeals

1. Should the filer be dissatisfied with the dispute determination, a written appeal may be directed to:

#### **Chief Procurement Officer**

##### **New York State Office of General Services**

##### **NYSPPro**

38th Floor, Corning Tower  
 Empire State Plaza  
 Albany, NY 12242  
 Facsimile: (518) 474-2347

2. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of NYSPPro shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.

3. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act

on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.

4. An appeal of the decision of the Director of NYSPRO shall not include new facts and information unless requested in writing by the Chief Procurement Officer.

5. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

#### E. Legal Appeals

Nothing contained in these provisions is intended to limit or impair the rights of Contractor to seek and pursue remedies of law through the judicial process.

### **THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS**

**65. SOFTWARE LICENSE GRANT** Where Product is acquired on a licensed basis the following shall constitute the license grant:

**a. License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

**b. License Term** The License Term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the License Term shall be extended by the time period for testing, acceptance or trial.

**c. Licensed Documentation** If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) hard copy instructions for access by downloading from the Internet (iii) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - one (1) copy per License
- Concurrent Users - 10 copies per site
- Processing Capacity - 10 copies per site

Software media must be in a format specified by the Authorized User, without requiring any type of conversion.

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license.

**d. Product Technical Support & Maintenance** Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (ii) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the Products in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Authorized User does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

**e. Permitted License Transfers** As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

**f. Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties** Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use

Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.

**g. Archival Back-Up and Disaster Recovery** Licensee may use and copy the Product and related Documentation in connection with: i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

**h. Confidentiality Restrictions** The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

**i. Restricted Use by Licensee** Except as expressly authorized by the terms of license, Licensee shall not:

- (i) Copy the Product;
- (ii) Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
- (iii) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

**66. PRODUCT ACCEPTANCE** Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware Products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing JUNE 2014

period for an additional thirty (30) day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

If the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

**67. AUDIT OF LICENSED PRODUCT USAGE** Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any site where a copy of the Product resides provided that: (i) Contractor gives Licensee(s) at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the NYS Net Price in effect at time of audit, or if none, then at the Contractor's U.S. Commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

**68. OWNERSHIP/TITLE TO PROJECT DELIVERABLES**

**a. Definitions**

(i) For purposes of this clause, "Products." Deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials

(including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

(ii) For purposes of this clause, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

(iii) For purposes of this clause, "Custom Products." Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for Authorized User under the Contract.

**b. Title to Project Deliverables** Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

**(i) Existing Products:**

**1. Hardware** - Title and ownership of Existing Hardware Product shall pass to Authorized User upon Acceptance.

**2. Software** - Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

(ii) **Custom Products:** Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the

related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

**c. Transfers or Assignments to a Third Party Financing Agent** It is understood and agreed by the parties that a condition precedent to the consummation of the purchase(s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

**d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS)** The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this clause.

**e. Contractor's Obligation with Regard to ISV (Third Party) Product** Where Contractor furnishes Existing Licensed Product(s) as a Project Deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

**69. PROOF OF LICENSE** The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the Proprietary owner accepting Product invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

**70. PRODUCT VERSION** Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by Authorized User and Contractor is willing to provide such version.

**71. CHANGES TO PRODUCT OR SERVICE OFFERINGS**

**a. Product or Service Discontinuance** Where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers (“date of notice”) that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor (“withdrawn support”) is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner, each Licensee and each Authorized User then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) at Authorized User’s option, provided that the Authorized User is under contract for maintenance on the date of notice, either: provide the Authorized User with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor’s obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to State approval, to an alternate Subcontractor.

**b. Product or Service Re-Bundling** In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers (“date of notice”) that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and each Authorized User in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

**72. NO HARDSTOP/PASSIVE LICENSE MONITORING** Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary

JUNE 2014

restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

**73. SOURCE CODE ESCROW FOR LICENSED PRODUCT** If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) will certify to the State that the Product manufacturer/developer has named the State, acting by and through the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause.

The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

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### **APPENDIX C: CONTRACT MODIFICATION PROCEDURE**

The following guidelines are subject to change at the discretion of OGS. A Contract Amendment requires a formally executed document by mutual agreement of the Parties, to be provided by OGS Contract Administrator, after submission and approval of the Contract Modification Form.

- (1) **TYPES OF CONTRACT MODIFICATIONS:** In order to expedite processing of a contract modification, where proposed changes involve more than one category below, each change should be submitted to OGS as a separate request.
  - a) **UPDATES:** “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. Updates may include: Centralized Contract changes and updates made in accordance with the previously approved pricing formula (e.g. discount from list price); adding new products or services within the established, previously approved pricing structure; lowering pricing of products or services already on Contract, deleting products or services available through the Centralized Contract, adding product or service that do not fall under the previously established price structure or discounts under the Contract, re-bundled products, and other updates not listed above that are deemed to be in the best interest of the State and do not result in a change to the established Centralized Contract terms and conditions. Updates must be submitted to OGS for review, and must be accompanied by a justification of reasonableness of price if the change results in a change in pricing methodology. OGS will notify Contractor in writing if approved.
  - b) **AMENDMENTS:** “Amendments” are changes that are not specifically covered by the terms and conditions of the Centralized Contract but inclusion is found to be in the best interest of the State. Requests for product changes and other requests that would require changes to the terms and conditions of the Centralized Contract would fall into the Amendments category. Contractor must provide a written justification of reasonableness of the price levels offered in the applicable Program Agreement and a statement explaining why it is in the best interest of the State to approve the requested amendment. Amendments typically require negotiation between OGS and the Contractor. OGS will work directly with the Contractor to obtain the required documentation for each requested amendment and notify Contractor in writing if approved.
- (2) **CONTRACTOR’S SUBMISSION OF CONTRACT MODIFICATIONS:** In connection with any Contract modification, OGS reserves the right to:
  - request additional information
  - reject Contract modifications
  - remove Products from Contract modification requests
  - request additional discounts for new or existing Products
- (3) **PRICE LEVEL JUSTIFICATION – FORMAT:** Contractor is required to submit the Product and price level information for the update in an Excel spreadsheet format electronically via e-mail (and in hard copy if requested by OGS) to the OGS Contract Administrator. The list must be dated. The Product and price level information should include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):
  - Price level increases
  - Price level decreases
  - Products being added
- (4) **SUPPORTING DOCUMENTATION:** Each modification request must include the current contract pricing discount relevant to the Products included in the update.
- (5) **SUBMITTAL OF MODIFICATION REQUESTS:** A Contract modification request must be accompanied by a completed Contract Modification Form. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, to restructure the price level to its customers generally, and/or for new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS). The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.

STATE OF NEW YORK  
 EXECUTIVE DEPARTMENT - OFFICE OF GENERAL SERVICES  
 Corning Tower – 38<sup>th</sup> Floor  
 Empire State Plaza  
 Albany, New York 12242

<b>CONTRACT MODIFICATION FORM</b>	
OGS CONTRACT NO.: <b>PT66910</b>  CONTRACT DESCRIPTION: <b>GPS Telematics</b>	DATE OF SUBMISSION: _____
CONTRACT PERIOD:  From: _____  To: _____	VENDOR CONTACT:  NAME: _____  PHONE NO: _____  E-MAIL: _____
<b>NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).</b>	

**INSTRUCTIONS:**

1. This form is to be used for all Contract modifications. The form is to be completed in full, signed and submitted to OGS for final approval. Any submission that is not complete and signed will be rejected.
2. Contractor is required to submit the Product and price level information for the update electronically via e-mail in either an Excel spreadsheet (and in hardcopy if requested by OGS) to the OGS Contract Administrator for this Contract.
3. Price level increase requests must be submitted in accordance with the Centralized Contract.
4. If more than one type of modification is being requested, each type should be submitted as a separate request.

The Contract modification request must be accompanied by the relevant current contract pricing discount information.

**COMPLETE STATEMENTS 1 THROUGH 5 BELOW:**

<p>1. This request is for an:  <input type="checkbox"/> Update  <input type="checkbox"/> Amendment</p> <p>See Contract Modification Procedure for an explanation of these terms.</p>	<p>2. The intent of this submittal is to request:  <input type="checkbox"/> Addition of new products or services  <input type="checkbox"/> Deletion of products or services  <input type="checkbox"/> Change in pricing level  <input type="checkbox"/> Other Update  <input type="checkbox"/> Other Amendment</p>
<p>3. All discounts are:  <input type="checkbox"/> GSA  <input type="checkbox"/> Most Favored Nation*  <input type="checkbox"/> Other (provide explanation)          _____          _____</p> <p>*Prices offered are the lowest offered to any similarly situated entity.</p>	<p>4. Attached documentation includes:  <input type="checkbox"/> Current approved GSA (labeled "For information only")  <input type="checkbox"/> Current relevant Price List (labeled "For information only")  <input type="checkbox"/> Revised NYS Net Price List in same format as found in the Pricing Appendix for this Contract  <input type="checkbox"/> Current copy of the "National Consumer Price Index for All Urban Consumers (CPI-U) Northeast region" (for price increases only)</p>
<p>5. Describe the nature and purpose of the modification. If applicable, please explain how pricing has been structured to customers, and/or identify and describe new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS.</p>	

**The following CORPORATE ACKNOWLEDGEMENT statement must be signed by an individual authorized to sign on behalf of Contractor for the modification being requested in this Contract Modification document. The authorizing authority's signature must be notarized.**

\_\_\_\_\_  
 Signature of Authorized Vendor Representative

**CORPORATE ACKNOWLEDGEMENT**  
**STATE OF }:** **ss.:**  
**COUNTY OF }**

On the \_\_\_\_day of \_\_\_\_\_in the year 20\_\_, before me personally came: \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in \_\_\_\_\_; that he/she/they is (are) \_\_\_\_\_ (the President or other officer or director or attorney in fact duly appointed) of \_\_\_\_\_, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

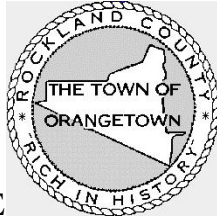
\_\_\_\_\_

**Notary Public**

**OGS APPROVAL:**  
*Approved* \_\_\_\_\_ *Approved as amended* \_\_\_\_\_ *Disapproved* \_\_\_\_\_

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

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



**TOWN ATTORNEY'S OFFICE**

**INTER-OFFICE MEMORANDUM**

DATE: April 6, 2018

TO: Charlotte Madigan, Town Clerk (with originals)

cc: Town Board Members (w/o encl.)  
Kimberly Allen, Administrative Secretary to the Supervisor (w/o encl.)  
Ellie Fordham, Secretarial Assistant II, DEME (w/o encl.)

