

Tioga County Soil and Water Conservation District (SWCD)

**Request for Proposals**  
for  
Engineering Design, Bidding and Construction Management and  
Inspection Services

*For*

**REGIONAL SUSQUEHANNA RIVER INITIATIVE FLOODPLAIN  
MANAGEMENT AND STREAM RESTORATION**  
**FULLER HOLLOW CREEK: DOWNSTREAM STAIR PARK STREAM  
STABILIZATION PROJECT**

September 17, 2020

A project funded by and conceived through the NY Rising Community Reconstruction Program of the  
Governor's Office of Storm Recovery

Responses must be received by:  
12:00p.m. (Eastern), October 14, 2020

## TABLE OF CONTENTS

---

1	Introduction and Overview .....	4
2	Project Description .....	5
3	Deadlines and Completion Date.....	6
4	Scope of Work .....	6
5	Submittal Content .....	8
6	Selection Process.....	9
7	Specific Legal Obligations .....	10
7.1	Procurement.....	10
7.2	Diversity and Income Requirements (BY PROJECT).....	11
7.2.1	Minority and Women Owned Businesses (M/WBE) .....	11
7.2.2	Section 3 .....	11
7.3	Iran Divestment Act.....	12
7.4	New York Law and Venue.....	12
	Schedule I: Detailed Project Description .....	13
	Schedule II: Deadline Schedule .....	14
	Schedule III: Insurance Requirements.....	15
	Schedule IV: Cost Proposal.....	17
	Schedule V: Minority and Women Owned Businesses (MWBE) .....	18
	Schedule VI: Guidance for the Development of Plans and Specifications.....	20
	Exhibit A: Supplementary Conditions For Contracts .....	25
	Exhibit B: Supplementary Information - 30% Design Report .....	51

[This page intentionally left blank]

## Request for Proposals

### 1 INTRODUCTION AND OVERVIEW

---

Tioga County Soil and Water Conservation District (SWCD), “Subrecipient”, is eligible to apply for U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant–Disaster Recovery (CDBG-DR) funding for long-term recovery and resiliency projects.<sup>1</sup> Funding will be delivered through the NY Rising Community Reconstruction (NYRCR) Program of the New York State Governor’s Office of Storm Recovery (GOSR). Accordingly, Respondents are obligated to comply with applicable federal and state laws and regulations set forth in Exhibit A (Supplementary Contract Conditions), as well as with the SWCD’s Procurement Policy and Procedures. In addition, Respondents are obligated to comply with all municipal codes, ordinances, and regulations. This project is funded by and conceived through the GOSR NYRCR Program.

**Agreements and contracts resulting from this Request for Proposals (RFP), including lower-tiered subcontracts, must include the following language:**

“All attachments and exhibits to this Contract are hereby incorporated by reference into the Contract and are considered a material part of this Contract. Should any provision(s) of this Contract (including any terms in any of the attachments and/or exhibits thereto and amendments thereof) be deemed to be in conflict with any other provision(s), the provisions shall be applied pursuant to the priority set forth in the Order of Precedence section of the Governor’s Office of Storm Recovery Supplementary Conditions for Contracts.”

Only responsible vendors who have the technical and financial competence to perform as well as an exemplary record of integrity will be selected under this procurement. Before selecting a vendor, SWCD intends to review the federal and state lists of vendors excluded from procurement. Contracts shall not be awarded to debarred, suspended, or otherwise ineligible vendors. Accordingly, responses to this Request for Proposals must include a completed NYS Vendor Responsibility Questionnaire and notarized certification, along with verification that a completed NYS Vendor Responsibility Questionnaire has been filed with the NYS Office of the State Comptroller: <http://www.osc.state.ny.us/vendrep/>.

Elation Systems, Inc. is a provider of cloud-based diversity and labor compliance reporting and management services. GOSR has adopted this web-based compliance management system to help all of its Contractors, Subrecipients, and Subrecipient’s Contractors receiving federal funds to adhere to Labor Compliance (Davis-Bacon), Minority and Women Owned Business (M/WBE) and Section 3 reporting requirements. The selected firm must comply with instructions from GOSR on how and when to meet all reporting requirements, and how to utilize Elation to satisfy those requirements.

In accordance with New York State General Municipal Law Section 104-b, this RFP is designed to identify New York State licensed professional architectural and engineering (A/E) firms best qualified to provide the services necessary for the project consistent with the requirements of the CDBG-DR funding stream. Respondents will be reviewed on the basis of their eligibility and ability to provide services in a manner sensitive to specific requirements and timetables established by federal law. Not all qualified Respondents will be selected to provide these services.

SWCD will select a qualified architectural and engineering firm of the highest caliber that employ adequate staff and possess the financial management capacity to be able to focus immediate attention on the project.

---

<sup>1</sup> U.S Department of Housing and Urban Renewal (HUD) Community Development Block Grant-Disaster Recovery (“CDBG-DR”) funds appropriated by the Disaster Relief Appropriations Act (“PL 113-2”).

Through its Evaluation Team, SWCD will select the Respondent whose proposal receives the greatest number of points. The Evaluation Team will only open or evaluate Cost Proposals from those firms that it has determined are qualified on the basis of the Technical Factors listed below. After the firms that are qualified have been identified, the Evaluation Team will factor in the cost of the qualified proposals using the formula set forth below under “6. Selection Process.” The Cost Proposal is included as Schedule IV: Cost Proposal.

SWCD reserves the right to negotiate the distribution of the A/E fee. SWCD reserves the right to reject any and all proposals either in whole or in part. The Subrecipient, Tioga County SWCD, reserves the right to: 1. amend, modify, or withdraw this solicitation; 2. revise any requirement of this solicitation; 3. require supplemental statements or information from any responsible party; 4. extend the deadline for submission of responses hereto; 5. negotiate or hold discussions with any firm and to correct deficient responses which do not conform to the instructions contained herein; 6. cancel, or reissue in whole or in part, this solicitation, if Subrecipient determines in its sole discretion that it is its best interest to do so; and 7. extend the term of any agreement on terms consistent with this procurement.

Subrecipient makes no representations or warranties regarding the accuracy of any information provided in this RFP and will have no liability or obligation with regards to its contents.

Respondents will not be reimbursed for costs incurred in the preparation of the proposal.

**The funding level anticipated for the project for construction is: \$743,900.00**

## 2 PROJECT DESCRIPTION

---

### **Project 1: FULLER HOLLOW CREEK: DOWNSTREAM STAIR PARK STREAM STABILIZATION PROJECT**

Tioga County Soil and Water Conservation District is requested CDBG-DR funding to provide grade control structures in the segment of Fuller Hollow Creek channel immediately downstream of Stair Park within the Town of Vestal, Broome County, NY. This area was affected by both Tropical Storm Irene and, shortly after, Tropical Storm Lee which delivered intense rainfall onto the watershed causing significant flooding within the community. Costly impacts included loss and damage of homes and businesses, loss and damage of utility infrastructure, road closures and washouts, and stream bank erosion.

Thirty percent design and engineering for the project has been completed and was performed in another New York Rising Community Reconstruction Project by the Subrecipient. Some of the design recommendations include engineered large wood and/or rock to establish grade control, raise bed levels and improve bank stability along approximately 300 feet of stream in order to mitigate the type of flooding experienced during Tropical Storms Irene and Lee.

Fuller Hollow Creek is which immediately downstream of Stair Park is highly entrenched where it passes through a residential neighborhood. Active bank failures are present along both banks. The primary goal of the project is to reduce erosion and sediment contribution to downstream reaches from a stretch of Fuller Hollow Creek extending from Stair Park at the upstream end to approximately 670 feet downstream. Objectives of the project include:

- Establish grade control and slowing rates of incision;
- Stabilize stream banks; and
- Protect private property within the project reach

Alternative interventions, specifically green infrastructure solutions, should be explored as well if applicable.

See Schedule I for additional details.

The successful Respondent will assist SWCD with all basic services necessary for 100% design development and geotechnical investigation; permitting; 100% construction documents and technical specifications (draft and final project manual); bid phase services (pre-bid site visit, responses to RFIs and addenda); and construction management and inspection services in accordance with HUD and GOSR requirements and timetables.

SWCD reserves the right to modify the project description.

### 3 DEADLINES AND COMPLETION DATE

---

The Technical Proposal and Cost Proposal must be delivered **in separate envelopes** to the Tioga County Soil and Water Conservation District in accordance with Schedule II: Deadline Schedule. Proposals are due on October 14, 2020. Subrecipient reserves the right to extend receipt of submissions beyond October 14, 2020.

### 4 SCOPE OF WORK

---

SWCD reserves the right to modify the Scope of Work.

Modifications to this scope of work by a Respondent to this RFP shall not be permitted unless approved by the Subrecipient.

- To avoid duplication of efforts, unless otherwise specified by GOSR in writing, the selected A/E firm will not conduct environmental review activities. It is presumed that GOSR will serve as lead agency for the purposes of NEPA and SEQRA. The selected A/E firm will be required to coordinate with GOSR and its contractors in support of any environmental review activity. Notwithstanding the above, Subrecipients will be responsible for complying with all applicable, local, state and federal permits.
- The selected A/E firm must abide by GOSR's environmental requirements, including but not limited to elevation design standards adapted to address impacts of climate change. Updated copies of these environmental requirements are available at [www.stormrecovery.ny.gov/environmental-docs](http://www.stormrecovery.ny.gov/environmental-docs).
- The successful Respondent should familiarize themselves with the existing 30% design report, meet and work with the Subrecipient to determine more detailed program requirements for the project, and shall refine and complete the program in a form acceptable to the SWCD. (Refer to Exhibit B for 30% Design Report) **At the time of award, the 30% design drawings will be made available to the successful vendor of the project.**
- Design the Projects so that the actual Total Project Construction Cost does not exceed the Approved Construction Budget. In the event it is discovered at any phase of design that the estimated Total Project Construction Cost of the work is in excess of the Approved Construction Budget, or the bids received are in excess of the Approved Construction Budget, the Respondent shall revise, at its own cost and expense, all or any part of the Schematic Deliverables, the Design Development Deliverables, the Construction

Documents or the Bid Documents necessary to bring the estimated Total Project Construction Cost within the Approved Construction Budget. In order to reduce the estimated Total Project Construction Cost to the Approved Construction Budget, the Respondent shall, in addition to the above, at the Subrecipient request and at no additional cost to the Subrecipient , (i) provide value engineering to reduce the estimated Total Project Construction Cost to the Approved Construction Budget; (ii) assist the Subrecipient in redefining the scope of the Project; (iii) incorporate all scope reductions and Project modifications into the modified Schematic Deliverables, Design Development Deliverables, Construction Documents or Bid Documents; and (iv) develop and incorporate bid alternates into the Construction Documents and Bid Documents.

