

Attachment C:

CONTRACT NUMBER C-_____

Legal Services

between

NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION

and

[Name of Firm]

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This professional services agreement (hereinafter “Contract”), effective on the date signed by the last party to sign, is between the **NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION** (“EFC”), a New York State public benefit corporation, having offices at 625 Broadway, Albany, New York 12207 and [FIRM NAME] (the “Firm”), having offices at

This agreement provides for the Firm to provide legal services identified herein upon the request of EFC.

Accordingly, the parties agree as follows:

Section 1. Services

The Firm shall perform the services identified in Appendix A, Scope of Services (the “Services”), consistent with applicable professional standards and to EFC’s satisfaction.

Section 2. Payment

1. EFC shall pay the Firm for the Services in accordance with the budget in Appendix B, Budget.
2. The Firm shall submit requests for payment for Services rendered in the form of Appendix C, Payment and Reporting Schedule.
3. EFC shall reimburse the Firm only for reasonable costs incurred performing Services and for actual expenses that are necessary for the performance of Services. EFC shall reimburse the Firm only for actual, necessary expenses at cost, except that EFC shall reimburse travel expenses only to the maximum extent allowed and in accordance with the NYS Office of the State Comptroller Travel Manual (revised June 21, 2022) and EFC shall not reimburse costs for travel to or overnight accommodations in locations where a Firm maintains an office. In order to be reimbursed for Services and allowable expenses, the Firm must provide EFC with an itemized statement of all expenses.

Section 3. Term

This Contract’s term starts on the effective date as stated in the introductory clause and ends at 5 p.m. E.S.T. three years from the effective date, unless sooner terminated in accordance with Section 20, Termination. At EFC’s option, the Contract may be extended for two additional one-year terms. In addition to any other provisions which by their terms are intended to survive expiration or termination of this Contract, the following provisions shall survive any expiration or termination of this Contract: Section 17, EFC’s Right to Withhold Payments and Setoff; Section 18, Indemnification; Section 25, Confidentiality and Non-Disclosure; Section 27, Release by the Firm; Section 28, Claims or Actions Related to this Contract; Section 34, No Arbitration; and, Appendix C, Payment and Reporting.

Section 4. Amendment

This Contract may be amended only by the parties’ written agreement that identifies itself as an amendment to this agreement.

Section 5. Firm's Representation and Warranties

1. The Firm has the financial ability, technical qualifications, organizational capacity, legal authority, and integrity to perform the Services.
2. The Firm is duly qualified to perform all of the Services described herein or otherwise necessary to effectuate the purpose of this Contract.
3. If the Firm is a Small Business pursuant to State Finance Law § 160(8), the Firm will notify EFC of any status changes during the term of this Contract.
4. If the Firm is a State certified minority- or women-owned business enterprise ("MWBE"), as defined by Executive Law Article 15-A, the Firm will notify EFC of such status as well as any status changes during the term of this Contract.
5. If the Firm is a State certified service-disabled veteran-owned business enterprise ("SDVOB"), as defined by Executive Law Article 17-B, the Firm will notify EFC of such status as well as any status changes during the term of this Contract.
6. The Firm certifies and affirms that all disclosures made in accordance with State Finance Law § 139-j and § 139-k are complete, true and accurate.
7. Pursuant to Public Authorities Law § 2878, if this contract was awarded based upon the submission of bids, the Firm warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Firm further warrants that, at the time the Firm submitted its bid, an authorized and responsible person executed and delivered to EFC a non-collusive bidding certification on the Firm's behalf.
8. To the extent this Contract is a contract as defined by Tax Law § 5-a, the Firm warrants that it filed the certification required by Tax Law § 5-a, and that such certification is complete, true, and accurate.

Section 6. Firm's Covenants

1. The Firm shall at all times during the Contract term remain responsible. At EFC's request, the Firm shall provide evidence of its integrity, experience, ability, prior performance, organizational and financial capacity, and continuing legal authority to do business in the State.
2. The Firm shall not infringe, misappropriate or otherwise violate any confidential or proprietary information, trade secret or intellectual property right, and will obtain any licenses required to use such property.
3. The Firm shall maintain sufficient staff resources, with the necessary minimum qualifications, to satisfactorily perform the Services throughout the term of this Contract.