FROM: Dennis D. Michaels, Deputy Town Attorney

RE: Certificate of Plumbing Registration (Sewer Work) 2018

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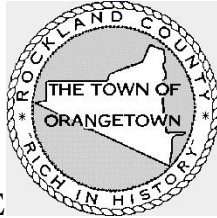
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The following applicant is qualified, pursuant to the qualification certificate received from Joe Moran, P.E., Commissioner of the Department of Environmental Management and Engineering (original attached), and the bond and insurance certificates having been reviewed and approved (originals attached), from a legal standpoint, by the Office of the Town Attorney.

SDM INDUSTRIES  
21 South Park Terrace  
Congers, NY 10920  
Tel.: 845-268-7235

This Certificate of Registration request will be placed on the next Workshop agenda scheduled for April 17, 2018 and the Regular Town Board Meeting agenda scheduled for April 24, 2018. Should you have any questions, please do not hesitate to contact this Office.

/mf  
encl.



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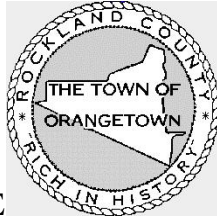
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BELLVILLE LANDSCAPING, INC.  
84 North Route 9W  
Congers, NY 10920  
Tel.: (845) 268-7437

This Certificate of Registration request will be placed on the next Workshop agenda scheduled for April 17, 2018 and the Regular Town Board Meeting agenda scheduled for April 24, 2018. Should you have any questions, please do not hesitate to contact this Office.

/mf  
encl.



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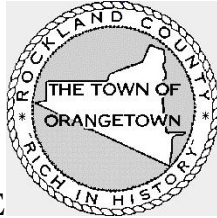
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HAUSER BROTHERS, INC.  
17 Old Schoolhouse Lane  
Orangeburg, NY 10962  
Tel.: (845) 359-1881

This Certificate of Registration request will be placed on the next Workshop agenda scheduled for April 17, 2018 and the Regular Town Board Meeting agenda scheduled for April 24, 2018. Should you have any questions, please do not hesitate to contact this Office.

/mf  
encl.



**TOWN ATTORNEY'S OFFICE**

**INTER-OFFICE MEMORANDUM**

DATE: April 6, 2018

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cc: Town Board Members (w/o encl.)  
Kimberly Allen, Administrative Secretary to the Supervisor (w/o encl.)  
Ellie Fordham, Secretarial Assistant II, DEME (w/o encl.)

FROM: Dennis D. Michaels, Deputy Town Attorney

RE: Certificate of Plumbing Registration (Sewer Work) 2018

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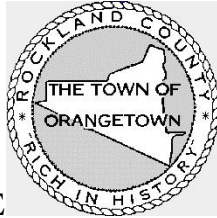
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HEWITT EXCAVATING, LLC.  
18 Broad Street  
Norwood, NJ 07648  
Tel.: (201)767-3653

This Certificate of Registration request will be placed on the next Workshop agenda scheduled for April 17, 2018 and the Regular Town Board Meeting agenda scheduled for April 24, 2018. Should you have any questions, please do not hesitate to contact this Office.

/mf  
encl.





**TOWN ATTORNEY'S OFFICE**

**INTER-OFFICE MEMORANDUM**

DATE: April 6, 2018

TO: Charlotte Madigan, Town Clerk (with originals)

cc: Town Board Members (w/o encl.)  
Kimberly Allen, Administrative Secretary to the Supervisor (w/o encl.)  
Ellie Fordham, Secretarial Assistant II, DEME (w/o encl.)

FROM: Dennis D. Michaels, Deputy Town Attorney

RE: Certificate of Plumbing Registration (Sewer Work) 2018

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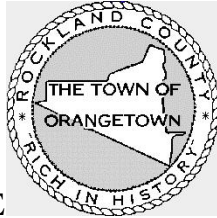
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The following applicant is qualified, pursuant to the qualification certificate received from Joe Moran, P.E., Commissioner of the Department of Environmental Management and Engineering (original attached), and the bond and insurance certificates having been reviewed and approved (originals attached), from a legal standpoint, by the Office of the Town Attorney.

WILLIAM KING AND SON CONSTRUCTION  
113 Lake Road  
Valley Cottage, NY 10989  
Tel.: 845-406-2914

This Certificate of Registration request will be placed on the next Workshop agenda scheduled for April 17, 2018 and the Regular Town Board Meeting agenda scheduled for April 24, 2018. Should you have any questions, please do not hesitate to contact this Office.

/mf  
encl.



**TOWN ATTORNEY'S OFFICE**

**INTER-OFFICE MEMORANDUM**

DATE: April 6, 2018

TO: Charlotte Madigan, Town Clerk (with originals)

cc: Town Board Members (w/o encl.)  
Kimberly Allen, Administrative Secretary to the Supervisor (w/o encl.)  
Ellie Fordham, Secretarial Assistant II, DEME (w/o encl.)

FROM: Dennis D. Michaels, Deputy Town Attorney

RE: Certificate of Plumbing Registration (Sewer Work) 2018

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The following applicant is qualified, pursuant to the qualification certificate received from Joe Moran, P.E., Commissioner of the Department of Environmental Management and Engineering (original attached), and the bond and insurance certificates having been reviewed and approved (originals attached), from a legal standpoint, by the Office of the Town Attorney.

PRO-CUT LANDSCAPING  
11 Pineview Road  
West Nyack, NY 10994  
Tel.: 845-746-6802

This Certificate of Registration request will be placed on the next Workshop agenda scheduled for April 17, 2018 and the Regular Town Board Meeting agenda scheduled for April 24, 2018. Should you have any questions, please do not hesitate to contact this Office.

/mf  
encl.



# Rockland County

Ed Day, Rockland County Executive

---

**OFFICE OF THE COUNTY ATTORNEY**

11 New Hempstead Road  
New City, New York 10956  
Phone: (845) 638-5180 Fax: (845) 638-5676

**Thomas E. Humbach**  
*County Attorney*

March 28, 2018

Robert V. Magrino, Town Attorney  
Town of Orangetown  
26 Dutchhill Road  
Orangeburg, NY 10962

Re: Intermunicipal Agreement between the County of Rockland  
and the Town of Orangetown  
Reimbursement for Packeye and Personal Radiation Detector  
Training (PRD)  
For training held on October 10, 2017 and October 11, 2017

Dear Mr. Magrino:

Enclosed please find a copy of the Contract for the above referenced matter that we have prepared on behalf of the County of Rockland. The contact information for the attorney assigned to this matter is listed below.

Pursuant to Executive Order No. 3 of 2015, if presently or during the pendency of the contract term, you, as a party to this contract, owe or come to owe property taxes to the County of Rockland, unless prohibited by law, the County will place into escrow any payments due under this contract until such time as the real property taxes are paid in full, or otherwise discharged or satisfied.

Please have the contract executed by Mr. Day and deliver the contract to the assigned attorney. Please note that his signature will need to be notarized. Also please provide us with a copy of the Town's resolution authorizing the contract.

The contract should be delivered to the following address:

Rockland County Department of Law  
Attention: Thomas Simeti, Esq.  
Principal Assistant County Attorney  
Allison-Parris County Office Building  
11 New Hempstead Road  
New City, New York 10956

In addition, we are simultaneously sending a copy of this Contract to the department for its review and approval, and therefore, we reserve the right to make any changes to this Contract based on any comments that the respective department may have. This Contract will not be binding on the County of Rockland until such time that fully executed duplicate originals are delivered from the County of Rockland to you or your attorney.

If you have any questions, please contact the attorney assigned to this matter.

Very truly yours,



THOMAS SIMETI  
Principal Assistant County Attorney  
[Writer's Direct Dial: 845-638-5108]  
TS/dc  
Enclosure

2018-00499

cc: Louis Falco, III, Sheriff

Introduced by:

Hon. Aron B. Wieder, Sponsor  
Hon. Aney Paul, Sponsor  
Hon. Philip Soskin, Sponsor  
Hon. Nancy Low-Hogan, Sponsor  
Hon. Jay Hood, Jr., Sponsor  
Hon. Douglas J. Jobson, Sponsor  
Hon. Laurie Santulli, Sponsor  
Hon. Michael M. Grant, Sponsor  
Hon. Harriet D. Cornell, Sponsor  
Hon. Toney L. Earl, Sponsor  
Hon. Ian S. Schoenberger, Sponsor  
Hon. Lon M. Hofstein, Sponsor

Referral No. 9361  
March 20, 2018

**RESOLUTION NO. 132 OF 2018  
AUTHORIZING INTERMUNICIPAL COOPERATION AGREEMENTS  
BETWEEN THE COUNTY OF ROCKLAND AND THE TOWN OF  
RAMAPO (\$3,711.92), THE TOWN OF ORANGETOWN (\$6,463.84)  
AND THE TOWN OF HAVERSTRAW (\$1,791.13)  
TO REIMBURSE FOR PERSONAL RADIATION DETECTOR (PRD) TRAINING  
AS OUTLINED IN THE SECURING THE CITIES INITIATIVE SUPPORTED  
BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY,  
STATE OF NEW YORK AND THE NEW YORK STATE POLICE,  
FOR THE PERIOD OCTOBER 10, 2017 THROUGH OCTOBER 11, 2017  
IN THE TOTAL AMOUNT OF \$11,966.89 AND AUTHORIZING THE EXECUTION  
OF THIS AGREEMENT BY THE COUNTY EXECUTIVE  
[OFFICE OF THE SHERIFF]  
(\$11,966.89)**

**HOOD, JR./MORONEY, SOSKIN, TYER, LOW-HOGAN: UNAN.**

WHEREAS, By Resolution No. 279 of 2007, the Legislature of Rockland County approved an intermunicipal cooperation agreement with the City of New York through its New York City Police Department, One Police Plaza, New York, New York 10038, for the procurement and distribution of goods (which goods shall be at no cost to the County), services and construction projects, including the receipt of equipment and training with regard to the "Securing the Cities Initiative" supported by the United States Department of Homeland Security, the State of New York and the New York State Police; and

WHEREAS, The Sheriff of Rockland County is recommending that the County Executive and the Legislature of Rockland County approve the intermunicipal agreement with the Town of Ramapo for reimbursement to the Town of Ramapo Police Department for Personal Radiation Detector (PRD) training as outlined in the Securing the Cities agreement dated March 30, 2007, for the period October 10, 2017 through October 11, 2017 in the total amount of \$3,711.92; and

