

New York State Department of Environmental Conservation

Division of Water

Bureau of Program Resources, 4th Floor

625 Broadway, Albany, New York 12233-3507

Phone: (518) 402-8267 • FAX: (518) 402-9029

Website: www.dec.ny.gov



Joe Martens
Commissioner



Mr. Abraham J. Zambrano
Village Manager
Village of Croton-on-Hudson
One Van Wyck Street
Croton-on-Hudson, New York 10520

JAN 25 2012

Dear Mr. Zambrano:

Enclosed are five (5) copies of the proposed Amendment No.2 to Contract No.C302514. This amendment is for the Design & Construction of a Retention and Urban Runoff Sediment Erosion Control System project and extends the contract end date from August 31, 2011 to December 31, 2013. In addition, a new Appendix A and a revised Appendix B have been added. There is no change in the dollar amount of the contract or to the scope of work or budget line item(s) included in Appendix C.

This contract amendment requires the notarized signature of the authorized representative. Your original resolution designates the Village Manager as the authorized representative (copy enclosed). If there has been any change, please forward a new municipal resolution with original signature and raised seal when you return the proposed contract. Please return the five (5) original signed and notarized amendments as soon as possible to my attention at: NYSDEC, Division of Water, 625 Broadway, 4th Floor, Albany, NY 12233-3507.

The contract amendment will then be reviewed by representatives of the Commissioner of Environmental Conservation, the State Attorney General and the Office of the State Comptroller prior to execution.) An executed copy of this contract amendment will be returned to you for your records.

Any administrative questions should be referred to me at (518) 402-8224. Any technical questions should be referred to Natalie Browne, Regional Project Manager at (914) 428-2505.

Thank you for your efforts in preventing and protecting New York State's waters from pollution.

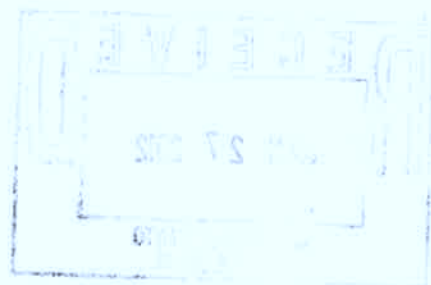
Sincerely,

Karen Dauphinais
Environmental Program Specialist 1
Fiscal & Human Resources Planning and Management
Division of Water

Enclosures

c: w/letter only:

N. Browne, Regional Project Manager, NYSDEC, Region #3, White Plains
S. June, NYSDEC, M/WBE Program Office, Albany



ST05

C302514
2003WQI 6079

1996 Clean Water/Clean Air Bond Act – title 3 Section 56-0303
Water Quality Improvement Projects and Environmental Protection Fund Article 17-14
Environmental Conservation Law; Performance Partnership Grants Public Law 104-134
Nonagricultural Nonpoint Source Projects

On motion of TRUSTEE Kane, seconded by TRUSTEE Wiegman, the following resolution was adopted by the Board of Trustees of the Village of Croton-on-Hudson, New York:

WHEREAS, the Village of Croton-on-Hudson, herein called the "Municipality," after thorough consideration of the various aspects of the problem and study of the available data, has hereby determined that certain work, as described in its application and attachments, herein called the "Project", is desirable, is in the public interest, and is required in order to implement the Project; and

WHEREAS, Article 56 of the Environmental Conservation Law authorizes State assistance to municipalities for water quality improvement projects by means of a contract and the Municipality deems it to be in the public interest and benefit under this law to enter into a contract therewith,

NOW, THEREFORE BE IT RESOLVED: by the Village Board of Trustees that the Village Manager is the representative authorized to act in behalf of the Municipality's governing body in all matters related to State assistance under the ECL Article 56, Title 3. The Village Manager is also authorized to make application, execute the State Assistance Contract, submit Project documentation, and otherwise act for the Board of Trustees in all matters related to the Project and to State assistance,

AND BE IT FURTHER RESOLVED: that the Municipality agrees that it will fund its portion of the cost of the Project and that funds will be available to initiate the Project's field work within twelve (12) months of written approval of its application by the Department of Environmental Conservation;

AND BE IT FURTHER RESOLVED: that one (1) certified copy of this Resolution be prepared and sent to the Albany office of the New York State Department of Environmental Conservation,

AND BE IT FURTHER RESOLVED: that this Resolution take effect immediately.