Section 7. Independent Contractor

1. The parties intend that the Firm will perform Services as an independent contractor and not as EFC's agent, servant, or employee. This Contract does not establish a partnership, joint venture, employment, franchise or agency between EFC and the Firm or the Firm's contractors or subcontractors.
2. The Firm and any subcontractors, and their respective officers, agents, employees, representatives and servants shall not hold themselves out as, nor claim to be acting in the capacity of, EFC's officers, employees, agents, representatives or servants nor make any claim, demand or application for any right or privilege applicable to EFC, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

Section 8. Compliance with Laws

1. EFC and the Firm shall each comply with all federal, State, and local laws, rules, and regulations in the performance of this Contract.
2. The Firm shall obtain any necessary permits or other authorizations at the Firm's sole cost and expense.
3. The laws of the State govern all matters arising out of this Contract or the relationship of the parties.

Section 9. Notices and Service of Process

1. Any notice or other communication required by this Contract must be in writing and must be delivered personally or sent by certified or registered mail, or by overnight courier, postage prepaid, to the following addresses:

EFC

New York State Environmental Facilities Corporation
625 Broadway
Albany, New York 12207-2997

Attn: Director of Administration and Corporate Operations

E-Mail Address: info@efc.ny.gov

A copy of the notice or communication must also be delivered to the attention of EFC's General Counsel.

The Firm

Address:

Phone No.:

Attn:

E-Mail Address:

2. A notice is considered as having been given: (1) on the day of personal delivery, or (2) two days after the date of mailing.
3. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), the Firm hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Firm's actual receipt of process or upon EFC's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Firm must promptly notify EFC, in writing, of each and every change of address to which service of process can be made. Service by EFC to the last-known address shall be sufficient. The Firm will have thirty (30) calendar days after service hereunder is complete within which to respond.

Section 10. Assignment of Contract

This Contract may not be assigned by the Firm nor its right, title, or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without EFC's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of this Contract may be waived at EFC's discretion, and with the concurrence of the State Comptroller if this Contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Firm's business entity or enterprise.

Section 11. Use of Subcontractors

1. The Firm shall not subcontract its obligations under this Contract without EFC's prior written consent.
2. The Firm may arrange for a portion or portions of its responsibilities under this Contract to be subcontracted to qualified, responsible subcontractors, subject to approval of EFC. If the Firm determines to subcontract a portion of the Services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this Contract must be fully explained by the Firm to EFC. As part of this explanation, the subcontractor must submit to EFC a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the Firm prior to execution of this Contract.

3. The Firm, in all cases, retains ultimate responsibility for all Services performed under the Contract.
4. If EFC consents to the Firm's use of subcontractors to perform any of the Services, the Firm must comply with Executive Law Article 15-A in connection with the subcontracts, and to report the nature and extent of such efforts to EFC.
5. If EFC consents to the Firm's use of subcontractors to perform any of the Services, the Firm shall include the terms of this Contract in the subcontract or agreement between the Firm and the subcontractor. Specifically, the Firm's agreement with the subcontractor must require the subcontractor to comply with the provisions herein concerning minority- and women-owned business enterprises.
6. EFC reserves the right, at any time during the term of the Contract, to verify that the written subcontract between the Firm and subcontractors is in compliance with all of the provisions of this section and any subcontract provisions contained in this Contract. The Firm shall give EFC immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the Firm's duties under the Contract. Any subcontract shall not relieve the Firm in any way of any responsibility, duty and/or obligation of the Contract.
7. If, at any time during performance under this Contract, total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.
8. At EFC's request, but no less than annually, the Firm shall give EFC a written list of the Firm's subcontractors, if any, used to perform the Services under this Contract. The Firm shall update this list and notify EFC within ten days of any change in the status of a subcontractor.
9. EFC reserves the right, in its sole discretion and at any time during the performance of the Contract, to require replacement of a subcontractor.

Section 12. Iranian Energy Sector Divestment

1. In accordance with Public Authorities Law § 2879-c (the "Iran Divestment Act"), by signing this Contract, the Firm certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to State Finance Law § 165-a(3)(b). Such list, known as the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List"), is posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.
2. The Firm further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. The Firm 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. The Firm 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 EFC.
3. During the term of the Contract, should EFC receive information that a person (as defined in Public Authorities Law § 2879-c) is in violation of the above-referenced certifications, EFC

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 Iran Divestment Act within 90 days after the determination of such violation, then EFC 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 Firm in default.