WHEREAS, The Sheriff of Rockland County is recommending that the County Executive and the Legislature of Rockland County approve the intermunicipal agreement with the Town of Orangetown for reimbursement to the Town of Orangetown Police Department for Personal Radiation Detector (PRD) training as outlined in the Securing the Cities agreement dated March 30, 2007, for the period October 10, 2017 through October 11, 2017 in the total amount of \$6,463.84; and

WHEREAS, The Sheriff of Rockland County is recommending that the County Executive and the Legislature of Rockland County approve the intermunicipal agreement with the Town of Haverstraw for reimbursement to the Town of Haverstraw Police Department for Personal Radiation Detector (PRD) training as outlined in the Securing the Cities agreement dated March 30, 2007, for the period October 10, 2017 through October 11, 2017 in the total amount of \$1,791.13; and

WHEREAS, Article 5-G of the General Municipal Law authorizes municipal governments to perform together that which each government is authorized to perform individually and requires that any intermunicipal cooperation agreement be approved by each participating municipal corporation by a majority vote of the voting strength of its governing body; and

WHEREAS, Funding from the City of New York that will cover these agreements is being appropriated to Dept. 3108, line E4920 via separate resolution; and

WHEREAS, The Public Safety and Budget and Finance Committees of the Legislature have met, considered and unanimously approved this resolution; now therefore be it

RESOLVED, That the Legislature of Rockland County hereby approves the intermunicipal cooperation agreement between the County of Rockland and the Town of Ramapo for reimbursement to the Town of Ramapo Police Department for Packeye and/or Personal Radiation Detector (PRD) training as outlined in the Securing the Cities agreement dated March 30, 2007, for the period October 10, 2017 through October 11, 2017 in the total amount of \$3,711.92, and authorizes the execution of this agreement by the County Executive, subject to the approval of the County Attorney; and be it further

RESOLVED, That the Legislature of Rockland County hereby approves the intermunicipal cooperation agreement between the County of Rockland and the Town of Orangetown for reimbursement to the Town of Orangetown Police Department for Packeye and/or Personal Radiation Detector (PRD) training as outlined in the Securing the Cities agreement dated March 30, 2007, for the period October 10, 2017 through October 11, 2017 in the total amount of \$6,463.84, and authorizes the execution of this agreement by the County Executive, subject to the approval of the County Attorney; and be it further

RESOLVED, That the Legislature of Rockland County hereby approves the intermunicipal cooperation agreement between the County of Rockland and the Town of Haverstraw for reimbursement to the Town of Haverstraw Police Department for Packeye and/or Personal Radiation Detector (PRD) training as outlined in the Securing the Cities agreement dated March 30, 2007, for the period October 10, 2017 through October 11, 2017 in the total amount of \$1,791.13, and authorizes the execution of this agreement by the County Executive, subject to the approval of the County Attorney; and be it further

RESOLVED, That funding from the City of New York that will cover these agreements is being appropriated to Dept. 3108, line E4920 via separate resolution.

TS:dc  
2018-00498  
2-20-18  
3-14-18 dc  
3/15/18, 3/22/18/dmg

Federal Tax ID # 13-6007311

**INTERMUNICIPAL AGREEMENT**

**TOWN OF ORANGETOWN**

**Reimbursement of Law Enforcement for Packeye and  
Personal Radiation Detector (PRD) Training**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the **COUNTY OF ROCKLAND**, a municipal corporation of the State of New York, having its principal office at 11 New Hempstead Road, New City, New York 10956, hereinafter referred to as "**COUNTY**," and the **TOWN OF ORANGETOWN**, a municipal corporation of the State of New York, having its principal office at Town Hall, 26 Dutchhill Road, Orangeburg, NY 10962, hereinafter referred to as "**MUNICIPALITY**," in the following manner:

**WITNESSETH:**

WHEREAS, the **COUNTY** wishes to financially assist the **MUNICIPALITY** in its law enforcement and make a disbursement of grant funds from the LETPP and SHSP grants to **MUNICIPALITY** for law enforcement purposes only, and

WHEREAS, the Rockland County Charter, Article III, Section 3.02(u) authorizes the County Executive to execute this agreement, and

WHEREAS, the Legislature of Rockland County has provided funds for this agreement in in **Resolution No. 132 of 2018** for the professional services of **MUNICIPALITY** for the period hereinafter stated,

NOW THEREFORE, the parties hereto, in consideration of the covenants, agreements, terms and conditions herein contained, do agree as follows:

1. **SERVICES:** The **MUNICIPALITY** shall use such funds for reimbursement of law enforcement overtime for Packeye and Personal Radiation Detector (PRD) training per Schedule A.
2. **TERM:** The professional services rendered and performed by the **MUNICIPALITY** under this agreement shall commence **October 10, 2017** and terminate **October 11, 2017**.
3. **PAYMENT:** The **COUNTY** agrees to pay **MUNICIPALITY** and **MUNICIPALITY** agrees to accept a sum not to exceed **SIX THOUSAND FOUR HUNDRED SIXTY-THREE AND 84/100 (\$6,463.84) DOLLARS**. **MUNICIPALITY** agrees that the aforesaid sum shall be solely and exclusively used for the purpose of reimbursement of law enforcement for Packeye and Personal Radiation Detector (PRD) training.
- 4a. **INDEMNIFY AND HOLD HARMLESS:** The **MUNICIPALITY** agrees to defend, indemnify and hold harmless **COUNTY** and its respective officers, employees and agents from and against all claims, actions and suits and will defend the **COUNTY** and its respective officers,

employees and agents, at its own cost and at no cost to the COUNTY, in any suit, action or claim, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of, or resulting from, the negligent activities or omissions of MUNICIPALITY. These indemnification provisions are for the protection of the COUNTY and its respective officers, employees and agents only and shall not establish, of themselves, any liability to third parties. The provisions of this section shall survive the termination of this agreement.

4b. The COUNTY agrees to defend, indemnify and hold harmless MUNICIPALITY and its respective officers, employees and agents from and against all claims, actions and suits and will defend the MUNICIPALITY and its respective officers, employees and agents, at its own cost and at no cost to the MUNICIPALITY, in any suit, action or claim, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of, or resulting from, the negligent activities or omissions of COUNTY. These indemnification provisions are for the protection of the MUNICIPALITY and its respective officers, employees and agents only and shall not establish, of themselves, any liability to third parties. The provisions of this section shall survive the termination of this agreement.

5. LIABILITY ONLY FOR MONIES BUDGETED: This agreement shall be deemed executory to the extent that the monies appropriated in the current budget of COUNTY for the purposes of this agreement and no liability shall be incurred by COUNTY, or any department, beyond the monies budgeted and available for this purpose. The agreement is not a general obligation of the COUNTY. Neither the full faith and credit nor the taxing power of the COUNTY is pledged to the payment of any amount due or to become due under this agreement. It is understood that neither this agreement nor any representation by any COUNTY employee or officer creates any obligation to appropriate or make monies available for the purpose of the agreement. This agreement shall not be effective unless the monies to be paid hereunder by the COUNTY are appropriated in the County budget. The COUNTY agrees that it shall not direct the police officers assigned to the Rockland County Narcotics Task Force to work any overtime hours in excess of the amount budgeted by the MUNICIPALITY without the prior consent of the MUNICIPALITY.

6. NO ASSIGNMENT: The MUNICIPALITY shall not assign, sublet or transfer or otherwise dispose of its interest in this agreement without the prior written consent of the COUNTY.

7. LAWS OF THE STATE OF NEW YORK: This agreement shall be governed by the Laws of the State of New York and the venue of any litigation shall be Rockland County.

8. LABOR LAW AND EXECUTIVE LAW: The MUNICIPALITY shall comply with all of the provisions of the Labor Law of the State of New York including, but not limited to, prevailing wage provisions, if required by law, and with Article 15 of the Executive Law of the State of New York relating to unlawful discriminatory practices insofar as the provisions are applicable to the work and/or services to be performed under this agreement.

9. LOCAL LAWS AND RESOLUTIONS: The MUNICIPALITY shall comply with all local laws and resolutions of the Legislature of Rockland County, including, but not limited to, filing of Disclosure Statements and Affirmative Action Plans, if required by law or resolution.

10. COMPLY WITH AMERICANS WITH DISABILITIES ACT OF 1990: The MUNICIPALITY agrees to comply with the provisions of the Americans With Disabilities Act of 1990 (ADA) prohibiting discrimination on the basis of disability with regard to employment policies and procedures, structural and program accessibility, transportation and telecommunications.



11. TERMINATION/AMENDMENT: This agreement may be terminated or amended on at least thirty (30) days written notice by COUNTY. In the event of early termination, the COUNTY agrees to pay the MUNICIPALITY for work performed up to the date of termination, subject to the not to exceed amount set forth in Paragraph 3 of this agreement.

12. IRAN DIVESTMENT ACT: CONTRACTOR and its employees, agents, servants, subcontractors and/or assignees agree to comply with the Iran Divestment Act of 2012 (the "Act"), as set forth in N.Y. State Finance Law § 165-a and N.Y. General Municipal Law § 103-g, both effective April 12, 2012, which requires bidders to certify that they do not invest in the Iranian energy sector when they bid on state or local government contracts. As set forth in the Act, a person engages in investment activities in Iran if: (a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran including, but not limited to, providing oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran or (b) the person is a financial institution that extends twenty million dollars or more in credit to another person for forty-five days or more for the purposes of providing goods or services in the energy sector in Iran.

13. ENTIRE AGREEMENT/NO MODIFICATION: This agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations or agreements either oral or written. It may not be modified, except by a writing signed by the parties.

14. EXECUTION: This Agreement may be signed in counterparts. Facsimile and electronic signatures are acceptable, where the original follows within ten (10) days. Failure to timely provide original signatures will be a ground for termination by COUNTY.

15. RECORD KEEPING AND AUDIT: The Contractor shall maintain records of all its financial transactions, including all expenses and disbursements, and all other documentation and communications which relate to this agreement or the performance of its obligations. Financial records shall be kept in accordance with GAAP (Generally Accepted Accounting Practices) and/or COUNTY record-keeping requirements, and each transaction shall be documented. Any such records shall be made available to COUNTY for inspection or audit upon demand. No compensation or fee for services will be due to Contractor unless or until any financial statements demanded by the required by the Rockland County Department of Finance have been provided, or such other documents or information required to be produced by the County are provided. This term shall survive the cancellation, termination or expiration of this agreement, or the date of the last payment tendered, whichever occurs latest, by six years.

*This space intentionally left blank*

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first written.

