



AGENDA
TUESDAY JANUARY 16, 2018
BOARD OF TRUSTEES
VILLAGE OF BRIARCLIFF MANOR, NEW YORK
REGULAR MEETING – 8:00 PM

Pledge of Allegiance

Board of Trustees Announcements

Village Managers Report

Public Comments

1. Budget Transfers
2. Acceptance of Donation from Kyle Kantor
3. Budget Amendment
4. Schedule a Public Hearing to Renew a Special Use Permit – Holy Innocents
5. Authorize Village Manager to Execute the Renewal of a Fire Protection Agreement with the Town of Ossining for Fire District 20
6. Minutes

**NEXT REGULAR BOARD OF TRUSTEES MEETING – WEDNESDAY,
FEBRUARY 7, 2018**

VILLAGE OF BRIARCLIFF MANOR
BOARD OF TRUSTEES AGENDA
JANUARY 16, 2018

1. BUDGET TRANSFERS-- 2017-2018

BE IT RESOLVED that the Board of Trustees does hereby authorize the following budget transfers for FY 2017-2018:

GENERAL FUND

From:	A0909	General Fund Balance - Unreserved	\$23,127
To:	A3120.202	Radio Equipment Purchase	\$23,127

WATER FUND

From:	F0909	Water Fund Balance - Unreserved	\$35,500
To:	F8320.211.PIPE	Water Pipe	\$35,500

BUDGET TRANSFER (FY 17-18) REQUEST FORM

Amount from:	Muni Code	Budget Line
\$ 23,127.00	A0909	General Fund Balance-Unreserved
Amount to:	Muni Code	Budget Line
\$ 23,127.00	A3120.202	Radio Equipment Purchase

Reason for Transfer Request: To allocate funds to make required upgrades to the PD communication system

Signature of Requesting Department Head


 Village Manager Approval

Date Signed

15 DEC 2017

Date Signed

12/15/17


 Village Treasurer Approval

Date Signed

If over \$10,000, Board of Trustees Approval Date:



New York State Contract Pricing

Motorola
 Metrocom
 Kevin Ronald
 31 Plainfield Ave.
 Bedford Hills, NY 10507
 914-244-3500 ext 101

Date December 12, 2017

Quotation valid for 90 days
 Prepared by: Kevin Ronald

Quotation For: Briarcliff Manor PD
 UHF Radio Links for 2 receivers
 HQ conversion to control station
 New Comparator

NEW YORK STATE CONTRACT - PT67405

LOT	APC	ITEM	QTY	MODEL	DESCRIPTION	LIST PRICE	SHIP DATE		Discount %
							6 weeks	TERMS: Net 30 days from invoice	
		1	2	AAM50RPC9AA1 N	CM200d 40 Watt UHF	\$ 586.00	\$ 439.50	\$ 879.00	25%
		2	2	AAM50RNC9AA1 N	CM200d 25 Watt UHF	\$ 526.00	\$ 394.50	\$ 789.00	25%
		3	3	RS30	Power Supplies	\$ 175.00	\$ 162.75	\$ 488.25	7%
		4	1	MCA108M	Receive Multicoupler	\$ 200.00	\$ 200.00	\$ 200.00	0%
		5	1	12127	Pre Amplifier	\$ 175.00	\$ 175.00	\$ 175.00	0%
		6	1	524013	Pre Selector	\$ 360.00	\$ 360.00	\$ 360.00	0%
		7	200	LFD-4A	Low Loss Antenna Feed Line	\$ 3.00	\$ 2.79	\$ 558.00	7%
		8	4	NMALE1/2	Connectors	\$ 33.00	\$ 30.69	\$ 122.76	7%
		9	2	570554	Ground Kit	\$ 22.00	\$ 20.46	\$ 40.92	7%
		10	2	IS-B50HN-C2-ME	Lighting Protector	\$ 85.00	\$ 79.05	\$ 158.10	7%
		11	2	JUMP10	Jumper Cable	\$ 55.00	\$ 51.15	\$ 102.30	7%
		12	2	YA6800W	Yagi Antenna	\$ 185.00	\$ 172.05	\$ 344.10	7%
		13	1		Omni Directional Antenna	\$ 95.00	\$ 88.35	\$ 88.35	7%
		14	30	#2	Ground Wire	\$ 5.00	\$ 4.65	\$ 139.50	7%
		15	4	Shop	Radio Programming	\$ 31.00	\$ 31.00	\$ 124.00	0%
		16	2	Field Service	Installation of Link Radios	\$ 750.00	\$ 750.00	\$ 1,500.00	0%
		17	1	343369	Signal & Noise Comparator	\$ 5,483.00	\$ 5,483.00	\$ 5,483.00	0%
		18	3	313300	Site Voter Module	\$ 989.00	\$ 989.00	\$ 2,967.00	0%
		19	1	Field Service	Install Link RX radios and Comparator	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	0%
		20	1	Field Service	Reconfigure Radio Console @ HQ	\$ 250.00	\$ 250.00	\$ 250.00	0%
		21	1	FCC	Radio License	\$ 750.00	\$ 750.00	\$ 750.00	0%

Notes:

TOTAL	\$	16,519.28
SALES TAX		n/a
GROUND SHIPPING		included

TOTAL \$ 16,519.28

Ed Ritter

From: EngineerAdmin
Sent: Thursday, December 14, 2017 4:01 PM
To: Philip Zegarelli; Donald Gorey; Ed Ritter
Cc: David Turiano
Subject: Village Cellular Facility 25 Scarborough Road
Attachments: Briarcliff Manor PD - UHF Links SNV12 (003).pdf

Gentlemen,

My office is working with the developer at the club project towards the development of the new cell tree at their premises. Recall that the village's existing water tank is planned to be demolished as the water function has been eliminated from this facility. Presently, the abandoned tank remains in place that serves as a tower to host the village's cellular tenants together with the VBM SCADA, Police, Fire and DPW Communication equipment. There is also some other ancillary equipment on the tank belonging to the Ossining PD and some other radio operator.

The Club and Andron Construction are in the process of removing the overhead utility poles on the premises that presently serve the water tank facility with power, telecom and CATV/Fiber Optic. Indeed, ConEd is scheduled to refeed the facility with new high voltage equipment next week.

The Fire Department Communications are one hundred percent (100%) radio frequency based (RF) and need power supply only. There are no issues in this regard.

The Police Department Communications are largely RF based, although there is an antiquated Verizon "dedicated line" that is utilized as a police hotline. This Hotline enables the PD to communicate with all Westchester based police departments in the event of a large scale emergency. This dedicated line, commonly referred to as a T1 Line or copper line, is older technology and becoming less and less serviceable by Verizon. Metrocom has advised me that the PSC is requiring that these lines be phased out.

Based on the above, it is recommended that the PD go one hundred percent RF, similar to the Fire Department. This would allow for seamless transition from the water tank to the new cell tree and would also make the village that much less reliant on Verizon and other carriers. Note that the Village's SCADA is one hundred percent wireless and trouble-free.

Attached please find a quote from Metrocom in the amount of \$16,519.28 to install the necessary radio link. This work involves new radio equipment at both PD headquarters and the water tank together with antennas and all other ancillary items. It is noted that NYS contract pricing is utilized for this proposal.

I would like to discuss this further at the next staff meeting.

Allie Cirrincione
For David J. Turiano, P.E.
Village of Briarcliff Manor
Building/ Engineering Department
1111 Pleasantville Road
Briarcliff Manor, NY, 10510
Phone # (914) 944- 2770
engineeradmin@briarcliffmanor.org

Briarcliff Manor PD
UHF Radio links for 2 receivers
HQ conversion to control station
New Comparator

Motorola (state contract)	\$16,519.28
Electrician-misc install	\$6,607.71
Funds required for project	<u>\$23,126.99</u>

BUDGET TRANSFER (FY 17-18) REQUEST FORM

Amount from:	Muni Code	Budget Line
\$ 35,500.00	F0909	Water Fund Balance-Unreserved
Amount to:	Muni Code	Budget Line
\$ 35,500.00	F8320.211.PIPE	Radio Equipment Purchase <i>Water Pipe</i>

Federal

Reason for Transfer Request: To allocate funds for the mapping, survey and engineering documents to replace the existing transite water main. *As preparation for permit submission*

Dalle Turan
Signature of Requesting Department Head

1-19-19
Date Signed

[Signature]
Village Manager Approval

9 Jan 2018
Date Signed

[Signature]
Village Treasurer Approval

1/10/18
Date Signed

If over \$10,000, Board of Trustees Approval Date:

Ed Ritter

From: EngineerAdmin
Sent: Monday, January 08, 2018 3:12 PM
To: Philip Zegarelli; Edward Torhan; Ed Ritter
Subject: Transite Water Main Replacement, Farm and North State Road

P2

The Village has been kicking around the idea of replacing the segments of transite water main, asbestos cement pipe (ACP) located in Farm Road and North State Road. To the best of the Village's knowledge and belief, we think that these two segments of ACP water main are the last remaining segments in the Village's system. To date, the Village has prepared some preliminary mapping of these mains that reveal approximate lengths as follows:

- 500 Linear Feet of 6 Inch ACP water main on Farm Road between Underhill Avenue and Macy Road
- 1,100 Linear Feet of 6 Inch ACP water main on North State Road between Chappaqua and Schrade Roads.

It is my recommendation that the Village perform the mapping coordination phase and the construction document phase of these projects at this time. With these documents in hand, the Village would be in a good position for grant funding in the event that a Federal Stimulus Grant Program or some other form of Infrastructure Project was authorized by the current federal administration. Recall in the past that the Village received such funding as it was "Shovel Ready" with its recent full supply water project.