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

Section 13. Conflicts of Interest

1. The Firm has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect) signed by an authorized executive or legal representative attesting that the Firm's performance of the Services does not and will not create a conflict of interest with, nor position the Firm to breach any other contract currently in force with the State of New York, that the Firm will not act in any manner that is detrimental to any State project on which the Firm is rendering services.
2. The Firm hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Firm's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Contract. The Firm shall have a duty to notify EFC immediately of any actual or potential conflicts of interest.
3. In conjunction with any subcontract under this Contract, the Firm shall obtain and deliver to EFC, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The Firm shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to EFC a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.
4. EFC and the Firm recognize that conflicts may occur in the future because the Firm may have existing, or establish new, relationships. EFC will review the nature of any relationships and reserves the right to terminate this Contract for any reason, or for cause, if, in the judgment of EFC, an actual or potential conflict of interest cannot be cured.

Section 14. Public Officers Law

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or

which was under their active consideration during their tenure with the State Agency or Authority.

Section 15. Ethics

The Firm and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Firm certifies that all of its employees and those of its subcontractors who are former employees of the State and who are assigned to perform Services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Firm or its subcontractors and who is disqualified from providing Services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Firm or its subcontractors derived from this Contract. The Firm shall identify and provide the State with notice of those employees of the Firm and its subcontractors who are former employees of the State that will be assigned to perform Services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Firm provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed hereunder would conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder conflicts with any of the Ethics Requirements.

Section 16. Firm Personnel

1. The principal employees of the Firm who are to perform the Services under this Contract shall be subject to the approval of EFC. In case of the death, disability, or departure of one or more but not all of the persons so approved, EFC has the right to approve successor personnel to perform the Services under this Contract. If EFC does not approve such personnel, then this Contract will terminate.
2. Notwithstanding Section 16.1, in the event of the departure of one or more of the principal employees, EFC reserves the right to direct the Firm to assign this Contract to any entity employing one or more of the former principal employees.
3. In case of the death, disability, or departure of all the persons so approved without approved replacements, all data and records pertaining to the project shall be delivered within 60 days to EFC or its duly authorized representative. If the Firm's successors or personal representatives fail to make such delivery on demand, then the representatives of the Firm shall be liable to EFC for any damage it may sustain by reason thereof. Upon the delivery of all such data to EFC, EFC will pay to the representatives of the Firm all amounts due to the

Firm, including retained percentages to the date of the death, disability, or departure of the last principal employee of the Firm.

Section 17. EFC'S Rights to Withhold Payments and Setoff

If the Firm fails to perform any of its obligations under this Contract as determined by EFC, EFC shall have all of its common law, equitable, and statutory rights of set-off until the Firm remedies the failure to EFC's satisfaction. These rights shall include, but not be limited to, EFC's option to withhold for the purposes of set-off any moneys due or to become due to the Firm under this contract up to any amounts due and owing to EFC with regard to this contract, plus any amounts due and owing to EFC for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. EFC 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 EFC, its representatives, or the State Comptroller.

Section 18. Indemnification

The Firm shall be responsible for all damage to life and property due to activities of the Firm, and any of its subcontractors, agents, or employees in connection with the Services under this Contract. Further, to the fullest extent permitted by law, the Firm shall protect, defend, indemnify and hold harmless EFC and the State, and any employee or agent thereof from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against EFC or the State resulting from, arising out of, or relating to the Firm's performance under this Contract. This obligation includes the cost of attorneys' fees, disbursements, costs, and other expenses incurred in connection with such action or proceeding. The Firm's obligations under this section survives any expiration or termination of this Contract and shall not be limited by any enumeration in this Contract of required insurance coverage.

Section 19. Insurance

The Firm shall obtain and maintain during the term of this Contract, at its own expense, insurance of the kinds and amounts identified in Appendix D and provided by insurance companies licensed to do business in the State, covering all operations under this Contract, whether performed by the Firm or its subcontractors. Before starting to perform the Services, the Firm shall give EFC a certificate or certificates, in form satisfactory to EFC, showing that the Firm has complied with this section, which certificate or certificates shall also be written to comply with the requirements for notice of cancellation or non-renewal in accordance with the State Insurance Law.

Section 20. Termination

1. Upon written notice to the Firm, and a reasonable opportunity to be heard with appropriate EFC officials or staff, the Contract may be terminated by the President of EFC, or the President's designee, at the Firm's expense where the President of EFC, or the President's designee, determines that the Firm is non-responsible. In such event, the President of EFC,

or the President's designee, may complete the contractual requirements in any manner deemed advisable and pursue available legal or equitable remedies for breach.