**OFFICE OF THE SHERIFF**

**TOWN OF ORANGETOWN**

By: \_\_\_\_\_  
LOUIS FALCO III  
Sheriff

By: \_\_\_\_\_  
CHRISTOPHER DAY  
Supervisor

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**DEPARTMENT OF LAW**  
Approved for signature of  
County Executive

By: \_\_\_\_\_  
THOMAS SIMETI  
Principal Assistant County Attorney

Dated: \_\_\_\_\_

**COUNTY OF ROCKLAND**

By: \_\_\_\_\_  
EDWIN J. DAY  
County Executive

Dated: \_\_\_\_\_

2018-00499





RECEIVED

MAR 20 2018

TOWN OF ORANGETOWN

SPECIAL USE PERMIT FOR USE OF TOWN PROPERTY

PERMIT # 18-57-10

TOWN OF ORANGETOWN  
HIGHWAY DEPARTMENT

American Legion Post 329

PEARL RIVER, NY ATTN: Scott Rutter

EVENT NAME: Pearl River Memorial Day Parade

ADDRESS: 30 Railroad Ave Pearl River NY 10965

PHONE #: 845-709-4104 CELL # 845-709-4104 FAX # N/A

CHECK ONE: PARADE  RACE/RUN/WALK  OTHER

The above event will be held on Mon 25 May 2018 from 9:45 AM to 11:45 AM RAIN DATE: N/A

Location of event: South Main St, between Central + Franklin and around Braunsdorf Park

Sponsored by: American Legion - Pearl River, NY Telephone #: 845-709-4104  
Parade Chairman

Address: 30 Railroad Ave Pearl River NY 10965

Estimated # of persons participating in event: 500+ vehicles 10

Person (s) responsible for restoring property to its original condition: Name-Address-Phone #:

Pearl River American Legion Post - Scott Rutter

Signature of Applicant: [Signature] Date: 4 MAR 2018

GENERAL INFORMATION REQUIRED: (HIGHWAY/PARKS)

Letter of Request to Town Board requesting aid for event:  Y /  N - Received On: 3-20-18

Certificate of Insurance:  Y /  N - Received On: 3-20-18

FOR HIGHWAY DEPARTMENT USE ONLY:

Road Closure Permit:  Y /  N - Received On: 3-20-18

Rockland County Highway Dept. Permit:  Y /  N - Received On: \_\_\_\_\_

NYS DOT Permit:  Y /  N - Received On: X

Route/Map/Parking Plan:  Y /  N - Received On: 3-20-18

RFS #: 39965 BARRICADES:  Y /  N CONES:  Y /  N TRASH BARRELS:  Y /  N OTHER: \_\_\_\_\_

APPROVED: [Signature] DATE: 3-21-18  
Superintendent of Highways

FOR PARKS & RECREATION DEPARTMENT USE ONLY:

Showmobile:  Y /  N Application Required: \_\_\_\_\_ Fee Paid - Amount/Check # \_\_\_\_\_

Port-o-Sans:  Y /  N Other: \_\_\_\_\_

APPROVED: [Signature] DATE: 3/23/18  
Superintendent of Parks & Recreation

RECEIVED

MAR 28 2018

TOWN OF ORANGETOWN  
HIGHWAY DEPARTMENT

FOR POLICE DEPARTMENT USE ONLY:

Police Detail:  Y /  N: 500 Items: \_\_\_\_\_

APPROVED: [Signature] DATE: 3/26/18  
Chief of Police

Please return to the Highway Department to be placed on the Town Board Workshop

Workshop Agenda Date: 4-17-18 Approved On: \_\_\_\_\_ TBR #: \_\_\_\_\_

RECEIVED

Sent to S. Wheatly 3-27-18

MAR 20 2018

**JAMES J. DEAN**  
Superintendent of Highways  
Roadmaster II

TOWN OF ORANGETOWN  
HIGHWAY DEPARTMENT

**HIGHWAY DEPARTMENT**  
**TOWN OF ORANGETOWN**

119 Route 303 • Orangeburg, NY 10962  
(845) 359-6500 • Fax (845) 359-6062  
E-mail - highwaydept@orangetown.com

Orangetown Representative  
R.C. Soil & Water Conservation Dist.-Chairman  
Member:  
American Public Works Association NY Metro Chapter  
NYS Association of Town Superintendents of Highways  
Hwy. Superintendents' Association of Rockland County



**ROAD CLOSING PERMIT APPLICATION**  
Section 139 Highway Law

NAME Pearl River American Legion Post <sup>ATTN</sup> Scott Rutter DATE 4 MAR 2018  
COMPANY Pearl River American Legion Post  
ADDRESS 30 Railroad Ave Pearl River NY 10965  
TELEPHONE 845-209-4104  
(INCLUDE 24 HOUR EMERGENCY NUMBERS)

ABOVE MENTIONED PARTY REQUESTS PERMISSION TO CLOSE:

South Main Street, between Central Franklin and around Braunsdorf Park  
(Address number and name of road)

(Intersecting streets and/or description of exact location)

REASON FOR CLOSING Memorial Day Parade  
DATE OF CLOSING Mon 28 MAY 2018 RAIN DATE N/A  
TIME ROAD WILL BE CLOSED 9:45 AM to 11:45 AM  
WILL ROAD BE OPEN TO LOCAL TRAFFIC? NO  
WILL ROAD BE OPEN TO EMERGENCY VEHICLES? Yes

PLEASE PROVIDE A DETAILED MAP AND DESCRIPTION OF DETOUR IF TRAVEL WILL BE RESTRICTED.

PRELIMINARY APPROVAL [Signature] DATE 3-28-18  
JAMES J. DEAN  
SUPERINTENDENT OF HIGHWAYS

This permit application will be forwarded to the Rockland County Superintendent of Highways, County of Rockland, 23 New Hempstead Road, New City, NY, 10956. You will receive written confirmation from that office.

8-13-02bjd

HAMLETS: PEARL RIVER • BLAUVELT • ORANGEBURG • TAPPAN • SPARKILL • PALISADES • UPPER GRANDVIEW



CLEAN STREETS=CLEAN STREAMS

RECEIVED

MAR 20 2018

TOWN OF ORANGETOWN  
HIGHWAY DEPARTMENT

**Their Commitment. Our Commitment.**

*"The U.S. is obligated at every level (federal, state, local and community) to care for its Disabled Veterans."*

**Valor Network Inc.**

7 Hemptor Rd  
New City, NY 10956

---

04 MAR 2018

Chief Kevin Nulty  
Orangetown Police Department  
26 Orangeburg Road  
Orangeburg, New York 10962

Re: Pearl River American Legion Memorial Day Parade – Monday, May 28, 2018

Dear Chief Nulty:

Enclosed please find the application of the Pearl River American Legion Post 329 to conduct its Annual Memorial Day Parade on May 28, 2018.

Attached to the application is the certificate of insurance for \$1,000,000 naming the American Legion as the insured and the Town of Orangetown as an additional insured.

Please be so kind as to process the application as soon as possible and if there are any questions or additional documents needed, please give me a call. If you find the same in order and approve the same, please be so kind as to forward the application to the Town of Orangetown Department of Highways for its approval. Once they have approved it, please have them send me a copy of the approved request.

Please note that to help with coverage issues your police department has with several parades being held in Orangetown at approximately the same time, we are starting the parade at 10:15 AM (March Time) with a 9:45 AM Assembly Time).

Thank you for your prompt attention to this request.

Respectfully Yours:



Scott E. Rutter  
Parade Committee Chairman  
Veteran  
Direct: 845-709-4104  
scottrutterfnc@gmail.com

ENCLs

RECEIVED

MAR 20 2018

TOWN OF ORANGETOWN  
HIGHWAY DEPARTMENT

**Their Commitment. Our Commitment.**

*"The U.S. is obligated at every level (federal, state, local and community) to care for its Disabled Veterans."*

**Valor Network Inc.**

7 Hemptor Rd  
New City, NY 10956

---

04 MAR 2018

Town of Orangetown  
26 Orangeburg Road  
Orangeburg, New York 10962

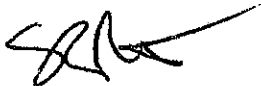
Subject: Request for Barricade Support - Pearl River American Legion Memorial Day Parade - May 28, 2018

To Whom it May Concern;

In support of the 2018 Pearl River Memorial Day Parade on 28 MAY 2018 a request is made for barricades to support the control of traffic during the assembly and execution of the parade. Members and organizations participating in the parade will assemble on the 28<sup>th</sup> at 9:45 AM with the Parade beginning at 10:15 AM. The parade should be complete NLT 11:45. Information on the parade route has been provided in previous request packet to the Chief of Police and the Highway Department.

Thank you for your prompt attention to this request.

Respectfully Yours;



Scott E. Rutter  
Parade Committee Chairman  
Veteran  
Direct: 845-709-4104  
scottrutterfnc@gmail.com ✓





# CERTIFICATE OF LIABILITY INSURANCE

OP ID: TM

DATE (MM/DD/YYYY)

02/05/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  
Raymond Sheridan Financial Inc  
19 E. Washington Ave.  
Pearl River, NY 10965  
Raymond Sheridan

RECEIVED  
MAR 20 2018

CONTACT NAME:	
PHONE (A/C, No, Ext):	
E-MAIL:	
ADDRESS:	
PRODUCER CUSTOMER ID #: AMERI-1	
INSURER(S) AFFORDING COVERAGE:	NAIC #
INSURER A:	Associated Mutual
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED  
American Legion Post 329  
30 Railroad Ave  
Pearl River, NY 10965

TOWN OF ORANGETOWN  
HIGHWAY DEPARTMENT**COVERAGES**

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR (W/D)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ <input type="checkbox"/> LOC		80034283	12/02/2017	12/02/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (PER ACCIDENT) \$ \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE \$ RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A			WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 104, Additional Remarks Schedule, if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

Town of Orangetown  
25 Orangeburg Road  
Orangetown, NY 10962

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

APPLICATION FOR PERMIT TO CLOSE  
A COUNTY ROAD UNDER SECTION  
104 OF THE HIGHWAY LAW

RECEIVED

MAR 20 2018

TOWN OF ORANGETOWN  
HIGHWAY DEPARTMENT

In the space provided the applicant must state their name and address.  
If the applicant is a corporation state the location of the local  
office and the title of the person signing this application.

*Scott Rutter*

as Chairman of Parade Committee for American Legion

Post 329, 30 Railroad Avenue, Pearl River, New York 10965

In the space provided describe why the road needs to be closed where  
(intersection to intersection), and when the proposed closure will take  
place.