At this time, it is my recommendation that the Village proceed with the utility mark-out, survey, and engineering phase 1 and 2 tasks, having a total approximately cost \$35,500.00.

Please advise as to your thoughts in this matter and available funding that could be utilized.

Thank you for your attention in this regard.

Professional Services, ACP Water Main Replacement, Farm Road and North State Road		
Task	Cost	Vendor
Utility Markout	\$4,000.00	New York Leak Detection
Survey	\$6,000.00 – North State RD \$3,500.00 – Farm Rd. = \$9,500.00	TC Merritts, P.C.
Cronin Engineering Phase 1 - Mapping Coordination	\$4,000.00	Cronin Engineering, P.E., P.C.
Cronin Engineering Phase 2 – Preparation Construction Documents, including DOH filing	\$18,000.00	Cronin Engineering, P.E., P.C.
Cronin Engineering Phase 3 – Construction Inspections	\$8,000.00	Cronin Engineering, P.E., P.C.
Total Cost	\$43,500.00	

VILLAGE OF BRIARCLIFF MANOR
BOARD OF TRUSTEES AGENDA
JANUARY 16, 2018

2. ACCEPTANCE OF DONATION FROM KYLE KANTOR

BE IT FURTHER RESOLVED, that the Board of Trustees hereby accepts a donation in the amount of \$700 from Kyle Kantor for the purposes of purchasing a planter for the Central Business District in honor of the Kantor Family.

Increase Revenue – Unclassified Revenue
(A0101.2770) by \$700

Increase Expenses – Materials and Supplies
(A8510.420) by \$700


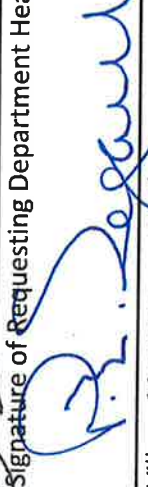

BUDGET AMENDMENT REQUEST FORM

2017/2018

Increase Expense	Muni Code	Budget Line
\$ 700.00	A8510.420	Materials and Supplies
Increase Revenue	Muni Code	Budget Line
\$ 700.00	A0101.2770	Unclassified Revenue

Reason for Amendment Request: To receive a donation from Kyle Kantor for a Planter

DPW

	12/28/17 Date Signed
R. J. Segura, NM 	28 DEC 2017 Date Signed
	12/28/17 Date Signed

If over \$10,000, Board of Trustees Approval Date:

VILLAGE OF BRIARCLIFF MANOR
BOARD OF TRUSTEES AGENDA
JANUARY 16, 2018

3. BUDGET AMENDMENT

BE IT RESOLVED that the budget for fiscal year 2017-2018 is hereby amended as follows:

GROSS RECEIPTS TAX

Increase Revenue	A0101.2770	Misc. Revenue	\$19,783.07
Increase Expense	A1230.460	Contractual Services	\$7,913.23
	A1990.499	Contingency	\$11,869.84

BUDGET AMENDMENT REQUEST FORM

2017/2018

Increase Expense	Muni Code	Budget Line
\$ 7,913.23	A1230.460	Contractual Services
Increase Expense	Muni Code	Budget Line
\$ 11,869.84	A1990.499	Contingency
Increase Revenue	Muni Code	Budget Line
\$ 19,783.07	A0101.2770	Unclassified Revenue

Reason for Amendment Request: To account for the receipt of underpaid Gross receipts tax and to account for the invoice for the services provided to collect.

Signature of Requesting Department Head

P.R. Rogerson, VM

Date Signed

11 Jan 2018

Village Manager Approval

Edward P. H.

Date Signed

1/11/18

Village Treasurer Approval

Date Signed

If over \$10,000, Board of Trustees Approval Date:

COMPUTEL CONSULTANTS

P.O. Box 35 • Earlville, New York 13332 • (800) 724-9859 • Fax (315) 691-4311

INVOICE

Invoice # 18-005

January 3, 2018

VIA EMAIL

Mr. Ed Ritter

Village of Briarcliff Manor

1111 Pleasantville Road

Briarcliff Manor, New York 10501

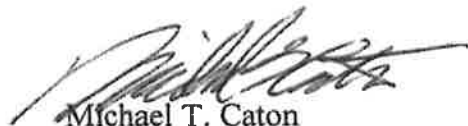
Verizon underpaid Gross Receipts Tax
received by the Village of Briarcliff Manor:

\$19,783.07

Fee due Computel Consultants
(40% of recovery as per agreement):

TOTAL NOW DUE \$7,913.23

Submitted by:



Michael T. Caton

Partner

Federal Tax ID # - 16-1359608



One Verizon Way, VC53N167B
Basking Ridge, NJ 07920
Tel: 908-559-5774
Kevin.j.crowley@verizon.com

Via Overnight Mail

December 11, 2017

Village of Briarcliff Manor
Attn: Ms. Robin Rizzo
111 Pleasantville Road
Briarcliff Manor, NY 10501

Re: Verizon New York
Local UUT Audit Payment

Dear Ms. Rizzo:

As you are aware, Computel Consultants has been working with Verizon on a local Utility User Tax ("UUT") audit for your jurisdiction. Verizon is enclosing a check made payable to the "Village of Briarcliff Manor Collector of Taxes" in the amount of \$19,783.07 (including interest & penalty) for additional UUT liability resulting from the audit.

Please call me at 908-559-5774 with any questions or concerns.

Sincerely,

Kevin Crowley
Manager - Transaction Taxes

cc: Maria Biava – Verizon (w/enclosures)
Mario Manniello - Verizon (w/enclosures)
Michael Caton – Computel Consultants (w/enclosures)

VILLAGE OF BRIARCLIFF MANOR
BOARD OF TRUSTEES AGENDA
JANUARY 16, 2018

**4. SCHEDULE PUBLIC HEARING: SPECIAL USE PERMIT, THE
AMERICAN ANGLICAN CHURCH (HOLY INNOCENTS)**

BE IT RESOLVED that a Public Hearing is hereby scheduled for _____ at 8:00pm or soon thereafter in the William J. Vescio Community Center located at 1 Library Road, Briarcliff Manor, NY to hear and consider an application for the renewal of a Special Use Permit issued to the American Anglican Church (Holy Innocents).

THE AMERICAN ANGLICAN CHURCH

DIOCESE OF HOLY INNOCENTS

680 Albany Post Road, Scarborough, NY 10510

The Most Rev. John A. Herzog, OSA
Primus & Abbot-The Order of Saint Andrew
914 941-1265
Rev. Mother Ann Frances, OSA
Administrative Secretary
914 762-0398



January 2, 2018

Mr. Philip Zegarelli, Village Manager
Village of Briarcliff Manor
1111 Pleasantville Road
Briarcliff Manor, N.Y. 10510

Speed a public hearing on this

Re: Renewal of Special Use Permit

Dear Mr. Zegarelli:

We respectfully request renewal of Special Use Permit #797 issued May 1, 2003 to the American Anglican Church, Diocese of The Holy Innocents at 680 Albany Post Road.

The operation of the Church remains the same as stated in the original application and no modifications have been made since the Special Use Permit renewal issued in 2013.

If you have any questions, you may contact me on (914)941-1265.

Very truly yours,

A handwritten signature in black ink that reads "John A. Herzog".

The Most Rev. John A. Herzog

VILLAGE OF BRIARCLIFF MANOR
BOARD OF TRUSTEES AGENDA
JANUARY 16, 2018

**5A. AUTHORIZE VILLAGE MANAGER TO EXECUTE THE RENEWAL OF A
FIRE PROTECTION AGREEMENT WITH THE TOWN OF OSSINING FOR
FIRE DISTRICT 20**

Whereas, recognizing the shortage of available volunteer fire department personnel due to the onset of World War II and resultant therefrom on or about March of 1942, the TOS contracted with the VBM for such fire protection, said delineation of TOS parcels becoming TOS FD-20; and

Whereas, The VBMFD has faithfully provided fire protection services to the residents of TOS FD-20 since 1942 to the present without interruption, challenge or problem; and

Whereas, by mutual agreement between TOS and VBM, the VBM redefined the parameters, terms, conditions and cost formula effective for TOS's 2011 calendar year, thereby becoming the basis for all subsequent annual contractual agreements since; and

Whereas, upon discussions between the TOS and VBM and notwithstanding the existing cost formula currently in place, an agreement has been mutually reached to extend the approved 2017 cost (\$152,620.77) for the upcoming 2018 calendar year subject to a 1.84% increase (\$2,808.22) for a total contractual amount of \$155,428.99; and

Whereas, this contract shall be for one calendar year and both the TOS and the VBM agree to revise, refine and adjust the cost formula for any future years and that the VBMFD Chief has indicated his support for these such changes,

Now Therefore, Be It Resolved by the VBM Board of Trustees that: (1) the proposed 2018 contract between the TOS and VBM with the above revised terms and conditions is hereby approved ; and (2) the Village Manager and Village Counsel are authorized to make such non material changes to the contract prior to its execution as they may jointly deem necessary; (3) that the Village Manager is hereby authorized to execute such contract; and (4) this Resolution shall take effect immediately but the contract shall be effective as of 1 January 2018.