2. EFC may terminate this Contract upon finding that the certification filed by the Firm in accordance with State Finance Law § 139-k was intentionally false or intentionally incomplete, by providing notice to the Firm.
3. EFC may terminate this Contract upon finding that the Firm, in accordance with Public Authorities Law § 2875, refused, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution, or to answer any relevant question concerning such transaction or contract.
4. EFC may terminate this Contract if, during the term of the contract, EFC discovers that the Firm failed to file the certification made pursuant to Tax Law § 5-a or that the Firm filed a false certification, by providing notice to the Firm.
5. EFC may terminate this Contract for any reason by providing thirty (30) days' notice to the Firm.
6. If EFC terminates this Contract, EFC shall pay the Firm for the Services performed and expenses incurred before the effective date of the termination. Upon receipt of any such notice of termination, the Firm shall stop performing the Services, shall make no further commitments with respect thereto and shall reduce as much as possible the amount of outstanding commitments including, to the extent requested by EFC, through termination of approved subcontracts which shall contain provisions therefore.
7. Within 30 days of a termination, the Firm shall deliver to EFC all work in progress and all other materials in its possession that are EFC's property under this Contract.

Section 21. Suspension of Work

EFC may suspend the Firm's performance of the Services under this Contract at any time upon the discovery of information calling into question the responsibility of the Firm, including the Firm's financial ability, technical qualifications, organizational capacity, legal authority, integrity, or prior performance. To suspend the Contract, EFC shall give notice to the Firm stating the reason for the suspension and providing terms for compliance. If the Firm satisfies the terms as determined solely by EFC, EFC may authorize the Firm to resume the performance of Services.

Section 22. Promotion of New York State Business Enterprises and New York State Residents in Procurements

1. It is the policy of the State, and EFC, to maximize opportunities for the participation of State business enterprises, including minority- and women-owned business enterprises, and State residents, as bidders, subcontractors, and suppliers on its procurement contracts.
2. Information regarding the availability of 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
3. 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, New York 10017
Telephone: 212-803-2414
Email: mwbecertification@esd.ny.gov <https://ny.newnycontracts.com>
4. Pursuant to Public Authorities Law § 2879, by signing this contract, the Firm certifies that whenever the total contract amount is greater than \$1 million:
 - (a) The Firm has made reasonable efforts to encourage the participation of 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 and EFC.
 - (b) The Firm has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.
 - (c) The Firm agrees to make reasonable efforts to provide notification to State residents of employment opportunities on this project through listing any such positions with the community service division of the State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Firm agrees to document these efforts and to provide said documentation to the State and EFC upon request.
 - (d) The Firm acknowledges that the State and EFC may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State and EFC in these efforts.

Section 23. Firm Requirements and Procedures for Business Participation Opportunities For New York State Certified Minority-And Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

1. General Provisions

1. EFC is required to implement the provisions of State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
2. The Firm agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to EFC, to fully comply and cooperate with EFC in the implementation of State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority- and women-owned business enterprises (“MWBEs”). The Firm’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
3. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section 23.8 or enforcement proceedings as allowed by this Contract.

2. Contract Goals

1. For purposes of this procurement, EFC hereby establishes an overall goal of 30% for MWBE participation, 15% for State certified minority-owned business enterprises (“MBE”) participation and 15% for State certified women-owned business enterprises (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of qualified MBEs and WBEs.
2. For purposes of providing meaningful participation by MWBEs on this Contract and achieving the MWBE Contract Goals established in Section 23.2.1, the Firm should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>. Additionally, the Firm is encouraged to contact the Division of Minority and Women’s Business Development at (518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on this Contract.
3. Where MWBE Contract Goals have been established herein, the Firm must, pursuant to 5 NYCRR § 142.8 document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. In accordance with Executive Law § 316-a and 5 NYCRR § 142.13, the Firm acknowledges that if it is found to have willfully and

intentionally failed to comply with the MWBE participation goals set forth in this Contract, such a finding constitutes a breach of contract and the Firm shall be liable to EFC for liquidated or other appropriate damages, as set forth herein.

3. Equal Employment Opportunity (EEO)

1. The Firm agrees to be bound by the provisions of Executive Law Article 15-A and the MWBE regulations promulgated thereunder by the Division of Minority and Women's Business Development of the State Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements
2. The Firm shall comply with the following provisions of Executive Law Article 15-A concerning equal employment opportunities for minority group members and women:
 1. The Firm and each contractor and subcontractor performing work on this Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Firm shall submit an EEO policy statement to EFC within 72 hours after the date of the notice by EFC to award this Contract to the Firm if the Firm did not previously submit an EEO policy statement with its proposal.
 3. If the Firm or a subcontractor does not have an existing EEO policy statement, EFC may provide the Firm or subcontractor with a model statement upon request.
 4. The Firm's EEO policy statement shall include the following language:
"The Firm will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

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

The Firm 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 Firm's obligations herein."