Annual Memorial Parade to be held on May *28, 2018*

Closure to be between the intersection of North Middletown Road and Blauvelt Road, along  
North Middletown Road to the intersection with East Central Avenue and down East Central  
Avenue to the intersection of Main Street and East Central Avenue, all in Pearl River.  
Parade line up will commence at 9:45 a.m. with parade to start at 10:15 a.m. and will  
conclude about 20 minutes later at 10:35 a.m. at Braunsdorf Park where Memorial Services  
will be held.

In the space provided describe the proposed detour route, barricades  
and signs required by the New York State Manual of Uniform Traffic  
Control Devices.

Southbound traffic on North Middletown Road, barricades should be just south of the  
intersection of North Middletown Road and Blauvelt Road with detour on Blauvelt Road for  
traffic that will eventually turn east and Brightwood Avenue for traffic that will  
eventually turn west. At the intersection of North Middletown Road and East Central Avenue  
detour will be to the right onto Central Avenue. For traffic on North Main Street,  
Southbound detour will be at East Washington Avenue either north or south and for traffic  
northbound on Main Street, detour would be at Franklin Avenue. Additionally barriers will  
be required at the intersection of Hunt Avenue, Braunsdorf Road, East Washington Avenue  
and Holt Drive where they intersect with North Middletown Road and Henry Street, North and  
South John Street and William Street where they intersect with East Central Avenue.

Dated this *4 Mar 2018* Day of *March* . *2018*

PC Address *30 Railroad Avenue*  
*Pearl River, NY 10965*



APPLICANT

*Scott Rutter*  
*American Legion Post*

*329*  
*Pearl River, NY*

*W.N.*



# CERTIFICATE OF LIABILITY INSURANCE

OP ID: TH

DATE (MM/DD/YYYY)

02/05/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER**  
Raymond Sheridan Financial Inc  
19 E. Washington Ave.  
Pearl River, NY 10965  
Raymond Sheridan

RECEIVED

MAR 20 2018

CONTACT NAME:

PHONE:

FAX:

E-MAIL:

ADDRESS:

PRODUCER:

CUSTOMER ID #: AMERJ-1

**INSURED**  
American Legion Post 329  
30 Railroad Ave  
Pearl River, NY 10965

OWN OF CHANGETOWN  
HIGHWAY DEPARTMENT

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Associated Mutual

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INBR LTR	TYPE OF INSURANCE	ADDL SUBR INSR (W/O)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		80034283	12/02/2017	12/02/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMPROP AGG \$ 1,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (PER ACCIDENT) \$ \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <b>DEDUCTIBLE</b> <b>RETENTION</b> \$					EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

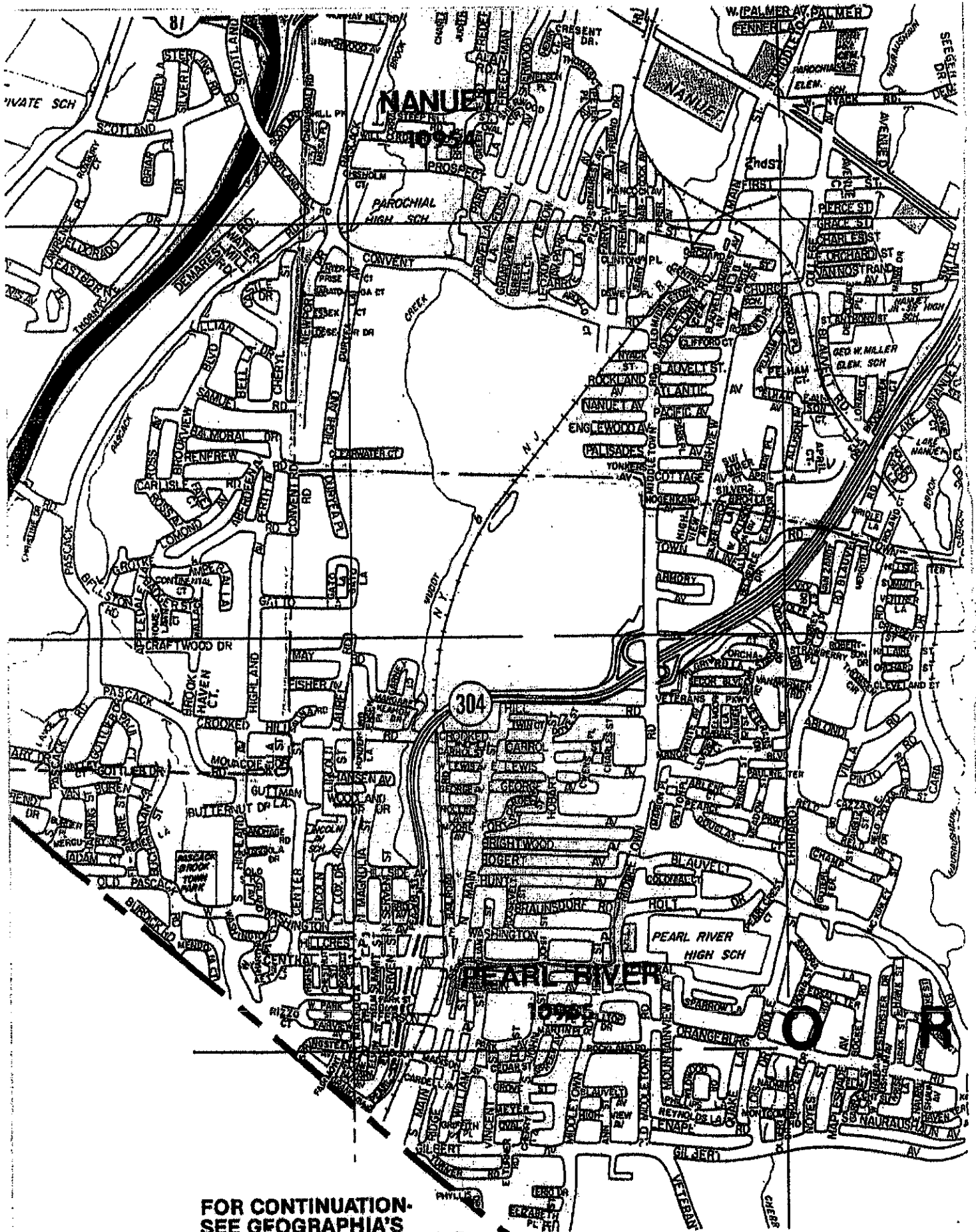
**CERTIFICATE HOLDER**

County of Rockland  
11 New Hempstead Road  
New City, NY 10956

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



FOR CONTINUATION -  
SEE GEOGRAPHIA'S

RECEIVED

DEC 8 2017

TOWN OF ORANGETOWN  
SPECIAL USE PERMIT FOR USE OF TOWN PROPERTY

PERMIT # 18-SP-01

TOWN OF ORANGETOWN  
HIGHWAY DEPARTMENT

Gran Fondo New York / Campagnolo GFNY World Championship

APPLICANT NAME: Lidia Fluhme

ADDRESS: 1 Columbus Place #N27B New York, NY 10019

PHONE #: 212-933-4033 CELL # 917-656-2005 FAX #

CHECK ONE: PARADE RACE/RUN/WALK OTHER

The above event will be held on 5/20/18 from 8am to 3pm RAIN DATE: No

Location of event: Northbound: 9W, Rockland Rd, Ferdon Ave, Piermont Ave, Main St, Gedney St, 4th Ave  
Southbound: Western Hwy, CR201, Orangeburg Rd, 303, Greenbush Rd, Rail Trail, Kings Hwy, 340, Highland Ave, 9W

Sponsored by: Gran Fondo New York Telephone #: 212-933-4033

Address: 1 Columbus Place #N27B New York, NY 10019

Estimated # of persons participating in event: 6000 vehicles 50

Person (s) responsible for restoring property to its original condition: Name-Address-Phone #:

Lidia Fluhme 1 Columbus Place #N27B New York, NY 10019 917-656-2005  
Uli Fluhme 1 Columbus Place #N27B New York, NY 10019 646-468-1578

Signature of Applicant: [Signature] Date: 12/23/16

GENERAL INFORMATION REQUIRED: (HIGHWAY/PARKS)

Letter of Request to Town Board requesting aid for event - Received On: 12-8-17

Certificate of Insurance - Received On: 3-1-8

FOR HIGHWAY DEPARTMENT USE ONLY:

Road Closure Permit: Y (N) Received On: X

Rockland County Highway Dept. Permit (Y) N - Received On:

NYS DOT Permit (Y) N - Received On:

Route/Map/Parking Plan: (Y) N - Received On: 12-8-17

RFS #: 39390 BARRICADES: (Y) (N) CONES: (Y) (N) TRASH BARRELS: (Y) (N) OTHER: debris signs

APPROVED: [Signature] DATE: 3-21-18  
Superintendent of Highways

RECEIVED

FOR PARKS & RECREATION DEPARTMENT USE ONLY:

Showmobile: Y (N) Application Required: Fee Paid - Amount/Check #

Port-o-Sans: Y (N) Other:

APPROVED: [Signature] DATE: 3/23/18  
Superintendent of Parks & Recreation

MAR 28 2018

TOWN OF ORANGETOWN  
HIGHWAY DEPARTMENT

FOR POLICE DEPARTMENT USE ONLY:

APPROVED: [Signature] DATE: 3/26/18  
Chief of Police

\*\* (Please return to the Highway AND/OR Parks Department to be placed on the Town Board Agenda) \*\*

Workshop Agenda Date: 4-17-18 Approved On: TBR #:



*Campagnolo*  
**GFNY**  
WORLD CHAMPIONSHIP  
NEW YORK CITY

Gran Fondo New York  
1 Columbus Place #N27B  
New York, NY 10019  
212-933-4033  
info@gfny.com  
gfny.com

December 8, 2017

Town Supervisor Andy Stewart  
Town Clerk Charlotte Madigan  
Town of Orangetown  
26 Orangeburg Road  
Orangeburg, NY 10962

Police Chief Kevin Nulty  
Sergeant James Sullivan  
Officer Harold Johnson II  
Orangetown Police Department  
26 West Orangeburg Road  
Orangeburg, NY 10962

Superintendent of Highways James Dean  
Helen Wilson  
Highways Department  
Town of Orangetown  
119 Route 303  
Orangeburg, NY 10962

Dear Supervisor Stewart, Charlotte, Chief Nulty, Sgt Sullivan, PO Johnson, Superintendent Dean, Helen,

Gran Fondo New York requests the approval from the Town Board of the use of town equipment for Gran Fondo New York cycling marathon on Sunday, May 20, 2018.