VILLAGE OF BRIARCLIFF MANOR
BOARD OF TRUSTEES AGENDA
JANUARY 16, 2018

5B. AUTHORIZE VILLAGE MANAGER TO EXECUTE AN INTER-MUNICIPAL AGREEMENT FOR PROFESSIONAL SERVICES FOR THE TRI-VILLAGE ROUTE 100C 30" WATER MAIN RELOCATION PROJECT

BE IT RESOLVED that the Board of Trustees does hereby authorize the Village Manager to execute an Inter-Municipal Agreement between the Villages of Briarcliff Manor, Sleepy Hollow and Tarrytown in connection with the Route 100C 30" Water Main Relocation Project, which includes the engagement of Professional Consulting, LLC (PCI) to provide engineering design services in connection with same pursuant to PCI's proposal of December 29, 2017.

1.2.18
SIGNED BY VBm, Pci

INTERMUNICIPAL AGREEMENT
FOR
PROFESSIONAL SERVICES

Route 100C 30" Water Main Relocation Project

This is an Intermunicipal Agreement for professional services by and between the Village of Briarcliff Manor, a New York municipal corporation with offices at Village Hall, 1111 Pleasantville Road, Briarcliff Manor, New York 10510 ("Briarcliff Manor"), the Village of Sleepy Hollow, a New York municipal corporation with offices at Village Hall, 28 Beekman Avenue, Sleepy Hollow, New York 10591 ("Sleepy Hollow") the Village of Tarrytown, a New York municipal corporation with offices at Village Hall, One Depot Plaza, Tarrytown, NY 105991 ("Tarrytown"), and Professional Consulting, LLC, Octagon 10 Office Center, 1719 Route 10, Suite 225, Parsippany, New Jersey 07054 ("Provider").

WHEREAS, Article 5 G of the General Municipal Law of the State of New York authorizes municipal corporations of the State to enter into agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis or for the provisions of services; and

WHEREAS, the parties to this Agreement are concerned about escalating government costs and the increasing tax and fees burden to their respective property owners and residents; and

WHEREAS, because the parties utilize and share the same connection to the Catskill Aqueduct, they have a common interest in the improvement and maintenance of water services therefrom, the water supply and the transmission service; and

WHEREAS, the New York State Department of Transportation ("DOT") intends to undertake a project involving certain construction activities on New York State lands and roads in the area of the Route 9A Bridge and New York State Route 100C in the Towns of Mount Pleasant and Greenburgh (the "Route 100C Project"); and

WHEREAS, the Villages' common water supply system includes a 30" water main located directly within the Route 100C Project area, which DOT has agreed to relocate at its own cost and expense in accordance with DOT's correspondence dated December 22, 2017, which is annexed hereto and made a part hereof as Exhibit A; and

WHEREAS, in anticipation of the Route 100C Project, Briarcliff Manor issued a request for proposals on or about December 22, 2017, (the "RFP") for engineering design services for the relocation of the said water main, a copy of which RFP is annexed hereto and made a part hereof as Exhibit B; and

WHEREAS, after evaluating three (3) proposals submitted in response to the RFP, the Villages selected Provider as the engineering design firm based upon Provider's letter proposal dated December 29, 2017, a copy of which is annexed hereto and made a part hereof as Exhibit C; and

WHEREAS, the Villages wish to enter into this Agreement with Provider in accordance with Provider's said proposal letter; and

WHEREAS, given their consolidated interests with respect to the water supply and transmission service which will be impacted by the Route 100C Project, the Villages wish to share equally in any costs incurred in connection with this Agreement, if any.

NOW, THEREFORE, in consideration of the premises and the provisions hereinafter set forth, the following constitutes a binding agreement by and between the parties.

Article 1. Scope of Work

Provider agrees to perform all services set forth in and in accordance with Provider's proposal letter dated December 29, 2017, the RFP and the terms of this Agreement (the "Services"). The Village of Briarcliff Manor shall take the lead in connection with the coordination of this Agreement with Provider.

Article 2. Performance of Services

In performing the Services, Provider shall assign qualified personnel and act in accordance with the professional standards and with the skill, diligence, and quality control/quality assurance measures expected of a recognized service firm performing engineering services of a similar nature.

Provider shall at all times comply with all applicable laws, ordinances, statutes, rules, and regulations. In addition, Provider and its employees and agents shall comply with all Federal, state, and local personnel safety rules and all applicable conditions or requirements of any permit, authorization, order, or directive issued by the Village or any court or agency.

Article 3. Provider's Representations

Provider represents that it is fully experienced, properly qualified, sufficiently capitalized and financed, and properly permitted, equipped, and organized to perform the Services.

Provider understands that part or all of the data, analyses, or conclusions developed in the performance of the Services may be public and subject to Freedom of Information Law and may be submitted to other governmental agencies or to courts of law.

Provider acknowledges that the Villages will be relying upon the accuracy, competency, and completeness of Provider's performance and the Services.

Article 4. Compensation and Payment

For satisfactory performance of the Services, the Villages agree to compensate Provider in accordance with Exhibit C.

The Villages will pay the amounts due Provider within 30 days after acceptance of performance by the Briarcliff Manor Village Engineer in his sole discretion.

Article 5. Independent Contractor

In performing the Services and incurring expenses under this Agreement, Provider shall operate as, and have the status of, an independent contractor and shall not act as agent or employee or be an agent or employee of the Villages. As an independent contractor, Provider shall be solely responsible for determining the means and methods of performing the Services, shall have complete charge and responsibility for Provider's personnel engaged in the performance of the Services, and whenever possible shall use its own equipment and facilities.

Article 6. Ownership of Documents

All documentation, reports, data, and the like, including all copies thereof, prepared or compiled by or on behalf of Provider in connection with its performance of the Services are the exclusive property of the Village regardless of whether it is delivered to the Villages. Copies of all such documentation shall be delivered to the Villages at or prior to the expiration or termination of this Agreement.

Notwithstanding the forgoing, for so long as Provider is engaged by the Villages to provide Services or has any responsibility to correct deficiencies under Article 9 of this Agreement, Provider also shall retain a copy of all such documentation.

Article 7. Insurance for Villages

Provider shall maintain, at its expense, Workers' Compensation Insurance, liability insurance covering personal injury and property damage, and other insurance with minimum coverages as listed in the Villages' Sample Insurance Agreement – Architects & Engineers, annexed hereto as Exhibit D. Policies for that insurance shall be in the broad form available on usual commercial terms and shall be written by insurers of recognized financial standing who are satisfactory to the Village and who have been fully informed as to the nature of the Services. Except for Workers' Compensation and professional liability insurance, if any, the Villages shall be named as an additional insureds on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligations of Provider and not of the Villages. Notwithstanding anything to the contrary in this Agreement, Provider irrevocably waives all claims against the Villages for all losses, damages, claims, or expenses resulting from risks that are commercially insurable, but Provider's provision of insurance coverage shall not in any way limit Provider's liability under this Agreement.

Each policy of insurance shall contain clauses to the effect that such insurance (except professional liability insurance, if any) shall be primary without right of contribution of any other insurance carried by or on behalf of the Villages with respect to the Villages' interests and that such insurance shall not be cancelled, materially changed, or not renewed for any reason, including non-payment of premium, without 30 days prior written notice to the Village. The Village shall have the option to pay any necessary premiums and charge the cost back to Provider.

Simultaneously with the execution of this Agreement, Provider shall deliver Certificates of Insurance to the Villages evidencing Provider's compliance with these requirements.

Article 8. Indemnification

To the fullest extent permitted by law, Provider shall indemnify, hold harmless and defend the Villages, their officials, agents and employees or any of them from and against all claims, damages, losses or expenses including but not limited to attorney's fees arising out of or resulting from the performance of the agreement, provided any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and (b) is caused in whole or in part by any act or omission or violation of statutory duty or regulation of the Provider or anyone directly or indirectly employed by it or anyone for whose acts it may be liable pursuant to the performance of the agreement. Notwithstanding the foregoing, Provider's obligation to indemnify the Village, its officials, agents and employees or any of them for any judgment, mediation or arbitration award shall exist to the extent caused in whole or in part by (a) negligent acts or omissions, or (b) violations of regulatory or statutory provisions of the New York State Labor Law, OSHA, or other governing rule or applicable law; by the Provider anyone directly or indirectly employed by it or anyone for whose acts it may be liable in connection to such claim, damage, loss and expense. The obligation of the Provider to indemnify any party under this paragraph shall not be limited in any manner by any limitation of the amount of insurance coverage or benefits including worker's compensation or other employee benefit acts provided by the Provider.

Article 9. Responsibility to Correct Deficiencies

Provider shall correct, in a timely fashion and at Provider's sole expense, any deficiencies in the Services provided such deficiencies are reported to Provider prior to thirty (30) days after completion of the Services.

Article 10. Survival of Obligation

Provider's obligations, and those of Provider's employees, agents, successors, and assignees under Article 6 (Ownership of Documents), Article 8 (Indemnification), and Article 9 (Responsibility to Correct Deficiencies) shall survive completion of the Services, expiration or termination of this Agreement, and final payment under this Agreement.

Article 11. Termination

The Villages may terminate this Agreement in whole or in part at any time upon 10 days notice if Provider fails to provide the Services in accordance with this Agreement, if the Village is reasonably dissatisfied with Provider's work under this Agreement after giving Provider reasonable notice and an opportunity to address its dissatisfaction, or if Provider is in default under or breach of this Agreement. Provider may terminate this Agreement at any time upon 10 days notice if the Village fails to make any payment to Provider under this Agreement after 30 days notice. Any such termination of this Agreement shall not relieve the Village of its obligation to pay charges due Provider for Services properly performed and expenses properly incurred prior to such termination and shall not relieve Provider of any liability arising from any act or omission of Provider or its employees or agents. Upon termination, Provider shall deliver to the Village all documents required to be delivered pursuant to Article 6.