The Firm shall include the foregoing language and Section 23.3.5, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Contract.

3. EEO Staffing Plan. To ensure compliance with this section, the Firm shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this Contract by the specified categories listed, including ethnic background, gender, employee compensation, and federal occupational categories. The Firm shall complete the EEO Staffing Plan form and submit it as part of its proposal or within a reasonable time, but no later than the time of award of the contract. If Firm did not submit the Staffing Plan with its proposal, EFC will provide the Firm with the form upon request.

4. Appendix F, Quarterly Workforce Utilization Report ("Workforce Report")

1. The Firm shall submit a Workforce Report and shall require each of its subcontractors to submit a Workforce Report in such format as shall be required by EFC on a quarterly basis during the term of the contract. The required format for the Workforce Report is attached as Appendix F.
2. Separate reports shall be completed by the Firm and any subcontractor.
3. In limited instances, the Firm or a subcontractor may not be able to separate out the workforce utilized in the performance of this Contract from the Firm or subcontractor's total workforce. When a separation can be made, the Firm or subcontractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on this Contract. When the workforce to be utilized on the contract cannot be separated out from the Firm or subcontractor's total workforce, the Firm or subcontractor shall submit the Workforce Report and indicate that the information provided is the Firm or subcontractor's total workforce during the subject time frame, not limited to work specifically under this Contract.

5. The Firm shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Firm and any subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of

the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

4. MWBE Utilization Plan

1. The Firm represents and warrants that the Firm has submitted an MWBE Utilization Plan to EFC either prior to or at the time of the execution of this Contract.
2. The Firm agrees to use such MWBE Utilization Plan for the performance of MWBEs on this Contract pursuant to the prescribed MWBE goals set forth in Section 23.2.1.
3. The Firm further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of this Contract. Upon the occurrence of such a material breach, EFC shall be entitled to any remedy provided herein, including but not limited to, a finding of the Firm's non-responsibility.

5. Waivers

1. If the Firm, after making good faith efforts, is unable to comply with the MWBE Contract Goals, the Firm may submit a Request for Waiver documenting good faith efforts by the Firm to meet such goals. If the documentation included with the waiver request is complete, EFC shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt. The Request for Waiver form is available upon request.
2. If EFC, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports (as required in Section 23.7), determines that the Firm is failing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, EFC may issue a notice of deficiency to the Firm. The Firm must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

6. Required Good Faith Efforts. In accordance with 5 NYCRR § 142.8, the Firm must document its good faith efforts toward utilizing MWBEs on this Contract. Evidence of required good faith efforts includes:

- (a) A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Firm solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
- (b) A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses of the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- (c) Descriptions of the contract documents/plans/specifications made available to certified MWBEs by the Firm when soliciting their participation and steps taken to

structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.

- (d) A description of the negotiations between the Firm and certified MWBEs for the purposes of complying with the MWBE Contract Goals.
- (e) Dates of any pre-bid, pre-award or other meetings attended by the Firm, if any, scheduled by EFC with certified MWBEs whom EFC determined could be used to fulfill the MWBE Contract Goals.
- (f) Other information deemed relevant to the request.

7. Appendix E - Quarterly MWBE Contractor Compliance Report. The Firm is required to submit a Quarterly MWBE Contractor Compliance Report to EFC by the 10th day following each end of quarter (January, April, July, and October) over the term of this Contract documenting the progress made towards achievement of the MWBE goals of this Contract. The required format for the Quarterly MWBE Contractor Compliance Report is attached hereto as Appendix E.

8. Liquidated Damages - MWBE Participation

- 1. In accordance with § 316-a of Article 15-A and 5 NYCRR §142.13, if it has been determined by EFC that the Firm has willfully and intentionally failed to comply with the MWBE participation goals, the Firm shall be obligated to pay to EFC liquidated damages or other appropriate damages, as specified herein and as determined by EFC.
- 2. Liquidated damages shall be calculated as an amount not to exceed the difference between:
 - 1. All sums identified for payment to MWBEs had the Firm achieved the approved MWBE participation goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under this Contract.

EFC reserves the right to impose a lesser amount of liquidated damages than the amount calculated above based on the circumstances surrounding the Firm's noncompliance.