- Prepare, at a minimum, the following deliverables for each project: 1) Design Development or 60% design; 2) Draft final or 90% design and 3) 100% construction documents or Final Contract Documents. At each submission, Respondent agrees to provide an opinion of probable cost. Respondent shall also prepare a detailed schedule in 30 calendar days of each deliverable.
- Prepare a complete set of Final Contract Documents (drawings, specifications, and calculations), including an estimate of probable construction costs for use as the basis for advertising the construction projects for bid within 120 calendar days of the executed design contract.
- Prepare and submit any and all required permit applications.
- Prepare boundary surveys and legal descriptions related to necessary property acquisition including permanent and temporary construction easements. Provide assistance to the Subrecipient and GOSR in the process for obtaining easements.
- Assist SWCD during the construction bid process by attending the pre-bid site meeting(s), responding to bidder questions, distributing documents to prospective bidders by mail or email and maintaining a list of prospective bidders, issuing any necessary addenda, and reviewing bids received to determine technical responsiveness and bidder experience and qualification to perform the work.
- Recommend to the Subrecipient, award to the lowest, responsive, responsible bidder and assist the Subrecipient in the preparation of the Notice of Award.
- Review the low bidder's submittals of bonds and insurance certificates and assist the Subrecipient in the preparation of the Notice to Proceed.
- Conduct the pre-construction meeting and prepare meeting minutes.
- Review submittals for contract document compliance.
- Answer Requests for Information within 5 business days.
- Prepare agendas and conduct regular construction progress meetings in accordance with SWCD's requests. Prepare meeting minutes. Meetings shall be held weekly, biweekly or monthly depending on the duration and complexity of the construction.
- Conduct regular construction observation and inspections to ensure contract compliance, design intent, quality of workmanship, and material acceptance. The frequency of inspections will be based on the duration and complexity of the construction and the level of construction activity.
- Prepare and issue Field Orders and Change Orders.
- At Substantial Completion, conduct Substantial Completion Inspection and prepare a punch list of work to be completed.
- At Final Completion, conduct Final Completion Inspection and prepare Certification of Final Completion
- Collect contract closeout documents from all prime contractors, this includes but is not limited to lien and claim releases from all subcontractors and vendors, Consent of Surety to Final Payment, and equipment warranties, if applicable.
- Prepare Record (as-built) drawings
- If applicable, prepare Operation and Maintenance Manual
- Coordinate project activities with the activities of the Subrecipient and other parties.

## 5 SUBMITTAL CONTENT

---

Respondent must supply two (2) hard copies and electronic version of its submission to the attention of Tioga County Soil and Water Conservation District's RFP Coordinator no later 12:00 p.m. on October 14, 2020.

RFP Coordinator:

Wendy Walsh  
District Manager  
Tioga County SWCD  
183 Corporate Drive  
Owego, NY 13827  
Phone: 607-687-3553  
Email: walshw@co.tioga.ny.us

While there is no specific page limit, brevity, whenever practical, is strongly encouraged and will be considered in evaluation responses. The Proposal must contain the following information and documentation:

- **Firm.** Respondent's legal structure, areas of expertise, length of time in business, number of employees and detailed contact information for the person authorized to contractually obligate the Respondent and for the person administratively responsible for the Proposal.
- **Subconsultants.** Identify any Subconsultants, including a summary of the organization, experience and technical skills. Respondent shall not employ, contract with, or use the services of any consultant for the work of this Contract (except such third parties which may be used by the Respondent in the normal course of business, such as couriers, imaging services, etc.) without obtaining the prior written approval of GOSR.
- **Disclosure.** Disclose all allegations or claims of substandard work, unethical or illegal practices or debarment or suspension from state- or federally-funded projects, and provide documentation as to the resolution of these matters. Respondent must not be suspended or debarred from participation in state- or federally-funded projects. Include a completed NYS Vendor Responsibility Questionnaire and notarized certification, along with verification that a completed NYS Vendor Responsibility Questionnaire has been filed with the NYS Office of the State Comptroller: <http://www.osc.state.ny.us/vendrep/>. Failure to complete and submit the NYS Vendor Responsibility Questionnaire may be cause for a proposal to be rejected.
- **Relevant Experience.** Previous projects that demonstrate relevant experience and identify public sector clients for whom Respondent has provided similar work in the past five years. For each project described, provide current contact information for the individual with whom Respondent worked.
- **Approach and Methodology.** Respondent's understanding of the scope, including a detailed work plan to complete the requested services.
- **Staffing Plan.** Respondent's capacity to provide services in the required timeframe, and key personnel to provide services and the proposed staffing plan. Outline the resumes of key personnel who will be assigned to the project, including their years of experience and functions on this project.



- **Ability to Conform to the Subrecipient's Deadline Schedule.** Describe firm's workload and the impact on its current capacity to perform services on this project, and describe specifically how the firm will comply with the required delivery schedule set forth in Schedule II.
- **Commitment to Comply with All Applicable Federal, State, and Local Regulations, including Minority and Women-Owned Business Enterprise (M/WBE) and Section 3.** Describe firm's commitment to and plan for complying with all applicable federal, state, and local regulations, including, as described below, M/WBE obligations and hiring requirements under Section 3 of the Housing and Community Development Act. Include a completed M/WBE Utilization Plan, (See Exhibit V) demonstrating the extent to which the firm will utilize M/WBE Subconsultants on this project. This is a factor for firm selection, and Respondents who demonstrate a commitment to comply will receive the most points (as described herein under "6. Selection Process").
- **Iran Divestment Act.** Respondent must attach a signed statement on company letterhead that is affirmed as true under penalty of perjury.
- **Costs.** Complete the Cost Proposal (Schedule IV) by providing a, not-to-exceed, lump sum price [**and itemized cost breakdown, by task**, showing estimated manhours and hourly rates] for completing this project. Also provide a schedule of hourly billing rates for all labor classifications that could be involved in the work. The Cost Proposal must be included in a separate sealed envelope.
- **Attachments.** Resumes and material helpful to the technical evaluation may also be attached (short project descriptions, brochures).

## 6 SELECTION PROCESS

---

Technical Proposals responsive to the requirements of this RFP will be evaluated and scored in accordance with the Subrecipient's internal evaluation criteria. **After evaluation of the Technical Proposals, Cost Proposals will be scored for cost.**

During or after the review of responses, SWCD may submit written questions and requests for clarification, and may conduct interviews. Respondents must comply with the calendar identified in Schedule II: Deadline Schedule, which may be adjusted if necessary.

The Subrecipient shall evaluate each respondent in terms of:

<b>Technical Factors</b>	<b><u>Maximum Points</u></b>
1. Relevant Experience	20
2. Approach and Methodology	20
3. Staffing Plan	15
4. Ability to Conform to Subrecipient's Deadline Schedule	20
5. Commitment to Comply with all Applicable Federal, State	
and Local Regulations including M/WBE and Section 3	10

<b>Total Technical Points</b>	<b>85</b>
Total Cost Points	15
<b>Maximum Points (Total Technical Points + Total Cost Points)</b>	<b>100</b>

The Subrecipient's Evaluation Team will conduct a technical evaluation of the non-cost elements as described in the RFP prior to opening the Cost Proposals. No more than 85 technical total points will be awarded to any Respondent.

The Cost Proposal will remain sealed until completion of the technical evaluation and will only be considered for the best qualified firms. No more than 15 points will be awarded to any Respondent.

Cost points will be awarded as follows:

- The lowest priced qualifying technical proposal will be awarded the full 15 points. Other bidders will be awarded as follows:

Total cost points for bidder X = (lowest bidder cost/bidder X's cost) x 15

- Subrecipient will weigh the technical and cost evaluation results of each submittal as two components, which together will have a maximum total score of 100 points. The contract will be awarded to the respondent with the highest total score.

After evaluation of selected Technical Proposals and Cost Proposals, Subrecipient reserves the right to award without delay. Subrecipient will issue a Letter of Intent to Award and a Notice to Proceed when costs are negotiated and accepted by the Subrecipient and approved by GOSR.

## 7 SPECIFIC LEGAL OBLIGATIONS

---

### 7.1 PROCUREMENT

SWCD is committed to providing all prospective respondents with accurate, consistent and timely information to ensure that the procurement is conducted with full and open competition. Written questions from prospective respondents about the RFP are accepted by email at [walshw@co.tioga.ny.us](mailto:walshw@co.tioga.ny.us) due by October 14, 2020. Questions may only be addressed to the RFP Coordinator as identified in Section 5 (Submittal Content).

In accordance with General Municipal Law Section 104-b(2)(f) and State Finance Law Section 139-j(2)(a), SWCD must identify the individual responsible for purchasing and the individual who is the sole point of contact during the procurement.

In accordance with State Finance Law Sections 139-j and 139-k, this RFP imposes restrictions on communications between the Subrecipient, GOSR, New York State Housing Trust Fund (HTFC) and Respondents during the procurement. Respondent is restricted from making contact from the earliest notice of intent to solicit offers through final award (the restricted period) with [Subrecipient]'s staff other than the RFP Coordinator unless it is a contact included among expressly provided statutory exceptions set forth in State Finance Law Section 139-j(3)(a). Respondent is also restricted during this period from making contact with any employee of GOSR or HTFC.

The RFP Coordinator is identified in Section 5 (Submittal Content).

Subrecipient employees also are required to obtain certain information when contacted during the restricted period and make a determination of responsibility of the Respondent pursuant to these two statutes. Certain findings of non-responsibility can result in the rejection for contract award and in the event of two (2) findings within a four-year period the Respondent is debarred from obtaining governmental procurement contracts.

## 7.2 DIVERSITY AND INCOME REQUIREMENTS

### 7.2.1 Minority and Women Owned Businesses (M/WBE)

Subrecipient is committed to awarding a contract(s) to firms that will provide high quality services and that are dedicated to diversity and to containing costs. Subrecipient strongly encourages Respondents that are certified by New York State, any other city or state, or the federal government, as M/WBE firms, as well as Respondents that are not yet certified but have applied for certification, to submit responses to this RFP. All New York State-certified M/WBE firms submitting proposals to this RFP should be registered as such with New York State Empire State Development (ESD). For M/WBE firms that are not certified but have applied for certification, Respondents must provide evidence of filing including filing date.

Subrecipient is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (M/WBE Regulations). Subrecipient strongly encourages joint ventures of M/WBE firms with majority firms and M/WBE firms with other M/WBE firms. For purposes of this solicitation, Subrecipient hereby establishes an overall goal of [30]% for M/WBE participation, [15]% for minority-owned business enterprises (MBE) and [15]% for women-owned business enterprises (WBE).

**Responders must submit a MWBE Utilization Plan with their proposal (See Schedule V).**

### 7.2.2 Section 3

In addition to the above diversity requirements, and pursuant to Section 3 of the Housing & Community Development Act (HCDA), Subrecipient is committed to ensuring that employment and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible and consistent with existing federal, state and local laws and regulations, be directed to Section 3 residents and businesses.

A “Section 3 resident” is: 1) a public housing resident; or 2) a low- or very low-income person residing in the metropolitan area or non-metropolitan county where the Section 3 covered assistance is expended. For the purposes of Section 3 of the HCDA, low-income persons are defined as families (including single persons) whose incomes do not exceed 80% of the median income for the area, and very low-income persons are defined as families (including single persons) whose incomes do not exceed 50% of the median income for the area.

A “Section 3 business” is a business that can provide evidence that it meets one of the follow criteria: 1) 51% or more owned by Section 3 residents; or 2) at least 30% of its full time employees include persons who are currently Section 3 residents, or were Section 3 residents within three years of the date of first hire; or 3) provides evidence, as required, of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to business concerns that meet one of the preceding two qualifications.

In their submittals, Respondents should demonstrate their commitment to advancing Subrecipient’s Section 3 goals, which include the following: 30% of new hires associated with the CDBG-DR funded project shall be Section 3 residents,

10% of new construction contracts shall be awarded to Section 3 businesses, and 3% of non-construction contracts shall be awarded to Section 3 businesses.