Article 12. Assignment

Provider shall not assign any of its rights, interests, or obligations under this Agreement or subcontract any of the Services to be performed by it under this Agreement without the express written consent of the Village. Any subcontract or assignment shall be subject to all of the terms of this Agreement.

Article 13. Waiver and Severability

The failure of either party to enforce, at any time, any provision of this Agreement shall not constitute a waiver of such provision in any way or waive the right of either party at any time to avail itself of such remedies as it may have for any breach or breaches of such provision. None of the conditions of this Agreement shall be considered waived by either party unless such waiver is given in writing by the waiving party. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the terms or conditions of this Agreement unless expressly stipulated in such waiver.

The invalidity or invalid application of any provision of this Agreement shall not affect the validity of any other provision or any other application of that provision.

Article 14. Miscellaneous

All notices hereunder shall be deemed to be duly given if in writing, signed by the party or the representative of the party giving the notice, and sent to the other party at the address set forth in this Agreement by certified mail, return receipt requested, by Federal Express or similar overnight courier, or by facsimile transmittal with confirmation by regular first class mail.

This Agreement has been negotiated between parties of equal bargaining power and is not to be construed against either party by virtue of such party's attorney having drafted it.

Provider and its subcontractors shall not engage in any discriminatory hiring practice or accept any engagement which might conflict with Provider's responsibilities under this Agreement.

Article 15. Consent to Jurisdiction and Venue.

Provider consents to jurisdiction in the Courts of the State of New York and to venue in Westchester County, New York, in any action for monetary, injunctive, declaratory, or other relief under any provision of this Agreement.

Article 16. Entire Agreement

The rights and obligations of the parties, and their respective agents, successors, and assigns, under this Agreement shall be subject to and governed by this Agreement, including Exhibits A and B, and this Agreement supersedes any other understanding or writing between the parties. No change, amendment, or modification of any term or condition of this Agreement shall be valid unless reduced to writing and signed by the party to be bound.

Any discrepancy between the foregoing provisions of this Agreement and Exhibits A, B, C and D to this Agreement, whether or not specifically identified, shall be resolved in favor of the foregoing provisions of this Agreement.

Article 17. Agreement Among the Villages

Notwithstanding DOT's obligations with respect to the Route 100C Project and the work under this Agreement, in the event that any Village incurs any costs in connection with this Agreement, which costs are not reimbursed by DOT, the Villages shall each be responsible for their share of such costs as follows: Briarcliff Manor – 41.40%, Sleepy Hollow – 24.80% and Tarrytown – 33.80%. Briarcliff Manor shall take the lead in terms of coordination with the Provider and the provisions of this Agreement subject to this continuing reimbursement provision.

Article 18. Counterparts

This Agreement may be executed in more than one counterpart, each of which, when taken together, shall be deemed to be one instrument. Each Village may deliver to each other Village a signed copy of this Agreement, which delivery may include facsimile transmission and/or delivery via electronic mail in PDF format, either of which shall constitute delivery of an "original" document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this ²⁰¹⁸ 5TH day of January, 2018.

Village of Briarcliff Manor

By: 
Philip Zegarelli, Village Manager

Professional Consulting, LLC //

By: 

Village of Sleepy Hollow

By: _____
Ken Wray, Mayor

Village of Tarrytown

By: _____
Drew Fixell, Mayor

ATTACHMENTS TO AGREEMENT

Exhibit A

[DOT Reimbursement Correspondence, dated December 22, 2017, annexed]

Exhibit B

[RFP, dated December 22, 2017]

Exhibit C

[Providers Proposal Letter dated December 29, 2017, annexed]

Exhibit D

[Village's Sample Insurance Agreement – Architects & Engineers, annexed]

EXHIBIT A

From: Wetzel, Jerry (DOT)
Sent: Friday, December 22, 2017 11:53 AM
To: 'David Turiano' <DTuriano@briarcliffmanor.org>
Cc: Olarte, Oscar (DOT) <Oscar.Olarte@dot.ny.gov>; Schaefer, Michael (DOT) <Michael.Schaefer@dot.ny.gov>; Strack, Jordan (DOT) <Jordan.Strack@dot.ny.gov>; Tiano, Mark (DOT) <Mark.Tiano@dot.ny.gov>
Subject: RE: NSYDOT 100C/9A

Dave.

Attached are the forms needed to set up the reimbursable. I will fill in all of the areas as necessary. The one major item I will need from you, of course, is the estimate to do all of the ROW procurement and design work, including all dealings with and approvals needed from the Health Department. When you send me the estimate, be sure to send me all workup sheets for the different tasks leading to the total. The 3 appendices get attached to the municipal agreement. The HC140 is a "Utility Work Agreement" that has the appropriate section of the law checked. The subcontractor form deals with the 3 bidders as we had discussed. The only other documents that will be needed is a resolution from the municipalities and a set of what call "fin" forms. They simply summarize the estimate that you will provide.

For you info, there is a followup letter being sent to the municipalities regarding how the ROW for the main is to be acquired. Be sure to reflect everything in your estimate.

Have a Merry Christmas.

Jerry W

Gerhard L. Wetzel, Jr., PE
Regional Utilities Engineer, R8

New York State Department of Transportation, Hudson Valley Region
4 Burnett Boulevard, Poughkeepsie, NY 12603
(845) 431-5831 | Jerry.Wetzel@dot.ny.gov
www.dot.ny.gov



**Department of
Transportation**



**REQUEST FOR PROPOSALS
(RFP)**

**Design Services: Relocation of 30 Inch Catskill Aqueduct Connection to facilitate NYSDOT
Project: PIN 8025.00.121 Route 100C over Route 9A project**

December 22, 2017

INTENT

The Village of Briarcliff Manor (hereinafter "Village") together with the Villages of Tarrytown, NY and Sleepy Hollow, NY (hereinafter Tri-Village) solicits proposals from firms experienced in designing, preparing construction documents and performing construction support services to provide said professional services for the relocation of approximately 1,000 Feet of 30 Inch Ductal Iron Pipe (DIP) located in the Towns of Mt. Pleasant, NY and Greenburg, NY together with all appurtenances. The purpose of this relocation is to facilitate the NYS Department of Transportation (DOT) construction of the above referenced project.

TRI-VILLAGE BACKGROUND INFORMATION

The Tri-Village is an entity consisting of the Villages of Briarcliff Manor, Sleepy Hollow and Tarrytown, NY. This entity was established by an inter-municipal agreement (IMA). The purpose of the entity is to share ownership and maintenance responsibility of the following items: (1) The Catskill Aqueduct Connections located at 375 Executive Boulevard, (2) The Catskill Tap meter building, (3) The 30 inch main from the Catskill Aqueduct Connection to the three Villages' individual pump stations.

GENERAL INFORMATION

The DOT is planning to install a traffic circle roundabout together with a new bridge and other highway improvements at the intersection. Preliminary plans of this improvement are attached. It is the Tri-Villages' goal to have its 30 inch water main relocated outside of the work limits. It is important to note that this water main is the sole source of water for the Tri-Village and that its continued operation is vital for the health, safety and welfare of the three member Villages. Shutdowns, temporary supply and other water sourcing issues are an integral part of this design.

SUBMISSION & DEADLINE

All proposals are to be received electronically by the Village of Briarcliff Manor by **10:00 AM., Friday, December 29, 2017**. Electronic copies of the proposal shall be submitted to the attention of David J. Turiano, P.E., Village Engineer:

DTuriano@Briarcliffmanor.org
Village of Briarcliff Manor
1111 Pleasantville Road
Briarcliff Manor, New York 10510

Hard copies are not required.

General questions about this RFP, submission requirements, and technical questions regarding the scope of services, work product requirements and requests for any documents cited in this RFP must be directed to David J. Turiano, P.E.

COORDINATION WITH OTHER AGENCIES

All deliverables shall be submitted in both electronic format and hardcopy format. Acceptable electronic formats include Bentley Microstation.dgn format and Bentley InRoads.alg and dtm format, Microsoft Word®, Microsoft Excel®, ArcMAP, or searchable portable document format (PDF) files, with no copy or password protection on the file content.

Please note that all work products are to utilize New York State Department of Transportation Standard Specifications (US Customary Units) latest Provision as issued by the NYSDOT for construction contracts.

SCOPE OF SERVICES

Project Kickoff Phase

The following background documentation is provided at this time to give an understanding of the project scope:

- 30- Inch Hydraulic Evaluation January 2006
- DOT Grading Plan
- DOT Utility Plan
- JMC Map of Regeneron Site
- Preliminary Relocation Route including Greenburg Connection
- Tri-Village 30-Inch Main As-Built (B&W)

The Village will coordinate with the adjacent property owners and DOT to obtain the required easements and or Right of Way. Geotechnical and subsurface information will not be available for design development. A project kickoff meeting will be held with the Working Group to initiate project activities.