- 3. In the event a determination has been made by EFC which requires the payment of damages identified herein and such identified sums have not been withheld by EFC, the Firm shall pay such liquidated damages to EFC within 60 days after they are assessed by EFC unless prior to the expiration of 60 days, the Firm has filed a complaint with the Director of the Division pursuant to Executive Law § 313(8), in which event the liquidated damages shall be payable if the Director renders a decision in favor of EFC.

Section 24. Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. EFC recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of EFC contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractors are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, EFC conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>

Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

Section 25. Confidentiality and Non-Disclosure

1. All information, documents, testing data and electronic media provided at any time by EFC to the Firm or obtained by the Firm while performing the Services under this Contract: (a) are proprietary and confidential; (b) are provided solely for use on EFC’s project; (c) shall be kept confidential by the Firm; and (d) shall not be disclosed or used by the Firm unless disclosure or use in connection with any matter other than the Services rendered to EFC under this Contract is specifically authorized in writing by EFC in advance.
2. The Firm shall not discuss or permit the disclosure of any information concerning the business of EFC to anyone other than EFC, EFC’s attorneys and employees, or persons designated by EFC in writing. The Firm shall take responsible measures to avoid any unintentional or inadvertent disclosure of any such information to any unauthorized person by its employees, agents, or consultants. The Firm shall not use such information for its own gain without the prior written consent of EFC. For purposes of this Contract, “information” includes written, verbal, or electronic communication, documents, agreements, models, or programs provided to, or used by, the Firm during the term of this Contract. The provisions of this section will survive the expiration or any termination of this Contract. The Firm is authorized to disclose any EFC information to the extent required by law or judicial order.
3. EFC shall take reasonable steps to protect from public disclosure any of the Firm’s books, records, documents, accounts, and other evidence directly pertinent to performance under

this contract (collectively, "the Records") which are exempt from disclosure under § 87 of the Public Officers Law (the "Statute") provided that: (a) the Firm shall timely inform an appropriate State official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, EFC's right to discovery in any pending or future litigation.

Section 26. Ownership of Materials

All work performed by the Firm under this Contract, whether tangible or intangible, including intellectual property, work in progress, documents, electronic databases, custom programs, whether preliminary, final or otherwise, deliverables, development tasks, staging, production, and business processes shall be the sole and exclusive property of EFC, for the exclusive use by EFC, and shall be delivered to EFC on demand, free of any retention rights of the Firm. EFC may use any of these materials for its own or any other purpose, without additional compensation to the Firm, free of any copyright claims, trade secrets or other proprietary rights.

Section 27. Release by the Firm

The acceptance by the Firm of final payment shall constitute and operate as a release by the Firm in favor of EFC for any and all claims against and liability of EFC that the Firm, its representatives and assigns might otherwise have or assert for any and all things done, for work, materials or equipment furnished by the Firm and for the Services rendered by the Firm pursuant to or in connection with or in any way arising out of or relating to this Contract.

Section 28. Claims or Actions Related to This Contract

The Firm shall give notice to EFC within ten business days of the initiation by or receipt of service against the Firm or any subcontractor of any legal action or proceeding relating to this Contract. The Firm shall give EFC notice of any potential claim related to this Contract that the Firm is or should be aware of, as soon as practicable. The Firm shall include in any subcontract entered under this Contract, a provision advising the subcontractor of the requirements of this section.

Section 29. Publicity

The Firm shall not issue, or permit to be issued, any press release, advertisement, or literature, or conduct or permit to be conducted any interview or news conference, referring to the Services, without EFC's prior written approval.

Section 30. Performance of Work

The Firm shall assume responsibility for the cost and timely accomplishment of all obligations and duties required by this Contract in a competent and professional manner whether such obligations or duties are performed by the Firm or its subcontractor. The Firm shall accept liability for work not performed in accordance with those standards.

Section 31. Access to Meetings

The Firm shall allow employees of EFC, as requested by EFC to attend any meeting held in connection with this Contract; and to access, review and photocopy the Firm's records related to the performance of this Contract during normal working hours.

Section 32. Records, Inspection, and Audit

1. The Firm 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 six (6) years plus the balance of the calendar year after contract final payment, expiration, or termination.
2. The Firm shall permit EFC or any authorized government representative access to the Firm's Records at all reasonable times during the term specified above for the purposes of inspection, auditing, and copying. No additional compensation will be paid for the preservation of such documents or audit support.
3. Records are EFC's property and shall be turned over to EFC, at EFC's request, upon completion of the Services of the Firm, or upon termination of this Contract, provided that the Firm may in its discretion retain a copy of same.

Section 33. Compliance with New York State Information Security Breach and Notification Act

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

Section 34. 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.