We are requesting the use of cones, detour signs, barricades and barrels from the Town of Orangetown. *-HWJ*

Thank you,

*Police Detail - OED*

Lidia Fluhme  
Founder and Race Organizer  
Gran Fondo New York





**ADDITIONAL REMARKS SCHEDULE**

AGENCY <b>Fairly Consulting Group, LLC</b>		NAMED INSURED <b>USA Cycling, Inc.</b> 210 USA Cycling Point, Suite 100 Colorado Springs, CO 80919	
POLICY NUMBER <b>SEE PAGE 1</b>			
CARRIER <b>SEE PAGE 1</b>	NAIC CODE <b>SEE P 1</b>	EFFECTIVE DATE: <b>SEE PAGE 1</b>	

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
 FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

**Description of Operations/Locations/Vehicles:**  
**(06/14) - Additional Insured - Designated Person or Organization.**

Event Number: 2018-745  
 Event Name: Campagnolo GFNY Championship NYC  
 Event Location: New York, NY  
 Event Date(s): 05/20/2018



**ENDORSEMENT # 006**

**This endorsement, effective 12:01 AM 12/31/2017**

**Forms a part of policy no.: 015375404**

**Issued to: USA CYCLING, INC.**

**By: LEXINGTON INSURANCE COMPANY**

**ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION**

(Based on CG2026 04/13)

This endorsement modifies insurance provided by the following:

**COMMERCIAL GENERAL LIABILITY POLICY**

**SCHEDULE**

**Name of Additional Insured Person(s) or Organization(s)**

**AS REQUIRED BY WRITTEN CONTRACT**

Information required to complete this Schedule, if not shown above, will be shown in the Declarations

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the Insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

LX4309 (06/14)	Includes Copyrighted Information of the Insurance Services Offices, Inc., with its permission. All Rights Reserved.	Page	1 of 2
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2. Available under the applicable Limits of Insurance shown in the Declarations;  
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations

All other terms and conditions of the policy remain the same.



---

**Authorized Representative**



Gran Fondo New York  
 1 Columbus Place #N27B  
 New York, NY 10019  
 212-933-4033  
 info@gfny.com  
 gfny.com

RECEIVED

DEC 8 2017

TOWN OF ORANGETOWN  
 HIGHWAY DEPARTMENT

December 8, 2017

Town Supervisor Andy Stewart  
 Town Clerk Charlotte Madigan  
 Town of Orangetown  
 26 Orangeburg Road  
 Orangeburg, NY 10962

Police Chief Kevin Nulty  
 Sergeant James Sullivan  
 Officer Harold Johnson II  
 Orangetown Police Department  
 26 West Orangeburg Road  
 Orangeburg, NY 10962

Superintendent of Highways James Dean  
 Helen Wilson  
 Highways Department  
 Town of Orangetown  
 119 Route 303  
 Orangeburg, NY 10962

Superintendent of Parks and Recreation Aric Gorton  
 81 Hunt Road  
 Orangeburg, NY 10962

Dear Supervisor Stewart, Charlotte, Chief Nulty, Sgt Sullivan, Officer Johnson, Superintendent Dean, Helen, Aric,

Thank you for your support of Gran Fondo New York over the past seven years. GFNY has held seven successful annual editions of the race that receives praise not only from locals, but also from people around the world. Without your support and the close collaboration with a multitude of local agencies, the event would not be possible.

GFNY has expanded its international series of events to 17 races in 15 countries in 2018 (Mexico, Colombia, Brazil, Uruguay, Chile, Peru, Costa Rica, Panama, Germany, Poland, Portugal, Israel, Malaysia, Indonesia, and the US). Our GFNY race in NY/NJ is the "mother" race and serves as the World Championship race and is the pillar of the series. Campagnolo GFNY World Championship 2018 will attract 5000 cyclists from 93 countries on May 20, 2018 to challenge themselves over 100 miles from NYC to Bear Mountain to Fort Lee.

The 2018 edition will continue the charity element from 2016-2017, focusing on local non-profit organizations. Benefitting organizations include all local EMS Corps, Stony Point PAL, FBI Explorers, Customs Explorers, DEA Explorers and the Chapel of St. John the Divine in Tomkins Cove. We're looking to add more local organizations over the coming months.

The challenging 100-mile route for May 20, 2018 will be largely the same as in 2017: from GWB to Bear Mountain to Fort Lee along the most unique cycling course in the world. The fastest man and woman will win high-end road bikes. However, many athletes will be simply participating for a personal challenge to do their best or even just finish within the cutoff time. Hundreds of people will be raising money for their chosen causes, including Nyack Center, Rockland County Pride Center, Bike 4 Chai, Table to Table, and others.

Same as in the past seven years, we will pay the related police overtime fees to cover the expenses of the event. We also make donations to all the local Volunteer Ambulance Corps who assist with the event.

As part of the organizational and permit process, we are working with PANYNJ, NJ DOT, NYS DOT, Palisades Interstate Park Commission, Harriman State Park, Rockland County, Fort Lee, Englewood Cliffs, Edgewater, Alpine, every town in Rockland County: Orangetown, Clarkstown, Haverstraw, Ramapo and Stony Point and many Rockland County Villages.

We will provide the Town of Orangetown with a Certificate of Insurance in February 2018.

### **Orangetown Police at GFNY**

GFNY requests assistance from Orangetown Police to control traffic to enable the cyclists to ride on a traffic-moderated course for May 20, 2018. We plan a similar route to GFNY 2017 and we will be coordinating the route and logistics details with Officer Johnson.

### **Route Marking**

GFNY crew will begin marking the route of GFNY starting Wednesday, May 9, 2018. Signs will include temporary road marking for turns, signs at eye level that mark turns or caution, mile markers (every 20 miles), aid station signs, water-based paint road markings and some sponsored fence signs where permitted. As in the past years, all signs will be posted in areas that do not affect visibility of the roads/intersections/traffic. All signs will be removed by Monday, May 21, 2018.

### **Background About the Event**

- **MEDIA:** Cyclists from all over the world attend the event and it receives global media coverage from 33 cycling magazines in 17 languages. National tv, newspaper and magazine media have covered the event.
- **COURSE:** The event starts on the George Washington Bridge, travels along Route 9W and up to Bear Mountain, the featured climb of the event. The event finishes on Hudson Terrace in Fort Lee, NJ. The event showcases the George Washington Bridge, charming towns in NY/NJ and beautiful nature.
- **HEALTH BENEFITS:** GFNY promotes and reinforces healthy lifestyles for the participants and spectators. Holding participatory events such as this encourages people to set goals, get in shape and experience the great outdoors.
- **CHARITY:** GFNY makes donations to non-profits based in NY/NJ who provide volunteers at GFNY aid station, pre-race registration or the finish village. Some GFNY riders choose to raise funds for their chosen causes as part of their participation in GFNY.
- **ECONOMIC IMPACT:** GFNY holds free weekly group rides for registered participants to prepare for the event utilizing the GFNY route and supporting local bakeries, coffee shops, bike shops and other local businesses. For race day, we source local products and services from area businesses.
- **TOURISM:** Dozens of tour operators bring hundreds of riders and families to the NY/NJ region. Thousand of other GFNY riders and families book their travel individually and boost sales at local businesses like hotels, restaurants, transportation companies and stores.

### **Conclusion**

Please let me know if we can answer additional questions pertaining to the event. I can be reached at 917-656-2005 or at [info@gfny.com](mailto:info@gfny.com). The event's website is [gfny.com](http://gfny.com).

We look forward to working with you in organizing a safe and successful event.

Warm regards,



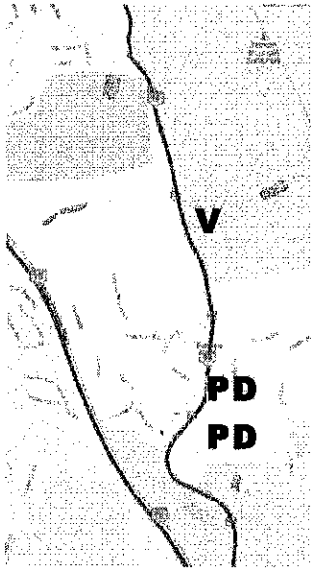
Lidia Fluhme  
Founder and Race Organizer  
Gran Fondo New York

**Proposed Route**

**NORTHBOUND**

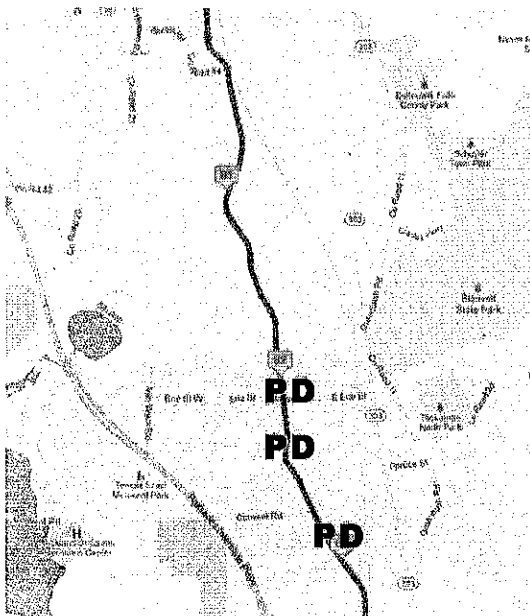
Route	Mile (approx.)	First cyclist	Last cyclist	Existing control	PD/Volunteer	Contact
Continuing on 9W	14	7:35	8:50			
Straight past Oak Tree Road	14	7:35	8:50	Light	2 PD at Oak Tree & 1 PD at Closter	James Sullivan 845-359-3700
Straight past IBM entrance	14	7:35	8:50		V	

EMS ORAN	John McCullough Chief	70 Independence Avenue Tappan, NY 10983	T: 845-359-3030 jmcullough@soacems.org
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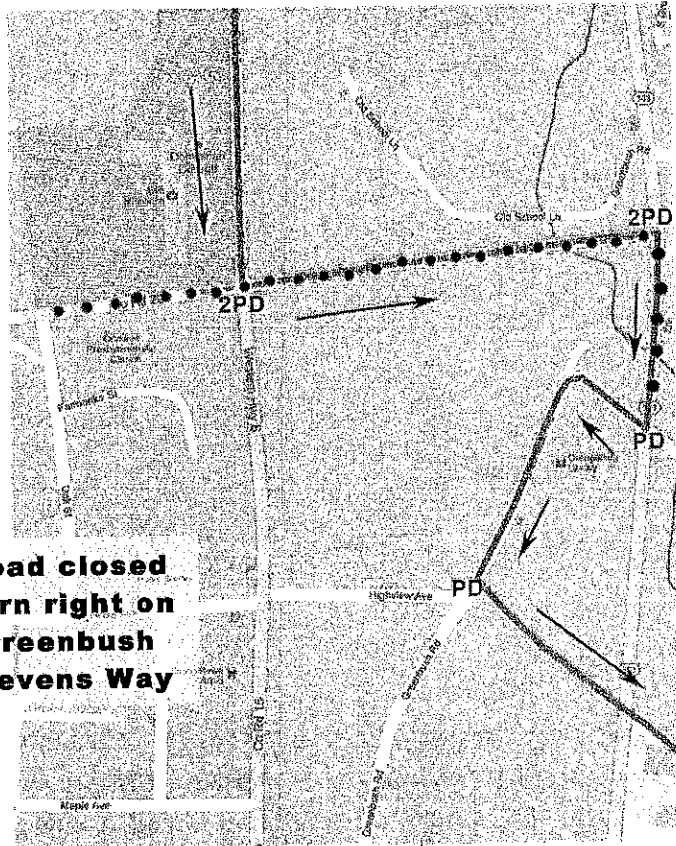
**SOUTHBOUND**

Route	Mile (approx)	First cyclist	Last cyclist	Existing control	PD/Volunteer	Contact
Straight across Erie St	82	10:10	3:20	Light	PD	James Sullivan 845-359-3700
Straight past Blauvelt	82	10:10	3:20	Light	PD	
Straight past Mountainview Road	83	10:15	3:30	Light	PD	

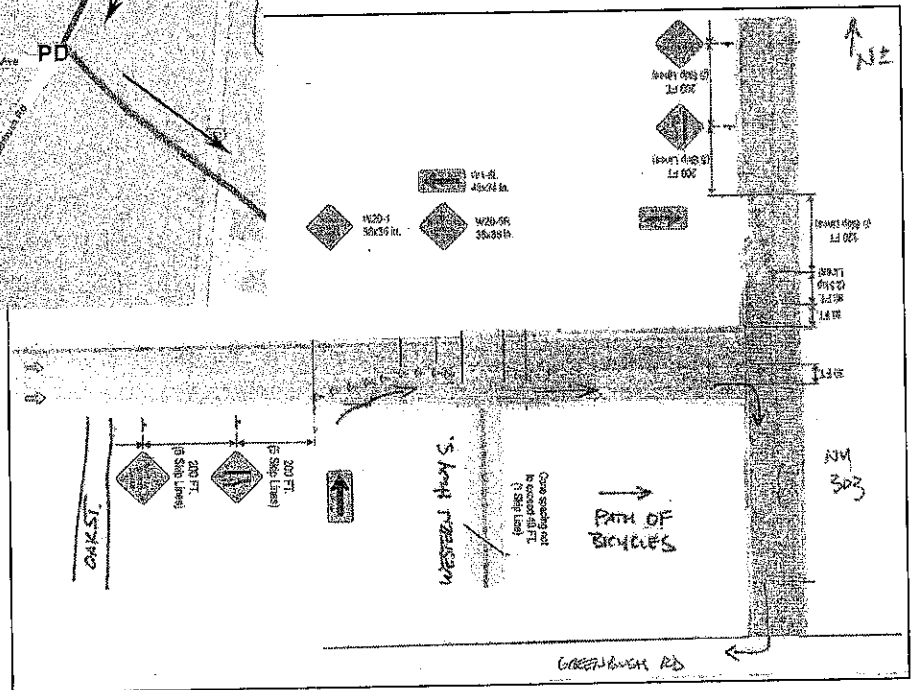


**SOUTHBOUND CONTINUED**

Route	Mile (approx)	First cyclist	Last cyclist
Left onto CR20 / Orangeburg Rd	84	10:20	3:40
Right onto Hwy 303	84	10:20	3:40
Right onto Greenbush Rd	84	10:20	3:40
Left onto Joseph B Clark Rail Trail	84	10:20	3:40

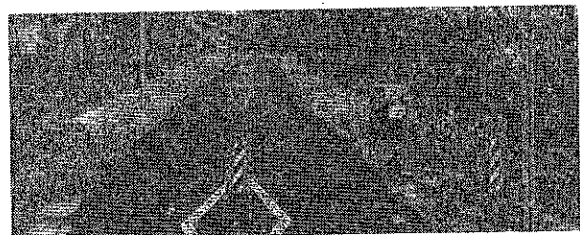


Lane closure diagram



**Presence on the Orangetown Parks Rail Trail:**

1 timing mat, at the base of the overpass bridge, 4 "broom wagons" 15-person vans, 5 rolling mechanical support cars, 1 rolling mechanical van, 10 marshal & medical motorbikes, 2 Rockland Sheriff cars, Front of Race car, End of Race car.



Permit # 18-SP01  
Sent to S. Wheately 3/23/18

## **GRAN FONDO BIKE RUN – SUNDAY, MAY 20, 2018**

We will be putting out barricades and DETOUR signage at the following locations on Friday, 5/18/18. They will have to be put in place by police personnel the day of the event. **We will not have anyone working the race that day.**

1. **South Greenbush Road and Highview Avenue, Orangeburg:** 2 wooden barricades with A frame legs and a road closed sign at Rail Trail – Detour → Right and Detour ← Left
2. **Kings Highway and Edward Street, Sparkill:** 2 wooden barricades with A frame legs, Detour → Right signs sending traffic to Depot Square. Depot Square to Main Street, Detour ← Left, Main Street to 340, Detour ← Left
3. (10) barrels for Orangeburg Road, east of Oak Street – set up for placement

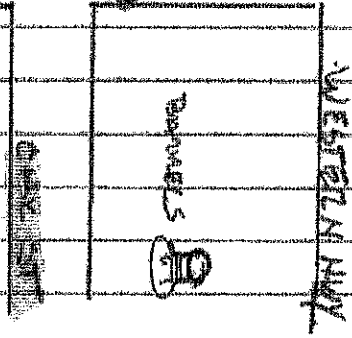
**Rockland County Highway is going to take care of Western Highway and Orangeburg Road and 303**

Permit #  
18-5201

ROUTE

ORANGE BLVD

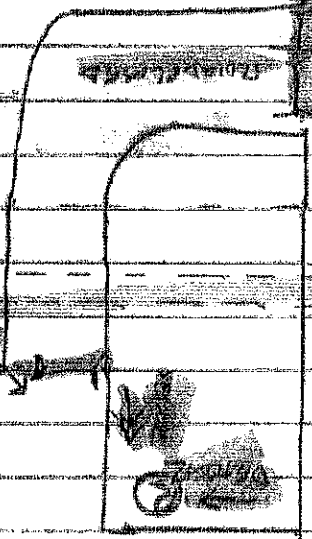
12110 E



303

7-8

DECK



9-10

9

STEUBEN ST



Permit #  
18-5701

ROUTE 340

② ←  
PROPERTY

KINGS HWY

ALBION ST

DEPT  
SOURCE

EDWARD ST

EDWARD ST

SPRINKLER

Ⓜ

①



FOUNDATION

P.O. Box 302  
Sparkill, NY 10976  
[www.dennispmchugh.org](http://www.dennispmchugh.org)

RECEIVED JAN 29 2018

*WKS/OP*

January 23, 2018

Chris Day, Town Supervisor  
Town of Orangetown  
Town Hall  
26 Orangeburg Road  
Orangeburg, NY 10962

Dear Chris Day and the Town Board:

The Dennis P. McHugh Foundation's 14th Annual Run for Fun and Family Fair will be held April 28, 2018, at 9:30 AM at Fly Wheel Park in Piermont, New York. The run has established itself as a significant community event. The town donated portable toilets for last year's event, and we would like to request them again for this year's event. We are requesting a total of 6 units (2 of which are ADA compliant).

Please let me know if you have any questions or need further information.

Sincerely,

*Una McHugh*

Una McHugh  
845-359-9110

The Dennis P. McHugh Foundation is a 501(c)(3) organization, all donations are tax deductible.

RETIREMENT INCENTIVE PROGRAM – OFFERING MEMORANDUM

TO: [Insert name of eligible employee]  
FROM: Donna Morrison, HR Coordinator  
Date: April 18, 2018  
Re: Retirement Incentive Program

After considerable review of its future staffing needs and operational expenses, the Town of Orangetown (“Town”) has decided to offer a Retirement Incentive Program which is entirely voluntary, and, if eligible, you are free to either participate in the Program, retire, subject to the Program conditions described below, or not to participate and continue to work. The choice belongs to you. If you decide not to participate, please be assured that, in keeping with Town policy, your decision will not affect the terms and conditions of your employment, subject to the Town’s right to make staffing changes in the future.

Here are the details of the Program for your consideration.

Employees Eligible to Participate in the Program: All full-time, active employees of the Town, (i) excluding all elected officials and Town Police Officers; (ii) who are or will be eligible to retire on or before [December 31, 2018] based on a service retirement under their respective tiers of the New York State Retirement System in which they participate; and (ii) have completed ten (10) or more years of continuous service as a full-time employee of the Town. The Town reserves the right to limit the eligibility to the first twenty (20) employees who elect to participate in the Program, to allow more than twenty (20) employees to elect to participate in the Program in its sole and exclusive discretion.

The Retirement Incentive: As a participant in the Program, you will be eligible to receive \$1,000 for each completed year of continuous full-time service with the Town as of the effective date of your retirement, less applicable taxes and withholdings, up to a maximum of the thirty (30) years of continuous full-time service with the Town or \$30,000. Eligible Employees shall not receive any payment under this Retirement Incentive for periods of employment with other employers. You must comply with Program Conditions described below to be eligible to receive a Retirement Incentive.

Program Conditions: To be eligible to receive a Retirement Incentive you must complete the attached Retirement Incentive Election Form (“Form”) and return it to me no later than the close of business on **[June 30, 2018]**. If you decide not to participate in the Program, you should complete the Form by checking that you elect not to participate and return it to me no later than the close of business on **[June 30, 2018]**. Your decision to participate or not to participate cannot be changed. Any eligible

employee who does not submit a completed Form to me by close of business on **[June 30, 2018]** will be considered to have declined participation in the Program. The Town reserves the right to deny participation in the Program based on staffing needs and continuity of staff services.

Additionally, in order to be eligible to receive a Retirement Incentive, you must retire **[after July 31, 2018], but no later than the close of business on [August 30, 2018]**, and you must execute a valid and enforceable release of claims that you that you have or may have against the Town in connection with your employment in a form substantially similar to the model Stipulation of Agreement and General Release form attached to the memorandum, the Town reserves the right to change or discontinue the Program, in whole or in part, at any time, in its sole and exclusive discretion. Nothing continued in this memorandum is a promise or guarantee that this Program or any similar Program will be offered in the future.