Preliminary Design Phase

Consultant shall prepare preliminary design documents including the following. Note that all DOT project files in .dgn format will be available for use:

- Realignment plans and profiles
- Temporary water supply plan
- Engineer's Report
- Preliminary DOT Item/ Quantity list
- Hydraulic analysis to determine that the replacement piping will not experience any losses greater than the existing, for all flow conditions, up to the max flow rate of 14.5MGD

Consultant shall present the preliminary design at a workshop meeting of the Working Group on January 12, 2018

Final Design and Permitting Phase

Consultant shall prepare Final Design documents including:

- Realignment plans and profiles
- Temporary water supply plan
- Engineer's Report, including, hydraulic analysis on adequacy of realigned water main to meet.
- DOH-348
- WCDOH Application Fee
- Final DOT Item/ Quantity spreadsheet including cost estimate
- Final hydraulic analysis of transmission main realignment
- Consultant shall submit Final Design to WCDOH and obtain approval to construct, including:
- Revisions to permit submittals in response to WCDOH comments
- Preparation of Addenda to DOT in response to WCDOH comments

Construction Support Phase

Consultant shall provide design services during bidding and construction, including:

- Issue necessary clarifications to and interpretations
- Review of submittals in conjunction with DOT
- Periodic site visits to review site conditions and confirm that the work is proceeding in accordance with the WCDOH construction approval
- Coordination of the Tri-Village on project progress
- Attend DOT construction meetings related to the transmission main realignment
- Issue necessary clarifications and interpretations
- Provide off-site technical support for construction conflicts and other issues, if they arise
- Observe the testing of the work, including disinfection, bacteriological testing, and pressure testing
- Conduct a final inspection with the Village and coordinate with the DOT's inspector for determination of substantial completion
- Consultant shall provide the following permitting services during construction:
- Coordination with WCDOH for modifications to design approvals

- Preparation of As-Built plans
- Filing for construction completion approval from WCDOH

PROJECTED TIMETABLE

<u>Deadline</u>	<u>Activity</u>
December 22, 2017	RFP Issuance
December 29, 2017	RFP Return Date
January 5, 2018	Contract Signing, Kick-off Meeting and Notice to Proceed
January 12, 2018	Preliminary Design Workshop
January 19, 2018	Final Design Submittal Date, to WCDOH and NYSDOT

PROPOSALS

Please provide cost estimates as follows:

Preliminary Design Phase	\$ _____
Final Design and Permitting Phase	\$ _____
Construction Support Phase	\$ _____
Total Project Cost	\$ _____

ADDITIONAL INFORMATION & REVISIONS TO PROPOSALS

Additional information may be provided to potential respondents for the purpose of clarification to assure full understanding of, and responsiveness to RFP requirements. Prospective respondents shall be afforded fair and equal treatment with respect to access to additional information and revision of proposals.

PCI

*Octagon 10 Office Center
1719 Route 10, Suite 225
Parsippany, New Jersey 07054*

Professional Consulting, llc.

*Phone: 973.683.0044
Fax: 973.683.0077*

December 29, 2017

David J. Turiano, P.E.,
Building/Engineering Department,
Village of Briarcliff Manor,
1111 Pleasantville Road,
Briarcliff Manor, NY 10510

RE: Proposal for Professional Engineering Services
Relocation of 30-inch Catskill Aqueduct Connection to Facilitate NYSDOT Project:
PIN 8025.00.121
Tri-Village-Village of Briarcliff Manor, Sleepy Hollow, and Tarrytown, NY
PCI No. P-934

Dear Mr. Turiano:

Professional Consulting, llc. is pleased to provide this proposal for the professional services including engineering design, preparation of construction documents and construction support services required for the above referenced project.

1. Project Understanding/Background:

The Villages of Briarcliff Manor, Sleepy Hollow, and Tarrytown, NY (Tri-Village) taps raw water from the Catskill Aqueduct intakes located south of the Kensico Reservoir at 375 Executive Boulevard in the Town of Greenburgh. Tri-Village operates and maintains two aqueduct taps on Catskill Aqueduct which discharges into a 30-inch transmission line. This transmission main provides raw water supply to the Tri-Village's individual pump station facilities. The three pump stations are located next to each other. The raw water line and connection to aqueduct was upgraded in 2007 to facilitate additional water supply to the Village of Briarcliff Manor's new water treatment facility. The 30-inch water main is the sole source of water supply to the Tri-Village.

The existing alignment of the 30-inch transmission main passes through Route 100C/Old Tarrytown Road, where the NYSDOT is planning to install a traffic circle (roundabout)

with a new bridge and other highway improvements. It is important to safeguard the 30-inch transmission main from any construction damage. The proposed DOT improvements will overburden and introduce excessive fill on the old 30-inch raw water main. In the last coordination meeting with the NYSDOT, it was agreed to relocate the 30-inch transmission main and install a new bypass immediately west of the DOT project improvement work.

2. Understanding of the Scope of Work:

As part of the project design work, we understand that the isolation of the transmission main and installation of temporary bypass piping will be required to maintain required water supply to the three pump stations. Hydraulic modeling will be required to analyze and design the temporary bypass piping and relocation of the 30-inch transmission main. Design documents will include preparation of plans, profiles, and construction documents.

Final water main relocation design will be submitted to the Westchester County Department of Health (WCDOH) for the approval of plans. Engineering support during bid solicitation and periodic site supervision is required to ensure compliance with the design and regulatory requirements.

The Tri-Village asked selected consulting engineers for submission of technical proposal, in accordance with their Request for Proposal (RFP), by December 29, 2017.

As per the RFP, water improvement work will include relocation of approximately 1,000 linear feet of 30-inch water transmission main.

Project tasks are described in more detail in the RFP and are listed as follows:

A. Preliminary Design Phase:

Deliverables during the preliminary design phase include:

1. Preliminary plans and profiles for bypass pipe realignment.
2. Preliminary temporary water supply plan to maintain flow during construction.
3. Preliminary Engineer's Report.
4. Preliminary DOT Item/Quantity list.
5. Hydraulic analysis to analyze temporary bypass piping and final pipe replacement design to check for excessive head-loss and reduction in flow capacity due to proposed piping.
6. Presentation of the preliminary design at a workshop meeting of the Working Group on January 12, 2018.

B. Final Design and Permitting Phase:

Deliverables during the final design phase include:

1. Final realignment plans and profiles based on comments received from the Tri-Village and DOT.
2. Final temporary water supply plan.
3. Revision of hydraulic analysis, if necessary, and preparation of final Engineer's Report. This report will be submitted to all involved agencies including regulatory approval.
4. DOH-348 (Permit Application).
5. Final DOT Item/ Quantity spreadsheet including probable construction cost estimate.
6. Coordination with WCDOH to obtain approval, including:
 - Revisions to permit submittals in response to WCDOH comments.
 - Preparation of Addenda to DOT in response to WCDOH comments.

C. Construction Support Phase:

Services during the construction support phase include:

1. Issue necessary clarifications and interpretations.
2. Review of submittals in conjunction with DOT.
3. Periodic site visits to review site conditions and confirm that the work is proceeding in accordance with the WCDOH construction approval.
4. Coordination of the Tri-Village on project progress.
5. Attend NYSDOT construction meetings related to the transmission main realignment and issue necessary clarifications and interpretations.
6. Provide offsite technical support for construction conflicts and other issues, if required.
7. Supervise the testing of the work, including disinfection, bacteriological testing, and pressure testing.
8. Conduct a final inspection with the Village and coordinate with the DOT's inspector for determination of substantial completion.
9. Provide the following permitting services during construction:
 - Coordination with WCDOH for modifications to design approvals.
 - Preparation of as-built plans.
 - Filing for construction works approval (CWA) from WCDOH.

3. Pertinent Experience Related to the Proposed Project:

The following brief history and experience provides additional qualification of our engineers and our company:

- PCI engineers have been involved since early 1990s in maintaining and resolving hydraulic issues concerning the original Catskill aqueduct tap. Our engineers designed the original air-release mechanism on the siphon line to resolve priming problems to restore the original 8.8-MGD tap capacity.

- PCI was also involved in review and analysis of the new aqueduct tap and upgrade of the raw water tap capacity which was completed in 2006.
- PCI developed water system hydraulic model for the Village of Tarrytown, including the 30-inch raw water supply main. PCI also developed and maintain water distribution hydraulic models for the neighboring municipalities for the Town of Mount Pleasant and Town of Greenburgh water systems.
- As part of the current DOT circle (round-about) improvement project, PCI is engaged in designing of a new water extension for the Town of Greenburgh which will be added to DOT project as Betterment work.
- PCI has been attending the DOT proposed project design development meetings, and informed DOT engineers about the presence and significance of the 30-inch raw water line. During the past meetings, PCI also developed concept plans for the 30-inch water main bypass piping which was discussed during the last meeting with the DOT designers and the Tri-Village.

For over 19 years, we have provided water engineering services to various municipal clients and government agencies throughout the tristate area. We have successfully completed several hydraulic models for municipal water systems located in Westchester County, NY. We have been involved in the design and construction management of many water distribution improvement projects during this time.

Our water main design and construction administration experience includes master planning, capital improvement planning, water main replacement, cleaning & cement mortar lining, hydraulic modeling, treatment plant design and upgrades, and storage tank design and upgrades.

Our engineers are well versed with AWWA regulations, WCDOH and NYSDOT permit requirements and have successfully and timely secured permits for several water main installation and water distribution system improvement projects. Our field office is conveniently located in the Town of Mount Pleasant.

Our staff experience with hydraulic modeling, evaluation studies and regulatory compliance similar to what are required in the RFP, makes us uniquely qualified to serve the Tri-Village for this project.

4. Provisions:

We understand the schedule for completion of the design work, and request approval of the following provisions:

1. Provide knowledgeable member of the Tri-Village to accompany PCI during site exploration and inspections and the design and construction phases.
2. Cost for any site survey works necessary to complete the project will be additional to the proposal fees.

3. Tri-Village authorized representative will sign on all permit applications and pay for permit fees.
4. PCI will utilize utility and topographic survey information provided by NYSDOT to prepare design drawings.
5. Cost for soil boring and soil testing is not included in the proposal fees. It is recommended that subsurface investigation should be completed before award of construction.
6. Final drawings will be completed on AutoCAD format. AutoCAD .dwg files can be converted to .dgn format, and can be imported to the DOT MicroStation format. PCI will provide all background reference files including images to DOT to assist in importing to MicroStation.

The undersigned, Arshad Jalil, P.E., BCEE (Principal) shall be the contact person for receipt of all communications to and from the Tri-Village and the NYSDOT. He can also be reached via email at ajalil@pci-engineers.com and (973) 703-7113.

5. Fees:

PCI team is committed to complete Final Design as per requirements and schedule outlined in the RFP dated December 22, 2017.

Based on our knowledge of similar construction work completed, we feel that minimum 40-days of periodic construction supervision during active construction period will be required.

Based on the above description and in accordance with the project RFP, following is our lump sum fee breakdown:

a) Preliminary Design Phase	\$ 16,000
b) Final Design and Permitting Phase	\$ 7,000
c) Construction Support Phase	\$ 29,800

Total Project Cost \$ 52,800

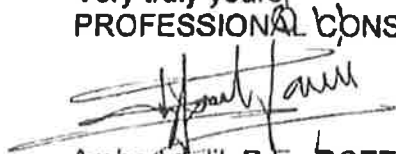
Attendance at public hearings or meetings and any additional regulatory compliance and services not specifically identified in the Scope of Work will be billed based on our standard schedule of rates (copy attached) and our General Services Agreement.

The attached General Conditions shall be considered as part of this proposal.

We look forward to the opportunity of working with the Tri-Village and the NYSDOT on this project. Should you have any questions, please do not hesitate to contact us.

Your authorized signature below will constitute satisfactory agreement between us for performance of our services.

Very truly yours,
PROFESSIONAL CONSULTING, llc.



Arshad Jalil, P.E., BCEE
Principal

ACCEPTED BY: _____

TITLE: _____

DATE: _____

Enclosure



RATE SCHEDULE

Professional Consulting, Inc.

<u>Title</u>	<u>Rate Per Hour</u>
Principal.....	\$145
Associate.....	\$135
Project Manager.....	\$135
Construction Manager.....	\$135
Principal Engineer.....	\$110
Senior Operator.....	\$110
Senior Project Engineer.....	\$110
Senior Architectural Designer.....	\$108
Project Engineer.....	\$105
Architectural Designer.....	\$98
Field Engineer.....	\$98
Operator.....	\$94
Resident Representative.....	\$94
GIS Specialist.....	\$89
Engineer/ CAD Tech II.....	\$94
Senior CAD Designer.....	\$72
Engineer/ CAD Tech I.....	\$66
Draftsman.....	\$60
Administrative Assistant.....	\$55

Rates Effective through June 30, 2018

Out-of-Pocket Expenses

Printing (8 1/2"x 11" to 11"x 17").....	\$0.15/per page
Blueprints.....	\$5.50/per page
Reproducible Print.....	\$16.00/per drawing
Binding.....	\$10.00 each
Mileage.....	\$0.32/mile
Other Travel, Lodging, Sustenance.....	Direct Cost

Professional Consulting, llc.

1. The cost of surveys, borings, test pits, flow metering, laboratory analysis, use of outside sub-consultants, etc., not specified in the scope of services, shall borne at direct cost by the Owner and paid directly by the Owner to the sub-consultant(s). Any coordination of sub-consultants by Professional Consulting llc. (PCI) will be billed at our standard rates.
2. Bills will be tendered monthly and are due within 30 days. All past due accounts will be subject to a 1-1/2% per month interest charge. Nonpayment may result in suspension of work and/or a delay in deliverables.
3. Out-of-pocket expenses will be billed at direct cost. Out-of-pocket are defined as those direct expenses incurred relative to this project including, but not limited to, computer time, travel, subsistence, postage, printing and reproduction.
4. If any services are required which are not specifically included in the above proposal, they shall be billed at our standard rates.
5. Warranty and Liability
 - A. PCI warrants that its services are performed within the limits prescribed by its Clients with the usual competence, diligence and thoroughness of the profession in accordance with the standards for professional services at the time those services are rendered. No other warranty or representation, implied or expressed, is included or intended in its proposals, contracts or reports.
 - B. PCI's liability shall be limited to its fee under this proposal; increased liability limits may be negotiated at the Client's written request, prior to the commencement of services, and agreement to pay an additional fee.
 - C. PCI's liability shall be limited to injury or loss caused by the negligence of PCI. PCI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant or otherwise dangerous substance or condition at the site, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions.
6. The use of this document for soliciting of other bids is strictly prohibited without the written consent of PCI. If the Owner wishes to use this document for the soliciting of bids or for any other purpose, payment for preparation of this proposal shall be negotiated between the Owner and the Engineer.
7. This proposal may contain provisions for periodic representation by PCI to monitor the Contractor's activities during construction. The Owner shall, at times when PCI is not on site, be responsible for monitoring the Contractor's activities.

Exhibit D

VILLAGES' SAMPLE INSURANCE AGREEMENT ARCHITECTS & ENGINEERS

- I. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the consultant hereby agrees to effectuate the naming of the municipality as an additional insured on the architect or engineer's insurance policies, with the exception of workers' compensation, NY State disability and professional liability. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract.
- II. The policy naming the municipality as an additional insured shall:
- Purchase an insurance policy from an A.M. Best rated "secure" New York State licensed insurer.
 - State that the organization's coverage shall be primary and non-contributory coverage for the Municipality, its Board, employees and volunteers.
 - The municipality shall be listed as an additional insured by using endorsement CG 20 10 11 85 or equivalent. Examples of equivalent ISO additional insured endorsements include using **both** CG 20 33 10 01 and CG 20 37 10 01 together. A completed copy of the endorsement must be attached to the certificate of insurance.
- III. The consultant agrees to indemnify the municipality for any applicable deductibles and self-insured retentions.
- IV. Required Insurance:
- **Commercial General Liability Insurance**
\$1,000,000 per occurrence/ \$2,000,000 aggregate.
 - **Automobile Liability**
\$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.
 - **Workers' Compensation and N.Y.S. Disability**
Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.
 - **Architects & Engineers' Professional Errors and Omissions Insurance**
\$2,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of the

consultant performed under the contract for the municipality. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work. If the architect or engineer is providing or managing environmental services, the errors & omissions policy must be endorsement to include coverage for these services.

- **Excess insurance**
On a "Follow-Form" basis (Excess insurance applies over the Architects & Engineers' Professional Errors and Omissions Insurance), with limits of \$1,000,000/ \$3,000,000/\$5,000,000 each occurrence and aggregate. *Exact limit depends on the size and complexity of the project.*
 - **Performance Bond (Optional)**
If required, these bonds shall be provided by a New York State admitted Surety Company, in good standing. The municipality shall be named as the obligee, and an original Power of Attorney, Corporate and Surety Acknowledgements must accompany the bond.
- V. Consultant acknowledges that failure to obtain such insurance on behalf of the municipality constitutes a material breach of contract. The consultant is to provide the municipality with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of the municipality to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by the municipality.
- VI. The municipality is a member/owner of the NY Municipal Insurance Reciprocal (NYMIR). The consultant further acknowledges that the procurement of such insurance as required herein is intended to benefit not only the municipality but also the NYMIR, as the municipality'

VILLAGE OF BRIARCLIFF MANOR
BOARD OF TRUSTEES AGENDA
JANUARY 16, 2018

**5C. AUTHORIZE VILLAGE MANAGER TO EXECUTE AN AGREEMENT
WITH THE NEW YORK STATE DEPARTMENT OF
TRANSPORTATION FOR THE TRI-VILLAGE ROUTE 100C 30”
WATER MAIN RELOCATION PROJECT**

WHEREAS, the New York State Department of Transportation proposes the replacement of the structure carrying Route 100C over Route 9A and the reconstruction and improvement to the bridge interchange in the Town of Greenburgh and the Town of Mount Pleasant, located in Westchester County, under Project Identification Number 8025.00.122, and

WHEREAS, the State will include as part of the construction of the above mentioned project, the relocation and adjustment to a thirty (30) inch water main and appurtenances, owned and maintained by the Villages of Briarcliff Manor, Sleepy Hollow and Tarrytown, pursuant to Section 10, Subdivision 24, of the State Highway Law, as shown on the contract plans relating to the project and meeting the requirements of the owner, and

WHEREAS, the service life of the relocated and or replaced utilities has not been extended, and

WHEREAS, the State will provide for the reconstruction of the above mentioned work, as shown on the contract plans relating to the above mentioned project.

NOW, THEREFORE, BE IT RESOLVED : That the Villages of Briarcliff Manor, Sleepy Hollow and Tarrytown approve the relocation of and adjustment to their water main and appurtenances and the above mentioned work performed on the project and shown on the contract plans relating to the project and that the Villages will acquire the necessary right-of-way and will maintain or cause to be maintained the adjusted facilities performed as above stated and as shown on the contract plans.

BE IT FURTHER RESOLVED that Mr. Philip E. Zegarelli, Village Manager for the Village of Briarcliff Manor has the authority to sign, with the concurrence of the Village Boards of the Villages of Briarcliff Manor, Sleepy Hollow, and Tarrytown, any and all documentation that may become necessary as a result of this project as it relates to the Villages and

BE IT FURTHER RESOLVED: That the clerk of the Village of Briarcliff Manor is hereby directed to transmit five (5) certified copies of the foregoing resolution to the New York State Department of Transportation.

AGREEMENT IN CONNECTION WITH COST OF RELOCATING
MUNICIPALLY OWNED FACILITIES MAINTAINED FOR PUBLIC USE
PIN 8025.00.122, AGREEMENT No. _____
(SECTION 10, SUBDIVISION 24 OF THE HIGHWAY LAW)

This agreement made this first day of January 2018, by and between the People of the State of New York (hereinafter referred to as "State") acting by and through the Commissioner of Transportation (hereinafter referred to as "Commissioner") with the principal office at 50 Wolf Road in the City and County of Albany and State of New York, and the Village of Briarcliff Manor, a municipal corporation in the County of Westchester, State of New York (hereinafter referred to as "Municipality").

WITNESSETH:

WHEREAS, the Municipality is desirous of having the work of removal, relocation, replacement and reconstruction of such facilities performed, in accordance with the provisions of this agreement.

NOW, THEREFORE, in consideration of the mutual benefits moving to each of the parties hereto, and in pursuance of Subdivision 24 of Section 10 of the Highway Law, it is agreed as follows, viz:

1. Documents Forming This Agreement: The parties agree that the Agreement consists of the following:
 - a. Agreement: This document, entitled "Agreement in Connection with Cost of Relocating Municipally Owned Facilities Maintained for Public Use" (Section 10, Subdivision 24 of the Highway Law);
 - b. Appendix "A" – Standard Clauses for New York State Contracts;
 - c. Appendix "A-1" – Supplemental Title VI Provisions (Civil Rights Act);
 - d. Appendix "B" – Requirements for Federally-Aided Transportation Projects (if necessary);
 - e. Resolution(s) – duly adopted resolutions.
2. General Description of Work. Such work herein contemplated consists generally of the relocation of the Village's thirty (30) inch water main to a new location outside of the project limits for maintenance reasons and to avoid excessive depth of cover, as the ground elevation of the proposed roundabout is being raised five (5) to six (6) feet above their facilities, in connection with Construction Contract D263671 and other facilities in connection therewith as shown and described generally or particularly in the plans, estimates and specifications which provide; such plans, estimates and specifications having been heretofore submitted to and having been duly approved by the Municipality and Commissioner.
3. Time Schedule. Such work shall be undertaken and completed in accordance with a time schedule established by the State in conjunction with the Municipality. The Municipality shall coordinate its activities with the State's construction contractor so as to avoid unnecessary delays. The Municipality agrees and understands that adherence to such time frames is

essential to the orderly progression of the State highway project by the State's contractor. Delays to the project caused by the failure of the Municipality to adhere to the time schedule may result in damages to the State. Such damages may include actual liability by the State to its highway contractor which is measurable by a negotiated settlement or court award, and/or other ascertainable damages. In addition, there may be other damages suffered by the People of the State of New York using the highway Facilities and by the Department which are incapable of or are very difficult to accurately estimate, including but not limited to the inconvenience to the public of not being able to use the improved facility, and additional overhead, administrative and other personnel costs suffered by the Department in managing the delayed highway project.

In the event that the Municipality fails to relocate or adjust its Facilities in accordance with the aforementioned time schedule, the Municipality understands that, under the provisions of common law or any applicable statute, it may be responsible for the failure to relocate or adjust its Facilities in accordance with such agreed upon time frames. Where the Municipality is responsible for failure to relocate or adjust its Facilities in accordance with the agreed upon time frames, the Municipality shall be liable directly to the State's contractor for damages incurred as a result of delay in accordance with subdivision 3 of Section 11-102 of the General Obligations Law. In the event the State's contractor recovers directly from the State for damages incurred as a result of such delay, by a negotiated settlement, court award, and/or otherwise, the Municipality shall be liable to the State for such damages. In addition to damages described above, the Municipality, where it fails to move its Facilities in accordance with the schedule, shall also be liable for liquidated damages for costs incapable of or very difficult to accurately estimate. Such damages shall be assessed at \$1,000.00 per day. Delays caused by forces beyond the control of the Municipality and where the Municipality is under emergency status shall not be included in delays for which the Municipality is responsible under this paragraph.

4. Method of Performance of Work. Such work may be performed (a) by the employment of forces and the use of the equipment of the Municipality and by the use of any material on hand or necessary to be purchased by the Municipality or (b) when consent therefor is stated in writing by the State, by contract as provided in Section 103 of the General Municipal law, or if this method is deemed to be impracticable by the Municipality, or Commissioner, then, upon such written consent, by such other method or combination of methods as the Commissioner shall approve. The Utility Facilities shall be adjusted in accordance with this agreement, as directed by the State's Engineer in Charge, without causing delay to the State's Contractor, and before completion of the State's contract.

5. Reimbursement of Costs. Upon written notice from the Municipality to the Commissioner that such work has been completed, and upon final inspection thereof to the satisfaction of the State, or in case the Municipality finds it necessary to have partial reimbursement made intermediately between the start of such work of construction and the final inspection thereof by the State, the State shall reimburse the Municipality up to 90% of the costs of such work as such costs are disclosed by the said records thereof, and the balance of such reimbursement shall be made by the State upon final inspection of such work and the acceptance thereof by the State, but in any event the State shall not be obligated for an estimated sum in excess of \$52,800, unless a Supplemental Agreement is made therefor. All

items included by the Municipality in said record of costs shall be subject to final audit by the Commissioner, and the Commissioner reserves the right to reduce or to eliminate any of such items as (s)he may deem such action to be proper for the best interest of the State.

6. Releases. As a condition of and prior to payment by the State of the aforesaid reimbursement, the Municipality shall furnish to the State, in a form acceptable to the Commissioner:

(a) a release forever discharging the State from any and all claims, damage, or causes of action arising from or growing out of the acts or failures to act of the Municipality, its agents, employees, contractors, subcontractors, or representatives under this Agreement; and

(b) a release of all claims arising from or growing out of any estate or interest in real property acquired for the purpose of the above captioned project.

7. Maintenance of Facilities. The Municipality covenants with the Commissioner that the maintenance of the Facilities as long as they shall be in use by the Municipality are and shall continue to be the sole and primary obligation of the Municipality.

8. Other Contracts Relative to Work. The Commissioner reserves the right to let other contracts in connection with such work. The Municipality shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate its work with theirs. Temporary structures, equipment or materials of the Municipality, its agents or contractors, shall be located where directed and if not so located they shall be moved when so directed.

9. Access To and Control of Work. The State shall have access to all phases of such work during its prosecution and to records pertaining thereto, including time records, payrolls, invoices, work orders, etc.

10. Unsatisfactory Work; Ambiguity of Plans. Should such work, or progress of same, at any time be unsatisfactory to the State, that fact will, without unnecessary delay, be brought to the attention of the Municipality which will take remedial action promptly. In the event the Commissioner determines that such remedial action is unsatisfactory or has not occurred within a reasonable period of time, (s)he may provide for completion of the work in such manner as (s)he deems necessary.

In case of any ambiguity in the plans, specifications, or maps, or between them, the matter must be immediately submitted to the State which shall adjust the same, and its decision in relation thereto shall be final and conclusive upon the parties.

11. Retention of Records. All records established by the Municipality pursuant to this agreement shall be maintained by the Municipality for a period of not less than six years after payment of the final voucher by the Federal Government to the State in connection with a Federal-aid project or the custody of such records shall be turned over to the Commissioner. Such records shall be available for inspection by representatives of the State upon reasonable notice during regular business hours.

12. Contract Clauses Required in Work. In connection with any contract let by the

Municipality for all or any part of such work, it is understood between the parties hereto that the contract shall comply with all applicable Federal, State and local laws, copies of the Federal and State required contract provisions appearing as Appendices A, A-1 and B (if applicable), attached hereto.

13. Insurance. Municipality shall procure and maintain, until the work covered by this Agreement has been completed to the satisfaction of the State and the Municipality, insurance for liability and damages imposed by law or otherwise of the kinds and in the amounts hereinafter provided, with insurance companies authorized to do such business in the State of New York, covering all work under this Agreement. Before commencing the work, the Municipality shall furnish to the State a certificate or certificates of insurance in a form satisfactory to the State showing that the Municipality or its contractor has complied with this Article, which certificates shall provide that the policies shall not be changed or cancelled until thirty (30) days written notice has been given to the State. The Municipality may elect to retain these risks. The kinds and amounts of insurance, subject to agreement that different coverage or higher limits shall apply, are as follows:

- (a.) Commercial General Liability Insurance: Each and every party performing work in connection with the PROJECT described herein shall be required to be insured under a policy of insurance. Municipality or its contractor shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from personal injury or death, advertising injury, liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of the primary named insured. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage), including any excess liability insurance providing coverage in an amount of five million dollars (\$5,000,000.00) per occurrence and five million dollars (\$5,000,000.00) aggregate. Aggregate coverage must be secured on a per-project basis. This insurance must be endorsed to provide coverage to **“the Municipality, the Municipality, the State of New York/New York State Department of Transportation, any Municipality in which the event is conducted, and any governmental entity whose facilities are affected by the event, and any of their employees or agents working for or on the facility,”** using ISO Form CG 20 10 07 04 or a form that provides equivalent coverage.
- (b.) Workers' Compensation and Disability Insurance and Employers' Liability Insurance. As required by State Finance Law '142, any Contractor working on the PROJECT Municipality shall maintain in force workers' compensation insurance for all of the Contractor's employees. Contractors shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York. Municipality shall provide evidence of the required coverage or exemption where appropriate (usually Form C-105.2 and Form DB-120.1). Municipality may furnish proof of coverage under the Federal Employers Liability Act and similar

statutes for the protection of employers for injuries to or death of employees engaged in the work.

- (c.) Automobile Insurance (applicable where automobiles or other vehicles will be used in relation to the event). Municipality or its Contractor(s) shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any automobiles (including owned, hired and non-owned vehicles) on and around the project. Coverage shall be in an amount of not less than one million dollars (\$1,000,000.00), each accident.

14. Funds Available. It is understood by and between the parties hereto that this agreement shall be deemed executory only to the extent of the moneys available to the State and no liability on account thereof shall be incurred by the State beyond moneys available for the purposes hereof.

15. Assignment or Other Disposition of Contract. The Municipality agrees not to assign, transfer, convey, sublet or otherwise dispose of this contract or any part thereof, or of its right, title or interest therein, or its power to execute such contract to any person, company, or corporation without previous consent in writing of the Commissioner of Transportation.

16. Notices

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
- (a) via certified or registered United States mail, return receipt requested;
 - (b) by facsimile transmission;
 - (c) by personal delivery;
 - (d) by expedited delivery service; or
 - (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

State of New York Department of Transportation

Name: Gerhard L. Wetzel, Jr., PE
Title: Regional Utilities Engineer
Address: 4 Burnett Boulevard, Poughkeepsie, NY 12603
Facsimile Number: (845)431-5928
E-Mail Address: Jerry.Wetzel@dot.ny.gov
Municipality

Name: Village of Briarcliff Manor
Representative: Philip E. Zegarelli

Title: Village Manager
Address: 1111 Pleasantville Road
Briarcliff Manor, N.Y. 10510
Facsimile Number: (914) 941-4837
E-Mail Address: pzegarelli@briarcliffmanor.org

2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

17. **Contract Payments.** Municipality shall provide complete and accurate billing invoices to the Agency in order to receive payment. Billing invoices submitted to the Agency must contain all information and supporting documentation required by the Contract, the Agency and the State Comptroller. Payment for invoices submitted by the Municipality shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Municipality shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index/htm, or by e-mail at epunit@osc.state.ny.us. Municipality acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

IN WITNESS WHEREOF, the State has caused this instrument to be signed by the said Commissioner of Transportation, and the Municipality has caused this instrument to be signed by its duly authorized officer.

This Agreement shall commence on _____, 20__, and shall expire ____ year(s) from that date unless a Supplemental Agreement is entered into extending the term of this Agreement.

Agreement Number: _____

Agency Certification - "In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other copies of this contract."

Municipality: Village of Briarcliff Manor

By: *Philip E. Zegarelli*

Philip E. Zegarelli
Village Manager

STATE OF NEW YORK)
)ss:
COUNTY OF Westchester

On this 12th day of Jan, 2016, before me personally came Philip Zegarelli, to me known, who, being by me duly sworn, did depose and say that he/she resides in Sleepy Hollow, New York; that he/she is the Village Manager of the Briarcliff Manor, the Municipal Corporation described herein, and which executed the above instrument pursuant to a resolution which was duly adopted on _____ and to which a certified copy is attached and made a part hereof; and that he/she signed his/her name thereto by like other.

Christine Bennett
Notary Public

CHRISTINE DENNETT
Notary Public, State of New York
No. 010FR115122
Qualified in Westchester County
Term Expires August 30, 2016

APPROVED FOR NYSDOT:

By: _____ Date _____
for the Commissioner of Transportation

APPROVED AS TO FORM:
STATE OF NEW YORK ATTORNEY GENERAL

By: _____
Assistant Attorney General

COMPTROLLER'S APPROVAL:

By: _____
For the New York State Comptroller Pursuant to State Finance Law §112

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is

available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed

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

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

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

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

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

exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and

provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

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

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

24. PROCUREMENT LOBBYING.

To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law

Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

a contract and appears on the Prohibited Entities list after contract award.

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

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

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

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

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

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

APPENDIX A-1: SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

To be included in all contracts

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B
REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS
(June 2016)

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its Procedures for Locally Administered Federal-Aid Projects Manual (available through NYSDOT's web site at: <http://www.dot.ny.gov/plafap>). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: <http://www.fhwa.dot.gov/programadmin/contracts/1273.htm>).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION**. No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY**. In connection with the execution of this Agreement, the Municipality/Sponsors contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions 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.

3. **DISADVANTAGED BUSINESS ENTERPRISES**. In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

FEDERAL SINGLE AUDIT REQUIREMENTS

Non-Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency¹ the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

¹ The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance (CFDA²), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

THE CFDA IDENTIFICATION NUMBER

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.

Additional CFDA numbers for other transportation and non-transportation related programs are:

- 20.215 Highway Training and Education**
- 20.219 Recreational Trails Program**
- 20.XXX Highway Planning and Construction - Highways for LIFE;**
- 20.XXX Surface Transportation Research and Development;**
- 20.500 Federal Transit-Capital Investment Grants**
- 20.505 Federal Transit-Metropolitan Planning Grants**
- 20.507 Federal Transit-Formula Grants**
- 20.509 Formula Grants for Other Than Urbanized Areas**
- 20.600 State and Community Highway Safety**
- 23.003 Appalachian Development Highway System**
- 23.008 Appalachian Local Access Roads**

PROMPT PAYMENT MECHANISMS

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by

² <http://www.cfda.gov/>

prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS

In accordance with 46 CFR 381, the contractor agrees:

- (a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (c) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

Special Emergency Meeting

RESOLUTION VILLAGE OF BRIARCLIFF MANOR BOARD OF TRUSTEES 3 January 2018

At the request of the Village Manager, the Mayor and Board of Trustees ("M/BOT") convened an Emergency Limited Agenda Session regarding the water damage to the Briarcliff Manor Public Library and William J. Vescio Community Center at the Court Room of the Village Hall, 1111 Pleasantville Road on Wednesday, 3 January 2018, at 7:30 PM. The following were present for the meeting:

Mayor Sullivan
Trustee Wilson
Trustee DeRose
Trustee Zirman
Village Manager Zegarelli

Trustee Pohar was Absent

There being a quorum, Mayor Lori Sullivan called the emergency meeting to order.

VM Zegarelli was asked to explain the issue at hand and read the following resolution.

WHEREAS, on 29 December 2017, a fire suppression system sprinkler head located in the Village of Briarcliff Manor ("VBM") Public Library ("VBMPL") entrance vestibule burst due to severely low temperatures resulting in significant flooding in and damage ("Flood Damage") to the VBMPL damage to the William J. Vescio Community Center (collectively, the "Premises"); and

WHEREAS, the Village's insurance carrier, NYMIR (the "Village's Insurer") and through its Adjuster, Chip Dahle (adjuster), when notified of the damage then authorized and engaged Serv-Pro to immediately commence activities to remediate the water damage, in the interests of time and to prevent additional collateral damage due to the flooding and cold temperatures of the season; and

WHEREAS, the Village Manager has reported to the M/BOT and to the Library Board of Trustees that water damage to the first floor of the VBMPL extended to the basement offices of the Recreation Department and the Briarcliff Manor Scarborough Historical Society and the boiler room necessitating the closure of the VBMPL and the Community Center; and

WHEREAS, as a result of the damage there is now a need to relocate the damaged office equipment, historic documents, books and book cases to the Community Center to accelerate the drying of such items to speed restoration necessitating the closure of the Community Center and relocation of the M/BOT meetings back the Village Hall; and

WHEREAS, the Village Engineer, upon inspection and analysis, has concluded that the time necessary to repair and restore the premises must be accelerated to achieve a full and timely restoration of the premises; and

WHEREAS, the Village's Insurer and Serv-Pro have worked together and have had extensive experience at and during previous similar flooding events in the VBM and in particular the VBM; and

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WHEREAS, the Village's Insurer advised the Village Manager in order to accelerate the restoration process, the VBM Board of Trustees can and should issue an emergency contract award to Serv-Pro to undertake water damage remediation and restoration of the Premises in order that the same Premises shall be restored to their pre-flood condition, the costs of which would be borne by the Village's Insurer (less the VBM's policy deductible); and

WHEREAS, the Village Manager has concluded that due to the joint and several activities of the Library and the Community Center have ceased and/or hobbled operations due to the remediation of the water damage and the need to repair the Premises described above cannot wait the time period typically associated with standard bidding procedures for such a project under General Municipal Law.

NOW THEREFORE, BE IT RESOLVED, by the Village Board of the Village of Briarcliff Manor that the conditions as detailed above and potential for further deterioration of the Premises constitute an emergency as anticipated under General Municipal Law Section 103(4) (attached); and

BE IT FURTHER RESOLVED, that the Village Manager is hereby authorized to request that the Village's Insurer engage Serv-Pro directly to complete the water remediation and necessary repair work as determined by the Village Manager and Village Engineer in order to restore the Premises to their pre-flood condition together with any other specialty service to effect and speed of the recovery of the premises as approved by the Village's Insurer; and

BE IT FURTHER RESOLVED, that the Village Engineer and Village Manager shall take such further action as are necessary to effectuate the said emergency repairs.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately.

Resolution moved by:	Trustee DeRose	
Second by:	Trustee Wilson	
Vote:	Trustee Wilson	Yes
	Trustee DeRose	Yes
	Trustee Zirman	Yes
	Mayor Sullivan	Yes

Motion passed. Upon motion of Trustee Zirman and seconded by Trustee DeRose, this emergency session of the M/BOT was adjourned at 7:39 PM.

Respectfully submitted:

Philip E. Zegarelli, VM and Deputy VC