Section 35. Headings

The section headings in this Contract are for convenience only and do not affect the interpretation of this Contract.

Section 36. Severability

The parties intend that if any provision of this Contract is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded; and that if an unenforceable provision is modified or disregarded in accordance with this section, then the rest of this Contract will remain in effect as written.

Section 37. Entire Agreement

This Contract and its appendices constitute the entire agreement of the parties with respect to the subject matter of this agreement. This Contract supersedes any other agreement entered into by the parties for the Services.

Section 38. Counterparts

This Contract may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument.

Each party is signing this Contract on the date indicated below that party's signature, and the Contract becomes effective on the date signed by the last party to sign.

FIRM:	EFC:
[ENTER FIRM NAME HERE]	NYS Environmental Facilities Corporation
By:	By:
Name:	Name: Maureen A. Coleman
Title:	Title: President and CEO
Date:	Date:

FIRM ACKNOWLEDGEMENT:

STATE OF NEW YORK)

) ss.:

COUNTY OF _____)

On this ____ day of _____, 20__, before me personally came _____, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did depose and say that he/she is the _____ of _____, and that he/she executed the foregoing instrument in the name of said firm, and that he/she had the authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm.

Notary Public

Section 39. Appendices

Appendix A: Scope of Services

Appendix B: Budget

Appendix C: Payment and Reporting

- I. No payment under this Contract will be made by EFC to the Firm unless proof of performance or required services or accomplishments is provided and a proper invoice submitted to EFC. The Firm will submit monthly invoices to EFC which shall set forth, in detail, a description of the Services rendered, the name of the individuals performing the Services, the basis for the calculation of the charges submitted with respect to each such specified matter and an itemization of disbursements for which reimbursement is expected. Services shall be limited to those requested or authorized by EFC. If the Firm fails to perform the Services required under this Contract, EFC shall, in addition to any remedies available by law or equity, recoup payments made but not earned, by set-off against any other public funds owed to the Firm.
- II. Should funds not be appropriated by the State or budgeted by EFC for the purpose herein specified, EFC shall have no liability under this Contract to the Firm, and this Contract shall be considered terminated.
- III. The Firm will be entitled to receive payments for work, projects, and services rendered as detailed and described in the program Scope of Services, Appendix A.
- IV. All required reports or other work products developed under this Contract must be completed as provided by the agreed-upon work schedule, in a manner satisfactory and acceptable to EFC, for the Firm to be eligible for payment. If requested by EFC, the Firm agrees to provide EFC with any reports or work products developed under this Contract, in an electronic format as specified by EFC. The Firm will also provide EFC with reports or other specific work products pursuant to this Contract.
- V. The Firm shall submit payment claims and reports of expenditures to EFC on such forms and in such detail as EFC shall require. The Firm shall submit invoices to EFC's designated payment office located at:
New York State Environmental Facilities Corporation
Accounting Unit
625 Broadway
Albany, New York 12207
- VI. All invoices submitted by the Firm pursuant to this Contract shall be submitted to EFC no later than 30 days after the end date of the period for which reimbursement is being claimed. In no event shall the amount received by the Firm exceed the budget amount approved by EFC and, if actual disbursements to the Firm are less than such sum, the amount payable by EFC to the Firm shall not exceed the amount of actual disbursements.
- VII. Timeliness of payment and any interest to be paid to the Firm for late payment shall be governed by Public Authorities Law § 2880 and EFC's Prompt Payment Guidelines, available at www.efc.ny.gov. If the Firm is a Small Business, as defined in EFC's Prompt Payment Guidelines, the Firm will notify EFC and provide an executed Appendix G, Certification of Small Business Status, as well as any other supporting documentation as requested by EFC to confirm its status as a Small Business. If the Firm files a Certification of Small Business Status, the Firm is required to notify EFC of any subsequent status changes.

Appendix D: Insurance Requirements

Prior to the commencement of the work to be performed by the Firm hereunder, the Firm shall file with EFC, Certificates of Insurance evidencing compliance with all requirements contained herein. Such Certificates shall be of form and substance acceptable to EFC.

Acceptance and/or approval by EFC does not and shall not be construed to relieve Firm of any obligations, responsibilities, or liabilities under the Contract.