### 7.3 IRAN DIVESTMENT ACT

Every Proposal made to Subrecipient pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. Responses that fail to certify compliance with this requirement may not be accepted as responsive.

### 7.4 NEW YORK LAW AND VENUE

This contract shall be construed under the laws of the State of New York. All claims, actions, proceedings, and lawsuits brought in connection with, arising out of, related to, or seeking enforcement of this contract shall be brought in the Supreme Court of the State of New York, Tioga County.

## SCHEDULE I: DETAILED PROJECT DESCRIPTION

---

The consultant will provide a schedule of deliverables to include a minimum of the following data. Additional data may be provided at the consultant's discretion.

Schedule of Deliverables		
60% Design		1/22/21
90% Design	Design ready for GOSR review (See Schedule VI)	2/21/21
100% Design	See Schedule VI	3/23/21

## SCHEDULE II: DEADLINE SCHEDULE

---

A. Date for Publication of Notice:	September 17, 2020
B. Date for Questions from Respondents:	September 30, 2020
C. Date for Response to Respondents' Questions:	October 5, 2020
D. Date for Submission of Proposals:	October 14, 2020
E. Date for Evaluation of Proposals:	October 21, 2020
F. Date for Contingent Award:	October 23, 2020
G. Date for Initial Meeting between Selected Firm, Subrecipient, and GOSR:	October 30, 2020
H. Date for Receipt of Draft Contract from Selected Firm:	November 6, 2020
I. Date for Execution of Contract with Notice to Proceed:	November 23, 2020 March 23, 2021
J. Date for Receipt of Deliverable I (See Schedule 1):	(100%)

Subrecipient reserves the right to modify this Deadline Schedule as necessary. All Submittals shall be submitted in hard and soft copies, signed in the original, and received and date stamped by Subrecipient on or before 12:00 p.m. on October 14, 2020.

Respondent is responsible for meeting all deadlines. The selected firm will be responsible for submitting a draft A/E contract that includes a scope of services or scope of work and cost proposal within one (1) week of the initial meeting (G). Failure to meet this deadline may result in the Subrecipient exercising its right to terminate negotiations with the selected firm.

## SCHEDULE III: INSURANCE REQUIREMENTS

---

- A. Unless otherwise directed by GOSR, Contractor shall procure and maintain without interruption, at its sole cost and expense, during the term of this Agreement (or any extensions thereof) and for a period of two years thereafter, insurance of the type, and with limits and deductibles, as follows:

- a. Commercial General Liability Insurance and Excess Liability Insurance. Providing both bodily injury (including death) and property damage insurance with limits in the aggregate and per occurrence in accordance with the following table:

Contract Value	Commercial General Liability in combination with Excess (Umbrella) Liability	
	Each Occurrence	General Aggregate
< \$10M	\$2,000,000	\$2,000,000
>\$10M - \$50M	\$5,000,000	\$5,000,000
>\$50M	\$10,000,000	\$10,000,000

Such insurance is to be written on an occurrence basis with defense outside of limits. New York State, the New York State Housing Trust Fund Corporation, and the Subrecipient shall each be named as an additional insured. The minimum required level of insurance may be provided through a combination of commercial general liability and umbrella and/or excess liability policies.

- b. Automobile Liability and Property Damage Insurance. In an amount not less than One Million Dollars (\$1,000,000) combined single limit for both Bodily Injury and Property Damage.
- c. Professional Liability. If the Contractor is engaged in providing professional services under this Agreement, professional errors and omissions coverage with a limit not less than Two Million Dollars (\$2,000,000) in the aggregate and One Million Dollars (\$1,000,000) per occurrence. If the Contractor is not engaged in providing professional services under this Agreement, this professional errors and omissions coverage is not required.
- d. Worker's Compensation. Covering workers' compensation and employers' liability and disability benefits as required by the State of New York.
- B. In addition to the foregoing, Contractor and any subcontractors shall procure and maintain any and all insurance which is required by any applicable current or future law, rule, regulation, ordinance, permit, license, order or other legal requirement.
- C. All insurance shall be primary and non-contributory and shall waive subrogation against GOSR and the Subrecipient and all of either of their former, current, or future officers, directors, and employees. No deductible of more than \$50,000 shall be permitted without advance written approval by GOSR, which GOSR may withhold, condition or deny in its sole and exclusive discretion.
- D. The Contractor shall provide Certificates of Insurance to GOSR and the Subrecipient prior to the commencement of work and shall provide full and complete copies of the actual policies and all endorsements upon request. Subcontractors under this Agreement shall be required to maintain insurance meeting all of the requirements set forth in Section A above for items a-d; however Contractor

shall require subcontractors to maintain greater limits and/or other or additional insurance coverages if greater limits and/or other or additional insurance coverages are (a) generally imposed by the Contractor given its normal course of business for subcontracts for similar work or services to those being provided by the subcontractor at issue; or (b) reasonable and customary in the industry for similar work or services to those anticipated hereunder.

- E. If the above insurance requirements are potentially excessive because they exceed the type and/or amount of insurance which is reasonable and customary for similar work or services in the same general geographic area, Contractor shall, within fifteen (15) calendar days of the execution of this Agreement, provide written notice of the same to GOSR, along with a written summary of the type and amount of insurance Contractor believes is reasonable and customary for similar work or services in the same general geographic area. GOSR may, in GOSR's sole and exclusive discretion, but is under no obligation to, waive, decrease, or otherwise alter or amend the insurance requirements in light of this notice. However, notwithstanding anything to the contrary herein, nothing in this paragraph requires or shall be deemed to require GOSR to waive, decrease, alter or amend, in whole or in part, any insurance requirements as a result of the foregoing notice from Contractor or for any other reason, and no waiver, decrease, alteration or amendment shall be made except as approved in advance and in writing by GOSR.
- F. If the above insurance requirements are potentially inadequate because they do not meet or exceed the type and/or amount of insurance which is reasonable and customary for similar work or services in the same general geographic area, Contractor shall, within fifteen (15) calendar days of the execution of this Agreement, provide written notice of the same to GOSR, along with a written summary of the type and amount of insurance Contractor believes is reasonable and customary for similar work or services in the same general geographic area. GOSR may, in GOSR's sole and exclusive discretion, but is under no obligation to increase, supplement, expand, or otherwise alter or amend the insurance requirements in light of this notice. However, notwithstanding anything to the contrary herein, nothing in this paragraph requires or shall be deemed to require GOSR to increase, supplement, expand, or otherwise alter or amend, in whole or in part, any insurance requirements as a result of the foregoing notice from Contractor or for any other reason, and no increase, supplement, expansion or other alteration or amendment shall be made except in an amendment to this Agreement, as approved in advance and in writing by GOSR.



## SCHEDULE IV: COST PROPOSAL

---

**NAME OF PROPOSER:** \_\_\_\_\_

**TOTAL LUMP SUM NOT TO EXCEED:**

**\$** \_\_\_\_\_

**\$** \_\_\_\_\_

**In Figures**

**All fees to be included in the lump sum**

**Please include the names, titles and hourly rates for each individual to be associated with this Project.**

**Reimbursable expenses to be invoiced at actual cost and must be included in the lump sum.**

# SCHEDULE V: MINORITY AND WOMEN OWNED BUSINESSES (MWBE) UTILIZATION PLAN

---

## M/WBE UTILIZATION PLAN

**INSTRUCTIONS:** This form is submitted at the time of bid or procurement submission, or at the time of contract execution, or within a reasonable time thereafter as outlined in procurement submission instructions. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Subrecipient Name:		Project Name:	
Offeror's Name:		Federal ID Number:	
Address:		Contract Number (if applicable):	
City State & Zip Code:		Phone:	
Location of Work:			

M/WBE Target Goal			Proposed M/WBE Participation		
Category	Percentage	Amount	Category	Percentage	Amount
MBE:	%	\$	MBE:	%	\$
WBE:	%	\$	WBE:	%	\$
Totals:	%	\$	Totals:	%	\$

1. Certified M/WBE Subcontractors/Suppliers Information:		Classification NYS-ESD Certified (Choose One Only)		Federal ID No. :	Detailed Description of Work:	Dollar Value of Subcontractors/Supplies/Services	Intended performance dates on each component of the contract
		MBE	WBE				
A	Name:						
	Address:						
	Email:						
	Phone:						
B	Name:						
	Address:						
	Email:						
	Phone:						
C	Name:						
	Address:						
	Email:						
	Phone:						
D	Name:						
	Address:						
	Email:						
	Phone:						

Contractor Use:	
Name of Preparer:	
Authorized Signature:	
Date:	
Email:	
Phone:	

## VI. GUIDANCE FOR THE DEVELOPMENT OF PLANS AND SPECIFICATIONS

---

---

**Governor's Office of Storm Recovery • NY Rising Community Reconstruction Program**  
*Guidance for the Preparation of Plans and Specifications*

---

Plans and Specifications must be submitted to the Governor's Office of Storm Recovery (GOSR) for review as a requirement of the NY Rising Community Reconstruction program. Because the NY Rising Community Reconstruction Program is funded with Community Development Block Grant Disaster Recovery (CDBG-DR) funds, projects assisted with these funds must meet certain CDBG-DR requirements as well as other Federal cross-cutting authorities (laws and executive orders). Therefore, Community Reconstruction projects must be bid and contracts awarded in accordance with applicable Federal laws and regulations as well as New York State laws and regulations related to public contracts. Plans and Specifications along with executed Bid/Contract Documents will be reviewed to verify that CDBG-DR and State requirements will or have been followed during the bidding and award process.

GOSR's review and acceptance does not ensure that the project is in compliance with all State and local requirements. The information contained in this guide is overview of Federal and State bidding requirements and should not be construed as legal advice or exhaustive coverage of the topic. It is the responsibility of the design professional and the subrecipient's legal counsel to know and follow all applicable regulations regarding the bidding and award process.

### **SUBMITTAL REQUIREMENTS**

---

The Plans and Specifications submittal must comply with the following:

1. One (1) Set of detailed Plans and Specifications must be submitted to GOSR. A registered professional architect or engineer, licensed to practice in the State of New York, must stamp the plans and specifications.
2. The Plans and Specifications should be submitted at least 30 days prior to the desired date for the publication of the advertisement for bids.
3. The preferred format is Adobe pdf format.

### **DESIGN REQUIREMENTS**

---

Plans and Specifications must comply with all State and local code requirements. In addition, where applicable Plans and Specifications should conform to GOSR's environmental guidance. GOSR is committed to promoting sustainability through resilient and green design in building and infrastructure projects funded through the NY Rising Community Reconstruction program. Designers should incorporate sustainability measures and green infrastructure practices into the proposed design where possible.

Any portion of the project that does not meet CDBG-DR eligibility requirements cannot be funded through GOSR. If any portions of the project are not eligible, these should be listed separately and identified as ineligible in the bid proposal.