September 13, 2004

Certified Copy

9/20/2004 Date

Margaret Keese

Deputy Village Clerk/Village Clerk

CERTIFICATE OF RECORDING OFFICER

That the attached Resolution is a true and correct copy of the Resolution, as regularly
adopted at a legally convened meeting of the Village of Croton on Hudson Board of Trustees
(Name of Governing Body of Applicant)
duly held on the 13th day of September, 2004; and further that such Resolution
has been fully recorded in the 2004 Village Board Minutes in my office.
(Title of Record Book)

In witness thereof, I have hereunto set my hand this 20th day of
September, 2004.

Margaret Keesel
Signature of Recording Officer

If the Applicant has an Official Seal, Impress here.

Village Clerk
Title of Recording Officer

SECOND AMENDMENT TO CONTRACT NO: C302514
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WATER QUALITY IMPROVEMENT PROJECTS
STATE ASSISTANCE CONTRACT

PROJECT NAME: Design & Construction of a Retention and Urban Runoff Sediment
Erosion Control System
PROJECT NO: 2003WQI6079
MUNICIPALITY: Village of Croton-on-Hudson
COUNTY: Westchester

This CONTRACT, ("Second Amendment"), made between the New York State Department of Environmental Conservation (hereinafter "Department"), acting for and on behalf of the State, and the Village of Croton-on-Hudson (hereinafter "Municipality"), with offices located at One Van Wyck Street, Croton-on-Hudson, New York 10520.

WITNESSETH

WHEREAS, the Department and the Municipality entered into a contract ("Original Contract") on May 9, 2005, which was duly assigned Contract No: C302514 and amended by Amendment #1 on October 06, 2009 by the Comptroller of the State of New York; and

WHEREAS, the Department is authorized under Bond Acts enacted in 1965, 1972 and 1996 and the Environmental Protection Fund, as well as federal grant awards available for such projects, more specifically Environmental Conservation Law ("ECL") Articles 17, 51 and 56 ("Articles") and/or any applicable federal grant provisions ("grant provisions"), to enter into State Assistance contracts with municipalities and county water and soil districts to provide State Assistance (as defined in the Original Contract) to Recipients for Water Quality Improvement Projects; and

WHEREAS, Section 11 of the Original Contract authorizes amendments to said Original Contract;

WHEREAS, circumstances necessitate a modification of the Original Contract and the parties desire to amend said Original Contract.

NOW THEREFORE, in consideration of the mutual covenants, promises, representations, and conditions made herein, the parties agree that the Original Contract is hereby revised as follows:

- I. Section 2 of the Original Contract, entitled "Term and Effective Date," is hereby repealed and rescinded in its entirety and is replaced with the following:
 2. **Term and Effective Date.** This Contract shall commence on September 1, 2004, the approved start date ("Commencement Date") set forth in the project schedule

section of the Project Workplan, and shall terminate on December 31, 2013. In accordance with Section 16 of this Contract, certain provisions of this Contract shall survive the termination of this Contract. This Contract shall be effective upon the approval of the Comptroller.

- II. Appendix "C" of the Original Contract is hereby amended to make any and all changes necessary to conform with the time extension amendment set forth in Section I above.
- III. Appendix A, dated June, 2006 is hereby deleted, and Appendix A, dated December, 2011 is attached hereto.

Appendix B, dated April 17, 2000 is hereby deleted, and revised Appendix B, dated April 17, 2000 is attached hereto.