The decision whether or not to participate in the Program will bear a significant amount of importance and impact upon one's future. Therefore, the Town management encourages you to weigh this decision carefully before reaching a conclusion. Please consider seeking the advice of a family member(s), a trusted financial advisor, an attorney, your union representative, or anyone else of your choosing, so that you can make a well-informed decision. If you choose to participate in the Program, you will receive information about your other retirement related benefits under separate cover.

I am available for you should you have any questions about the Program.

RETIREMENT INCENTIVE PROGRAM ELECTION FORM

Please place a check in the appropriate space below, sign and date the Form below and return it to Donna Morrison, HR Coordinator, no later than the close of business on **[June 30, 2018]**.

\_\_\_\_\_ I elect **to participate** in the Retirement Incentive Program described in the memorandum dated April 25, 2018 received from Donna Morrison, HR Coordinator, have thoroughly read the document and fully understand the terms and conditions of the Retirement Incentive Program. I am making this election to participate voluntarily and acknowledge that this election is irrevocable and cannot be changed.

\_\_\_\_\_ I elect **not to participate** in the Retirement Incentive Program described in the memorandum dated April 25, 2018 received from Donna Morrison, HR Coordinator, have thoroughly read the document and fully understand the terms and conditions of the Retirement Incentive Program. I am making this election to participate voluntarily and acknowledge that this election is irrevocable and cannot be changed.

\_\_\_\_\_  
Signature of Employee

Dated: \_\_\_\_\_

STIPULATION OF SETTLEMENT AGREEMENT AND GENERAL RELEASE

The stipulation of Settlement Agreement and General Release (“agreement”) is by and between the Town of Orangetown (“Town”) and \_\_\_\_[INSERT NAME HERE]\_\_\_\_ (“Employee”) and is dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**WHEREAS**, the Employee is employed by the Town and has elected to participate in the Retirement Incentive Program, as described in a memorandum from Donna Morrison dated \_\_\_\_\_ (“Program”); and

**WHEREAS**, as a condition of receiving the retirement incentive under the Program, the Employee acknowledges that he/she is entering into this Agreement in connection with and as a condition of his/her receipt of the retirement incentive under the Program.

**NOW, THEREFORE**, in exchange of the mutual promises contained herein and the valuable consideration provided herein, the sufficiency of which is hereby acknowledged by both parties, the Town and the Employee agree, as follows:

1. Upon the effective date of the Employee’s retirement, which is \_\_\_\_\_ or as soon as practicable thereafter, the Town will make a lump-sum payment to the Employee in the amount of \$ \_\_\_\_[INSERT AMOUNT HERE]\_\_\_\_, less applicable taxes and withholdings.
2. In exchange for the valuable consideration set forth in paragraph 1 above, the Employee fully, forever, irrevocably and unconditionally releases the Town and its affiliates, departments, officers, employees, agents, trustees and representatives, past, present and future (collectively “Releasees”) from any and all claims, controversies, liabilities, promises, suits, grievances, proceedings, complaints, petitions, causes of action, debts, obligations, acts, agreements, attorney fees, costs, expenses, indemnification, orders, memoranda, judgments, damages, and remedies of whatever kind or nature, whether know or unknown, suspected or unsuspected, foreseen or unforeseen, liquidated or contingent, actual or potential, jointly or individually (individually and collectively “Claims”) that the employee has had , now has or may have based on or relating to any aspect of the Employee’s employment with and retirement from the Library, including but not limited to 42 U.S.C. Sections 1981-1988, Title VII of the Civil Rights Acts of 1964, as amended, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, as amended, the other Workers Benefit Protection Act, the Americans With Disabilities Act, The Employee Retirement Income Security Act, the Equal Pay Act, the

Occupational Safety and Health Act of 1970, the Worker adjustment and Retraining Notification Act of 1989, the New York State Civil Service Law, the New York General Municipal Law, including entitlement to benefits under Section 207-c thereof, the New York State Town Law, the New York Public Officers Law, as well as any other federal, state or local statute, regulation, ordinance or common law regarding employment or benefits associated with employment; all claims for civil rights violations, discrimination, retaliation, or violation of public policy; all Claims for breach of express or implied contract, including but not limited to collective bargaining, or the covenant of good faith and fair dealing (whether written or oral); breach of promise, detrimental reliance or tort (e.g., intentional infliction of emotional distress, defamation, wrongful termination, invasion of privacy, interference with contractual or economically advantageous relationship, etc.), whether based on common law or otherwise; all Claims for mental distress, mental anguish, personal injury, and loss of consortium; and any and all Claims that may be asserted on behalf of the Employee by others. Specifically excluded from this release are claims arising after the Effective Date of this Agreement or the Employee's right to bring a claim to enforce this Agreement.

3. The employee represents that he/she has not filed, directly or indirectly, nor has caused to be filed, directly or indirectly, any Claims released herein against the Releasees in any forum, including federal, state or local court, in arbitration or in the grievance process, or in any administrative proceeding with any federal, state or local administrative agency. If the Employee has so filed any Claim, he/she agrees to withdraw this filing with prejudice and acknowledges that he/she is not eligible to receive the consideration set forth in paragraph 1 prior to the date such withdrawal is effective.
4. This Agreement shall be binding on the Employee and the Town and may not be released, discharged, abandoned, supplemented, amended, changed, or modified in any manner, orally or otherwise, except by an instrument in writing of concurrent or subsequent date signed by a duly authorized representative of each of the parties hereto.
5. This Agreement contains and constitutes the entire and complete understanding of the parties hereto with respect to the matters that are subject to this Agreement, and it supersedes and cancels all prior negotiations, agreements, commitments and understandings, written or oral, between the Employee and the Town.
6. This Agreement shall be governed by the laws of the State of New York (regardless of conflict of law principles) as to all matters including, without limitation, validity, performance, construction, effect and remedies.
7. The validity or enforceability of any provision of this Agreement shall have no effect upon, and shall not impair the validity of enforceability of any other provision of this Agreement. The employee and the Town agree that if any provision herein is found to be invalid or unenforceable by a court of competent jurisdiction, the Employee and the

Town will request that the court revise the provision to come closest to the meaning intended, and the provision will be enforced as rewritten without affecting any other provision of this Agreement.

8. This Agreement may be executed in separate counterparts, each of which shall constitute one and the same instrument. A signed facsimile copy of this Agreement shall be deemed an original.
  
9. The Employee acknowledges that: (a) the Employee has read and understands each of the provisions of this Agreement; (b) the Employee has been advised to consult with a family member, an attorney, a financial advisor, union representative of his/her choosing prior to executing this Agreement; (c) the Employee has up to forty-five (45) days from the Employee's receipt of this Agreement to review it and to consider his/her decision to sign it, although it may be signed earlier by the Employee if the Employee so decides; (d) the Employee is entering this Agreement voluntarily, knowingly and as of his/her free will; (e) no other promises or agreements of any kind have been made to or with him/her by any person or entity whatsoever to cause him/her to sign this Agreement; (f) he/she has received no representations concerning the terms or effects of this Agreement other than those specifically contained herein; and (g) this Agreement is not intended to be a waiver of claims arising after the Effective Date of this Agreement.
  
10. Once the Employee signs this Agreement, he/she has seven (7) days to revoke it. The Employee may do so by delivering to the undersigned written notice of his/her revocation within the seven-day revocation period. This Agreement will become effective on the eighth day after the Employee signs it ("Effective Date") provided the Employee has not revoked it during the seven-day revocation period. The Employee's failure to sign and return this Agreement by the close of business on the forty-sixth day after receipt of this Agreement will cause this Agreement to be null and void.
  
11. In accordance with the Older Workers Benefit Protection Act, Exhibit A attached this Agreement, which is hereby made part of this Agreement, lists the job titles and ages of the employees in the decisional unit who are eligible for the Program, as described therein, and who elected to participate and who elected not to participate in the Program.

FOR THE TOWN

FOR THE EMPLOYEE

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

\_\_\_\_\_

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

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

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_



## EXHIBIT A

1. The Decisional Unit includes all full-time employees of the Town, who are eligible to participate in the Retirement Incentive Program described in the memorandum issued by Donna Morrison, Town of Orangetown, and dated April 25, 2018 (“Program”).
2. Eligible employees in the Decisional Unit who elect to participate in the Program are eligible to receive the retirement incentive described in the Program provided they retire and sign the attached Stipulation of Agreement and General Release (“Participating Employee”). A participating Employee has up to forty-five (45) days to consider whether or not to sign the Stipulation of Agreement and General Release, although it may be signed earlier by the Employee if the Employee so decides, and seven (7) days after signing it to revoke it. Each participating Employee has been advised to consult an attorney, financial officer, union representative, family member or representative of his/her choosing before signing the attached Stipulation of Agreement and General Release. Eligible employees, who do not elect to participate in the Program, will continued to be employed, subject to the Town’s right to make staffing changes in the future and except to the extent their employment may be terminated in accordance with applicable law.
3. Listed below are the job titles, ages, and detail as to the eligible employees who elected to participate in the Program and eligible employees who elected not to participate in the Program. Participation in the Program is strictly on a voluntary basis.

<u>Job Title</u>	<u>Age as of</u> <u>[December 31, 2018]</u>	<u>Elected to</u> <u>participate</u>	<u>Elected not</u> <u>to participate</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____
7. _____	_____	_____	_____
8. _____	_____	_____	_____
9. _____	_____	_____	_____
10. _____	_____	_____	_____
11. _____	_____	_____	_____
12. _____	_____	_____	_____
13. _____	_____	_____	_____
14. _____	_____	_____	_____
15. _____	_____	_____	_____
16. _____	_____	_____	_____
17. _____	_____	_____	_____
18. _____	_____	_____	_____
19. _____	_____	_____	_____
20. _____	_____	_____	_____
21. _____	_____	_____	_____
22. _____	_____	_____	_____
23. _____	_____	_____	_____
24. _____	_____	_____	_____
25. _____	_____	_____	_____
26. _____	_____	_____	_____
27. _____	_____	_____	_____
28. _____	_____	_____	_____
29. _____	_____	_____	_____
30. _____	_____	_____	_____
31. _____	_____	_____	_____
32. _____	_____	_____	_____
33. _____	_____	_____	_____
34. _____	_____	_____	_____
35. _____	_____	_____	_____
36. _____	_____	_____	_____
37. _____	_____	_____	_____
38. _____	_____	_____	_____
39. _____	_____	_____	_____