### **REQUIRED PROVISIONS**

---

The following provisions must be incorporated directly in the Project Specifications:

1. GOSR Supplementary Conditions for Contracts
2. Federal Labor Standards Provisions (HUD Form 4010)
3. GOSR project sign requirements
4. NYS General Municipal Law Section 103-d – Non-Collusive Bidding certification
5. NYS General Municipal Law Section 103-g – Iranian Energy Sector Divestment certification
6. NYS General Municipal Law Section 105 – Time period for holding bids

---

**Governor's Office of Storm Recovery • NY Rising Community Reconstruction Program**

*Guidance for the Preparation of Plans and Specifications*

---

7. NYS General Municipal Law Section 108 – Workmen's Compensation
8. NYS General Municipal Law Section 109 – Assignment of Contract
9. NYS Labor Law Section 220 – Work Hours
10. NYS Labor Law Section 220-e – Discrimination in Employment
11. NYS Labor Law Section 220-h – OSHA Safety Course (applicable to contracts over \$250,000.)

Note: Non-governmental entities should consult legal counsel regarding applicability of New York State General Municipal Law and New York State Labor Law requirements to their project.

---

**REQUIRED FORMS**

The following forms are necessary for compliance with program requirements and must be included in or incorporated by reference in the Project Specifications.

1. NYS Vendor Responsibility Questionnaire For-Profit Construction (CCA-2) - This form must be submitted by the apparent low bidder as a condition of contract award.
2. M/WBE Utilization Plan – All bidders must submit a M/WBE Utilization Plan.
3. Section 3 Plan - A Section 3 Plan must be submitted by the apparent low bidder as a condition of contract award.

---

**ADVERTISEMENT FOR BIDS**

The Advertisement (Invitation) for Bids must include the following language:

"This project is being financed by the NYS Governor's Office of Storm Recovery. Attention of bidders is particularly called to Section 3 requirements, M/WBE goals, Federal labor standards and wage rates, online reporting requirements using Elation System, Inc. and GOSR Supplementary Contract Conditions."

---

**INSTRUCTIONS TO BIDDERS**

The Instructions to Bidders must include the language similar to the following:

**M/WBE**

"Special attention is directed to the M/WBE requirements contained in the GOSR Supplementary Conditions for Contracts. The Contractor shall make a good faith effort to solicit active participation by enterprises identified in the New York State Minority and Women-Owned Business Enterprises Directory of Certified Firms in order to promote and assist the participation of certified M/WBEs in an amount equal to fifteen (15%) minority-owned business enterprises ("MBE") and fifteen percent (15%) women-owned business enterprise ("WBE") of the total dollar value of the contract. The Contractor agrees to be bound by the provisions of Section 316 of Article 15-A of the Executive Law, which pertain to enforcement of Article 15-A.

All bidders must submit a M/WBE Utilization Plan with their bid."

**SECTION 3**

"Special attention is directed to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly person who are



---

**Governor's Office of Storm Recovery • NY Rising Community Reconstruction Program**  
*Guidance for the Preparation of Plans and Specifications*

---

recipients of HUD assistance for housing. A sample Section 3 Plan is included in the Project Specifications. The successful bidder will be required to submit a Section 3 Plan as a condition of contract award."

**REPORTING**

"Special attention is called to GOSR reporting requirements. GOSR has adopted the Elation Systems, Inc. web-based compliance management system to assist with Labor Compliance (Davis-Bacon), Minority and Women Owned Business (M/WBE) and Section 3 reporting requirements. The Contractor and its subcontractors must utilize the Elation Systems to satisfy reporting requirements. To this end the Contractor and its subcontractors will be required to register with Elation Systems, Inc. and to attend online training on the use of the system."

**INSURANCE**

"Special attention is called to GOSR insurance requirements contained in the GOSR Supplementary Conditions for Contracts."

**PREVAILING WAGES**

"This project includes both State and Federal prevailing wages. If Federal Davis-Bacon wage rates differ from the New York State prevailing wage rates, then the higher of the two rates shall be paid."

**VENDOR RESPONSIBILITY**

"The New York State Vendor Responsibility Questionnaire For-Profit Construction (CCA-2) shall be submitted by the apparent low bidder to the Owner as a condition of contract award."

**BONDING**

Contracts that exceed \$150,000 must comply with the following minimum bonding requirements:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

**LABOR COMPLIANCE**

The Project Specifications must include both a Davis-Bacon Federal Wage Decision and, if applicable, a New York State Wage Schedule. Davis-Bacon Wage Decisions may be downloaded from <http://www.wdol.gov/> and clicking on "Selecting DBA WDs". New York State Wage Schedules may be downloaded from <https://wpp.labor.state.ny.us/wpp/publicViewPWChanges.do?method=showIt>.

The Davis Bacon Wage Decisions must be re-verified within ten days before bid opening, and if it has been

---

**Governor's Office of Storm Recovery • NY Rising Community Reconstruction Program**  
*Guidance for the Preparation of Plans and Specifications*

---

revised, the revised version must be issued to bidders as an Addendum. Additionally, if a contract is not awarded within 90 days after the bid opening an updated Davis-Bacon Wage Decision must be obtained.

#### **PERFORMANCE REQUIREMENTS AND PENALTIES**

The Project Specifications must include a fixed time for performance in either calendar days or working days and must include provisions for damages for failure to complete the work on time.

#### **COMPARABLE PRODUCTS ("Or Equal" Clause)**

The Project Specifications must include a statement similar to one of the following:

"Whenever a material, article or piece of equipment is identified on the drawings or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue number, or make, said identification is intended to establish a standard. Any material, article or equipment of other manufacturers and vendors which performs satisfactorily the duties imposed by the design intent may be considered equally acceptable provided that, in the opinion of the Design Professional, the material, article or equipment so proposed is of equal quality, substance and function. The Contractor shall not provide, furnish or install any said proposed material, article or equipment without the prior written approval of the Design Professional."

or

"Whenever any product is specified by the name, trade name, make or catalog number or any manufacturer or supplier, the intent is not to limit competition but to establish a standard of quality which the Design Professional has determined is necessary. The words "or equal" shall be deemed inserted in each instance. The Contractor may use any product equal to that named in the Contract Documents which is approved by the Design Professional and which meets the requirements of the Contract Documents, providing the Contractor gives timely notice of his/her intent in accordance with the submittal requirements of the Contract Documents."

#### **UNIFORM FEDERAL ACCESSIBILITY STANDARDS**

Design, construction, or alteration of building must conform to the Uniform Federal Accessibility Standards (UFAS). The project architect must execute a certification that the design is in conformance with UFAS.

#### **PAYMENT PROVISIONS**

The payment provisions in the Project Specifications should allow the Owner a minimum of 45 days to make payment to the Contractor after the Design Professional has issued a certificate for payment.

#### **PROJECT SIGN**

*All projects receiving funding through GOSR are required to have a weatherproof outdoor project sign. This must be clearly stated in the Project Specifications. The sign must be displayed conspicuously in a prominent location on-site throughout the entire construction phase. Electronic graphic file versions of the emblems used in the sign are available by request from GOSR. Following are some general details regarding specifications for the outdoor project sign and the sign template, which are to be filled out by the Contractor. Only one Project Sign is required per project.*



### **WICKS LAW (GENERAL MUNICIPAL LAW SECTION 101)**

When the entire cost of a contract for the erection, construction, reconstruction or alteration of a public building exceeds certain thresholds, the design professional must prepare the plans and specifications to allow for the independent and separate bidding and award of contracts for plumbing trade work, HVAC trade work and electrical trade work. In addition a general construction trade contract is normally separated as well.

Currently, the Wicks Law's threshold amounts triggering the requirement of multiple prime contractors are:

1. \$3 million in the counties of the Bronx, Kings, New York, Queens, and Richmond;
2. \$1.5 million in the counties of Nassau, Suffolk and Westchester; and
3. \$500,000 in all other counties.

In accordance with the provisions of Labor Law Section 222, projects that utilize a Project Labor Agreement are exempt from the multiple prime contracts requirements of the Wicks Law.

For contracts that do not meet the Wicks Law threshold, the Project Specifications must require bidders to submit a separate sealed list that names each plumbing, HVAC and electrical subcontractor that the bidder will use in performance of the contract and the amount to be paid to each. This list is opened after the low bid is announced. After bid, the contractor may seek to change any listed subcontractor upon a showing of legitimate need.

### **REQUIRED DOCUMENTS**

The following documents are available from GOSR and/or online:

1. GOSR Supplementary Conditions for Contracts
2. Federal Labor Provisions HUD Form 4010 – <https://www.hudexchange.info/resource/2490/hud-form-4010-federal-labor-standards-provisions/>
3. NYS Vendor Responsibility Questionnaire For-Profit Construction (CCA-2) - [https://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](https://www.osc.state.ny.us/vendrep/forms_vendor.htm)
4. Sample Section 3 Plan format
5. M/WBE Utilization Plan (PROC-2)
6. UFAS certification form



## EXHIBIT A: SUPPLEMENTARY CONDITIONS FOR CONTRACTS

---

Rev. 2/27/17

Definitions:

---

---

“GOSR”: Governor’s Office of Storm Recovery and its successors and assigns, as well as the Housing Trust Fund Corporation and its successors and assigns, and its parent entities and their successors and assigns.

“Subrecipient”: \_\_\_\_\_

“Contractor”: \_\_\_\_\_

When these Supplementary Conditions are attached to any lower tier contract (e.g., a contract between Contractor (as defined above) and any subcontractor, or between Contractor’s direct or indirect subcontractors), references herein to “Subrecipient” shall be deemed to refer to the party seeking products and/or services, and references to “Contractor” shall be deemed to refer to the party providing products and/or services, and references to the “Agreement” or “Contract” or “contract” shall be deemed to refer to the agreement between such subcontracting parties.

### ORDER OF PRECEDENCE

---

---

In the event of a conflict between the terms of these Supplementary Conditions and the terms of the remainder of the contract (including any other attachments thereto and amendments thereof), the terms of these Supplementary Conditions shall control.

In the event of a conflict among the requirements found in these Supplementary Conditions, which conflict would make it impossible to comply with all of the requirements set forth herein, the provisions shall be applied with the following priority:

- (1) Part I: Required Federal Provisions; then
- (2) Part II: Required State Provisions;

and the remaining requirements shall be interpreted in a manner so as to allow for the terms contained therein to remain valid and consistent with such superseding provisions. If any provision of these Supplementary Conditions relates to a matter embraced by another provision(s) of these Supplementary Conditions, but is not in conflict therewith, all such provisions shall apply. Any question as to which requirements control in a particular instance which cannot be resolved by Contractor and Subrecipient shall be submitted in writing (indicating the issue and the applicable provisions) by Subrecipient to GOSR, which shall decide the applicable question.

## PART I: REQUIRED FEDERAL PROVISIONS

---

The following terms and conditions apply to any contract for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development (“HUD”).

### GENERAL CONDITIONS

---

1. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.
2. **STATUTORY AND REGULATORY COMPLIANCE.** Contractor shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.
3. **BREACH OF CONTRACT TERMS.** The Subrecipient and GOSR reserve their rights to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this contract, in instances where the Contractor or any of its subcontractors violate or breach any contract term. If the Contractor or any of its subcontractors violate or breach any contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
4. **REPORTING REQUIREMENTS.** The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Subrecipient and GOSR. The Contractor shall cooperate with all Subrecipient and GOSR efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 2 CFR Part 200 and 24 C.F.R. § 570.507.
5. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government, GOSR, and the Subrecipient in any resulting invention in accordance with 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by HUD.
6. **DEBARMENT, SUSPENSION, AND INELIGIBILITY.** The Contractor represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 C.F.R. Part 2424. The Contractor shall notify the Subrecipient and GOSR should it or any of its subcontractors become debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 C.F.R. Part 2424.

7. **CONFLICTS OF INTEREST.** The Contractor shall notify the Subrecipient as soon as possible if this contract or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as described in 2 CFR Part 200). The Contractor shall explain the actual or potential conflict in writing in sufficient detail so that the Subrecipient is able to assess such actual or potential conflict. The Contractor shall provide the Subrecipient any additional information necessary for the Subrecipient to fully assess and address such actual or potential conflict of interest. The Contractor shall accept any reasonable conflict mitigation strategy employed by the Subrecipient, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict. If requested by GOSR, Contractor shall sign a certification affirming that it has no conflict of interest arising from performance of work on a specific task.

8. **SUBCONTRACTING.** The Contractor represents to the Subrecipient that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.

The Contractor will include these Required Federal Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

9. **ASSIGNABILITY.** The Contractor shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Subrecipient.

10. **INDEMNIFICATION.** The Contractor shall indemnify, defend, and hold harmless the Subrecipient, GOSR, and their agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Contractor in the performance of the services called for in this contract.

11. **TERMINATION FOR CAUSE (Applicable to contracts exceeding \$10,000).** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Subrecipient shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Subrecipient, become the Subrecipient's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Subrecipient for damages sustained by the Subrecipient by virtue of any breach of the contract by the Contractor, and the Subrecipient may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Subrecipient from the Contractor is determined.

12. **TERMINATION FOR CONVENIENCE (Applicable to contracts exceeding \$10,000).** The Subrecipient may terminate this contract at any time by giving at least ten (10) days' notice in writing to the Contractor. If the contract is terminated by the Subrecipient as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

**13. LOBBYING (Applicable to contracts exceeding \$100,000).** The Contractor certifies, to the best of his or her knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

**14. BONDING REQUIREMENTS (Applicable to construction and facility improvement contracts exceeding \$100,000).** The Contractor shall comply with New York State bonding requirements, unless they have not been approved by HUD, in which case the Contractor shall comply with the following minimum bonding requirements:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- C. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

**15. ACCESS TO RECORDS.** The Subrecipient, GOSR, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal

business hours, access to any work product, books, documents, papers, and records of the Contractor which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.

- 16. MAINTENANCE/RETENTION OF RECORDS.** Contractor shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement (collectively, the “Records”) (i) for three (3) years from the time of closeout of HUD’s grant to the State or for the period provided in the CDBG regulations at 24 CFR 570.487 (or other applicable laws and program requirements) and 24 CFR 570.488, or (ii) for six (6) years after the closeout of a CDBG-DR funded project pursuant to 42 USC 12707(a)(4) and New York Civil Practice Law and Rules § 213, whichever may be longer, provided that Section 1 of the Required State Provisions herein is also satisfied.

CIVIL RIGHTS AND DIVERSITY PROVISIONS:

- 17. SMALL AND MINORITY FIRMS, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.** The Contractor will comply with the small and minority firms, women’s business enterprise, and labor surplus area requirements as set forth at 2 CFR Part 200. Contractor will use its best efforts to afford small businesses, minority business enterprises, and women’s business enterprises the maximum practicable opportunity to participate in the performance of the contract. As used in these Required Federal Provisions, the terms “small business” means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. § 632), and “minority and women’s business enterprise” means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are Afro-Americans, Spanish-speaking, Spanish surnamed, or Spanish-heritage Americans, Asian Americans, and American Indians. Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

The Contractor will take necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- A. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises; and
- E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

**18. TITLES VI AND VIII OF THE CIVIL RIGHTS ACT OF 1964 AND EXECUTIVE ORDER 11063.**

The Contractor shall comply with the provisions of Titles VI and VIII of the Civil Rights Act of 1964 and with Executive Order 11063. No person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. No person shall, on the grounds of race, color, religion, sex, or national origin, be discriminated against in the sale, rental, or financing of dwellings. To the extent that any such sale, lease or other transfer of land shall occur, Contractor, in undertaking its obligation to carry out the Program assisted hereunder, will not itself so discriminate.

**19. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974.**

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

**20. SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT OF 1990.**

The Contractor shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations, and with the Americans with Disabilities Act of 1990 (42 U.S.C. § 126), as amended, and any applicable regulations

The Contractor agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance from HUD.

**21. AGE DISCRIMINATION ACT OF 1975.** The Contractor shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

**22. NONDISCRIMINATION.**

The Contractor shall comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 C.F.R. § 570.607. The applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act of 1974 are still applicable. The Contractor shall comply with all other federal statutory and constitutional non-discrimination provisions. During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during

employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering

agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

With respect to construction contracts and subcontracts exceeding \$10,000, The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967; Executive Order 11478 of August 8, 1969; Executive Order 12107 of December 28, 1978; Executive Order 12086 of October 5, 1978; and as supplemented in Department of Labor regulations (41 C.F.R. Part 60). Subrecipient shall include the following Specifications, which are required pursuant to 41 CFR 60-4.3 in all federally assisted contracts and subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term "Construction Work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

**Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of \$10,000. (Federal Notice Required by 41 CFR 60-4.3)**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Agreement resulted.



3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Agreement resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction contractors performing Construction Work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each Construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the

contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.
12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**23. CERTIFICATION OF NONSEGREGATED FACILITIES (Applicable to construction contracts exceeding \$10,000).** The Contractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the nondiscrimination clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the nondiscrimination clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

**24. SECTION 503 OF THE REHABILITATION ACT OF 1973 (Applicable to contracts exceeding \$10,000).** The Contractor shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

- A. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
1. Recruitment, advertising, and job application procedures;
  2. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  3. Rates of pay or any other form of compensation and changes in compensation;
  4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  5. Leaves of absence, sick leave, or any other leave;
  6. Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
  7. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  8. Activities sponsored by the Contractor including social or recreational programs; and
  9. Any other term, condition, or privilege of employment.
- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Contractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual or may lower the posted notice so that it might be read by a person in a wheelchair).
- E. The Contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

**25. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (Applicable to contracts exceeding \$100,000 in value for housing construction, rehabilitation, or other public construction).**

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, the availability of apprenticeship and training positions, the qualifications for each, the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
- D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.
- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled: (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. Part 135.
- F. Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

- H. Irrespective of any applicable federal reporting requirements as noted in the statutory language above or otherwise, Contractor shall submit quarterly reports along with any supporting documentation, in a form acceptable to Subrecipient, of its Section 3 compliance efforts to Subrecipient. Contractor may be required to consolidate all reports received from subcontractors and lower-tiered subcontractors into a single report or several reports as reasonably requested by Subrecipient. Notwithstanding the provision of such reports and supporting documentation, Contractor shall maintain copies of all reports and supporting documents as set forth in these Supplementary Conditions.

**26. FAIR HOUSING ACT.** Contractor shall comply with the provisions of the Fair Housing Act of 1968 as amended. The act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. Contractor shall comply with the provisions of the Equal Opportunity in Housing Act, which prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with federal funds.

## LABOR PROVISIONS

---

- 27. COPELAND “ANTI-KICKBACK” ACT (Applicable to all construction or repair contracts).** Salaries of personnel performing work under this contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland “Anti-Kickback Act” of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874; and 40 U.S.C. § 276c). The Contractor shall comply with all applicable “Anti-Kickback” regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.
- 28. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$2,500 that involve the employment of mechanics or laborers).** The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable federal laws and regulations pertaining to labor standards.

- 29. DAVIS-BACON ACT AND OTHER LABOR COMPLIANCE (Applicable to construction contracts exceeding \$2,000 when required by federal program legislation).** The Contractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. Part 5), and all other applicable federal, state, and local laws and regulations pertaining to labor standards insofar as they apply to the performance of this agreement. In addition, Contractor shall comply

with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_12586.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12586.pdf).

All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the Federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis Bacon Act. The Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to Subrecipient and GOSR for review upon request.

If Contractor is engaged under a contract in excess of \$2,000 for construction, renovation, or repair work financed in whole or in part with assistance provided by GOSR, Contractor agrees, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, to comply and to cause all subcontractors engaged under such contracts to comply with federal requirements adopted by GOSR pertaining to such contracts and with the applicable requirements of the Department of Labor under 29 C.F.R. Parts 1, 3, 5, and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is to relieve Contractor of its obligation, if any, to require payment of the higher wage. Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

## ENVIRONMENTAL PROVISIONS

---

30. **ENERGY EFFICIENCY.** The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the New York State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
31. **SOLID WASTE DISPOSAL.** Pursuant to 2 CFR § 200.322, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (codified at 42 USC § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
32. **CERTIFICATION OF COMPLIANCE WITH ENVIRONMENTAL LAWS.**

The Contractor and all subcontractors agree to comply with the following requirements (and their state and/or local counterparts or analogues, if any) insofar as they apply to the performance of this Agreement as any of the following may hereinafter be amended, superseded, replaced, or modified:



- A. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951, 3 C.F.R., 1977 Comp., p. 117, as interpreted at 24 C.F.R. Part 55), and Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961, 3 C.F.R., 1977 Comp., p. 121);
- B. Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1451 *et seq.*);
- C. Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. § 349, as amended), and EPA regulations for Sole Source Aquifers (40 C.F.R. Part 149);
- D. Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*);
- E. Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. § 1271 *et seq.*);
- F. Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
- G. EPA regulations for Determining Conformity of Federal Actions to State or Federal Implementation Plans (40 C.F.R. Parts 6, 51, and 93);
- H. Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201 *et seq.*), and USDA regulations at 7 C.F.R. Part 658;
- I. HUD criteria and standards at 24 C.F.R. Part 51;
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Feb. 11, 1994 (59 FR 7629, 3 C.F.R., 1994 Comp. p. 859);
- K. Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4001-4128);
- L. National Flood Insurance Reform Act of 1994 (42 U.S.C. § 5154a);
- M. Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. § 3501);
- N. Runway Clear Zone regulations (24 C.F.R. Part 51);
- O. Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251, *et seq.*), commonly known as the Clean Water Act, and all regulations and guidelines issued thereunder;
- P. Environmental Protection Agency (“EPA”) regulations at 40 C.F.R. Part 50, as amended;
- Q. HUD regulations at 24 C.F.R. Part 51, Subpart B, and New York State and local laws, regulations, and ordinances related to noise abatement and control, as applicable;
- R. HUD regulations at 24 C.F.R. Part 51 Subpart C regarding siting of projects near hazardous operations handling conventional fuels or chemicals of an explosive or flammable nature;

- S. HUD and EPA regulations related to asbestos-containing material and lead-based paint, including but not limited to Part 56 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York Department of Labor (12 NYCRR 56), the National Emission Standard for Asbestos (40 C.F.R. § 61.145), the National Emission Standard for Asbestos (40 C.F.R. § 61.150), and 24 C.F.R. Part 35 Subparts B, H, and J; and
- T. All other applicable environmental laws that may exist now or in the future.

Further, Contractor shall abide by any conditions or requirements set forth in any environmental review performed pursuant to 24 C.F.R. Part 58, which are HUD's regulations for Responsible Entities implementing the National Environmental Policy Act.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the Subrecipient, the following:

- A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. Part 32 or on the List of Violating Facilities issued by the EPA pursuant to 40 C.F.R. Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraphs A through D of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

## PART II: REQUIRED STATE PROVISIONS

---

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "Contract") agree to be bound by the following clauses which are hereby made a part of the Contract.

**1. ACCOUNTING RECORDS.** The Contractor shall establish and maintain complete Records, including accurate books, records, documents, accounts and other evidence directly pertinent to performance of work done for the Subrecipient under this Contract consistent with generally accepted bookkeeping practices. Subrecipient shall retain the Records, including all financial records, supporting documents, statistical records, and all other

records pertinent to the Agreement (i) for three (3) years from the time of closeout of HUD's grant to the State or for the period provided in the CDBG regulations at 24 CFR 570.487 (or other applicable laws and program requirements) and 24 CFR 570.488, or (ii) for six (6) years after the completion of a CDBG-DR funded project pursuant to 42 USC 12707(a)(4) and New York Civil Practice Law and Rules § 213, whichever may be longer, provided that Section 16 of the Required Federal Provisions herein is also satisfied. The Subrecipient, GOSR, and any person or entity authorized to conduct an examination 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 Subrecipient and GOSR shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform the Subrecipient and GOSR, 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 Subrecipient's or GOSR's right to discovery in any pending or future litigation.

**2. NON-ASSIGNABILITY.** This Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent in writing of the Subrecipient and GOSR, and any attempts to assign the Contract without such written consent are null and void. However, this Contract shall be binding upon and inure to the benefit of the Subrecipient and GOSR, and their successors and assigns.

**3. INDEMNITY.** The Contractor shall indemnify and hold New York State and the Housing Trust Fund Corporation and their employees, officers, Members and Directors (collectively, the "Indemnities") harmless from and against all claims, demands, liability, loss, cost, damage or expense, including attorney's fees, which may be incurred by the Indemnities because of negligence or malfeasance on the part of the Contractor arising out of this Contract.

**4. NON-DISCRIMINATION.** 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, domestic violence victim status, pregnancy, religious practice, presence of a service animal, or criminal conviction. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of \$50 per person per day for any violation of Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

If directed to do so by the State Commissioner of Human Rights ("Commissioner"), the Contractor will send to each labor union to which the Contractor is bound a notice provided by the Commissioner advising of this provision. The Contractor will keep posted in conspicuous places notices of the Commissioner regarding laws against discrimination. The Contractor will state in all advertisements for employees that all qualified applicants will be afforded equal opportunities without discrimination because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.

If the Contractor has fifteen or more employees, it is an unlawful employment practice for the Contractor to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an individual's status as an employee, because of such individual's race, color, religion, sex, or national origin, or because an individual opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, or because he or she made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that Title, and that it shall be an unlawful employment practice to print or publish or cause to be printed or published any notice or advertisement relating to employment indicating any preference, limitation, specification, or discrimination on the basis of race, color, religion, sex, or national origin.

If the Contractor has fifteen or more employees, the Contractor: (1) will make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed; (2) will preserve such records for such periods as the Equal Employment Opportunity Commission ("EEOC") shall prescribe by regulation; (3) will make such reports therefrom as the EEOC shall prescribe by regulation or order; (4) must post and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted a notice prepared or approved by the EEOC setting forth excerpts from, or summaries of, pertinent provisions of Title VII of the Civil Rights Act of 1964, as amended, and information pertinent to the filing of a complaint.

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 comply with all non-discriminatory employment practices, will furnish all information deemed necessary by the Commissioner, and will permit the Commissioner access to its records to ascertain compliance. The Contractor will bind all subcontractors hired to perform services in connection with this Contract to the requirements of this section, take such action for enforcement as the Commissioner may direct, and notify the Commissioner if such action results in litigation. This Contract may be terminated by Subrecipient upon the Commissioner's finding of non-compliance with this section, and the Contractor may be declared ineligible for future contracts with an agency of the state or a public authority until the Contractor satisfies the Commissioner of compliance.

## **5. 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 the Agency or Agencies, 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 Agency or Agencies, 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 Subrecipient's 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 Subrecipient or GOSR, 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 this 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 through C above in every subcontract. Section 312 does not apply to: (i) work, goods or services unrelated to this Contract; or (ii) employment outside New York State. Subrecipient and GOSR 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 Subrecipient and GOSR 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, Subrecipient and GOSR 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.

**6. OPPORTUNITIES FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES.**

Contractor shall make a good faith effort to solicit active participation by enterprises identified in the New York State Minority and Women-Owned Business Enterprises Directory of Certified Firms in order to promote Subrecipient's obligation to make good-faith efforts to promote and assist the participation of certified M/WBEs through the use of contractors and their subcontractors in an amount equal to fifteen percent (15%) minority-owned business enterprises ("MBE") and fifteen percent (15%) women-owned business enterprises ("WBE").

Contractor agrees to be bound by the provisions of Section 316 of Article 15-A of the Executive Law, which pertain to enforcement of Article 15-A.

- 7. **PROPRIETARY INFORMATION.** All memoranda, analyses, spreadsheets and other pertinent documents or writings, including reports and financial statements developed or prepared by, or for, the Contractor in connection with the performance of this Contract are "Proprietary Information" and shall be, and remain, the property of the Subrecipient. All original documents constituting Proprietary Information shall be delivered to the Subrecipient by the Contractor, or any subcontractor, or any other person possessing them, upon the termination of this Contract or upon the earlier request of the Subrecipient, except that the Contractor may retain copies for its files. Proprietary Information may not be utilized, disclosed or otherwise made available to other persons by the Contractor without the prior written approval of the Subrecipient. The provisions of this section shall be in addition to, and not in derogation of, any duty imposed upon the Contractor by any law, regulation or rule governing professional conduct respecting confidentiality.

8. **COPYRIGHT.** If this Agreement results in any copyrightable material or inventions, the Subrecipient, GOSR, and/or HUD reserve the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes. This clause shall survive indefinitely the termination of this Agreement for any reason.
9. **ENVIRONMENTAL LAWS.** Contractor shall comply with any and all applicable New York State and local environmental laws, including all permits and approvals issued thereunder. Additionally, Contractor shall comply with any and all conditions or requirements set forth in an environmental review performed pursuant to the State Environmental Quality Review Act.
10. **SECTION HEADINGS.** The caption of sections in this Contract are inserted solely for convenience of reference and are not intended to define, limit, or describe the scope of this Contract or any provision hereof or to otherwise affect this Contract in any way. The section headings shall not be considered in any way in construing this Contract.
11. **COUNTERPARTS.** This Contract may be executed in any number of counterparts. Each such counterpart shall be deemed to be a duplicate original. All such counterparts shall constitute but one and the same instrument.
12. **GOVERNING LAW.** This Contract has been executed and delivered in and shall be construed and enforced in accordance with the laws of, the State of New York. In the event of conflict between New York State law and federal laws and regulations, the latter shall prevail.
13. **WORKERS' COMPENSATION.** 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.
14. **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.
15. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service of process hereunder shall be complete upon the Contractor's actual receipt of process or upon the Subrecipient's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the Subrecipient, in writing, of each and every change of address to which service of process can be made. Service of process by the Subrecipient to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.
16. **NON-COLLUSIVE BIDDING CERTIFICATION.** If this Contract was awarded based upon the submission of a bid or proposal, the Contractor affirms, under penalty of perjury, that the prices in its bid or proposal were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, or as to any matter relating to such prices with any other Contractor or with any competitor.

17. **LOBBYING REFORM LAW DISCLOSURE.** If the procurement of the goods or services provided herein were applicable to Lobbying Reform Law Disclosure as pursuant to State Finance Law §§139-j and 139-k, the Subrecipient reserves the right to terminate this Contract in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Subrecipient may exercise their termination right by providing written notification to the Contractor.

18. **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.

19. **GENERAL RESPONSIBILITY LANGUAGE.** The Contractor shall at all times during Contract term remain responsible. The Contractor agrees, if requested by Subrecipient or GOSR, 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.

For purposes of this Agreement, Contractor responsibility generally means that the Contractor has the integrity to justify the award of public dollars and the capacity to perform the requirements of this Contract fully. In connection herewith, to the extent that the Subrecipient may make certain determinations with respect to Contractor responsibility, wherein the Subrecipient determines whether it has reasonable assurances that a Contractor is responsible, is an important part of the procurement process, promoting fairness in contracting, mitigating contract issues, and protecting the Contractor and the Subrecipient against failed contracts. In making such a responsibility determination, the Subrecipient shall evaluate the Contractor's responsibility with respect to four factors: (i) financial and organizational capacity; (ii) legal authority to do business in New York State; (iii) integrity; and (iv) previous performance.

20. **SUSPENSION OF WORK (for Non-Responsibility).** The Subrecipient reserves the right to suspend any or all activities under this Contract, at any time, when the Subrecipient 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. Contract activity may resume at such time as the Subrecipient issues a written notice authorizing a resumption of performance under the Contract.

21. **TERMINATION (for Non-Responsibility).** Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Subrecipient staff, the Contract may be terminated by the Subrecipient at the Contractor's expense where the Contractor is determined by the Subrecipient to be non-responsible. In such event, the Subrecipient may complete the contractual requirements in any manner they deem advisable and pursue available legal or equitable remedies for breach.

22. **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 NonResponsive 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 Subrecipient.

During the term of the Contract, should the Subrecipient receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Subrecipient 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 Subrecipient 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 Subrecipient 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.

### PART III: INSURANCE

---

- G. Unless otherwise directed by GOSR, Contractor shall procure and maintain without interruption, at its sole cost and expense, during the term of this Agreement (or any extensions thereof) and for a period of two years thereafter, insurance of the type, and with limits and deductibles, as follows:

- a. Commercial General Liability Insurance and Excess Liability Insurance. Providing both bodily injury (including death) and property damage insurance with limits in the aggregate and per occurrence in accordance with the following table:

Contract Value	Commercial General Liability in combination with Excess (Umbrella) Liability	
	Each Occurrence	General Aggregate
< \$10M	\$2,000,000	\$2,000,000
>\$10M - \$50M	\$5,000,000	\$5,000,000
>\$50M	\$10,000,000	\$10,000,000

Such insurance is to be written on an occurrence basis with defense outside of limits. New York State, the New York State Housing Trust Fund Corporation, and the Subrecipient shall each be named as an additional insured. The minimum required level of insurance may be provided through a combination of commercial general liability and umbrella and/or excess liability policies.



- b. Automobile Liability and Property Damage Insurance. In an amount not less than One Million Dollars (\$1,000,000) combined single limit for both Bodily Injury and Property Damage.
  - c. Professional Liability. If the Contractor is engaged in providing professional services under this Agreement, professional errors and omissions coverage with a limit not less than Two Million Dollars (\$2,000,000) in the aggregate and One Million Dollars (\$1,000,000) per occurrence. If the Contractor is not engaged in providing professional services under this Agreement, this professional errors and omissions coverage is not required.
  - d. Worker's Compensation. Covering workers' compensation and employers' liability and disability benefits as required by the State of New York.
- H. In addition to the foregoing, Contractor and any subcontractors shall procure and maintain any and all insurance which is required by any applicable current or future law, rule, regulation, ordinance, permit, license, order or other legal requirement.
- I. All insurance shall be primary and non-contributory and shall waive subrogation against GOSR and the Subrecipient and all of either of their former, current, or future officers, directors, and employees. No deductible of more than \$50,000 shall be permitted without advance written approval by GOSR, which GOSR may withhold, condition or deny in its sole and exclusive discretion.
- J. The Contractor shall provide Certificates of Insurance to GOSR and the Subrecipient prior to the commencement of work and shall provide full and complete copies of the actual policies and all endorsements upon request. Subcontractors under this Agreement shall be required to maintain insurance meeting all of the requirements set forth in Section A above for items a-d; however Contractor shall require subcontractors to maintain greater limits and/or other or additional insurance coverages if greater limits and/or other or additional insurance coverages are (a) generally imposed by the Contractor given its normal course of business for subcontracts for similar work or services to those being provided by the subcontractor at issue; or (b) reasonable and customary in the industry for similar work or services to those anticipated hereunder.
- K. If the above insurance requirements are potentially excessive because they exceed the type and/or amount of insurance which is reasonable and customary for similar work or services in the same general geographic area, Contractor shall, within fifteen (15) calendar days of the execution of this Agreement, provide written notice of the same to GOSR, along with a written summary of the type and amount of insurance Contractor believes is reasonable and customary for similar work or services in the same general geographic area. GOSR may, in GOSR's sole and exclusive discretion, but is under no obligation to, waive, decrease, or otherwise alter or amend the insurance requirements in light of this notice. However, notwithstanding anything to the contrary herein, nothing in this paragraph requires or shall be deemed to require GOSR to waive, decrease, alter or amend, in whole or in part, any insurance requirements as a result of the foregoing notice from Contractor or for any other reason, and no waiver, decrease, alteration or amendment shall be made except as approved in advance and in writing by GOSR.
- L. If the above insurance requirements are potentially inadequate because they do not meet or exceed the type and/or amount of insurance which is reasonable and customary for similar work or services in the same general geographic area, Contractor shall, within fifteen (15) calendar days of the execution of this Agreement, provide written notice of the same to GOSR, along with a written summary of the type and amount of insurance Contractor believes is reasonable and customary for similar work or services in the same general geographic area. GOSR may, in GOSR's sole and exclusive discretion, but is under no

obligation to increase, supplement, expand, or otherwise alter or amend the insurance requirements in light of this notice. However, notwithstanding anything to the contrary herein, nothing in this paragraph requires or shall be deemed to require GOSR to increase, supplement, expand, or otherwise alter or amend, in whole or in part, any insurance requirements as a result of the foregoing notice from Contractor or for any other reason, and no increase, supplement, expansion or other alteration or amendment shall be made except in an amendment to this Agreement, as approved in advance and in writing by GOSR.

#### PART IV: REPORTING

---

**Elation Systems, Inc.** is a provider of cloud-based diversity and labor compliance reporting and management services. The Governor's Office of Storm Recovery (GOSR) has adopted this webbased compliance management system to help all of its Contractors, Subrecipients, and Subrecipient's Contractors receiving federal funds to adhere to Labor Compliance (DavisBacon), Minority and Women Owned Business (MWBE) and Section 3 reporting requirements.

Contractors, Subrecipients, and Subrecipient's Contractors must comply with instructions from GOSR on how and when to meet all reporting requirements, and how to utilize Elation to satisfy those requirements.

To this end, all Contractors, Subrecipients, and Subrecipient's Contractors must register with Elation Systems and attend an online training on the use of this tool. GOSR offers a series of virtual training events. GOSR requires all parties receiving federal funds through GOSR programs to use the Elation Systems application to make reporting requirements easier, faster and simpler to complete.

Prior to participating in training, it is necessary to create an Elation account. An account may be created at <https://www.elationsys.com/app/Registration/>.

Questions related to reporting requirements should be directed to GOSR's Monitoring and Compliance team at [stormrecovery.dl.gosr-monitoring&compliance@stormrecovery.ny.g](mailto:stormrecovery.dl.gosr-monitoring&compliance@stormrecovery.ny.g)

## EXHIBIT B: SUPPLEMENTARY INFORMATION – 30% DESIGN REPORT

---

**To:** Wendy Walsh, Tioga County Soil and Water Conservation District

**From:** Candice Constantine, PhD, PE; Zach Sudman, EIT

**Date:** December 31, 2019; Revised January 15, 2020

**Re:** Regional Susquehanna River Initiative Floodplain Management and Stream Restoration – 30% Design Submission for Fuller Hollow Creek: Project FH-7800

---

### EXECUTIVE SUMMARY

Based on field and desktop evaluations, the Inter-Fluve design team has developed a conceptual plan for Fuller Hollow Creek downstream of Stair Park to establish grade control and reduce sediment contribution from the banks. The incised channel bed will be reconstructed over approximately 670 feet using large rock to form a roughened channel that will be more resistant to erosion than the existing channel bed, and the over steepened right bank will be regraded to a more stable slope.

### 1. INTRODUCTION

Inter-Fluve Engineering and our partners Fuss & O'Neill and Integrated Aquatic Sciences were contracted by Tioga County Soil and Water Conservation District (TCSWCD) to assess current conditions in the Fuller Hollow Creek watershed, describe flood-related vulnerabilities, and identify opportunities for both infrastructure and natural systems options for mitigating flood impacts and increasing community resilience. As a part of this work, we used a scoring procedure to rank proposed site-specific construction projects that would be eligible for implementation using the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant-Disaster Recovery (CDBG-DR) funding secured by TCSWCD. A public meeting was hosted by Broome County Soil and Water Conservation District in Binghamton, New York on June 13, 2019 to solicit feedback on a draft version of the assessment report, including a short list of recommended projects. The proposed project (FH-7800) was selected based on ranking, available funding, and partner and public feedback. A brief background of the site is provided below. Additional project background, information on the assessment process, and the full list of recommendations can be found in the final background report (Inter-Fluve Engineering 2019).

In recent years, Fuller Hollow Creek has experienced several instances of extreme flooding, most notably during Tropical Storm Lee in September of 2011. Flood impacts to Fuller Hollow Creek immediately downstream of Stair Park included substantial channel incision and bank erosion. The rate and timeline of erosion through the project reach has not been well documented, and there are no surveyed historical bed elevation data for reference. However, as evidenced by existing efforts to

stabilize the banks (large riprap, gabion baskets, concrete debris), it appears that Fuller Hollow Creek has been experiencing problems caused by incision for many years. The incision has reached a point at which the adjacent slopes have become compromised in some areas, which has caused mass wasting of the slopes into the channel. These mass wasting events have been observed to block the creek completely until large flows are able to transport the material downstream. Failure scars and scarps present along the tall bank on river right were observed and surveyed during site visits for this project. The purpose of this memo is to provide a narrative and cost estimate for this project FH-7800; a grade control and bank stabilization project, which was selected for 30% design.

## 2. NARRATIVE

### 7.4.1.1.1 PROJECT GOALS

Fuller Hollow Creek immediately downstream of Stair Park is highly entrenched where it passes through a residential neighborhood. Active bank failures are present along both banks. The primary goal of the project is to reduce erosion and sediment contribution to downstream reaches from a stretch of Fuller Hollow Creek extending from Stair Park at the upstream end to approximately 670 feet downstream. Objectives of the project include:

- Establish grade control and slowing rates of incision;
- Stabilize stream banks; and
- Protect private property within the project reach.

Performance criteria were set at the outset of the design process and in collaboration with the project partners and are summarized below.

- A proactive approach to grade control and bank stabilization will be pursued at this site.
- Because of the narrow width of the incised channel, rock grade control will be designed at this site.
- The risk of scour and undermining will be managed by appropriately designing structure extents and elevations to fit the context of the stream's overall longitudinal profile and trajectory of adjustment.
- Proactive bank stabilization is likely to include regrading banks to more stable angles where space allows and constructing lower banks using biotechnical methods including native seeding and planting.
- Proximity of permanent structures may limit the scope of work at some locations. Adequate buffers will be maintained around permanent structures to remain. Currently at-risk outbuildings such as sheds may require relocation.
- The stream is not a trout stream and there is a natural barrier immediately upstream of the site; therefore, fish passage is not a primary design consideration. Grade control will be designed to improve habitat conditions in the reach for other aquatic species.
- Invasive species (Japanese knotweed) at the site will be managed before and during construction to reduce the presence at the site and prevent spreading.
- Potential impacts to environmental, historical, and cultural resources will be investigated by GOSR as part of the SEQR process. Implications for design will be incorporated into the final (100%) designs.

The following design criteria accompany the above performance criteria:

- Grade control measures and bank construction will be designed to limit vertical and lateral adjustment up through a 100-year flood peak plus 20% to account for climate change in line with recommended design flow multipliers for eastern New York (NYS DEC 2018).
- The size and shape (i.e., angular vs. rounded) of the rock used to construct the grade control will be determined by the hydraulic conditions at the above design flow. Rounded river stone will be used if conditions are suitable.
- Final grade will be at or above existing grade.
- Where temporary erosion control is necessary on newly graded bank slopes, 100% biodegradable products will be used.
- Seed and plants incorporated into the project will be appropriate native species of local origin.

#### 7.4.1.1.2 SCOPE OF WORK

The scope of work is shown on the concept design drawings appended as Attachment 1. The scope of this project is to reduce bed incision and bank erosion through the area experiencing mass wasting. We defined the longitudinal extent of the project based on field observations and features such as failure scarps and bluff height captured during our September 2019 topographical survey. The extent was set so that treatment extends downstream through the reach with a high bluff on river right that is susceptible to mass wasting. An appropriate tie-in location was selected to minimize the risk that the work would be undermined by head cuts progressing upstream. The resulting project extends from station 20+89 to station 14+18 for a total of approximately 670 feet.

Grade control and bed stabilization will be achieved through construction of a roughened channel at a slope of approximately 1.1% in the upstream reach (Reach 1) from station 20+89 to 18+69 and 3.5% in the downstream reach (Reach 2) from station 18+69 to 14+18. A bottom width of 24.5 feet was selected for the design channel to match upstream and downstream conditions, thereby minimizing abrupt hydraulic expansions or contractions. The lower banks will be sloped at 2:1.

The current conceptual design shows the regrading of the right bank to a more stable angle to reduce instability and to accommodate the design channel. Graded slopes will be no steeper than 2:1. A geotechnical engineer should be consulted in the next design phase to assess risks and opportunities associated with the proposed bank work and whether other stabilization measures may be required.

Approximately 4,500 tons of rock will be imported to construct the channel bed and lower banks. Placement of the imported rock and bank regrading will require excavation of approximately 13,100 cubic yards of native bed and bank material. Approximately 3,800 cubic yards of this material will be blended with the imported rock to achieve the design rock gradations shown on the drawings. The remaining volume, or approximately 9,300 cubic yards, will be removed off site. Earthwork details, including volumes, will be refined in future design phases.

#### 7.4.1.1.3 LAND ACQUISITION

The work will affect an estimated 18 parcels, 17 of which are privately owned. The parcel at the upstream extent of the project includes Stair Park and is owned by the Town of Vestal. Construction work will take place primarily within the existing channel with grading focused mainly on the right bank. The limits of grading will be refined in future design phases with input from a geotechnical engineer. Affected landowners should also be consulted. The site will be accessed from the southern end of Lehigh Avenue via the Town of Vestal parcel. The dead end on Lehigh Avenue provides a potential staging area.

### 3. CODES, STANDARDS, AND REFERENCES

#### 7.4.1.1.4 DESIGN STANDARDS AND REFERENCES

##### **Geomorphology**

The project area is immediately downstream of a bedrock falls at Stair Park. Approximately 1,700 feet downstream of the park, the concrete invert beneath the Washington Drive bridge provides a local grade control for the channel. The project site is the upstream 670 feet of this stretch of channel where the right bank is formed by a steep hillslope mapped as till. Past rotational failures of the slope have left scarps near the top of the bank.

Field observations and anecdotal information from local residents suggest that the project site receives a supply of coarse sediment from upstream, which makes its way through Stair Park and over the falls. The existing channel through the project site is highly entrenched and contains flows well in excess of the 100-year flood peak. The channel lacks defined bedforms.

The designs currently show construction of a roughened channel. The upstream approximately 220 feet of the new channel from station 20+90 downstream to station 18+68 will be constructed at approximately 1% slope with the remaining channel length constructed at 3.5% slope. The existing channel longitudinal profile is slightly convex; therefore, a break in the slope is necessary to tie into upstream and downstream bed levels and ensure that final grade is at or higher than existing grade.

It is likely that at approximately 3.5% gradient, a boulder and cobble bed channel would naturally form a step-pool morphology. With the import of boulders and cobbles as part of the project, it is anticipated that irregularities may form on the bed surface. The formation of steps and pools may be facilitated by particular placement of large boulders during bed construction; this detailed level of design will be developed in future design phases.

Fuller Hollow Creek is a heavily modified system that lacks suitable reference reaches for design. Channel width was therefore set to minimize abrupt hydraulic conditions at the upstream and downstream extents of the work.

#### 7.4.1.1.5 Hydrology

Fuller Hollow Creek is a tributary of the Susquehanna River. The majority of the Fuller Hollow Creek watershed sits within the Town of Vestal, New York, with the southeast portion in the Town of Binghamton. The watershed is small (3.62 square miles), but has high relief, with a maximum elevation of 1,526 feet and an outlet at 820 feet. The mainstem of Fuller Hollow Creek is fed by five primary tributaries. The mainstem is approximately 3.2 miles long (Inter-Fluve Engineering 2019).

USGS StreamStats, which estimates peak flows for a range of recurrence intervals using regional regression equations derived from stream gage data, was used to estimate peak flood discharges on Fuller Hollow Creek. The drainage was delineated from the point just upstream of Washington Drive. The peak flood discharges were then increased by 20% to account for climate change in line with NYS DEC (2018) guidance and were used as inputs to the hydraulic model (Table 1).

**Table 1. Design peak flows for Fuller Hollow Creek**

	10-year	50-year	100-year
USGS StreamStats Results	542	928	1,120
Flows increased 20% per NYS DEC	647	1,106	1,332

#### 7.4.1.1.6 Existing Hydraulics

Existing hydraulics were modeled to develop a baseline understanding of Fuller Hollow Creek flows through the project reach. The analysis was completed using the one-dimensional hydraulic model HEC-RAS. The model geometry was developed using data from Inter-Fluve's September 2019 survey of bathymetric, topographic, and bridge data merged with LiDAR collected in 2007 (Terrapoint USA 2008). The existing conditions model was developed with 41 cross sections derived from survey data and 11 additional cross sections using elevations from surface interpolation between surveyed cross sections.

Roughness coefficients (Manning's n values) applied at each model cross section were estimated based on field observations, published reference values, the Acrement and Schneider method (1989), and the Jarrett equation (1985). The Manning's n was estimated to be 0.08 for the channel and 0.1 for the side slopes.

#### 7.4.1.1.7 Design Hydraulics

The existing conditions HEC-RAS model was modified to simulate the design and anticipated future hydraulic conditions in the channel. A design surface was developed in AutoCAD Civil 3D 2018 and was used in HEC-RAS to model post-construction hydraulic conditions. New roughness coefficients (Manning's n values) corresponding to the proposed channel and bank design were estimated to be 0.09 for the channel and 0.12 for the side slopes. The increase in Manning's roughness for the

channel results from the increase in proposed substrate size, as well as the increase in bedform roughness. The increase in Manning's roughness for the side slopes was based on the assumed increase in roughness caused by future vegetation coverage.

Results from the modeling show the impacts of the project on water surface elevations, velocities, and shear stresses throughout the project reach; and provide input into the channel and bank designs. Predicted average channel shear stresses for design conditions are highest during the future 100-year flood event and range from 4.3 to 12.4 pounds per square foot, with higher values occurring in Reach 2 where the design slope is 3.5%. Predicted shear stresses were used to size and dimension the bed material and rock bank protection for the lower banks.

#### 7.4.1.1.8 Rock Sizing

Moment Stability Analysis (Julien 2010) was used to determine the incipient motion rock size corresponding to the modeled proposed conditions shear stresses. The incipient motion size was then used as the  $D_{50}$  of the rock gradation. The gradation was based on FHWA HEC-11 rock gradation (FHWA 1989) for  $D_{50}$  up to  $D_{100}$  and the Fuller Thompson gradation for  $D_5$  to  $D_{50}$  which is designed to minimize void spaces within the mixture. There were two gradations calculated, one for Reach 1 at the upstream end of the project which has a lesser longitudinal slope of 1.1%, and another for Reach 2 which has a greater longitudinal slope of 3.5%. Estimated rock sizes are summarized in Table 2.

**Table 2. Design rock sizes**

	Median Grain Size Diameter $D_{50}$ (inches)	Maximum Grain Size Diameter $D_{100}$ (inches)
Reach 1	24 – 28	36 – 41
Reach 2	36 – 41	54 – 61

A sensitivity test was carried out to determine the effect of choice of Manning's  $n$  value on predicted shear stresses and rock sizing. We reduced Manning's  $n$  to 0.07 in the channel and on the side slopes and repeated the design conditions simulation for the future 100-year event. The change had the effect of reducing predicted flow depths and average channel bed shear stresses. Revised predictions in average channel shear stresses for design conditions during the future 100-year flood event range from 3.6 to 11.0 pounds per square foot. The corresponding design rock sizes would be a lower  $D_{50}$  of 16 inches in Reach 1 and 32 inches in Reach 2. The more conservative result (i.e., stability and cost) with the larger rock sizes shown in Table 2 was used in the 30% design. Hydraulic modeling and rock sizing will be revisited in future design phases to look for potential cost savings.



#### 7.4.1.1.9 FEDERAL, STATE, AND LOCAL ENVIRONMENTAL PERMITTING REQUIREMENTS

We anticipate this project will require the following permits:

- New York State Department of Environmental Conservation (NYS DEC) Protection of Waters (Stream Disturbance) Permit;
- NYS DEC Section 401 Water Quality Certification;
- U.S. Army Corps of Engineers Nationwide Permit 27 or Individual Permit; and
- Local Floodplain Development Permit.

Investigation of historical/ cultural resources and impacts to threatened or endangered species will need to be carried out to determine whether permits covering these areas will be required.

## 4. ENVIRONMENTAL CONSIDERATIONS

Environmental permitting has not yet been carried out for the project. Applicable recommendations in the Environmental Review Guidance for Community Development Block Grant-Disaster Recovery (CDBG-DR) Funded Projects include:

- Plant hardy and flood-resistant native species on riverbanks to stabilize soil and strengthen the riparian buffer;
- Use biodegradable erosion control blankets to provide temporary erosion protection during vegetation establishment; and
- Design standards should incorporate flood peaks taking into consideration climate change over the life of the project.

We have incorporated these recommendations as described in previous sections. Potential environmental impacts will be considered further during the SEQOR process. The information below was gathered during the initial assessment phase (Inter-Fluve Engineering 2019) and has been used to inform the design to date.

Fuller Hollow Creek has been assigned a C classification, defined as waters supporting fisheries and suitable for non-contact activities. Fuller Hollow Creek does not have a classification that would indicate the ability to support trout; therefore, the proposed design does not prioritize fish passage or habitat requirements for supporting trout. However, the typical section was designed such that low flows will concentrate at the low point of the channel. This will provide habitat for aquatic and riparian plants and animals while not adding construction implementation cost of constructing an appropriately sized bank full channel. The rock gradation was developed to minimize the amount of void spaces in the placed material. The goal of this is to increase the stability of the rock, and to mitigate the risk of the stream flowing sub-surface during periods of low flow. We anticipate that hydraulic and substrate complexity will develop naturally over time as material is deposited from upstream and smaller grain sizes are reorganized by the flow. Inclusion of strategically placed boulders for habitat enhancement will be considered in a future design phase.

Records available from the New York Natural Heritage Program (NHP) indicate occurrences of rare plants and animals. The NHP database was searched via NYS DEC's Nature Explorer for the Town of Vestal and Binghamton and identified the presence of eight recorded rare, threatened and endangered species (Inter-Fluve Engineering 2019). These species may be present throughout the watershed, and potential impacts of the project should be considered and mitigated against in future design and construction phases.

In addition to understanding the unique habitats of rare or protected species, our review of existing data included the presence of invasive species. Broome County is currently identified as a quarantine county for the invasive insect emerald ash borer (EAB), which attacks ash trees. There are ash trees currently within the project reach. Care should be taken to avoid damage to ash trees not marked for removal, and ash trees removed as part of the project must be disposed of in accordance with all local and state regulations to eliminate the potential for transporting EAB.

Another invasive insect is the hemlock wooly adelgid (HWA). We did not observe hemlock trees within the project area, but there are hemlocks upstream of the project within Stair Park. Care should be taken to avoid damage to hemlock trees not marked for removal, and hemlock trees removed as part of the project must be disposed of in accordance with all local and state regulations to eliminate the potential for transporting HWA.

Japanese knotweed was observed within the project area. In order to prevent spreading the invasive species during construction, the contractor will be required to take great care in removing and disposing of the plants, as well as over excavating and disposing of the surrounding sediment. Prior to mobilization, the contractor will be required to submit an invasive species management plan for approval.

Existing trees within the vicinity of the project and greater than 12 inches in diameter are shown on Sheet 1 of the appended conceptual drawings. A revegetation plan using native woody species will be developed in future design phases.

## **5. REFERENCES**

- Acrement, G., and Schneider, V. 1989. Guide for selecting Manning's roughness coefficients for natural channels and flood plains. Water Supply Paper 2339. United States Geological Survey.
- Federal Highway Administration. 1989. HEC 11 – Design of Riprap Revetment SI.
- Fuller, W., and Thomson, S. 1907. The Laws of Proportioning Concrete. Transactions of the American Society of Civil Engineers.
- Fuss & O'Neill. 2019. Memorandum, Regional Susquehanna River Initiative Floodplain Management and Stream Restoration Assessment and Design, Road-Stream Crossing Assessment – Fuller Hollow Creek Watershed.
- Inter-Fluve Engineering. 2019. Fuller Hollow Creek Background Report. Prepared by Inter-Fluve Engineering in partnership with Integrated Aquatic Sciences and Fuss & O'Neill. Submitted to Tioga County Soil and Water Conservation District. August 6, 2019.

Jarrett, R. 1985. Determination of Roughness Coefficients for Streams in Colorado. Water-Resources Investigations Report 85-4004. United States Geological Survey.

Julien, P. 2010. Erosion and Sedimentation. Cambridge University Press.

[NYS DEC] New York State Department of Environmental Conservation. 2018. Draft New York State Flood Risk Management Guidance for Implementation of the Community Risk and Resiliency Act. 108 p.

Terrapoint USA. 2008. New York State LiDAR Survey – Delaware and Susquehanna River Basin. Collected 2007.