- IV. Payments for expenditures incurred under this contract will be rendered electronically to the Recipient unless payment by paper check is expressly authorized by the Commissioner of the Department (Commissioner), in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Recipient shall comply with the Comptroller's procedures to authorize electronic payments. Authorization forms are available at the Comptroller's website at www.osc.state.ny.us/epay/index.htm, by e-mail at epunit@osc.state.ny.us or by telephone at (518) 402-4067. The Recipient acknowledges that it will not receive payment under this Contract if it does not comply with the Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.
- V. This Second Amendment will be effective upon approval and filing by the State Comptroller in accordance with Section 112 of the State Finance Law.
- VI. Except as specifically modified herein, all terms and conditions of the Original Contract remain in full force and effect.

CONTRACT SIGNATURE PAGE

Recipient: Village of Croton-on-Hudson

Contract No.: C302514

Recipient Signature section:

Authorized Representative: _____
(typed/printed name)

Signature: _____ **Date:** _____

Title: _____

RECIPIENT ACKNOWLEDGMENT:

STATE OF NEW YORK)

)SS.:

COUNTY OF _____)

On the _____ day of _____, in the year 20_____, before me, the undersigned notary public, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC

NYSDEC Certification: "In addition to the acceptance of this contract, I also certify that original signature pages will be attached to other exact copies of this contract."

NYSDEC Signature: _____ **Date:** _____

Attorney General's Signature:

Approved:
Thomas P. DiNapoli
State Comptroller

By: _____

By: _____

Date: _____

Date: _____

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are

required to be covered by the provisions of the Workers' Compensation Law.

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

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

Contractor has been informed and is in compliance with the provisions regarding use of tropical woods as detailed in §165 State Finance Law. Any such bid must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under the provisions, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby certifies 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 and 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.

OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as vendors, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development
Division for Small Business
100 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
http://www.empire.state.ny.us

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
100 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
http://www.empire.state.ny.us

The Omnibus Procurement Act of 1992 requires that by accepting this bid proposal or contract, as applicable, the Contractor certifies that whenever the total bid amount is more than \$1 million:

The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as vendors and subcontractors, including certified minority and women-owned business enterprises, on this project, and has

retained the documentation of these efforts to be provided upon request to the State;

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

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

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

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

APPENDIX B

Standard Clauses for All New York State Department of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. Postponement, suspension, abandonment or termination by the Department: The Department shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall immediately stop work, take steps to incur no additional obligations, and to limit further expenditures. Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

II. Indemnification and Holdharmless The Contractor agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractors in the performance of this contract. The Department and the State of New York may retain such monies from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the Department and/or the State of New York.

III. Conflict of Interest (a) Organizational Conflict of Interest. To the best of the Contractor's knowledge and

belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) **Personal Conflict of Interest:** The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual, or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management

or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.

(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) Remedies - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or

misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.

(f) Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

(1) The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

(2) The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

IV. Requests for Payment All requests for payment by the Contractor must be submitted on forms supplied and approved by the Department. Each payment request must contain such items of information and supporting documentation as are required by the Department, and shall be all-inclusive for the period of time covered by the

payment request.

V. Compliance with Federal

requirements To the extent that federal funds are provided to the Contractor or used in paying the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause.

VI. Independent Contractor The Contractor shall have the status of an independent contractor. Accordingly, the Contractor agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the Department by reason of this contract. It further agrees that it will not make any claim, demand or application to the Department for any right or privilege applicable to an officer or employee of the Department, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

VII. Article 15-A Requirements The terms contained in this clause shall have the definitions as given in, and shall be construed according to the intent of Article 15-A of the Executive Law, 5 NYCRR Part 140, et. seq., Article 52 of the Environmental Conservation Law and 6 NYCRR Part 615, et. seq., as applicable, and any goals established by this clause are subject to the intent of such laws and regulations.

(a) If the maximum contract price herein equals or exceeds \$25,000, and this contract is for labor, services, supplies, equipment, or materials; or

(b) If the maximum contract price herein equals or exceeds \$100,000 and this contract is for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; then

(c) The affirmative action provisions and equal employment opportunity provisions contained in this paragraph and paragraphs (d) and (e) of this clause shall be applicable within the limitations established by Executive Law §§312 and 313 and the applicable regulations.

(1) The Contractor is required to make good faith efforts to subcontract at least 6 % of the dollar value of this contract to Minority Owned Business Enterprises (MBEs) and at least 6 % of such

value to Women Owned Business Enterprises (WBEs).

(2) The Contractor is required to make good faith efforts to employ or contractually require any Subcontractor with whom it contracts to make good faith efforts to employ minority group members for at least 10 % of, and women for at least 10 % of, the workforce hours required to perform the work under this contract.

(3) The Contractor is required to make good faith efforts to solicit the meaningful participation by enterprises identified in the NYS Directory of Certified Businesses provided by:

Empire State Development Corp.
Div. Minority & Women's Business Development
30 South Pearl Street
Albany, New York 12245

Phone: (518) 292-5250

Fax: (518) 292-5803

and

Empire State Development Corp.

633 Third Avenue

New York, NY 10017

Phone: (212) 803-2414

Fax: (212) 803-3223

internet: www.empire.state.ny.us/esd.htm

(d) The Contractor agrees to include the provisions set forth in paragraphs (a), (b) and (c) above and paragraphs (a), (b), and (c) of clause 12 of Appendix A in every subcontract in such a manner that the provisions will be binding upon each Subcontractor as to work under such subcontract. For the purpose of this paragraph, a "subcontract" shall mean an agreement providing for a total expenditure in excess of \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon in which a portion of the Contractor's obligation under a State contract is undertaken or assumed.

(e) The Contractor is required to make good faith efforts to utilize the MBE/WBEs identified in the utilization plan to the extent indicated in such plan, and otherwise to implement it according to its terms. The Contractor is requested to report on such implementation periodically as provided by the contract, or annually, whichever is more frequent.

VIII. Compliance with applicable laws

(a) Prior to the commencement of any work under this contract, the Contractor is required to meet all legal requirements necessary in the performance of the

contract. This includes but is not limited to compliance with all applicable federal, state and local laws and regulations promulgated thereunder. It is the Contractor's responsibility to obtain any necessary permits, or other authorizations. By signing this contract, the Contractor affirmatively represents that it has complied with said laws, unless it advises the Department otherwise, in writing. The Department signs this contract in reliance upon this representation.

(b) During the term of this contract, and any extensions thereof, the Contractor must remain in compliance with said laws. A failure to notify the Department of noncompliance of which the Contractor was or should have been aware, may be considered a material breach of this contract.

IX. Dispute Resolution The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

(a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.

(1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.

(2) The decision of the designated individual shall be the final agency determination, unless the Contractor files a written appeal of that decision with the designated appeal individual ("DAI") within twenty days of receipt of that decision.

(b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.

(1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or

(2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or

(3) Make a determination on the record as it exists.

(c) The decision of the DAI shall be the final agency decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee ("CRC") within twenty days of receipt of that decision.

The designated individual to hear disputes is:

Joseph DiMura, Director, BWC

(Name and Title)

NYSDEC, 625 Broadway, 4th floor, Albany, NY 12233-3506

(Address)

(518) 402-8177

(Telephone)

The designated appeal individual to review decisions is:

Alan Fuchs, Director, BFP&DS

(Name and Title)

NYSDEC, 625 Broadway, 4th floor, Albany, NY 12233-3504

(Address)

(518) 402-8185

(Telephone)

The Chair of the Contract Review Committee is:

Department of Environmental Conservation

Nancy W. Lussier, Chair

Contract Review Committee

625 Broadway, 10th Floor

Albany, NY 12233-5010

Telephone: (518) 402-9228

(d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.

(1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or

(2) Adopt the decision of the DAI; or

(3) Consider the matter for review by the CRC in accordance with its procedures.

(e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.

(f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Assistant Commissioner for Administration who shall render the final agency determination.

(g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of

Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.

(h) Final agency determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.

(i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.

(j) (1) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

(2) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

X. Labor Law Provisions

(a) When applicable, the Contractor shall post, in a location designated by the Department, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this project, a copy of all re-determinations of such schedules for the project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the site, the Department of Labor notice that this project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for their occupation, and all other notices which the Department directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the Department. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. Contractor shall post such notices before commencing any work on the site and shall maintain such notices until all work on the site is complete.

(b) When appropriate, contractor shall distribute to

each worker for this Contract a notice, in a form provided by the Department, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of Contractor and all Subcontractors and all employees of suppliers entering the site. Such notice shall be distributed to each worker before they start performing any work of this contract. At the time of distribution, Contractor shall have each worker sign a statement, in a form provided by the Department, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by the following paragraph (c).

(c) Contractor shall maintain on the site the original certified payrolls or certified transcripts thereof which Contractor and all of its Subcontractors are required to maintain pursuant to the New York Labor Law Section 220. Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to paragraph (b).

(d) Within thirty days of issuance of the first payroll, and every thirty days thereafter, the Contractor and every subcontractor must submit a transcript of the original payroll to the Department, which transcript must be subscribed and affirmed as true under penalty of perjury.

XI. Offset In accordance with State Law, the Department has the authority to administratively offset any monies due it from the Contractor, from payments due to the Contractor under this contract. The Department may also (a) assess interest or late payment charges, and collection fees, if applicable; (b) charge a fee for any dishonored check; (c) refuse to renew certain licenses and permits.

XII. Tax Exemption Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

XIII. Litigation Support In the event that the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation will be negotiated and based on rates established in the contract, or as may otherwise be provided in the contract.

XIV. Equipment Any equipment purchased with funds provided under this contract, shall remain the property of the Department, unless otherwise provided in the contract. The Contractor shall be liable for all costs for maintaining the property in good, usable condition. It shall be returned to the Department upon completion of the contract, in such condition, unless the Department elects to sell the equipment to the Contractor, upon mutually agreeable terms.

XV. Inventions or Discoveries Any invention or discovery first made in performance of this Contract shall be the property of the Department, unless otherwise provided in the contract. The Contractor agrees to provide the Department with any and all materials related to this property. At the Department's option, the Contractor may be granted a non-exclusive license.

XVI. Patent and Copyright Protection

If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

(a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

(1) prompt written notice of any action, claim or threat of infringement suit, or other suit, and

(2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and

(3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.

The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

(b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:

(1) procure for the Department the right to continue using the same item or parts thereof;

(2) modify the same so that it becomes non-infringing and of at least the same quality and performance;

(3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;

(4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

(c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.

(d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of: (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items; (2) alterations of the items by the Department; (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement; (4) use of items in combination with apparatus or devices not delivered by the Contractor; (5) use of items in a manner for which the same were neither designed nor contemplated; or (6) a patent or copyright in which the Department or

any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

(e) The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

XVII. Force Majeure The term Force Majeure shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war rebellion, sabotage or the like. If a failure of or delay in performance by either party results from the occurrence of a Force Majeure event, the delay shall be excused and the time for performance extended by a period equivalent to the time lost because of the Force majeure event, if and to the extent that:

(a) The delay or failure was beyond the control of the party affected and not due to its fault or negligence; and

(b) The delay or failure was not extended because of the affected party's failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome; and

(c) The affected party provides notice within (5) days of the onset of the event, that it is invoking the protection of this provision.

XVIII. Freedom of Information Requests The Contractor agrees to provide the Department with any records which must be released in order to comply with a request pursuant to the Freedom of Information Law. The Department will provide the contractor with an opportunity to identify material which may be protected from release and to support its position.

XIX. Precedence In the event of a conflict between the terms of this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B, and the terms of Appendix A, the terms of Appendix A shall control.