All insurance required by the Contract shall be obtained at the sole cost and expense of the Firm; shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to EFC; shall be primary and non-contributing to any insurance or self-insurance maintained by EFC; and shall be endorsed to provide that written notice be given to EFC, prior to the non-renewal, or material alteration of such policies in accordance with New York State Insurance Law, which notice, evidenced by return receipt of United States Certified Mail, shall be sent to the New York State Environmental Facilities Corporation, 625 Broadway, Albany, NY 12207, and shall name EFC as an additional insured thereunder (General

Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85, or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 12 19 and CG 20 37 12 19). In addition, within ten (10) business days of receipt of any notice of cancellation or non-renewal of insurance, the Firm shall provide EFC with a copy of such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements herein.

The Firm shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by EFC.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII," the insurance must be replaced no later than the renewal date of the policy, with an insurer acceptable to the Department and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Firm shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The Firm shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

As soon as practicable in connection with the expiration date or renewal date, the Firm shall supply EFC updated replacement Certificates of Insurance and amendatory endorsements.

The Firm shall require that any subcontractors hired carry insurance with the same limits and provisions provided herein.

The Firm, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain, in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- a. Worker's Compensation, Employers Liability, and Disability Benefits as required by New York State.
- b. Commercial General Liability Insurance with a limit of not less than \$2,000,000 per occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages, and shall cover liability arising from premises operations, independent consultants, products, completed operations, broad-form property damage, personal & advertising injury, cross-liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage. If such insurance contains an aggregate limit, it shall apply separately on a per-job, per-location basis.
- c. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$2,000,000 per accident. Such insurance shall cover liability arising out of any automobile, including owned, leased, hired, and non-owned.
- d. Waiver of Subrogation. For the Commercial General Liability Insurance and Business Automobile Insurance Liability insurance required herein, the Firm shall cause to be included in each of its policies insuring against loss, damage, or destruction by fire or other insured casualty, a waiver of the insurer's right of subrogation against EFC or, if such waiver is unobtainable, an express Contract that such policy shall not be invalidated if the Firm waives, or waived before the casualty, the right of recovery against EFC, or any other form of permission for the release of EFC.
- e. If providing professional services, the Firm shall maintain, or if subcontracting professional services shall certify that subcontractor maintains, Professional Liability Insurance with a limit of not less than \$1,000,000 per loss.
 1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and may not exclude bodily injury or property damage.
 2. If coverage is written on a claims-made policy, the Firm warrants that any applicable retroactive date precedes the effective date of this Contract and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two (2) years from the time work under this Contract is completed.

Please direct questions to: Brian McGuire
Senior Manager of Procurement and Program Compliance
New York State Environmental Facilities Corporation
625 Broadway
Albany, NY 12207
Phone: (518) 402-6924
Fax: (518) 486-9323

Appendix E: Quarterly MWBE Contractor Compliance Report

Is this a final report? Yes No

Contract No: _____

The following information indicates the payment amounts made to the Firm by the _____ and payments made to the NYS certified MWBEs from the Firm on this project. The payments as shown are in compliance with contract documents for the above referenced project:

Start Date: _____ Completion Date: 1st Quarter (Oct.1 – Dec.31)

Contractor: _____ Contract Description: 2nd Quarter (Jan.1 – Mar.31)

Contract Amount: _____ 3rd Quarter (Apr.1 – June 30)

Paid to Firm - This Quarter: _____ 4th Quarter (July 1 – Sept. 30)

Total Paid to Firm - To Date: _____

MBE Goal/Amount: _____ % = \$ _____

WBE Goal/Amount: _____ %=\$ _____

M/WBE Subcontractor	Work Status This Report	Total Subcontractor Contract Amount - MBE	Total Subcontractor Contract Amount - WBE	Payments this Quarter - MBE	Payments this Quarter - WBE	Previous Payments - MBE	Previous Payments - WBE	Total Payments Made to Date - MBE	Total Payments Made to Date - WBE
Name: Fed. ID:	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
Name: Fed. ID:	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
Name: Fed. ID:	<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
TOTAL									

Is documentation of previous months payments to M/WBE subs attached? Yes No

Date: _____

Signature: _____

Appendix G: Certification of Small Business Status

Firm Name:

Address:

City:

State:

Zip Code:

Federal Tax ID:

Number of Employees:

Contact Person:

Title:

Phone Number:

Email:

The Firm certifies that it is a Small Business as defined in the New York State Environmental Facilities Corporation's Prompt Payment Guidelines, meaning that the Firm:

1. Has a significant business presence in New York State;
2. Is independently owned and operated;
3. Is not dominant in its field; and,
4. Employs not more than two hundred employees.

By signing, you certify your express authority to sign on behalf of the Firm and that all information provided herein is complete, true and accurate.

Signature:

Name (Print):

Title:

Date: