



**EASTERN REGION
PROPOSAL**

FOR

K24-10359171NF

**CULVERT REPLACEMENT 1400 FEET WEST OF THOMAS ROAD
AND EMPIRE STATE TRAIL REPAIRS BETWEEN REBER ROAD
AND THOMAS ROAD
ON THE OLD ERIE CANAL
IN ONEIDA COUNTY**

**SUBMITTED IN ACCORDANCE WITH THE NEW YORK STATE DEPARTMENT OF
TRANSPORTATION STANDARD SPECIFICATIONS OFFICIALLY ADOPTED SEPTEMBER 1,
2023, EXCEPT AS MODIFIED IN THE PLANS AND/OR PROPOSAL AND ANY CHANGES WITH
ARTICLE 2, TITLE 9 OF THE PUBLIC AUTHORITIES LAW.**

LETTING OF

November 7, 2024

4:00 P.M.



Contract No. K24-10359171NF

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Designated Contacts

Pursuant to NYS Finance Law Sections 139-j and 139-k, the following people are the Designated Contact(s) for this procurement process:

For all procurement related questions:

- Primary Contact

Nancy Florence
Category Manager – Services, Major Projects
Strategic Supply Management
New York Power Authority
(914) 390-8268
Nancy.Florence@nypa.gov

REQUEST FOR INFORMATION (RFI)

A **request for information (RFI)** is a written process used to clarify a detail, specification, or note in the contract documents, provide notification of a possible error or omission, or request a minor modification due to possible unforeseen issues that may occur during construction.

However, during the period between project advertisement and award of contract, the prospective Bidder/Contractor shall submit all RFIs to the Designated Contact(s) via e-mail or Ariba, as listed elsewhere in the Proposal. The RFIs shall follow the format shown on the following page.

This form can be printed, filled out as completely and accurately as possible, and numbered sequentially, as needed. Any supporting information that may help describe the issue more clearly, as well as any suggestions or recommendations for possible resolution, should be provided.

All RFIs requiring a response prior to the designated Letting Date (Bids Due Date) shall be communicated by email or Ariba to the Primary and/or Secondary Contact listed above as soon as practical, but no later than 5pm of the day preceding three (3) full business days prior to the Letting Date. This gives NYPA and NYSCC ample time to answer the RFI and make the response available to all potential bidders if that becomes necessary. NYPA and NYSCC reserve the right not to answer any RFI submitted after this designated date and time.

CONTRACTOR REQUEST FOR INFORMATION

New York State Canal Corporation

Purpose: This form is used by Corporation staff to provide further information to the Contractor for the progression of contract work. This form is completed by a Project's Construction Manager or a designee upon receipt of a Contractor's request for information regarding an aspect(s) of the project.

INSTRUCTIONS:

- Construction Manager: Complete Section I upon receiving the Contractor's written request for information. This form, along with the Contractor's request, is forwarded to the appropriate Corporation Office (Design or Maintenance) with a copy being sent to the Director of Construction Management.
- Receiving Corporation Office: Completes Section II, providing the requested information, and returns the form to the Construction Manager with a copy being sent to the Director of Construction Management.

Section I Request		
Contract Number:	Project Description:	
CC-RFI Number:	Construction Manager: (NYSCC)	Phone Number:
Contractor's Ref. No.:	Company:	Requested by:
Trades: (if applicable)	Contract Drawing Number:	Specification Section:
Detailed Description of Issue: (use additional sheets if necessary)		
Proposed Solution: (use additional sheets if necessary)		
Date of RFI:	Preferred Response Date:	
Section II Response		
Date RFI Received:	Actual Response Date:	
Corporation Office:	Response by:	
Response: (use additional sheets if necessary)		
Attached Document(s) Description:		



NOTICE TO BIDDERS

Electronic Bid Documents to be returned for this Proposal will only be accepted via Ariba. Bidders must submit their bid through Ariba.

Bids will be due no later than 4:00 PM EST November 7, 2024 and will be returned according to directions provided by NYPA Procurement.

All bidders are advised that Appendices referred to in this Proposal (with the exception of A-1 & A-2 in “Revisions to the NYSDOT Standards Specifications”) are now separate documents in Ariba but are part of this Contract Proposal.

Your bid must be secured with a Bid Bond. A Bid Bond must be in the amount of 10% of the total bid and must be on the Bid Bond Form which is included in the Proposal.

Plans, proposals, and information on how to download Contract Bid Data are available on the Corporation’s website at www.canals.ny.gov/business, Procurement Opportunities.

PROJECT INFORMATION



EASTERN REGION

PROPOSAL ESTIMATE FOR

CULVERT REPLACEMENT 1400 FEET WEST OF THOMAS ROAD AND

EMPIRE STATE TRAIL REPAIRS BETWEEN REBER ROAD AND

THOMAS ROAD

ON THE OLD ERIE CANAL

IN ONEIDA COUNTY

TYPE	LIMITS
Box Culvert Installation	Old Erie Canal Between Thomas Road
Restoration of Stone Dust Surfaced Trail	and Reber Road in the Town of
Miscellaneous Work	Whitestown and City of Rome

BID BOND REQUIRED: 10% OF TOTAL BID AMOUNT
COMPLETION DATE: NOVEMBER 21, 2025

PRE-BID INSPECTION

Contractors are encouraged to visit the- Contract area before bidding to become familiar with the field conditions, and to judge the extent and nature of the work to be done under this contract. Extra compensation will not be provided to the Contractor due to the failure to include in the Contractor's bid, all items and materials which the Contractor is required to furnish, in accordance with the contract documents. The prospective bidder must have in its possession the Contract Proposal and a Work Permit for identification purposes when conducting a pre-bid inspection of Canal infrastructure components within the contract area. Before submitting the required Work Permit Application, the prospective bidder shall contact the appropriate Region Point of Contact (listed below) to obtain the specific insurance requirements associated with the Application.

- **New York State Canal Corporation
Commercial and Municipal - Canal Occupancy and Work Permit Application (CC-W99072)**
is available at <http://www.canals.ny.gov/business/realproperty/permits.html>.
- The application shall be submitted to the appropriate Region Canal Permit Coordinator as indicated on page 2 of the application. The fee is waived for this Pre-Bid Inspection.

<u>Region</u>	<u>Point of Contact</u>	<u>Phone</u>	<u>Email</u>
Eastern – Utica & Fonda Sections	Canal Permit Coordinator Utica Office	(315)263-0909	UticaCanalPermits@Canals.ny.gov

Provisions of Section 107-05 of the NYSDOT Standard Specifications and NYSCC Addendum, Safety and Health Requirements contained in the Contract Proposal shall apply to all Pre-Bid Inspectors and shall be strictly adhered to while performing the pre-bid inspection.

WORK TO BE DONE

The following is a general description of the work to be done under this Contract. This list is intended to give the Contractor a general description of the work involved in this Contract and is not a complete listing of all work to be done. All work shall be done in accordance with the Contract Documents even though not specifically mentioned in this list.

Culvert replacement 1400 feet west of Thomas Road and Empire State Trail repairs between Reber Road and Thomas Road on the Old Erie Canal

- Install temporary erosion and sediment control devices and protective barrier fence prior to disturbing any areas.
- Remove and store/ dispose any interfering wood rail fence.
- Install work zone traffic control features.
- Clear trees as indicated in plans and as necessary. Remove downed trees and stumps to construct new box culvert and trail.
- Excavate for new box culvert and rip rap armoring.
- Install new box culvert and stone armoring.
- Excavate and grade existing trail as necessary and construct new stone dust surface.
- Install new wood rail fencing as needed.
- Remove temporary erosion and sediment control devices and protective barrier fence upon completion of the permanent stabilization of all disturbed areas.

SCHEDULE AND SUSPENSION OF WORK

There are no specific restrictions for this project regarding the Schedule and Suspension of Work other than to comply with the Canal Operation Notes on Contract Drawing GNN-1 and to complete the work before the contract completion date.

LIQUIDATED DAMAGES

Liquidated Damages shall be assessed in accordance with Section 108-03 of the NYSDOT Standard Specifications, as modified by this Proposal. Failure to complete the work in this contract on or before the completion date shall result in the assessment of Liquidated Damages in the amount per calendar day specified in Table 108-1, Schedule of Liquidated Damages, of the NYS Standard Specifications.

ADDITIONAL INSURED PARTIES

The following is a list of additional insured parties: Oneida County
City of Rome
Town of Whitestown
New York State Department of Transportation

PRE-CONSTRUCTION MEETING

A Pre-Construction Meeting will be held prior to the start of construction. The time and date will be coordinated by the Director of Construction Bureau who will provide this information to the awarded contractor as soon as it is available.

SUPPLEMENTAL INFORMATION FOR BIDDERS

Supplemental information is available to bidders. As indicated below, information is available in electronic format from the Canal Corporation prior to the letting date.

The bidder's signature on this proposal certifies that they have made themselves aware of the availability of the information indicated below prior to the letting date.

INFORMATION	NOT AVAILABLE	AVAILABLE AND PROVIDED
Utility Estimate Sheets with Names of Utility Officials	X	
Earthwork Cross Section Sheets	X	
Drainage Estimate Sheets	X	
Sign Face Layouts	X	
Logs of Subsurface Exploration		X
Tabulated Results of Probing	X	
Tabulated Depth of Bed Rock	X	
Logs Showing Laboratory Description of Soil and Sediment Samples		X
Laboratory Test Data from Soil and Sediment Samples		X
Rock Outcrop Maps	X	
Granular Materials Resources Survey Reports	X	
Terrain Reconnaissance Reports	X	
Subsurface Data		X
Granular Material Sources Report	X	
Pavement/Rock Cores (available for inspection only)	X	
Oriskany to Stanwix Canalway Trail Design Plans		X
Applicable Asbestos Blanket Variances	X	
Storm Water Pollution Prevention Plan		X
Shop Drawings	X	
Residency Sheets	X	
CADD Files of Contract Plans (Unofficial - Not signed or stamped)	X	
Foundation Design Report	X	
Environmental Report	X	
Geotechnical Report		X
Water Level Records	X	

Hard copies of the supplemental information indicated above are not available. Contractors shall be responsible for their own hard copies of this information at no additional cost to the Corporation.

**PERMITS
AND
EXTERNAL
PROJECT
APPROVALS**

**NEW YORK STATE HISTORIC
PRESERVATION
OFFICE**



**New York State
Parks, Recreation and
Historic Preservation**

KATHY HOCHUL
Governor

ERIK KULLESEID
Commissioner

January 02, 2024

Margaret Crawford
USACE
7413 County House Road
Auburn, NY 13021

Re: USACE
Thomas Road Culvert Replacement, Whitestown, Oneida County.
Town of Whitestown, Oneida County, NY
23PR03280

Dear Margaret Crawford:

Thank you for requesting the comments of the State Historic Preservation Office (SHPO). We have reviewed the project in accordance with Section 106 of the National Historic Preservation Act of 1966. These comments are those of the SHPO and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the National Environmental Policy Act and/or the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8).

Based upon this review, it is the opinion of the New York SHPO that no historic properties, including archaeological and/or historic resources, will be affected by this undertaking.

If further correspondence is required regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

R. Daniel Mackay

Deputy State Historic Preservation Officer
Division for Historic Preservation

rev: B. Russell

UNITED STATES ARMY CORPS OF ENGINEERS

The project is being progressed under coverage of the TRGP-1 - Category -6.

DEPARTMENT OF THE ARMY PERMIT

Permittee:

Matthew W. Luzzatto
Colonel, Corps of Engineers
District Commander, New York District

and

Colby K. Krug
Lieutenant Colonel, Corps of Engineers
District Commander, Buffalo District

On Behalf of New York State Department of Transportation (NYSDOT),
New York State Thruway Authority (NYSTA) and the New York State
Canal Corporation (NYSCC)

Regional Permit No.: TRGP-1

Effective Date: 23 November 2022
Expiration Date: 23 November 2027

Issuing Office: U.S. Army Engineer District, Buffalo
1776 Niagara Street
Buffalo, New York, 14207-3199

and

U.S. Army Engineer District, New York
26 Federal Plaza, Room 17-201
New York, NY 10278-0090

IMPORTANT: PRIOR TO COMMENCING THE ACTIVITY AUTHORIZED BY THIS PERMIT OR DIRECTING A CONTRACTOR TO PERFORM SUCH ACTIVITY ON YOUR BEHALF, BE SURE THAT ALL PARTIES READ, UNDERSTAND AND ARE PREPARED TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT.

NONCOMPLIANCE WITH ANY OF THE TERMS OR CONDITIONS OF THIS PERMIT MAY RESULT IN AN ORDER TO REMOVE THE ACTIVITY; CIVIL AND/OR CRIMINAL PENALTIES OR BOTH.

AUTHORITIES: You have been authorized to undertake the activity described below pursuant to:

Section 404 of the Clean Water Act (33 U.S.C. 1344)

and

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

Authorized Activities: State transportation related work and structures located in, or that affect, navigable waters of the United States as prescribed in US Army Corps of Engineers (Corps) regulations implementing Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and the discharge of dredged or fill material into waters of the United States (WOTUS), including but not limited to wetlands, as prescribed in Corps regulations implementing Section 404 of the Clean Water Act (33 U.S.C.1344), would be eligible for consideration under this Regional General Permit (RGP) within the geographic limits of the State of New York.

This RGP is authorized for activities proposed by the New York State Department of Transportation (NYSDOT), New York State Thruway Authority (NYSTA) and the New York State Canal Corporation (NYSCC). Authorized activities are as stated in each of the Categories of Authorization in Section A.

This RGP is for use only in non-tidal WOTUS. Impact limits for waters are listed within each Category of Authorization. This RGP does not authorize channelization, channel widening, deepening, or straightening of a channel that would result in instability of the watercourse. This permit does not include maintenance dredging of the NYS Barge Canal. Finally, this RGP does not authorize permanent impacts to any WOTUS for the construction of borrow or disposal sites.

Note regarding Federal Lead Agency for the National Environmental Policy Act (NEPA): With respect to NEPA responsibilities, if the Federal Highway Administration (FHWA) or another Federal Agency is acting as NEPA-Lead Agency, that agency will have the ultimate responsibility for compliance with certain reviews including, but not limited to: compliance with the protection of the National Wild and Scenic Rivers System (NWSR), Section 7 of the Endangered Species Act (ESA), and Section 106 of the National Historic Preservation Act (NHPA).

The permit is structured to contain six Categories of Authorization. Within each Category there are activities which require a Request for Authorization (RFA) to be submitted to the Corps of Engineers. In addition to these category specific RFA requirements, an RFA must be submitted for any of the following:

1. Projects located within or that may affect a U.S. Army Corps of Engineers Federal Project (see General Condition No. 1)
2. New stormwater management facilities located within WOTUS (See General Condition 15(i))

3. Projects located within Designated Critical Resource Waters (See General Condition No. 24)
4. Projects likely to have an adverse effect to a listed species, or species proposed for listing, or designated critical habitat, or critical habitat proposed for such designation, with respect to the ESA where FHWA or another Federal Agency has not completed required Section 7 consultation (See Section D.1.M. for complete ESA procedures). This only applies to species that are listed or proposed for listing, not candidate, warranted, etc.
5. Projects which may have an adverse effect to properties listed on, eligible for listing on or potentially eligible for listing on the National Register of historic places, or when tribal consultation is necessary and FHWA or another Federal Agency has not completed consultation with respect to Section 106 of the NHPA (See Section D.1.N. for complete Section 106 procedures, including cases where there is disagreement regarding an effects determination)
6. Projects located within a component of the National Wild and Scenic Rivers System or a river officially designated by Congress as a "study river" (See Section D.1.P.)

In reviewing an RFA for a proposed activity, the district engineer will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the RGP, as well as the cumulative effects caused by all the crossings authorized by the RGP. The overall project, for purposes of this RGP, includes all regulated activities that are reasonably related and necessary to accomplish the project purpose. Linear projects may be composed of more than one "single and complete project", but require disclosure of all impacts to aquatic resources necessary to accomplish the overall project's purpose in order to assess cumulative effects.

The use of more than one Categories of Authorization for a single and complete project is authorized, subject to the following restrictions: (a) If only one of the Categories of Authorization used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the Categories of Authorization with the highest specified acreage limit. (b) If one or more of the Categories of Authorization used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those Categories of Authorization cannot exceed their respective specified acreage limits.

A. Categories of Authorization:

- 1) Maintenance Activities
- 2) Linear Transportation Projects
- 3) Non-Linear Transportation Projects
- 4) Streambed and Bank Stabilization Activities
- 5) Temporary Construction, Access, Dewatering
- 6) Culvert Installation, Replacement, Repair or Rehabilitation

1) Maintenance Activities:

- a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification.
- b) The repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.
- c) The removal of previously authorized structures or fills.
- d) The removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, drainage outfalls etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 500 feet upstream or downstream from the structure (total potential removal area of 1,000 feet).
- e) The placement of new or additional riprap scour protection to protect the structure, provided the minimum necessary is placed in waters of the United States for this purpose. Natural in-stream design methods (i.e., cross vanes, j-hooks, should be used instead of rock rip rap to reduce fill into the stream and create aquatic habitat, where practicable.

REQUIREMENTS:

Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized.

The discharge must not cause the loss of more than 500 linear feet of streambed, unless for intermittent and ephemeral streambeds, the district engineer waives the 500 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of streambed plus any other losses of WOTUS, including wetlands caused by the RGP activity cannot exceed 2 acres.

Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill.

All dredged or excavated materials must be permanently deposited and retained in an upland area unless otherwise specifically approved by the district engineer under separate authorization.

Examples of Authorized Activities Include:

- Repair, Replacement, Rehabilitation of Existing or Additional Scour Protection
- Sediment Removal
- Repair, Replacement, Rehabilitation of Other Existing Structures and Fills (i.e. road shoulder, embankment, bank stabilization, etc.)

NOTE: Activities associated with culverts shall be reviewed under Categories of Authorization No. 6) Culvert, Installation, Replacement, Repair or Rehabilitation.

Request for Authorization (RFA) Shall Be Submitted for:

- i. Permanent loss of jurisdictional wetlands that exceeds 1/10 acre.
- ii. Maintenance activities of existing vertical stabilization structures/fills (e.g. retaining walls or bulkheads – not culvert wingwalls) that extend waterward more than 18 inches from the existing wall. This 18-inch limit does not include the placement of riprap scour protection in front of a repaired or existing wall.
- iii. Maintenance activities that involve the placement of new vertical stabilization structures/fills below the ordinary high water (OHW) of WOTUS, including wetlands.
- iv. Sediment removal exceeding 100 linear feet upstream and/or downstream of existing culvert or bridge, not to exceed a total of 200 linear feet.
- v. Any single stone or concrete apron or the placement of stone across a stream exceeding 25 feet in length from the structure.
- vi. Stone fill placed below OHW for scour/toe protection exceeding one (1) cubic yard per running foot extending above the existing grade of the streambed. Filling of scour holes is excluded from the calculation.
- vii. Replacement bridges that are proposed to be placed more than 150 feet from the existing location, and/or there is more than 100 feet of stream relocation on either side of the bridge;
- viii. Replacement bridges that include the installation of abutments and/or piers below OHW where none previously existed (i.e. replacing a clear span with a pier-supported structure).
- ix. Relocation of more than 100 feet of intermittent or perennial streams not associated with bridge or culvert replacement/rehabilitation/repair.
- x. Relocation of utility lines in, above, or below navigable waters of the US.

2) Linear Transportation Activities:

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads and highways) in waters of the U.S.

REQUIREMENTS:

The discharge must not cause the loss of more than 500 linear feet of streambed, unless for intermittent and ephemeral streambeds, the district engineer waives the 500 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of streambed plus any other losses of WOTUS, including wetlands caused by the RGP activity cannot exceed two (2) acres. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project. Natural in-stream design methods (i.e., cross vanes, j-hooks, should be used instead of rock rip rap to reduce fill into the stream and create aquatic habitat, where practicable.

Examples of Authorized Activities Include:

- New Roadway Alignments
- Roadway Realignments
- Construction of Roadway Embankments and Bridge Abutments
- Installation of Additional Traffic Lanes to Existing Roadways
- Traffic Lane/Shoulder Widening
- Intersection Improvements
- Multi-Use Paths and Sidewalks
- Roadway and Railway Grade Separations
- Replacement of Structures and Fills Not Currently in Service

Request for Authorization Shall Be Submitted for:

- i. The combined loss of WOTUS exceeds 1/10 acre or 300 linear feet of stream
- ii. The total perennial stream loss is greater than 100 linear feet

3) Non-Linear Transportation Activities:

Non-linear features commonly associated with transportation projects.

REQUIREMENTS:

The discharges associated with non-linear transportation projects must not cause the loss of greater than 1/2 acre of non-tidal WOTUS, including the loss of no more than 500 linear feet of streambed.

The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States.

In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench.

The construction of temporary pads is authorized, provided the discharge does not exceed 1/10-acre in waters of the U.S.

Discharges and structures associated with the recovery of historic resources are not authorized.

Fill placed for roads and other similar activities is not authorized.

The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404).

Examples of Authorized Activities Include:

- Storage Buildings
- Vehicle Maintenance Buildings
- Parking Lots
- Rest Area
- Fishing or Boating Access
- Survey Activities (such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys.

Request for Authorization Shall Be Submitted for:

- i. The combined loss of WOTUS exceeds 1/10 acre or 300 linear feet of stream
- ii. The activity is in a Section 10 waterway
- iii. The total perennial stream loss is greater than 100 linear feet

4) Streambed and Bank Stabilization Activities:

Activities necessary for bank erosion control or prevention and streambed grade control to protect an existing linear or non-linear transportation structure or address aquatic passage issues, etc.

REQUIREMENTS:

The discharge must not cause the loss of more than 500 linear feet of streambed, unless for intermittent and ephemeral streambeds, the district engineer waives the 500 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of streambed plus any other losses of WOTUS, including wetlands caused by the RGP activity cannot exceed two (2) acres.

The placement of stone protection must be the minimum necessary to protect the structure or to

ensure the safety of the structure.

Every effort should be made to prevent hardening of the shoreline in New York waterbodies by selection of vegetative stabilization measures and/or rip-rap stone material.

No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any WOTUS.

No material is placed in a manner that will be eroded by normal or expected high flows.

Examples of Authorized Activities Include:

- Bioengineering using natural stream design methods
- Live Plantings
- Grade Control Structure/Fill (i.e. rock sill, cross vane, etc.)
- Directional Control Structures/Fill (i.e. cross vanes, j-hook, etc.)
- Fish Habitat Structures (creation of spawning habitat, cobbles, boulders, Little Underwater Neighborhood Keepers (LUNKERS), etc.)
- Rip-Rap Stone

Request for Authorization Shall Be Submitted for:

- i. Any in-stream structure or fills that extend across more than 50% of the existing channel width as measured at the OHW at the project location.
- ii. Material placed in excess of the minimum needed for erosion protection.
- iii. The activity is more than 500 feet in length as measured along each bank at the OHW.
- iv. The discharge of fill material will exceed an average of one cubic yard per running foot extending below the ordinary high water mark of the waterway (fill placement for key below streambed is excluded from the calculation).
- v. The activity involves the discharge of fill material into the following special aquatic sites: wetlands, vegetated shallows, mudflats.
- vi. The construction of new vertical stabilization structures/fills where one currently does not exist.

5) Temporary Construction, Access, and Dewatering Activities:

Temporary structures, work, and discharges of dredged or fill material necessary for construction activities or access fills or dewatering of construction sites, and return water from upland contained dredged material disposal sites.

REQUIREMENTS:

Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding.

Following completion of construction, temporary fill must be entirely and permanently removed to an area that has no WOTUS and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. The RFA must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.

This permit does not authorize the discharge of dredged or fill materials to dewater wetlands or other aquatic areas to change their use.

Temporary fills must consist of suitable materials, and be placed in a manner that will not be eroded by expected high flows.

Examples of Authorized Activities Include:

- Cofferdam (jersey barrier, sheet piling, bladder, sand-bags, etc.)
- Water Diversion
- Access Road or Causeway
- Construction Pad
- Temporary Mats
- Temporary Erosion Controls
- Turbidity Curtain
- Return Water from Temporary or Permanent Dredged Material Disposal Sites

Request for Authorization Shall Be Submitted for:

- i. Any temporary causeway that extends further than ½ the width of the stream channel at OHW at any one crossing site.
- ii. Any temporary construction, access, or dewatering activity that removes trees within forested wetlands (reference the Cowardin classification system).
- iii. Any causeway/cofferdam scheduled to be in place for greater than 6 months or one construction season.
- iv. Use of dredged/excavated streambed materials is proposed for the construction of the temporary causeway/cofferdam.

6) Culvert Installation, Replacement, Repair, and Rehabilitation:

Activities necessary for the installation, replacement, repair and rehabilitation of culverts.

REQUIREMENTS:

a) New/Replacement Culverts

ALL NEW OR REPLACEMENT CULVERTS IN STREAMS, to the extent they are regulated, shall be constructed/installed in accordance with the following, in order to ensure compliance with General Condition #3 – Aquatic Life Movement and #9 – Management of Water Flows:

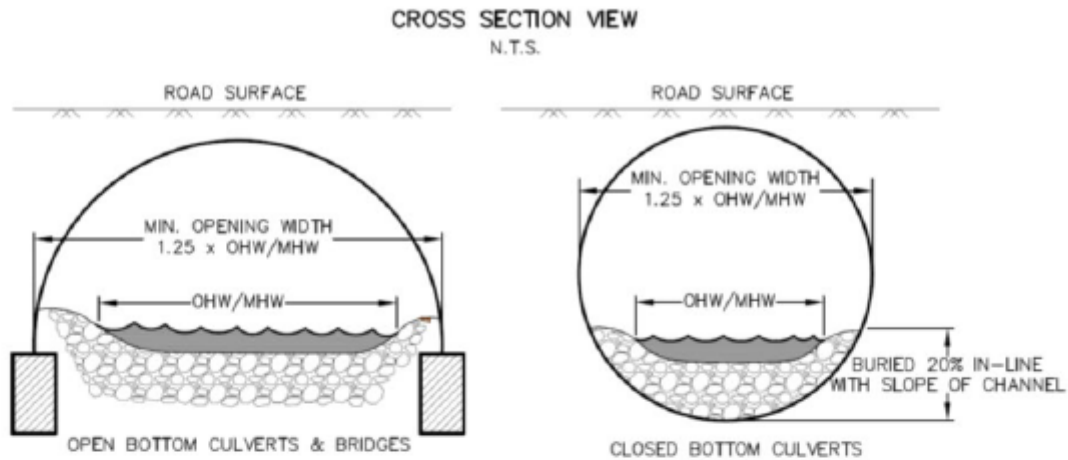
- i. Size: Bank-full flows shall be accommodated through maintenance of the existing bank-full channel cross sectional dimensions within a single culvert. Bank-full width is generally considered to be the top width at the stage where a stream begins to overtop its banks and spread into the floodplain. A bottomless culvert or bridge must be used to span the stream channel where practicable. If the stream cannot be spanned, the culvert width shall be minimum of 1.25 times width of the stream channel at the ordinary high water, which is generally equivalent to the width of the channel during the 2-year design storm.
- ii. Depth: To maintain low flow and aquatic life movement within culverts with a bottom, the culvert invert, including end sections, must be embedded. Specifically, the culvert must be installed with its bottom buried below the grade of the streambed, as measured at the average low point, to a depth of a minimum of 20 percent of the culvert vertical rise (height) throughout the length of the culvert. (Note: When not practicable to do so due to small culvert size, it is acceptable to allow natural deposition to cover the interior of the culvert bed following placement of the culvert invert to the 20% depth.)
- iii. The dimension, pattern, and profile of the stream above and below the stream crossing shall not be permanently modified by changing the width or depth of the stream channel.
- iv. The culvert bed slope shall remain consistent with the slope of the adjacent stream channel.

Note 1: Use of the requirements alone will not satisfy the need for proper engineering and design. In particular, appropriate engineering is required to ensure structures are sized and designed to provide adequate capacity (to pass various flood flows) and stability (bed, bed forms, footings and abutments, both upstream and downstream). It is the permittee's responsibility to ensure the structure is appropriately designed.

Note 2: This condition does not apply to temporary culverts used for construction access that are in place for less than one construction season. However, compliance with General Conditions #3 and #9 (i.e. cannot impede aquatic life movement or water flow) still applies.

Note 3: For further guidance on identification of the Ordinary High Water mark, please see Regulatory Guidance Letter 05-05 available at: <https://www.usace.army.mil/Missions/Civil->

Works/Regulatory-Program-and-Permits/Guidance-Letters/.



b) Rehabilitated Culverts (Cured-In-Place, Slip Lining, Paving, etc.):

- i. **Aquatic Life Movement:** An evaluation of the existing culvert is required to determine its effect upon aquatic life movements (See RGP General Condition #3). Potential evaluation methods to consider include: North Atlantic Aquatic Connectivity Collaborative (NAACC), U.S. Forest Service Aquatic Organism Passage FishXing, etc. If the culvert is not providing Aquatic Life Movement, the identified causes of the impediments are required to be resolved, to the maximum extent practicable, through the rehabilitation design.
- ii. Rehabilitated culverts cannot raise the existing invert elevation or increase water velocity such that it causes or worsens an impediment to the passage of either aquatic life movement or water flow, unless appropriate mitigation measures are employed.

Note 1: Use of these requirements alone will not satisfy the need for proper engineering and design. Appropriate engineering is required to ensure structures are sized and designed to provide adequate capacity (to pass various flood flows) and stability (bed, bed forms, footings and abutments, both upstream and downstream). It is the permittee's responsibility to ensure the structure is appropriately designed.

Note 2: This condition does not apply to temporary culverts used for construction access that are in place for less than one construction season. However, compliance with General Conditions #3 and #9 (i.e. cannot impede aquatic life movement or water flow) still applies.

Examples of Authorized Activities Include:

- New or Replacement Culverts
- Culvert Rehabilitation Projects
- Wingwall Replacement or Repair
- Adjacent Grade Control Work Associated with a Culvert Repair or Replacement

Request for Authorization Shall Be Submitted for:

New/Replacement Culverts:

- i. Replacement culverts that have identified impediments to General Condition #3 - Aquatic Life Movement and resolution of the impediments is not part of the project.
- ii. Culverts where bank-full flows will not be accommodated.
- iii. Embedment of culvert at a minimum of 20% of the vertical rise is not possible.
- iv. The channel dimension, pattern, and profile above and below the culvert will be altered.
- v. Any temporary culvert in place for more than one construction season and does not meet the above requirements. Note: Culverts in place for less than one construction season must still comply with General Conditions #3 – Aquatic Life Movement and #9 Management of Water Flows.
- vi. Culvert extensions when the resulting total length would exceed 50% of the total length of an existing culvert.
- vii. Replacement of pipe and box culverts that require more than 100 feet of stream relocation on either side of the culvert.

A variance of the requirement(s) will be issued by the Corps if it can be demonstrated that the proposal would meet General Conditions #3 & #9 (i.e. does not impede aquatic life movement or water flow) and would result in the least environmentally damaging practicable alternative (e.g. compliance with any of the requirement(s) would result in detrimental impacts to the aquatic system).

Rehabilitated Culverts:

- i. The culvert has identified impediments to General Condition #3 – Aquatic Life Movement and resolution of the impediments is not part of the culvert rehabilitation project.
- ii. Rehabilitated culverts that increase existing invert elevation or increase water velocity such that it causes or worsens an impediment to passage of aquatic life movement or low flows.
- iii. Culvert extensions when the resulting total length would exceed 50% of the total length of an existing culvert.

NYSDOT/NYSTA/NYSCC RGP – GENERAL CONDITIONS:

NOTE: To qualify for RGP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any case-specific special conditions imposed by the

division engineer or district engineer.

1. **Federal Projects.** An RFA shall be submitted for any proposed activity located within, or potentially affecting, a US Army Corps of Engineers Civil Works project. These projects may also require a separate approval from the Corps under 33 CFR Section 408. Use of this RGP is not valid until any necessary Section 408 permission is granted.
2. **Navigation.**
 - a. No activity may cause more than a minimal adverse effect on navigation.
 - b. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
 - c. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
3. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
4. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
5. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
6. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
7. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-

approved state or local floodplain management requirements.

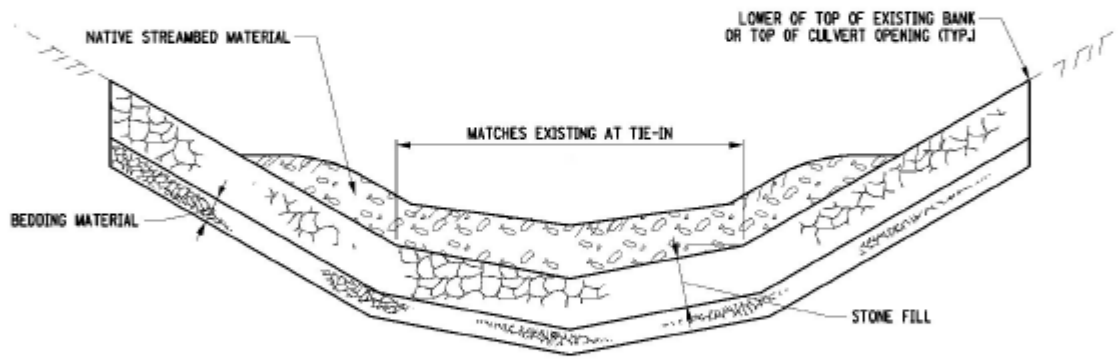
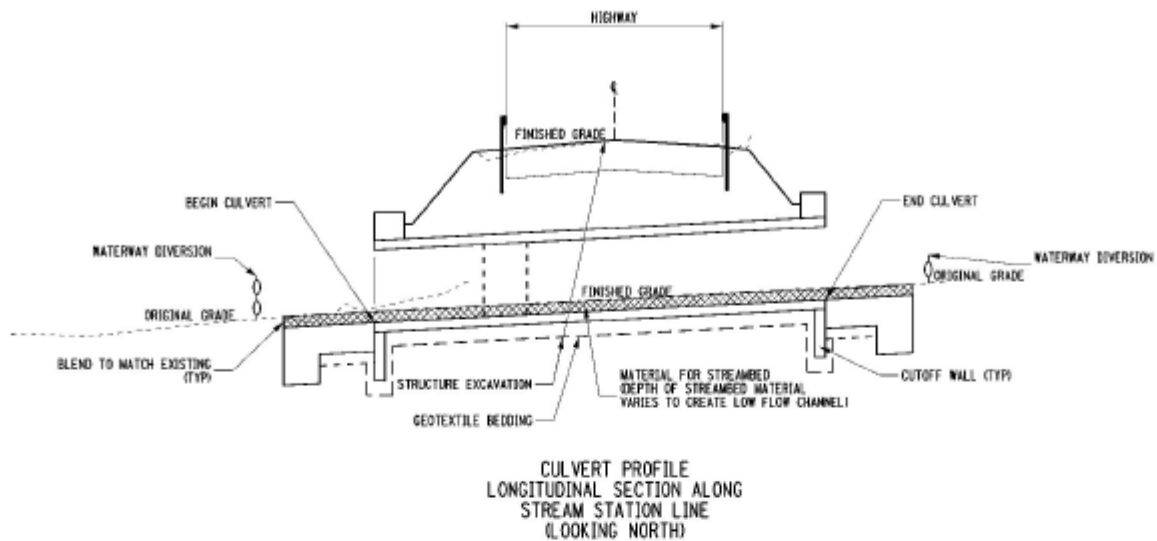
8. **Equipment.** Heavy equipment working in wetlands or mudflats must be clean, placed on mats, or other measures must be taken to minimize soil disturbance and to minimize spread of invasive species to the maximum extent practicable.
9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, stormwater management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows and must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound or manage high flows. The activity may alter the pre-construction watercourse, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. **Suitable Material.** No activity may involve unsuitable material, which includes, but is not limited to chemical or hazardous waste, trash, debris, car bodies, asphalt, etc. Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act (CWA)). If there is a question as to whether the material is unsuitable, the Corps Buffalo or New York District, as applicable should be contacted and must authorize prior to the commencement of the activity.
11. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within WOTUS during periods of low-flow or no-flow.
12. **Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be re-vegetated with native vegetation, as appropriate. The RFA must include a restoration plan showing how all temporary fills and structures will be removed and the area restored.
13. **Proper Maintenance & Abandonment.** Permittee must maintain the structure/fill authorized by this permit in good condition and in conformance with the terms and conditions of this permit to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the district engineer to an RGP authorization. Permittees are not relieved of this requirement unless the permit is transfer to a third party in compliance with General Condition 44 below. Should a Permittee wish to cease maintenance of, or abandon the authorized activity, without transferring the permit, the Permittee must apply for a modification from the appropriate USACE District office, which may require restoration of the area to the original condition.
14. **Disposal.** If the authorized project results in material requiring off-site disposal, the applicant must either ensure that the disposal location is not within a water of the US or provide the contractor with the Contractor Notification Information Sheet included as Appendix A to ensure that the contractor is aware of the potential Corps permitting requirements if the material is placed in WOTUS,

including wetlands.

15. **General Construction Best Management Practices (BMPs).** Unless specifically approved otherwise through issuance of a waiver by the District Engineer, the following BMPs must be implemented to the maximum degree practicable, to minimize erosion, migration of sediments, and adverse environmental impacts. Note that at a minimum, all erosion and sediment control and stormwater management practices must be designed, installed and maintained to meet or exceed the criteria contained in the latest version of the *New York Standards and Specifications for Erosion and Sediment Control* and the *New York State Stormwater Management Design Manual*. These documents are available at: <http://www.dec.ny.gov/chemical/29066.html> and <http://www.dec.ny.gov/chemical/29072.html>, respectively. Prior to the discharge of any dredged or fill material into waters of the United States, including wetlands, authorized by TRGP-1, the permittee must install and maintain erosion and sedimentation controls in and/or adjacent to wetlands or other waters of the United States.
- a. All synthetic erosion control features (e.g., silt fencing, netting, mats), which are intended for temporary use during construction, shall be completely removed and properly disposed of after their initial purpose has been served. Only natural fiber materials, which will degrade over time, may be abandoned in place.
 - b. Materials resulting from trench excavation for utility line installation or ditch reshaping activities which are temporarily sidecast or stockpiled into WOTUS must be backfilled or removed to an upland area for permanent disposal and sufficiently stabilized within 30 days of the date of deposition. Note: Upland options shall be utilized prior to temporary placement within WOTUS, unless it can be demonstrated that it would not be practicable or if the impacts of complying with this upland option requirement would result in more adverse impacts to the aquatic environment.
 - c. For trenching activities in wetlands the applicant shall install impermeable trench dams or trench breakers at the wetland boundaries and every 100 feet within wetland areas to prevent inadvertent drainage of wetlands or other waters of the United States.
 - d. Dry stream crossing methods (e.g., diversion, dam and pump, flume, bore) shall be utilized for culvert or other pipe, or utility installations to reduce downstream impacts from turbidity and sedimentation. This may require piping or pumping the stream flow around the work area and the use of cofferdams.
 - e. No in-stream work shall occur during periods of high flow, except for work that occurs in dewatered areas behind temporary diversions, cofferdams, or causeways.
 - f. Construction access shall be by means that avoid or minimize impacts to aquatic sites (e.g. upland access, floating barges, mats, etc.). Discharges of fill material associated with the construction of temporary access roads, staging areas, and work pads in wetlands shall be placed on filter fabric. All temporary fills shall be removed upon completion of the work and the disturbed area restored to pre-construction contours, elevations, and wetland

conditions.

- g. All return flow from dredge material disposal areas shall not result in an increase in turbidity in the receiving water body that will cause a substantial visible contrast to natural conditions.
 - h. For activities involving the placement of concrete into waters of the U.S., the permittee must employ watertight forms. The forms shall be dewatered prior to the placement of the concrete. The use of tremie concrete is allowed, provided it complies with NYS water quality standards.
 - i. New stormwater management facilities shall be located outside of waters of the U.S. A waiver of this requirement may be requested with the submission of an RFA. The RFA must include justification which demonstrates that avoidance and minimization efforts have been met. An outfall (pipe or ditch connection from a stormwater facility) to a WOTUS doesn't automatically require an RFA, if impacts result in a few square feet to connect stormwater facilities at the appropriate elevation. Work in WOTUS associated with stormwater outfalls (i.e. new outfalls, repair or reconstruction of existing outfalls) from existing stormwater treatment facilities do not require an RFA.
 - j. To the maximum extent practicable, the placement of fill in wetlands must be designed to maintain pre-construction surface water flows/conditions between remaining on or off-site waters to prevent draining of the wetland or permanent hydrologic alteration. This may require the use of culverts and/or other measures. Furthermore, the activity must not restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters). The activity may alter the pre-construction flows/conditions if it can be shown that it benefits the aquatic environment (i.e. wetland restoration and/or enhancement).
 - k. To the maximum extent practicable, stone aprons and scour protection placed in streams shall not extend higher than the streambed in order to create a uniform grade (unless a specifically designed instream structure) and shall be filled with native streambed material and supplemented with similarly sized material, if needed, to fill interstitial spaces to maintain water flow on the surface of the streambed.
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16. **Single and Complete Project.** The activity must be a single and complete project. (See definitions) The same RGP cannot be used more than once for the same single and complete project.
17. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has

determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service (NPS), U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

The Upper Delaware River has been designated as a National Wild and Scenic River from the confluence of the East and West Branches below Hancock, New York, to the existing railroad bridge immediately downstream of Cherry Island in the vicinity of Sparrow Bush, New York. Also, the portion of the Genesee River located within Letchworth Gorge State Park, beginning at the southern boundary of the park and extending downstream to the Mt. Morris Dam, was designated by Congress as a permanent Study River in the Genesee River Protection Act of 1989. (Note: the applicant may not commence work under this RGP until the NPS determines in writing that the project will not adversely affect the NWSR even if 45-days have passed since receipt of the RFA package).

18. **Endangered Species.** No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat or critical habitat proposed for such designation of such species. No activity is authorized under this RGP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. Reference <https://www.fws.gov/office/new-york-ecological-services-field>)
- a. In cases where the applicant has identified listed species, or species proposed for listing, or designated critical habitat, or critical habitat proposed for such designation, that might be affected or is in the vicinity of the project, the applicant shall not begin work until Section 7 consultation has been completed by or on behalf of FHWA (when FHWA is the lead NEPA agency) or as identified under Section D.1.M. in this document. (Note: The applicant may not commence work under this RGP until ESA consultation is completed, even if 45-days have passed since receipt of the RFA package.)
 - b. Authorization of an activity by this RGP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including

breeding, feeding or sheltering.

19. **Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for ensuring that an action authorized by this RGP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
20. **Migratory Bird Breeding Areas.** Activities in the WOTUS that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
21. **Historic Properties.** No activity which has the potential to affect properties listed, or eligible for listing, in the National Register of Historic Places is authorized under this RGP until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied in accordance with 36 CFR Part 800, by or on behalf of FHWA (when FHWA is the lead NEPA agency) or and as outlined under Section D.1.M in this document. (Note: The applicant may not commence work under this RGP until the SHPO concurs in writing that the project is not likely to have an adverse effect to properties listed on or potentially eligible for listing on the National Register of historic places with respect to Section 106, even if 45-days have passed since receipt of the RFA package.)
22. **Discovery of Previously Unknown Remains and Artifacts.** If any previously unknown historic, cultural or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, the permittee must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required consultation has been completed. Further, should human remains be encountered during any phase of the proposed project, such person or persons encountering the human remains must immediately cease work and must not disturb or remove the remains, must protect the exposed portions of the remains from inclement weather and vandalism, and immediately notify the permittee. Within 24 hours of notification, the permittee must notify the Corps Project Manager or NEPA Lead Agency and the New York State Office of Parks, Recreation, and Historic Preservation, Peebles Island State Park, P.O. Box 189, Waterford, New York 12188-0189. The district engineer or NEPA Lead Agency will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
23. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
24. **Designated Critical Resource Waters.** Discharges of dredged or fill material into WOTUS are not authorized under this permit for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters without written approval.

Notification is required for any activity proposed in designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities only after it is determined that the impacts to the critical resource waters will be no more than minimal. Critical resource waters include NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. Critical Resource Waters in New York State include the following:

- a. East-of-Hudson portion of the New York City Water Supply: This area includes portions of Dutchess, Putnam and Westchester Counties as delineated on Figure 1.

The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites.

25. **Bogs and Fens.** No regulated activity authorized by this permit can cause the loss of areas classified as a bog or fen in the State of New York, as determined by the Buffalo or the New York District Corps of Engineers, due to the scarcity of this habitat in New York State and the difficulty with in-kind mitigation. The Districts will utilize the following document in the classification: Edinger, G. J., D. J. Evans, S. Gebauer, T. G. Howard, D. M. Hunt, and A. M. Olivero (editors). 2014. Ecological Communities of New York State. Second Edition. A revised and expanded edition of Carol Reschke's Ecological Communities of New York State. New York Natural Heritage Program, New York State Department of Environmental Conservation, Albany, NY. This document is available at the following location:
<https://www.nynhp.org/ecological-communities/>
26. **National Lands.** Activities authorized by this permit shall not impinge upon the value of any National Wildlife Refuge, National Forest, or any other area administered by the USFWS or NPS. This category includes existing mitigation and wetland mitigation banking sites.
27. **Mitigation.**
 - a. Authorized activities must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
 - b. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
 - c. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require an RFA, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provide a project-specific waiver of this requirement.
 - d. Compensatory mitigation will be required for all losses of streambed that exceed 3/100-acre and require an RFA, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and

provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of streambed of 3/100-acre or less that require an RFA, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

- e. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.
- f. The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the RGPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the RFA is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.
- g. The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).
- h. If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site, the specific program sponsor, the number of credits to be provided, and a letter of credit availability.
- i. A final mitigation plan that addresses the applicable requirements of 33 CFR
- j. 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines in writing that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).
- k. The permittee must commence approved mitigation prior to or concurrently with the authorized activity.

- 28. Water Quality.** Where NYSDEC has not previously certified compliance of an RGP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

The Section 401 Water Quality Certification issued on February 14, 2020, for this project by the State of New York, for this project by the State of New York, attached to this permit as Appendix G, is hereby part of this Department of the Army permit pursuant to Section 401(d) of the Clean Water Act. Noncompliance with any limitations or

requirements stated in the certification may be a basis for suspension, revocation, or modification of this permit.

As the Seneca Nation and St. Regis Nation did not act on the certification request before the TRGP-1 was issued, project proponents that intend to conduct activities under TRGP-1 that may result in discharges into waters of the United States on tribal lands under Seneca Nation or St. Regis Mohawk CWA 401 jurisdiction will have to obtain activity-specific water quality certifications or waivers from the Seneca Nation or St. Regis Mohawk Nation.

Any party proposing to conduct the activities authorized by this RGP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority.

29. **Coastal Zone Management.** Where an RGP has not previously received a state coastal zone management consistency concurrence from NYSDOS, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

This permit was issued on your certification that the project is consistent with the New York Coastal Zone Management Plan. The New York State Department of State concurs with your certification, and contained in a letter dated May 16, 2019, attached to this permit as Appendix F, provided you comply with any special conditions imposed by that agency. Noncompliance with the conditions may be a basis for suspension, revocation, or modification of this permit.

30. **Minimal Effects.** Projects authorized by this permit shall have minimal individual and cumulative adverse environmental impacts as determined by the Corps.
31. **Federal Liability.** In issuing this permit, the Corps does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.
32. **Environmental Values.** The Permittee shall make every reasonable effort to carry out the construction or operation of the work authorized herein in a manner so as to maintain as much as is practicable, and to minimize any adverse impacts on, existing fish, wildlife, and natural environmental values, and discourage the establishment or spread of plant species identified as non-native invasive species by any federal or state agency.

33. **Inspections.** The Permittee shall permit the Corps or authorized representative(s) to make periodic inspections at any time deemed necessary in order to ensure that the work is being performed in accordance with the terms and conditions of this permit. The Corps may also require post-construction engineering drawings for completed work, and post-dredging survey drawings for any dredging work.
34. **Modification, Suspension, and Revocation.** This permit may be modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 CFR 325.7; and any such action shall not be the basis for any claim for damages against the United States.
35. **Restoration.** The Permittee, upon receipt of a notice of revocation of authorization under this permit, may be required to restore the wetland or waterway to its former condition as directed by the Corps. Non-compliance with this notice would result in the pursuit of further enforcement action by the Corps.
36. **Previously Authorized Activities.** This permit does not affect any prior determinations made by the Corps.
37. **Combining Permits.** This office reserves the right to use this regional permit in combination with any existing or future nationwide, regional or individual permit or any letter of permission.
38. **Limits of this Authorization.**
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant or convey any property rights either in real estate or material or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
39. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. Failure to comply with the terms and conditions of this permit.
 - b. The information provided in support of the permit application proves to have been false, incomplete, or inaccurate.
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.
 - d. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of the permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and if the permittee fails to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the

cost.

- 40. **Reliance on Applicant's Data.** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information provided by the applicant.
- 41. **Permit Expiration.** The work authorized under this regional permit must be completed prior to the expiration date noted on the first page of this authorization. In the event that the affirmation date is less than twelve months prior to the expiration date, the regional permit will remain valid for a period of twelve months from the affirmation date. In no case shall authorization exceed twelve months beyond the expiration date.
- 42. **Transfer of Regional Permit Verifications.** If the permittee sells the property associated with a regional permit verification, the permittee may transfer the regional permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this regional permit are still in existence at the time the property is transferred, the terms and conditions of this regional permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

C. DEFINITIONS:

- 1. **Best management practices (BMPs):** Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.
- 2. **Bridge:** A structure carrying a road, path, railway, etc. across a river, road, or other obstacle. The structure may consist of a clear span or may be supported by one or more piers or pilings. **Note: This definition supersedes any bridge designation made by NYSDOT based on culvert size.**
- 3. **Compensatory mitigation:** The restoration (re-establishment or rehabilitation), establishment

- (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.
4. Culvert: A conduit such as a drain or pipe that passes under a road, or railroad, footpath, etc. or through an embankment. Culverts provide a conveyance through which water can flow. Shapes may include round, elliptical, flat-bottomed, pear-shaped, and box which can be 3 or 4 sided. Material maybe concrete, metal, plastic, PVC, or stone and can be any width or length. **Note: This definition supersedes any bridge designation made by NYSDOT based on culvert size.**
 5. Cured-In-Place Pipe Lining: A culvert rehabilitation process in which a felt tube is saturated with resin and inverted or pulled into a deteriorated pipe. See NYSDOT Standard Specifications Sec. 602-Rehabilitation of Culvert and Storm Drain Pipe.
 6. Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.
 7. Direct effects: Effects that are caused by the activity and occur at the same time and place.
 8. Discharge: The term "discharge" means any discharge of dredged or fill material.
 9. Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.
 10. Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral streambeds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.
 11. Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.
 12. Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).
 13. Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if

it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility

14. Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.
15. Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.
16. Invert Paving: A culvert rehabilitation process in which the invert of a deteriorated pipe is reinforced with steel mesh or studs and paved with concrete. See NYSDOT Standard Specifications Sec. 602-Rehabilitation of Culvert and Storm Drain Pipe.
17. Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an RGP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of streambed includes the linear feet of streambed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.
18. Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).
19. Open water: For purposes of the RGP, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.
20. Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

21. Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the streambed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.
22. Pipe-in-Pipe Slip Lining: A culvert rehabilitation process in which a new pipe is inserted into a deteriorated pipe and grout is injected into the annular space. See NYSDOT Standard Specifications Sec. 602-Rehabilitation of Culvert and Storm Drain Pipe.
23. Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.
24. Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.
25. Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.
26. Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.
27. Request for Authorization (RFA): A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by this Regional General Permit. The request shall be submitted in accordance with procedures outlined Section D below.
28. Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For purposes of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.
29. Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

30. Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality.
31. Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of RGP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately. The overall project, for purposes of this RGP, includes all regulated activities that are reasonably related and necessary to accomplish the project purpose. Linear projects may be composed of more than one “single and complete project”, but require disclosure of all impacts to aquatic resources necessary to accomplish the overall project’s purpose. In addition, the cumulative impacts of all crossings of waters and/or wetlands must be known in order to assess the cumulative impacts of the project.
32. Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an RGP authorization.
33. Slip Lining: Insertion of a smaller diameter pipe into an existing pipe by pulling pushing, or spiral winding.
34. Special Aquatic Site: Wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes as defined at 40 CFR 230.40 through 230.45. These are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region.
35. Spray Lining: A culvert rehabilitation process in which concrete is sprayed onto the interior surface of a deteriorated pipe. This process is also known as shotcreting. See NYSDOT Standard Specifications Sec. 602-Rehabilitation of Culvert and Storm Drain Pipe.
36. Stormwater management: Stormwater management is the mechanism for controlling

stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

37. Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.
38. Streambed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the streambed, but outside of the ordinary high water marks, are not considered part of the streambed.
39. Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.
40. Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.
41. USEPA Guidelines at Section 404(b)(1) 40 CFR Part 230.10: These Guidelines are a set of regulations written by the USEPA and administered by the Corps in the Corps regulatory permit program. The Corps uses the Guidelines in the evaluation of proposed impacts of a project on jurisdictional WOTUS.
42. Vertical Stabilization Structure/Fill: A wall, built at a right angle to the ground, streambed, or bed of a waterway, such as a bulkhead, sheetpile, or stacked rock wall.
43. Waterbody: For purposes of the RGP, a waterbody is a jurisdictional water of the United States as defined under 33 CFR 328.3, Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.
44. Waters of the United States (WOTUS): See 33 CFR PART 328—DEFINITION OF WATERS OF THE UNITED STATES

D. Application Procedures and Processing of Requests for Authorization

Note 1: The listed timeframes are in calendar days.

Note 2: Activities that have been determined by NYSDOT, NYSTA or NYSCC (hereinafter referred to as "the applicant") to be in the "Non-Reporting" category may proceed with no written

authorization or other verification from the Corps.

1. RFAs - Submittal of a Complete Application

The applicant shall submit an application package to the Corps and use the Request for Authorization (RFA) Template (Appendix C). The application package should be delivered to the Corps using a method that tracks the delivery of the package. Submittal of the RFA shall follow current instructions for each Corps District found at:

<https://www.lrb.usace.army.mil/Missions/Regulatory/CONTACT-INFO/>

<https://www.nan.usace.army.mil/Missions/Regulatory/Obtaining-a-Permit/>.

For projects in which the applicant proposes the loss of waters of the U.S. exceeding 1 acre, the application must contain additional copies of the RFA for dissemination to the state and federal resource and Regulatory agencies: New York State Department of Environmental Conservation (NYSDEC), U.S. Fish and Wildlife Service (USFWS), U.S. Environmental Protection Agency (USEPA) and Adirondack Park Agency (APA) and New York City Department of Environmental Protection (NYCDEP), as appropriate.

In addition, the Corps may request additional copies of the application package when the Corps is the lead federal agency, to assist with coordination with other agencies.

For emergency applications, the applicant will include "Emergency" in the RFA Cover Letter to ensure an immediate response from the Corps. Verbal notification to the respective Corps point of contact should precede submission of an emergency application. In emergency situations, the applicant shall make every attempt to provide the required information for a complete RFA package. The Corps recognizes that given the nature of an emergency all or complete information may not be available at the time of submission and will apply flexibility in the RFA review to allow emergency work to proceed in a timely manner.

"Information To Be Submitted for RFA Package: The application will be provided electronically (and in hard copy only upon request) using the RFA Template in Appendix C and must include, but is not limited to, the following information:"

- A. RFA Template (Developed by NYSDOT, NYSTA and NYSCC).
- B. Location Map – preferably depicted on a USGS 7.5 minute topographical map. The map shall include a north arrow, property/project boundary (not a star or arrow pointing to an unspecified area of land) and adjacent roads and highways to enable orientation/direction.
- C. Project Drawings.
 - i. Provide all plan view (as if viewed from overhead) maps and drawings on 8 ½ x 11-inch black-and-white topographic base map (color aerial maps are convenient for in-house review, but are not acceptable for the permanent recordkeeping). All

information must be clearly labeled in legibly reproducible 8 ½ x 11-inch drawings. Reducing larger drawings to 8-1/2 by 11 is typically not acceptable. The temporary and permanent impacts to waters and wetlands should be clearly defined on an overview drawing with blow-ups of the impact areas with dimensions of impact clearly legible.

- ii. Plan sheets shall indicate the vertical datum (e.g. IGLD 1985, NGVD 1929, etc.) equivalent for the project's vertical datum (Ordinary High Water (OHW)). Relative elevations from a chosen vertical reference point may be accepted in place of vertical datum.
 - iii. Provide typical cross-section views of all WOTUS and stream fill areas on 8 ½ x 11-inch black-and-white maps; include size and description of project area. Include maps or drawings showing the area and the lineal extent of the project, and a description of pre- construction conditions and photographs coordinated to a photo key.
- D. Project Description – a detailed project description; project purpose and need for the project; direct and indirect effects the project could potentially cause to the aquatic resource, dimensions of all permanent and temporary fills, excavations, and impacts occurring in WOTUS to include length, width, and depth (below the Ordinary High Water mark). Disposal sites located within the right-of-way (ROW) must be identified. If known, location of disposal sites outside the project limits shall also be included.
- E. Identify any past permitted activities on the project site, including a description and permit number.
- F. A Waters of the U.S. delineation report, including the following:
- i. Delineation map/drawing of wetlands, ephemeral, intermittent, perennial streams, natural or man-made drainages, swales, and other water conveyances and the location and dimensions of any culverts, drop-in culverts, etc. observed/documentated during the delineation activity. The delineation should also address special aquatic sites including submerged aquatic vegetation. Delineations must be prepared in accordance with the current method required by the Corps under Section 404 of the CWA. This methodology currently includes guidelines contained in the 1987 Delineation Manual, the most recent version of the applicable Regional Supplement to the Corps of Engineers Wetland Delineation Manual (North Central/Northeast Supplement or Eastern Mountains and Piedmont Supplement).
 - ii. An interpretation/discussion of information noted on the delineation data sheet describing each wetland. (Wetland A is a 1.6 acre palustrine emergent wetland with...etc.)
 - iii. COMPLETE Wetland Delineation Form for each data point taken. Data points

should be representative of the delineation between the upland/wetland boundary along which the survey flags are placed and surveyed (if survey is completed and available at time of submission).

- iv. Color photographs of each identified ephemeral, intermittent, perennial stream, ditch, conveyance, etc. and each wetland (including those that may be considered isolated and/or non-jurisdictional) taken during the growing season. Description of vegetative cover types on the site.
 - v. Soil Survey Maps including citation (source of information and date of publication). Include a brief description of each soil series identified on the site and include a statement indicating if the soil is listed in the National List of Hydric Soils and/or the local classification of the soil.
 - vi. NYSDEC Freshwater Wetlands Maps. If a state regulated wetland is present, identify the wetland by the NYSDEC identification number and also give it a unique name (example: Wetland A).
 - vii. National Wetland Inventory (NWI) Maps. Note that the NWI maps are not regarded/accepted as definitive regulatory maps. These maps are viewed as a resource tool and do not accurately depict the size, presence, or absence of wetlands on any particular parcel.
 - viii. Identify potential habitat for aquatic, amphibian, and mammal species, or direct observation of fauna.
- G. A Waters of the U.S. delineation map, including the following:
- i. Title block, including drawing date, scale, revision dates, north arrow, existing topographic contours (if available), benchmarks, and the stamp of a licensed surveyor (if available at time of submission) or a narrative describing how the GPS data were obtained.
 - ii. Boundary lines and acreage of the project area, with sizes of each water of the U.S. clearly marked.
 - iii. Wetland delineation flags (if applicable) shown as connected points (or shown as extending off-site at parcel boundaries if wetland continues offsite), identified on the drawing with the corresponding number and/or letter that is written on the flag in the field. The flag numbers and any text must occur in large enough scale to be legible on an 8 ½ x 11-inch drawing.
 - iv. Appropriate hatching, shading, and/or standard symbols to identify the extent of WOTUS including all drainages (ephemeral, intermittent, perennial streams, ditches, swales, and conveyances) and all wetlands. All identified features shall be

labeled clearly.

- H. Jurisdictional Determination (JD): Provide statement indicating that “No Jurisdictional Determination is requested” unless it is intended to contest jurisdiction, which requires an approved JD. Contact Corps District to discuss process and informational requirements for all approved JD requests. (See Regulatory Guidance Letter (RGL) 16-01 & 08-02 for further information regarding JD options, which are available on Corps website.)
- I. A drawing/map depicting all proposed aquatic impacts shall be presented as a separate document including the following:
- i. Flagged, and legibly labeled boundary/reach of each wetland and stream.
 - ii. Unique hatching depicting each impact to each aquatic resource with the acreage/linear feet labeled.
- J. All information pertaining to proposed impacts shall be summarized in a table that depicts the following in a separate column for each item listed below. This table should also appear on the Proposed Impacts Map, if feasible.
- i. Wetland/Stream Name (e.g. Wetland A; Stream 1)
 - ii. Wetland type (emergent, scrub/shrub, forested)
 - iii. Stream type (ephemeral/headwater, intermittent, perennial)
 - iv. Stream order
 - v. Total wetland acreage of each wetland
 - vi. Proposed acreage of wetland impact for each wetland
 - vii. Stream lineal feet and width for each stream
 - viii. Proposed lineal feet of impact for each stream
 - ix. Wetland - jurisdictional/non-jurisdictional
- K. The RFA shall include a narrative describing avoidance and minimization efforts.

Note: All permits authorized/issued by the Corps must reflect the least environmentally damaging practicable alternative as described in the USEPA 404(b)(1) Guidelines. Include, as appropriate, any plan maps that show the “evolution” of the proposed plan to the current alternative and discuss how the proposed project represents the least environmentally damaging practicable alternative (Note: such “evolution” plans are primarily necessary for larger projects where multiple designs/configurations were contemplated, and not required for routine maintenance activities).

- L. Any application requesting DA authorization to fill more than 1/10th acre of jurisdictional WOTUS must include either a compensatory mitigation plan proposal that satisfies the requirements outlined in 33 CFR 332, “Compensatory Mitigation for Losses of Aquatic Resources; Final Rule”, dated April 10, 2008 (33 CFR 325 & 332) or, for projects proposing wetland losses exceeding 1/10-acre, a request for a waiver as discussed in General Condition 27.c. Any request for a waiver of requirements for compensatory wetland mitigation shall include information as to how the adverse

effects of the proposed activity are minimal. 33 CFR 332 (Compensatory Mitigation for Losses of Aquatic Resources) is available at:

<https://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/mitigationinfo.aspx>

- i. The RFA shall include at least a conceptual compensatory mitigation plan and must include the following information at a minimum: proposed compensation type (bank or in-lieu fee credit, restoration, creation, preservation, etc.), location and brief discussion on factors considered for site selection (i.e. soils, water source, potential for invasive species, etc.), amount proposed per resource type and a discussion of how the proposal will compensate for aquatic resource functions and services lost as a result of the project. Note: Although a conceptual mitigation plan may be sufficient for the purposes of a RFA submission, a detailed mitigation plan must be approved by the Corps before any jurisdictional work may occur on the project site.
- ii. For wetland losses of 1/10-acre or less and an RFA is submitted, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.
- iii. Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In case where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide compensatory mitigation for wetland losses.
- iv. Where certain functions and services of waters of the United States are adversely affected, such as the conversion of a forested or scrub-shrub wetland to an herbaceous wetland (e.g., associated with temporary access or staging areas), mitigation may be required to reduce the adverse effects of the project to the

minimal level.

M. Endangered Species:

When FHWA or another Federal Agency is the NEPA Lead Agency: The applicant will coordinate with FHWA or the other Federal Agency and the U.S. Fish and Wildlife Service in accordance with approved NYSDOT/NYSTA/NYSCC procedures. If the project would otherwise result in submission of an RFA, the applicant must provide the Corps with FHWA's or other Federal Agency's determination, or a statement referencing applicable Programmatic Agreements, as part of the RFA, in order to demonstrate compliance with Section 7 of the ESA.

For projects where another Federal Agency is not the NEPA Lead Agency: The applicant must evaluate the proposed work to determine if there is potential to cause effects to Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation). For projects where no listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the project, no additional coordination is required with respect to endangered species. If the project would otherwise result in submission of an RFA, the applicant shall include the determination as part of the RFA to demonstrate compliance with Section 7 of the ESA.

For projects where the applicant identifies a species or critical habitat (listed/proposed) which cannot be excluded via the Vicinity document, NYSDOT, NYSTA and NYSCC (Applicant) will make a preliminary determination regarding effects to ESA resources. If the determination is that the project would result in no effect to a species or habitat, the Agencies will document the decision and submit the documentation to the Corps for concurrence. The Corps will respond either agreeing with the determination, which would end the ESA process, or disagreeing, which would result in additional coordination. No work may proceed on a project until the Corps concurs with the no effect determination. Documentation of these submissions will also be tracked on the reporting spreadsheets (see Section 7, below).

For projects where the evaluation indicates that the project may affect, but is not likely to adversely affect (NLTAA) a Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the Applicant shall perform informal consultation using the USACE SLOPES procedures, concurrently sending copies of information submitted directly to USFWS to the Corps via email. For USFWS consultation, the applicant must follow procedures outlined in the approved SLOPES agreement (Appendix D). No work may proceed on the project until concurrence is received from USFWS regarding the NLTAA determination. If the project would otherwise result in submission of an RFA, the applicant shall include the determination and the USFWS concurrence as part of the RFA to demonstrate compliance with Section 7 of the ESA.

For any project that is likely to result in an adverse effect to a Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the applicant shall submit an RFA to the district engineer, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. The RFA shall include:

- i. A written statement and documentation concerning any federally listed or proposed Threatened or Endangered (T&E) species or designated and/or proposed critical habitat that might be affected or located in the vicinity of the project.
- ii. A copy of any correspondence from the U.S. Fish and Wildlife Service (USFWS) regarding the potential presence of T&E species on the project site. USFWS T&E website: <https://www.fws.gov/office/new-york-ecological-services-field>.
- iii. An official T&E species list printed within 90 days of the RFA submission from the USFWS Website.
- iv. For projects where T&E species are listed, a discussion of potential T&E species habitat within the project site (See USFWS T&E website for species habitat information).
- v. If there is potential habitat for any T&E species within the project site the following, as applicable, shall be submitted:
 - a) The results of any habitat surveys and presence/absence surveys. Note: All surveys should be coordinated with the USFWS prior to initiation.
 - b) A detailed description of the proposed project, including secondary impacts and approximate proposed project construction schedule of project activities (e.g. land clearing, utilities, stormwater management).
 - c) A description of the natural characteristics of the property and surrounding area (e.g. forested areas, freshwater wetlands, open waters, and soils). Additionally, please include a description of surrounding land use (residential, agricultural, or commercial).
 - d) A description of the area to be impacted by the proposed project, including the species and number or acres of trees to be removed.
 - e) The location of the above referenced property and extent of any project related activities or discharges clearly indicated on a copy of a USGS 7.5 minute topographic quadrangle (with the name of the quad(s) and latitude/longitude clearly labeled) A description of conservation measures to avoid or minimize

impacts to listed species.

- N. Historic Properties (Section 106 of the National Historic Preservation Act):
The following procedures, and Streamlined Activity Lists (Appendix E) will be used with respect to Section 106 consultation requirements:

i. Definitions:

- a) No Potential to Cause Effects to Historic Properties – The project is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present.
- b) CRIS – New York State Cultural Resource Information System online database/resource.

ii. Procedures:

The USACE, in coordination with NYSDOT, NYSTA, NYSCC and SHPO will ensure that review of applications for USACE TRGP-1 authorizations will be conducted in accordance with 36 CFR §800.4-800.6 of the Council's regulations Protection of Historic Properties, and the Corps Regulations 36 CFR Part 800 and 33 CFR 325, Appendix C, and any interim guidance.

- a) Projects where FHWA or another Federal Agency is NEPA Lead Agency:
When FHWA or another Federal Agency is the NEPA Lead Agency, the applicant will coordinate with the State Historic Preservation Office (NYSHPO) in accordance with their approved Section 106 National Historic Preservation Act (NHPA) procedures and the FHWA or other Federal Agency will make its final determination. In order to proceed under this RGP, the applicant must provide the Corps with FHWA's or the other Federal Agency's determination, or a statement referencing applicable Programmatic Agreements, as part of any necessary RFA, to demonstrate compliance with those requirements¹.
- b) Projects where another Federal Agency is not the NEPA Lead Agency:
 1. Review for Historic/Cultural Resources
 - b. Determine the Corps permit area for the project/undertaking pursuant to 33 CFR 325 Appendix C. The state agency will document NYSHPO consultation and concurrence with findings of No Effect or No Adverse Effect in accordance with established procedures.
 - c. Review NYSOPRHP CRIS database for information on known historic resources or archaeological sensitivity in the project area.

¹ Pursuant to 36CFR 800.2(a)(2) - *Lead Federal agency*. If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106.

- d. Determine if there are any National Register listed, eligible, or potentially eligible historic resources on the project site or that could be affected visually by the undertaking.
 - e. Determine if the project is on or within 500 feet of tribal reservation or trust lands.
2. Determine if RFA for purposes of Section 106 is Required
 - a. If the project has no potential to cause effects to historic properties, pursuant to 36 CFR 800.3 and 33 CFR 325 Appendix C (including interim guidance from 2005 AND 2007), NO RFA IS REQUIRED FOR SECTION 106 PURPOSES.
 - b. If the activity is consistent with one or more of the activities listed on the attached Streamlined Activity Lists (Appendix E), NO RFA IS REQUIRED FOR SECTION 106 PURPOSES.
 - c. If the project is not consistent with any of the activities on the Streamlined Activity List and there is potential for the project to cause an effect to Historic/Cultural Resources, the applicant must submit an RFA to the Corps.
 3. Procedures if no RFA is required for Section 106 purposes pursuant to 2. a. or 2.b.
 - a. The applicant will document that the project has No Potential to Affect Historic/Cultural Resources or No Historic Properties Affected, as appropriate, including decision rationale
 - b. Place CRIS map print out in administrative record
 - c. Maintain documentation with the administrative record for the project.
 - d. Include documentation with any RFA required for authorization under TRGP-1
- c) General Provisions:
1. These procedures, SHPO Programmatic Agreement and Streamlined Activity Lists do not apply to any activity located on or within 500 feet of lands which are part of a reservation or held in trust by federally recognized Native American Tribal Nations.
 2. Indian Nations – In the event that the applicant, Corps, FHWA, other Federal Agency, or NYSHPO determine that consultation with one or more Indian Nations may be appropriate, or other evidence indicates that such consultation may be appropriate, the applicant shall submit a RFA to the Corps and Section 106 consultation reverts to the Corps (or FHWA or other NEPA Lead Federal Agency).

3. The Corps reserves the right to suspend these procedures for any project where it determines that additional consultation is necessary. Reasons for suspension include, but are not limited to, concerns expressed by Indian Nations, SHPO or other interested party.
- O. Nationwide Rivers Inventory: The application shall indicate if a river segment listed within the National Park Service (NPS) Nationwide Rivers Inventory (NRI) is located within the proposed project area. For project areas containing a listed NRI segment, the application shall also include a statement as to how adverse effects to the river have been avoided or mitigated. The list is available at:
<http://www.nps.gov/ncrc/programs/rtca/nri/states/ny.html>.

When FHWA or another Federal Agency is the NEPA Lead Agency, the applicant will provide documentation of any correspondence between the FHWA and the NPS for activities proposed within a NRI.

- P. National Wild and Scenic Rivers System (NWSR). An RFA shall be submitted for this RGP which would impact the designated portions of the Genesee River or the Upper Delaware River. (Note: the applicant may not commence work under any permit until the NPS determines in writing that the project will not adversely affect the NWSR even if 45-days have passed since receipt of the RFA package.) Information regarding NWSR may be found at: <https://www.rivers.gov/>.

When FHWA or another Federal Agency is the NEPA Lead Agency: The applicant will provide documentation of any correspondence between the FHWA and the NPS for activities proposed within a NWSR.

- Q. New/Replacement Culverts:
 The RFA must include the following information:
- i. A statement indicating which of the requirements specified in Activity Category 6 will not be met by the proposed project;
 - ii. Information as to why the use of such structures or measures would not be practicable;
 - iii. A brief description of the stream discussing:
 - a) Site specific information (i.e. streambed slope, type and size of streambed material, stream type, existing natural or manmade barriers, etc.) assessed to determine appropriate culvert design and to ensure management of water flows and aquatic life movement.
 - b) Evaluation of the replacement for its impacts on: downstream flooding, upstream and downstream habitat (in-stream habitat, wetlands), potential for erosion and headcutting, and stream stability.
 - c) Flow/storm event the proposed culvert is designed to pass (2 year, 50 year, etc.)

- iv. Cross sections of the stream used to calculate the streambed low point and ordinary high water width, consisting of:
 - a) Stream channel cross sections shall be taken at reference locations (outside of the influence of a structure) to the crossing location to determine the lowest point in elevation of the streambed and the average width at ordinary high water.
 - 1. For new crossing locations, the average values from at least three measurements (project location and straight sections of the stream upstream and downstream) shall be used.
 - 2. For replacement of an existing structure, the average values from at least two cross sections (straight sections of the stream upstream and downstream from the existing structure representative of the natural channel) shall be used.
 - b) This low point shall be used to ensure low flow is maintained through the culvert and from which all embedment depths are measured.

If the above cross section method was not practicable to use, an alternative method may be utilized. The RFA shall include justification for the method used including the data used and an explanation as to how it provides an equivalent measure.

- v. An evaluation of the effects the crossing would have on aquatic life movement and/or water flows.
- vi. Mitigation measures that will be employed to minimize these effects. Mitigation measures may include, but are not limited to baffles, weirs, roughened channels, and grade control structures.

R. Culvert Repair/Rehabilitation Projects:

The RFA must include the following information:

- i. A summary of the evaluation required in Item b) i. of Activity Category 6, including a discussion of the impediment(s) to aquatic life movement and/or water flow.
- ii. Information as to how the proposal will mitigate for the impediment. Mitigation measures may include, but are not limited to baffles, weirs, roughened channels, and grade control structures.

2. **Complete Application Determination**

The Corps shall have 30 days from the date that the RFA package is received by the Corps District office to determine whether the RFA is complete and request additional information from the applicant as necessary. If the Corps does not respond to the applicant in writing or via electronic mail message within 30 days, then the applicant shall assume that the submitted RFA

is complete for processing. The applicant will await a decision from the Corps as outlined in D.4. Corps Decision on RFAs.

3. Corps Review of RFAs

- i. The Corps review of the RFA package will be based on whether or not the project meets the terms and conditions of the RGP.
- ii. The Corps will consult with the Federal and state resources agencies for projects in which the loss of waters of the U.S. exceeds 1 acre. The Corps will provide a copy of the complete RFA package to the U.S. EPA-Region 2, the NY Field Office of the USFWS, and the appropriate Regional Office of the NYS DEC. These review agencies shall have the opportunity to provide to the Corps any project-specific comments or concerns within 20 days from the receipt of a complete RFA from the Corps.
- iii. The Corps will consider agency comments in its determination whether the project, as proposed, will qualify for the authorization under the RGP.
- iv. The Corps will provide the agency comments to the applicant, offering the applicant the opportunity to address concerns or modify the project. If the Corps determines that concerns are adequately addressed, then the Corps is not required to re-consult with the agencies.

4. Corps Decision on RFAs

- i. The Corps shall notify the applicant in writing whether:
 - a) The project is authorized under this RGP without special conditions;
 - b) The project is authorized under this RGP with special conditions;
 - c) The project as proposed is not eligible for the RGP and will require coverage under a Nationwide Permit.
 - d) The project as proposed is not eligible (i.e., exceeds RGP thresholds, and/or results in more than minimal impact) for the RGP and will require coverage under an Individual Permit.
- ii. If the Corps determines that an Individual Permit is required, the written notification to the applicant shall include an identification of which term(s) and/or condition(s) are not met in the RFA and clearly describe why the project does not meet such term(s) and/or condition(s). The applicant will review the reasons for the "not eligible" decision and then decide to:
 - a) Revise the project and resubmit the RFA, or
 - b) Request that the Corps review the application under an Individual Permit. In this case, the applicant will provide additional information needs for the Corps to evaluate the project under an Individual Permit (adjacent property owners, alternatives analysis etc.).

- iii. For projects involving impacts less than 1/2 acre to waters of the U.S. or 300 linear feet of stream and that do not include Corps-led consultation under Section 7 of the ESA or Section 106 of the NHPA the 45-day review period has lapsed with no written or electronic (e-mail) notification from the Corps, the applicant will assume that the RFA is complete, and that the project may proceed as proposed.
- iv. In reviewing the RFA for the proposed activity, the district engineer will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the RGP as well as the cumulative effects caused by all of the crossings authorized by any previous permits in addition to the current proposal. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the activity, the type of resource that will be affected by the activity, the functions provided by the aquatic resources that will be affected by the activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the authorization to address site-specific environmental concerns.

5. Modifications to Existing Permits

Modifications to existing Authorizations under this RGP that do not exceed the thresholds listed in the RGP when added to the impacts of the originally authorized project, shall be reviewed under this RGP. The complete application process will also be the same as listed in Section D (2) above.

6. Project Initiation

The applicant shall ensure that the activity is not commenced unless and until:

- i. The applicant has received verification from the Corps that the activity is authorized under the RGP as proposed;
- ii. The applicant has received verification from the Corps that the activity is authorized under the RGP with the inclusion of certain special conditions as determined by the Corps; or
- iii. The activity-related impacts are less than 1/2 acre to waters of the U.S. or 300 linear feet of stream, and the 45-day review period has lapsed with no written or electronic

- notification from the Corps. Note, however, no activity is authorized under this RGP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. In cases where the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. In addition, any project which would impact the designated portions of the Genesee River or the Upper Delaware River, may not proceed until the NPS determines in writing that the project will not adversely affect the NWSR.
- iv. The applicant has received verification from the Corps that the activity is authorized under the Nationwide Permit Program (33 CFR 330), or that the Corps has issued an Individual Permit for the activity.

7. Reporting Requirements

- i. RGPs authorized not requiring Requests for Authorization (non-RFA): The applicant shall submit, in spreadsheet form, an annual summary report for non-RFA activities utilizing this RGP. The applicant shall utilize the template format included in the TRGP Reporting Spreadsheet (Appendix B). A copy of the report shall be submitted electronically to both the Buffalo (LRB.Regulatory.PermitCompliance@usace.army.mil) and New York District offices (CENAN-R-Permit-App@usace.army.mil) by February 15 of each year.
- ii. RGPs authorized through Requests for Authorization (RFA): Each permittee who receives an RGP verification letter from the Corps will receive commencement and completion forms with the RGP verification letter. The permittee must complete and return the forms to the respective Corps District office prior to commencement of authorized work or immediately upon completion of authorized work, as appropriate. Projects under the responsibility of the Buffalo District will be submitted electronically to LRB.Regulatory.PermitCompliance@usace.army.mil. Projects under the responsibility of the New York District will be submitted to CENAN-R-Permit-App@usace.army.mil. The subject heading of the electronic submission should include “TRGP” to differentiate from other permit actions. Additionally, if the authorized work was submitted as an emergency action this should also be noted in the subject heading of the email. (Note: The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer.)
- iii. For projects that fall under paragraph D.4.iii, where 45 days have elapsed and no RGP verification letter is received from the Corps, the permittee will verbally notify the designated Project Manager at the respective Corps District office of commencement of work. These actions must also be included on the TRGP Reporting Spreadsheet, entering the date that the RFA was submitted as the permit application number.

**Regional Permit TRGP-1 – Appendix A
Contractor Notification Form**

This form must be provided to third party contractors in the event that a project generates excess fill material to be taken off-site.

IMPORTANT NOTICE TO CONTRACTORS:

Pursuant to Section 404 of the Clean Water Act it is unlawful to discharge dredged or fill material into waters of the US, including wetlands, without Department of the Army authorization. Care must be taken to ensure that any excess material removed from this project site is not placed in waters of the US, including wetlands. Should material be placed in an area within DA jurisdiction without proper authorization, you may incur a violation of Federal law. If that happens, your project may be stopped, a full or partial restoration of the jurisdictional area may be required, and/or you may be subject to civil or criminal penalties.

Please note that there are no definitive maps showing all waters of the US, including wetlands, as these are dynamic systems that change over time. There are on-line resources that will help determine the likelihood that a given parcel contains waters, including, but not limited to the following:

- **USGS Topographical Map**
- **County Web Soil Survey**
- **National Wetland Inventory Maps**
- **Aerial Photographs: Various Internet Resources**

If any of the above resources indicates that wetlands may be present on or near the proposed disposal location, wetlands should be identified and delineated by a qualified biologist in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual and the appropriate supplement.

The delineation manual and supplements are available on-line at:

<http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/techbio/>

Questions may be directed to the US Army Corps of Engineers at the following addresses:

Buffalo District:
US Army Corps of Engineers
Regulatory Branch
1776 Niagara Street
Buffalo, New York 14207
716-879-4330

New York District:
US Army Corps of Engineers
Regulatory Branch
26 Federal Plaza
New York, New York 10278-0090
917-790-8411

**NEW YORK STATE
DEPARTMENT OF
ENVIRONMENTAL
CONSERVATION**

NYS Canal Corporation
Attn: James Candiloro
30 South Pearl Street
10th Floor
Albany, New York 12207

RE: DEC ID # 6-3099-00023/00006
Canalway Trail
Town of Whitestown, Oneida County

Dear Mr. Candiloro:

Enclosed is your permit for construction as proposed in your application under the Environmental Conservation Law.

It is essential that you give particular attention to the **NOTICE** attached to your permit and to the **Special Conditions** that begin on page 2. The attached drawings are a part of the permit. Note any alterations made to your original proposal.

According to the application materials submitted, the project should be authorized by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act pursuant to Nationwide Permit Number No. 3 – Maintenance.

Section 401 Water Quality Certification

The project meets the conditions set forth in the Blanket Section 401 Water Quality Certification issued in October of 2021 based on the issuance of this Article 24 – Freshwater Wetlands permit. Therefore, an individual Section 401 WQC was not issued by DEC. If the U.S. Army Corps of Engineers subsequently determines that a different Nationwide Permit or an individual Section 404 permit is required for this project, the Department's Section 401 WQC determination for this project may not apply and a new determination may be requested.

Sincerely,

Zachary Goodale

Zachary Goodale
Environmental Analyst
Region 6 – Utica



Enclosures: Permit

cc: File

ecc: Law Enforcement
USACOE
Town of Whitestown
Luke Morenus
Steve Case

PERMIT

Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:
NYS CANAL CORPORATION
30 S PEARL ST

ALBANY, NY 12207-0189

Facility:
CANALWAY TRAIL
NYS ERIE CANAL, FROM ROME TO
ORISKANY|1,400 ft. west of Thomas Rd.
Rome, NY

Facility Permit Contact:
JAMES CANDILORO
New York Power Authority
30 S Pearl St
Albany, NY 12207
(518) 433-6841

Facility Application Contact:
Luke Morenus
CHA
1 Park Pl 300 S State St Ste 600
Syracuse, NY 13202

Facility Location: In MULTIPLE TOWNS in ONEIDA COUNTY
Facility Principal Reference Point: NYTM-E: 468.6 NYTM-N: 4781.6
Latitude: 43°11'11.5" Longitude: 75°23'11.1"

Project Location: Canalway Trail, approximately .5 miles west of Thomas Rd.
Authorized Activity: replace an existing 36" drainage culvert (and a supplementary 18" pipe) beneath the Old Erie Canal trail with a 16' x 10' box culvert. Approximately 8,400 square feet of the 100 foot Adjacent Area of NYS Regulated Freshwater Wetland OR-20 will be affected.

Permit Authorizations

Freshwater Wetlands - Under Article 24
Permit ID 6-3099-00023/00006
New Permit Effective Date: 7/31/2024 Expiration Date: 7/30/2029

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: TODD J PHILLIPS, Deputy Regional Permit Administrator
Address: NYSDEC Region 6 Utica Sub-Office
State Office Bldg - 207 Genesee St
Utica, NY 13501 -2885

Authorized Signature: Todd J. Phillips Digitally signed by Todd J. Phillips
Date: 2024.07.31 14:31:58 -0400 Date / /



Distribution List

JAMES CANDILORO
 Luke Morenus
 US ARMY CORPS OF ENGINEERS - BUFFALO DISTRICT
 Law Enforcement
 Town of Whitestown
 STEVE O CASE, JR

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Permit Attachments

Drawings/Blueprints
 Permit Sign

3/5/2024

**NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following
 Permits: FRESHWATER WETLANDS**

1. **Notify DEC of Commencement of Work and Completion of Work** The permittee shall notify the Department at least seven days prior to project commencement and within seven days of project completion. Each notification is to be made by e-mailing the region's Bureau of Ecosystem Health at R6BEH@dec.ny.gov or by telephone at 315-793-2404 during the Department's normal business hours (8:30 am to 4:45 pm), and providing the name of the permittee and the Permit ID(s) as listed in the Permit Authorization section of this permit.
2. **Post Permit Sign** The permit sign enclosed with this permit shall be posted in a conspicuous location on the worksite and adequately protected from the weather.
3. **Failure to Meet Permit Conditions** Failure of the permittee to meet all the conditions of this permit is a violation of this permit and grounds for an order to immediately cease the permitted activity at the project site.



4. Conformance With Plans All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by CHA and received March 5, 2024.

5. Minimize Adverse Impacts to Wetlands, Wildlife, Water All work must be performed in a manner which minimizes adverse impacts to wetlands, wildlife, water quality and natural resources.

6. Minimize Stream Bed/Bank Disturbance Disturbance to the bed and banks of the stream shall be kept to the minimum necessary to complete the project.

7. Water Clarity Stream reaches downstream of construction areas shall always remain as clear (non-turbid) as the reaches upstream of the construction areas.

8. Silt Screen Around Wetland Area Prior to commencement of any construction activities, a continuous line of silt screen (maximum opening size of U.S. Sieve #20) shall be staked along the upland edge of the wetland adjacent area.

9. Maintain Silt Screen The screen shall be maintained, repaired and replaced as often as necessary to ensure proper function, until all disturbed areas are permanently vegetated. Sediments trapped by the screen shall be removed to an approved upland location before the screen is removed.

10. Stabilize Disturbed Areas All areas of soil disturbance resulting from this project shall be stabilized immediately following project completion or prior to permit expiration, whichever comes first. The approved methodologies are as follows:

- a. Stabilization of the entire disturbed area with appropriate vegetation (grasses, etc.).
- b. Stabilized as per specifications identified on approved plans.
- c. Temporarily stabilized with straw mulch or jute matting or other similar natural fiber matting within 1 week of final grading. Temporary stabilization shall be maintained until a mature vegetative cover is established.

11. Disposal of Material Any demolition debris, excess construction materials, and/or excess excavated materials shall be immediately and completely disposed of on an approved upland site more than 100 feet from any regulated waterbody or wetland. These materials shall be suitably stabilized so as not to re-enter any water body, wetland, or wetland adjacent area; and must be disposed of in accordance with all local, state, and federal statutes, regulations, or ordinances.

12. Floodplain Regulations The project must meet all local and federal floodplain regulations.



13. Human or Archaeological Remains If any human remains or archaeological remains are encountered during excavation, the permittee must immediately cease, or cause to cease, all work in the area of the remains and notify

Regional Permit Administrator
 NYSDEC Region 6 Headquarters
 State Office Building - 317 Washington St
 Watertown, NY13601

Work shall not resume until written permission to do so has been received from the Department.

14. Precautions Against Contamination of Waters All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
 NYSDEC Region 6 Utica Sub-Office
 State Office Bldg - 207 Genesee St
 Utica, NY13501 -2885



4. Submission of Renewal Application The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Freshwater Wetlands.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.



Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.



**NEW YORK STATE
DEPARTMENT OF
TRANSPORTATION**

HIGHWAY WORK PERMIT

As indicated on Contract Drawings the Contractor will need to secure a Highway Work Permit from the New York State Department of Transportation in order to complete some of the contract work. The Contractor shall abide by all provisions of the permit. See the Highway Work Permit application on the following pages.

THIS IS PROVIDED FOR REFERENCE ONLY - THE CONTRACTOR IS TO APPLY FOR THIS PERMIT.



**Form PERM 33 (July 2015)
Highway Work Permit Application for Non-Utility Work**

Instructions and Form
(For Commercial Driveways, use Form PERM 33-COM)

INSTRUCTIONS FOR COMPLETING THE APPLICATION

FRONT OF APPLICATION

Three (3) copies of the entire application, work plans and all other supporting documents must be submitted. At the time of application, certain information relative to fees and deposits may be contingent upon determinations to be made by the Department. In such cases, the information may be left blank and remittance withheld until a determination is made.

Please complete the following:

- Permittee name, address, phone and email address. Provide joint applicant contact information, if appropriate. If there are additional applicants, attach contact information on a separate sheet.
- Name and phone number(s) of emergency contact person.
- If permit is to be returned to someone other than the applicant, complete this section.
- If the guarantee deposit or bond is to be returned to someone other than applicant, complete this section.
- Estimate the cost of work being performed in the state highway right-of-way and provide this figure.
- Indicate anticipated duration of work to be performed with starting date and ending date.
- Indicate the form of insurance coverage to be provided.
- Give a brief description of the work that is proposed to be done under this permit.
- Indicate whether any overhead and/or underground work (5 foot or greater depth) is included in the proposed work.
- Plans and specifications should accompany this application for any work that involves construction within the state highway right-of-way. Place a check mark on the lines for plans and specifications if they are attached to this application.
- Location of the project should be identified by State Route, highway reference marker(s), and the municipality and county in which work area is located.
- In regard to State Environmental Quality Review (SEQR), indicate the type of action, the name of the Lead Agency, and what date the final determination was made, if available.
- Signature of applicant and date.
- Signature of second applicant, if any, and date.

BACK OF APPLICATION

- Check type of work that will be performed.
- In the appropriate column, indicate total amount of permit fees (Include insurance fee for residential work)
- Indicate type of performance security provided (bond, deposit, letter of credit), if required.
- Indicate check number of deposit or bond number.

**RESPONSIBILITIES OF PERMITTEE
PURSUANT TO NON-UTILITY HIGHWAY WORK PERMITS**

NOTE: FAILURE TO OBTAIN A PERMIT OR FAILURE TO COMPLY WITH THE TERMS OF A PERMIT MAY RESULT IN THE DEPARTMENT HALTING THE ACTIVITY FOR WHICH A PERMIT IS REQUIRED UNTIL ADEQUATE CORRECTIONS HAVE BEEN MADE.

1. LIMITATIONS ON USE: The specific site identified in this Highway Work Permit, and only that site identified, will be available for use by Permittee only for the purpose stated in this Permit and only on the date(s) and for the duration designated in this permit. This Permit does not authorize any infringement of federal, state or local laws or regulations, is limited to the extent of the authority of NYSDOT and is transferable and assignable only with the written consent of the Commissioner of Transportation. The Commissioner reserves the right to modify fees and to revoke or annul the Permit at any time, at his/her discretion without a hearing or the necessity of showing cause.

2. CONDITIONS OF USE: NYSDOT makes no affirmation that the state-owned site used for the work has been designed, constructed, or maintained for the purpose of the conduct of the work. The Permittee assumes full responsibility for planning and conducting a safe and orderly project that does not expose workers or the public to any unreasonable hazards and that involves a minimal disruption of the normal uses of the state and local highway systems. It shall be the sole obligation of the Permittee to determine whether the site is suitable for the purpose of safely conducting the work. The Permittee assumes all responsibility for assuring that the use of the highway/property conforms to applicable requirements of law, including, but not limited to those set forth herein.

Permittee agrees to assure compliance with New York Labor Law, industrial regulations, and OSHA regulations, and to assure the safety of all workers who will be engaged to do the permitted work.

3. INSURANCE COVERAGE: Permittee must have the insurance that is required for the type and extent of the work being performed.

Permittee agrees to maintain liability insurance in full force and effect throughout the term of the highway work permit. Expiration of, or lack of, liability insurance automatically terminates the permit.

To comply with this requirement, an applicant must furnish the Department with one of the following:

- A completed **Certificate of Insurance** evidencing the required types and limits of insurance coverage, with New York State Department of Transportation named as an additional insured on the commercial general liability policy. An industry standard **ACORD 25** form with an **ACORD 855** Addendum is acceptable evidence of the required coverage. Certificate Holder should be indicated as New York State Department of Transportation, with the address of the issuing office.
- A fully executed **Undertaking Agreement** may be provided by Municipalities, Public Utilities, Transportation Corporations, Public Service Corporations or Railroads, as an alternative to providing proof of commercial general liability the insurance.
- **Homeowners** applying for a residential work permit (driveways, improvements or tree work) and performing their own work have the option to pay a **\$25 Insurance Fee**, and waive the requirement to provide insurance coverage. Any contractor doing work on the homeowner's behalf must be listed on the permit and provide satisfactory proof of insurance as set forth below.

See "PERM 33 Submission Package Requirements" on page 4 for more detailed guidance on insurance coverage.

4. COMPENSATION AND DISABILITY INSURANCE COVERAGE: Permittee is required to have compensation insurance and disability coverage as noted in the provisions of the Worker's Compensation Law and Acts amendatory thereof for the entire period of the permit, or the permit will be invalid. Applicant must provide proof of coverage (Form C-105.2, U-26.3 or SI-12 for Worker's Compensation, and DB-120.1 or DB-155 for Disability Benefits), or provide proof of exemption from this requirement (Form CE-200).

5. INDEMNIFICATION: Permittee agrees that, in addition to any protection afforded to NYSDOT under any available insurance, NYSDOT shall not be liable for any damage or injury to the Permittee, its agents, employees, or to any other person, or to any property, occurring on the site or in any way associated with Permittee's activities or operations; whether undertaken by Permittee's own forces or by contractor or other agents working on Permittee's behalf. To the fullest extent permitted by law, the Permittee agrees to defend, indemnify and hold harmless the State of New York, NYSDOT and their agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of any claim, including but not limited to claims for personal injuries, property damage or wrongful death and/or environmental claims, in any way associated with the Permittee's activities or operations, no matter how caused.

6. NOTIFICATION: The following should be notified at the appropriate time as shown below:

- Commissioner of Transportation, through the NYSDOT regional office, one week prior to commencing work.
- Area gas distributors, 72 hours prior to any blasting.
- Utility companies with facilities in work areas, before starting work (in accordance with Industrial Code 53).
- Permission from utility company must be obtained before commencing work affecting the utilities' facilities.
- NYSDOT regional signal maintenance shop, 3 days prior to starting work (traffic signal work).
- NYSDOT regional office, at conclusion of work, and return original copy of permit to Resident Engineer.

NOTIFICATION FOR ANNUAL PERMITS: Notify by phone, the Regional or Resident Engineer's Office, one week in advance, each time regular maintenance work is to be performed. In emergencies, notification by phone, fax or email should be made as soon as is practical, no later than the next business day.

7. SITE CARE AND RESTORATION: A bond, deposit (bank cashier's check), or a Letter of Credit, in an amount designated by the Department of Transportation, may be required before a permit is issued, in order to guarantee restoration of the site to its original condition. A fully executed Undertaking Agreement may be accepted as an alternative security, where applicable. If the Department is obliged to restore the site to its original condition, the costs to the Department will be deducted from the amount of the permittee's deposit at the conclusion of the work. Costs in excess of the bond/deposit on file will be billed directly to the permittee. If permittee posts a Letter of Credit, the Department may elect to have a contractor restore the site, and issue a draft drawn against the Letter of Credit as payment.

- Anyone working within state highway right-of-way must wear **high visibility apparel** and **hard hat** meeting ANSI Class 2 requirements.
- No unnecessary obstruction is to be left on the pavement or the state highway right-of-way, or in such a position as to block warning signs during non-working hours.
- No work shall be done to obstruct drainage or divert creeks, water courses or sluices onto the state highway right-of-way.
- All false work must be removed and all excavations must be filled in and restored to the satisfaction of the Regional Maintenance Engineer.

8. COSTS INCURRED BY ISSUANCE OF THIS PERMIT: All costs beyond the limits of any liability insurance, surety deposits, etc. are the responsibility of the permittee. The State shall be held free of any costs incurred by the issuance of this permit, direct or indirect.

9. SUBMITTING WORK PLANS: The applicant will submit three (3) copies of work plans and/or maps as required by the Department. This shall include (but not limited to) such details as: measurements of driveways with relation to nearest property corner; location of existing and proposed poles, guide rail, signal equipment, trees or drainage structures; positions of guys supporting poles; a schedule of the number of poles and feet of excavation necessary for completion of work on the State right-of-way. A description of the proposed method of construction will be included.

- Plan work with future adjustments in mind, as any relocation, replacement or removal of the installation authorized by this permit and made necessary by future highway maintenance, reconstruction or new construction, will be the responsibility of the permittee.
- Driveway plans should be prepared in accordance with NYS DOT POLICY AND STANDARDS FOR ENTRANCES TO STATE HIGHWAYS.
- The permittee must coordinate the work with any State construction being conducted.

10. TRAFFIC MAINTENANCE: A plan detailing how the permittee intends to maintain and protect traffic shall be submitted with work plans. Traffic shall be maintained on the highway in a safe manner during working and non-working hours until construction is completed. The permittee is responsible for traffic protection and maintenance, including adequate use of signs, barriers, and flag persons during working and non-working hours until construction is completed. All sketches will be stamped with "MAINTENANCE OF TRAFFIC SHALL BE IN CONFORMANCE WITH THE NATIONAL MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES."

11. COST OF INSPECTION AND SUPERVISION: Prior to issuance of the Highway Work Permit, the permittee may be required to sign an INSPECTION PAYMENT AGREEMENT FOR HIGHWAY WORK PERMITS (FORM PERM 50) agreeing to the payment of construction inspection charges, based on the number of work days involved. In certain cases, the permittee may also be required to sign a PAYMENT AGREEMENT FOR HIGHWAY WORK PERMITS DESIGN REVIEW (FORM PERM 51) agreeing to design review charges, based on the number of work hours in which Department employees were engaged in design review activity.

12. SCOPE:

- **Areas Covered:** Permits issued are for highways, bridges and culverts over which the New York State Department of Transportation has jurisdiction. (Local governments issue permits for highways under their jurisdiction.) Work locations must be approved by the Department.
- **Maintenance:** Unless noted otherwise, applicant shall be fully responsible for the maintenance of all items installed and/or altered as shown on the approved permit plans and documents. Property owners having access to a state highway shall be fully responsible for the maintenance of their driveway in accordance with POLICY AND STANDARDS FOR ENTRANCES TO STATE HIGHWAYS.
- **Work Commencement:** The Permittee shall have a copy of the permit available at the site during the construction period. Work should start within 30 days from validation date of permit or said permit may be revoked.

13. REPORTING ACCIDENTS: Permittee is required to report any accidents that occur during the course of the permit work to their insurance company, and to provide the Department with a copy of any such report.

14. COMPLETION OF PROJECT: Upon completion of the work within the State highway right-of-way authorized by the work permit, the person and his or its successors in interest shall be responsible for the maintenance and repair of such work or portion of such work as set forth within the Terms and Conditions of the Highway Work Permit.

PERM 33 Submission Package Requirements

Submit three (3) copies of the final submission package: Submission package must include the entire PERM 33 with all work plans and supporting documents, including the following (check all that apply):

<input type="checkbox"/>	Stamped Final Plans – Submit in PDF file format on CD, with three (3) paper copies (1" = 50'), or as requested
<input type="checkbox"/>	ACORD 25 - Certificate of Insurance, with NYSDOT named as Additional Insured (See line 3 below).
<input type="checkbox"/>	ACORD 855 - New York Construction Certificate of Liability Insurance Addendum (See line 3 below).
<input type="checkbox"/>	PERM 1, 2, 6 or 16 - Undertaking Agreement, if applicable (See line 4 below).
<input type="checkbox"/>	PERM 36 - Attachment to Highway Work Permit – Consultant Inspection, if applicable
<input type="checkbox"/>	PERM 44 - Surety Bond – Performance bond in Applicant's name, or deposit (Bank cashier's check required)
<input type="checkbox"/>	PERM 50 – Inspection/Supervision Payment Agreement, if applicable
<input type="checkbox"/>	Proof of Worker's Compensation Insurance (Form C-105.2, U-26.3 or SI-12), or proof of exemption (Form CE-200)
<input type="checkbox"/>	Proof of Disability Benefits Coverage (Form DB-120.1 or DB-155), or proof of exemption (Form CE-200)
<input type="checkbox"/>	Permit Fee (Include \$25 Insurance Fee for residential operations)
<input type="checkbox"/>	Other (specify):

Insurance Requirements

- 1) In most cases, Permittee must provide proof of **Commercial General Liability** insurance coverage with limits of liability not less than **\$1,000,000** per claim/occurrence, unless any of the following circumstances exist, in which case the limits of liability shall not be less than **\$5,000,000** per claim/occurrence:
 - (a) The estimated value of permitted work in state right-of-way is \$250,000 or more (see line 6 below);
 - (b) The permitted work requires or includes the construction, alteration or maintenance of underground features at any depth five feet or more below grade;
 - (c) The permitted work requires or includes the construction, alteration or maintenance of overhead features that include, but are not limited to, traffic signals, overhead sign structures, retaining walls or other grade separation structures.
- 2) Exceptions to the above liability limits include: (a) Annual maintenance permits require limits of liability not less than \$5,000,000 per claim/occurrence; (b) Permits for vegetation control activities require limits of liability not less than \$1,000,000 per claim/occurrence; (c) Residential driveway permits require limits of liability not less than \$500,000 per claim/occurrence; and (d) Adopt-a-Highway permits are exempt.
- 3) **ACORD 25** with **ACORD 855** (New York Construction Addendum) shall be submitted as an acceptable proof of liability coverage. New York State Department of Transportation should be named as Additional Insured and as the Certificate Holder at the address of the issuing office.
- 4) Municipalities, public utilities, public authorities and railroads may elect to provide a fully executed Undertaking Agreement as a substitute for providing proof of insurance coverage, or any other financial security otherwise required.
- 5) Homeowners may pay a \$25 Insurance Fee in lieu of providing proof of insurance, however any contractor performing on behalf of a homeowner and who is named on the permit must provide proof of insurance as outlined above.
- 6) When the estimated cost of work being performed in the right-of-way equals or exceeds \$250,000, Permittee must additionally provide proof of a **Protective Liability (OCP)** insurance policy with a minimum liability limit of \$1,000,000 per occurrence, with New York State Department of Transportation as Named Insured.

Permittee agrees to maintain liability insurance in full force and effect throughout the term of the highway work permit. Expiration of, or lack of, liability insurance coverage automatically terminates the permit.

For more information on insurance requirements, go to: www.dot.ny.gov/permits-insurance

STATE OF NEW YORK DEPARTMENT OF TRANSPORTATION
HIGHWAY WORK PERMIT APPLICATION FOR NON-UTILITY WORK

Application is hereby made for a highway work permit:

For Joint application, name and address of Applicant 2 below:

Name _____

Name _____

Address _____

Address _____

City _____ State _____ Zip _____

City _____ State _____ Zip _____

Applicant Phone (____) _____

Applicant 2 Phone (____) _____

Applicant Email Address _____

Applicant 2 Email Address _____

Emergency Contact _____

Emergency Phone (____) _____

RETURN PERMIT TO: (if different from Permittee)

RETURN DEPOSIT/BOND TO: (if different from Permittee)

Name _____

Name _____

Address _____

Address _____

City _____ State _____ Zip _____

City _____ State _____ Zip _____

DESCRIPTION OF PROPOSED WORK: _____

Estimated cost of work being performed in highway right-of-way: \$ _____

Anticipated duration of work: From _____ to _____ (applies to the operations indicated on the reverse side)

WILL OVERHEAD OR UNDERGROUND (5'+) OPERATIONS BE INVOLVED IN THE PROPOSED WORK? YES NO

ATTACHED: Plans Specifications

LOCATION: State Route: _____ Located Between Reference Markers _____ and _____

City/Town/Village of _____ County of _____

SEQR REVIEW (select one)

Type II Type I Unlisted LEAD AGENCY: _____ DATE OF DETERMINATION: _____

Insurance (check one): General Liability Insurance Undertaking Insurance Fee (residential operations only)

NOTE: PERMIT IS ISSUED CONTINGENT UPON ALL LOCAL REQUIREMENTS BEING SATISFIED

ACKNOWLEDGMENT: ON BEHALF OF THE APPLICANT, I HEREBY REQUEST A HIGHWAY WORK PERMIT, AND DO ACKNOWLEDGE AND AGREE TO THE RESPONSIBILITIES OF PERMITTEE AND THE OTHER OBLIGATIONS SET FORTH IN THIS PERMIT AND WARRANT COMPLIANCE THEREWITH.

Applicant Signature _____ Date _____

Applicant 2 Signature _____ Date _____

Approval recommended by Resident Engineer _____	Res No _____ Date _____
Approved by Regional Traffic Engineer _____	Reg No _____ Date _____

Operational Type and Description		Permit Fee	Insurance Fee	Total Fees
\$ 0.00				
DRIVEWAYS				
5a1	Residential Driveway (includes field entrances)	15	25	
5a6	Temporary access road or street	200		
<i>For Commercial Driveways and subdivisions streets, use form PERM 33-COM</i>				
IMPROVEMENTS				
5b1	Residential	15	25	
5b2a	Commercial- Sidewalk, curb paving, drainage, etc.	200		
5b2b	Commercial – Grade, seed, improve land contour, clear brush	100		
5b2c	Commercial – Resurface existing road or driveway	50		
5b2d1	Annual resurfacing of roadways and driveways – PER COUNTY	150		
	Number of counties:			
5b2d2	Annual resurfacing of roadways and driveways – PER REGION	400		
TREE WORK				
5c1	Residential	15	25	
5c2a	Commercial removal or planting	25		
5c2b	Commercial pruning, applying chemicals to stumps	25		
5c3	Vegetation control for advertising signs – PER SIGN	150		
	Number of Signs:			
MISCELLANEOUS CONSTRUCTION AND WORK OPERATIONS				
5d1	Beautify ROW (civic groups only)	N/C		
5d2a	Temporary signs, banners, décor (not-for-profit organizations)	N/C		
5d2b	Temporary signs, banners, décor (other organizations)	25		
5d3	Traffic control signals	500		
5d4	Warning and entrance signs	25		
5d5	Miscellaneous – Requiring substantial review (describe below)	400		
5d6	Miscellaneous (describe below)	25		
OTHER TYPES OF HIGHWAY WORK PERMITS				
6	Encroachment caused by DOT acquisition of property	25		
7a1	Compulsory permit required for demolition requested by DOT	N/C		
7a2	Compulsory permit required for moving requested by DOT	N/C		
7b	Improvement to meet Department standards	N/C		
8	Miscellaneous (describe below)	25		
9	Adopt-a-Highway (exempt from insurance requirement)	N/C		
Description of Miscellaneous Operation:				

PERFORMANCE SECURITY (Select one): Guarantee Deposit - Cash Performance Bond Letter of Credit

Guarantee Deposit Amount: _____

Guarantee Deposit Check Number or Bond Number _____

(To be completed by NYS DOT issuing office)	
Project Identification Number _____	Highway Work Permit No. _____
State Highway (SH) Number _____	Record ID Number _____

REVISIONS TO NYSDOT STANDARD SPECIFICATIONS

NEW YORK STATE CANAL CORPORATION ADDENDUM TO THE STANDARD SPECIFICATIONS

The Standard Specifications published by the New York State Department of Transportation shall form a part of the agreement. The dated edition that applies to this contract is shown on the front cover of the proposal. All work contemplated under this contract is to be covered by, and be in conformance with, the Standard Specifications as modified by this Addendum, the contract proposal, or the contract plans. Also, the bidder's attention is directed to the fact that the New York State Canal Corporation, acting through its duly authorized officers, is the contracting party herein and the specifications referenced above shall be read accordingly.

All special notes bound in this proposal shall be incorporated.

In the event of a conflict between any provision of the Standard Specifications published by the New York State Department of Transportation which are annexed to this proposal, and any provision of the New York State Canal Corporation's Appendices, the provisions of the New York State Canal Corporation's Appendices shall prevail.

Make the following changes to *Standard Specifications dated September 1, 2023*:

TABLE OF CONTENTS

Substitute or **Add** the following sections:

- 102-01 LOCATION OF CANAL REGION OFFICES
- 102-08 STANDARD CLAUSES FOR ALL NEW YORK STATE CANAL CORPORATION CONSTRUCTION CONTRACTS AND FEDERALLY FUNDED PROCUREMENT CONTRACTS (APPENDIX A), SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT) (APPENDIX A-1), AND SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT) (APPENDIX A-2)
- 104-11 REMOVAL AND REPLACEMENT OF BRIDGE IDENTIFICATION SIGNS
- 107-14 PERMIT REQUIREMENTS
- 108-01 START AND PROGRESS OF WORK
- 109-11 RECOVERY OF MONIES BY THE CANAL CORPORATION

Section 100 GENERAL PROVISIONS

SECTION 101 – ABBREVIATIONS AND DEFINITION OF TERMS

101-01 ABBREVIATIONS OF TERMS.

Delete the **abbreviations** DCEC, DCED, DCES and DCETS and their respective expressions. Wherever these abbreviations are used in the specifications, **Substitute** as follows:

- DCEC – Director of Construction
- DCED – Director of Design
- DCES – Director of Design
- DCETS – Director of Design

101-02 DEFINITIONS OF TERMS.

Add “Acceptance Testing. Testing, conducted by the Engineer, to measure the degree of compliance to the Contract Documents.”

Addenda; Delete the definition and **Substitute** “This Canal Corporation Addendum and any supplemental additions, deletions and modifications to the provisions of the Standard Specifications published by NYSDOT, adopted by the New York State Canal Corporation, and listed on the front cover of this Contract Proposal.”

Add “Award Date; Considered to be the “Valid From” date on the initial Purchase Order (PO), including if Interim Approval is issued.”

Add “By Others. The term “by others” refers to a person, firm, or corporation other than the Contractor or its surety, or persons, firms or corporations in a contractual relationship with the Contractor or the surety, such as a Subcontractor, supplier, fabricator or consultant at any tier. “By others” shall include the New York State Canal Corporation or other public body.”

Add “Canal Corporation Construction Manager. An employee of the New York State Canal Corporation, under the direction of the Director of Construction Bureau, who has been delegated the responsibility for supervision of the Project Engineer.”

Chief Engineer; Delete the definition and **Substitute** “NYPA Regional Manager – Canals”

Commissioner; Delete the definition and **Substitute** “NYPA Regional Manager – Canals or his/her designated representative.”

Contract Agreement; Delete the last sentence and **Substitute** “A sample of the standard contract agreement is found elsewhere in this proposal.”

Add “Corporation. The New York State Canal Corporation, its employees, and its designated representatives.”

Department; Delete the definition and **Substitute** “The New York State Canal Corporation”. The Corporation maintains a website at www.canals.ny.gov.”

Departmental Geotechnical Engineer; Delete the definition and **Substitute** “A Geotechnical Engineer in the employ of the New York State Canal Corporation or its designated inspection agency, acting at the request of the Director of Design Bureau, authorized to perform the duties required under these specifications.”

Departmental Engineering Geologist; Delete the definition and **Substitute** “An Engineering Geologist in the employ of the New York State Canal Corporation or its designated inspection agency, acting at the request of the Director of Design Bureau, authorized to perform the duties required under these specifications.”

Add “Department of Engineering. The New York State Canal Corporation’s Engineering Services Division.”

Add “Director of Construction Bureau. The Director of Construction Bureau for the New York State Canal Corporation. Wherever the term “Regional Construction Engineer is used”, it shall mean the Director of Construction Bureau.”

Engineer OR Engineer-In-Charge; Delete the definition and **Substitute** “The Project Engineer representing the New York State Canal Corporation having direct supervision of the execution of the contract under the direction of the Director of Construction Bureau.”

Final Agreement; Delete the definition and **Substitute** “Agreement between the New York State Canal Corporation and the Contractor, stating the total cost of the work done by the Contractor. This document, which may also be referred to as a “Final Supplemental Agreement”, provides a final tabulation of the net increases or decreases in the Contract.”

Geotechnical Engineering Bureau; Delete the definition and **Substitute** “The New York State Canal Corporation employee, or its designated inspection agency or representative, having responsibility for providing Geotechnical Engineering Services including laboratory testing of earthwork materials.”

Materials Bureau; Delete the definition and **Substitute** “The New York State Canal Corporation employee, or its designated inspection agency or representative, with responsibility for the quality assurance program for materials to be used on the contract, directed to secure samples, conduct tests and maintain records as prescribed for this contract.”

Add “**Notice to Proceed.** Written notice to the Contractor to begin Work.”

Add “**NYPA Regional Manager – Canals.** The ranking staff Operations employee for the New York State Canal Corporation.”

Office; Delete the definition and **Substitute** “Any of the offices within the Engineering Services Division of the New York State Canal Corporation.”

Regional Director; Delete the definition and **Substitute** “Director of Construction Bureau , or a designated representative.”

Add “**Regional Materials Engineer (RME)**”. Defined as “the NYSCC Project Engineer” or his/her designated representative.

State; Delete the definition and **Substitute** “When used, means the New York State Canal Corporation.”

SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS

102-01 LOCATION OF REGIONAL OFFICES.

Delete this section in its entirety and **Substitute** the following:

“**102-01 LOCATION OF NEW YORK STATE CANAL CORPORATION.** Western Region Office – 4950 Genesee St., Suite 190, Cheektowaga, NY 14225; Western Region Headquarters – 149 Northern Concourse, Suite 300, N. Syracuse, NY 13212; Eastern Region Headquarters and New York State Canal Corporation Headquarters – 30 South Pearl St., 5th Floor, Albany, NY 12207.”

102-02 EXAMINING THE CONTRACT DOCUMENTS AND THE WORK SITE.

Delete the first paragraph and **Substitute** the following:

“Information on letting schedules, contract documents, detailed plans of the work, contract proposals, supplemental information for bidders, amendments, and other information are available on the Corporation’s website at: www.canals.ny.gov/business, Procurement Opportunities. Standard sheets are available on the Engineering > CADD Info > Drawings page of the Department of Transportation’s Business Center website at: www.dot.ny.gov/business.”

Delete the third paragraph and **Substitute** the following:

“Inquiries prior to the receipt of bids regarding any discrepancy, error, omission, intent or meaning of the Contract Documents shall be directed to the Corporation’s designated contact named in the Proposal. Only amendments shall be considered binding. Oral responses shall not be used to modify the Contract Documents.”

102-04 PROPOSAL CONTENT.

Delete “three (3) decimal positions” in the first paragraph and **Substitute** “two (2) decimal positions”.

102-05 PROPOSAL SUBMISSION.

Delete the first sentence of the second paragraph and **Substitute** “Amendments will be provided via electronic means on the Corporation’s website at www.canals.ny.gov/business, Procurement Opportunities.

Delete the last two paragraphs of this section.

102-06 BID DEPOSIT.

Delete all the information in this section and **Substitute** the following:

“Bids must be secured with a bid bond. A bid bond must be in the amount of 10% of the total bid and must be on the Corporation’s Bid Bond Form which is included in the Proposal. (Bidders must also submit a Statement of Surety’s Consent with the bid.) The retention and disposition of such bid bond by the Corporation shall be pursuant to and in conformity with Section 38(2) of the Highway Law, as amended.”

102-07 MODIFICATION OR WITHDRAWAL OF PROPOSAL

Delete this section in its entirety and **Substitute** the following:

“Electronic Proposals shall be modified in accordance with the Corporation’s website at www.canals.ny.gov/business, Procurement Opportunities.”

102-08 SAMPLE APPENDIX A - STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS.

Delete this section in its entirety and **Substitute** the following:

“102-08 STANDARD CLAUSES FOR ALL NEW YORK STATE CANAL CORPORATION CONSTRUCTION CONTRACTS AND FEDERALLY FUNDED CONTRACTS (APPENDIX A).

The parties to the attached contract, license, lease, amendment, or other agreement of any kind (“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 and its agents, successors and assigns, other than the Corporation (“Corporation”), whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **NON-ASSIGNMENT CLAUSE.** This contract may not be assigned by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet, or otherwise disposed of without the previous consent, in writing, of the Corporation and any attempts to assign the contract without the Corporation’s written consent are null and void.
2. **WORKERS’ COMPENSATION AND DISABILITY BENEFITS.** 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 State Workers’ Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers’ Compensation Act endorsement must be included.
3. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the State 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 State Labor Law §220-e, 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 State Labor Law §230, then, in accordance with §239 thereof, the 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. The Contractor is subject to fines of \$50 per person per day for any violation of State Labor Law §§220-e or 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

4. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the State Labor Law or a building service contract covered by Article 9 thereof, neither the 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 State Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the 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 State Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the New York State 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 New York State Labor Law shall be a condition precedent to payment by the Corporation of any Corporation approved sums due and owing for work done on the project.

5. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with State Public Authorities Law §2878, if this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further warrants that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the Corporation a non-collusive bidding certification on the Contractor's behalf.

6. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with State Labor Law §220-f, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this 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. §§2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the 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 Corporation within five (5) business days of such conviction, determination, or disposition of appeal.

7. **SET-OFF RIGHTS.** The Corporation shall have rights of set-off. These rights shall include, but not be limited to, the Corporation'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 by the Contractor to the Corporation with regard to this contract, or any other contract with the Corporation, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Corporation for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Corporation and third parties in connection therewith.

8. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts, and other evidence directly pertinent to performance under this contract (collectively, "Records") for a period of six (6) years (or any other longer period required by law) following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Corporation, or any authorized governmental representative shall have access to the Records during normal business hours at an office of the Contractor within New York State, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, during the contract term, any extensions thereof and said six (6) year period thereafter, for purposes of inspection, auditing and copying. As used in this clause, "termination of this contract" shall mean the later of completion of the work of the contract or the end date of the term stated in the contract. The Corporation will take reasonable steps to protect from public disclosure those Records which are exempt from disclosure under State Public Officers Law §87 ("Statute") provided that: (i) the Contractor shall timely inform an appropriate Corporation official, in writing, that said records should not be disclosed; (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 Corporation's right to discovery in any pending or future litigation.

9. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Corporation must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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 State Tax Law §5. Disclosure of this information by the seller or lessor to the Corporation 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 State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The above personal information is maintained at the New York State Canal Corporation Headquarters located at 30 South Pearl St., 5th Floor, Albany, NY 12207.

10. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with State Executive Law §312, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the Corporation 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 Corporation; or (ii) a written agreement in excess of \$100,000 whereby the Corporation 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 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, or major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this contract 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, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Corporation contracts.

(b) At the request of the Corporation, 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.

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

The Contractor shall include the provisions of (a), (b) and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such 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 Corporation will consider compliance by a Contractor or its subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The Corporation 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 Corporation may waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall 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 thereto.

11. **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.

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

13. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by State Public Authorities Law §2880 and 21 NYCRR Part 109.

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

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

16. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (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 Corporation.

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 State Finance Law §165. Any such use must meet with the approval of the Corporation; 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 Corporation.

17. **NON-PUBLIC PERSONAL INFORMATION.** The 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). In addition to any relief or damages that may be imposed pursuant to the provisions of this Act, the Contractor shall be liable for the costs imposed upon the Corporation which are associated with breach of the Act if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees, or subcontractors.

18. **OBSERVANCE OF LAWS.** The Contractor agrees to observe all applicable Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

19. **NO WAIVER OF PROVISIONS.** The Corporation's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Corporation of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Corporation, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

20. **ENTIRE AGREEMENT.** This contract, together with this Appendix A and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

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

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, religion, age, color, sex 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 the Corporation 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 New York Power Authority's Supplier Diversity Program , 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, Corporation shall impose such contract sanctions as it 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 subcontractor procurement as the Corporation 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 the Corporation to enter into such litigation to protect the interests of the Corporation, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)
(APPENDIX A-2)**

The New York State Canal Corporation, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written Department solicitation, request for proposal or invitation for bid that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for an award.”

102-10 LABOR AND EMPLOYMENT.

D. Training.

Delete this section in its entirety.

102-11 EQUAL EMPLOYMENT OPPURTUNITY.

Delete this section in its entirety.

102-12 D/M/WBE PARTICIPATION.

Delete this section in its entirety and Substitute the following:

“The Contractor must comply with Appendix C: SUPPLIER DIVERSITY PROVISIONS”

102-15 SAMPLE FORM OF BID BOND.

Delete all the information in this section and Substitute “The Bid Bond form contained in this Proposal shall apply.”

102-17 SAMPLE FORM OF ITEMIZED PROPOSAL/JURAT.

Delete all the information in this section and Substitute “The Itemized Proposal contained within this Proposal shall apply.”

SECTION 103 – CONTRACT AWARD AND EXECUTION

103-01 CONTRACT AWARD.

Delete the fourth paragraph and Substitute:

“A bidder may withdraw its bid if no award of the contract is made within one hundred eighty (180) days after the receipt of the bids, and upon such withdrawal, its deposit will be returned. The notice of withdrawal shall be made in writing to the NYPA Regional Manager - Canals”. However, in the event that the Corporation is awaiting Trustee approval in order to execute a contract, and a limited scope of the work and/or services needs to commence prior to Trustee approval, the Corporation may issue a contract with a caveat that the contract is pending Trustee approval. In the event the contract is not approved by the Trustees, the contract will be cancelled via a change order. In the case of cancellation, the Contractor shall be compensated for the limited scope of work and/or services performed prior to the date of cancellation. The bid bond and/or performance bond shall remain in effect until such period of written notice has expired provided the contract has not been approved by the Corporation in the interim. The Contractor and the Corporation may agree in writing to extend the date upon which the bid may be withdrawn if the contract has not been approved by the Corporation.

Delete the seventh paragraph and **Substitute**:

“Contract award on a joint venture proposal will place upon the joint participants complete liability, jointly and individually, for contract performance. Contracting corporations, which are chartered in a state other than New York, as well as individuals or firms doing business under fictitious names, are required to register with the NYS Department of State authorizing them to do business in New York, before they can be awarded a contract.”

103-02 EXECUTION OF CONTRACT.

Add the following after the second paragraph:

“When a joint bidder returns a signed contract for a joint venture proposal to the Manager of Engineering and Maintenance, a certified copy of a resolution of the board of directors of each participating corporation must be included that clearly indicates the work to be performed by both parties. The resolution must authorize the joint venture with the other party participant(s) for the specific contract. Each corporation must also submit a copy of its corporate powers. The participants in any joint venture must make the designation in writing, addressed to the Manager of Engineering and Maintenance.

The designations are as follows:

1. The name of the person who will be in charge of the project for the joint Contractors. This person must have complete authority to speak for and bind the joint Contractors in all matters relating to the contract. It is this person to whom all notices, orders, directions, and determinations concerning the project may be given by the Manager of Engineering and Maintenance. Notices orders, directions, or determinations given to this designated person, or to one of the joint Contractors, will be considered to have been given to all parties.

No change in the person designated to be in charge of the project will be recognized by or be binding upon the Corporation, until the participants in the joint venture give written notice of such change. In the event of the inability or unwillingness to serve, death or disability of the person in charge of the project, it is the responsibility of the joint Contractors to advise the Manager of Engineering and Maintenance, in writing, over their joint signatures, of such inability or unwillingness to serve, death or disability within 24 hours after the occurrence, and then to designate a successor.

2. A mailing address for the receipt of all estimates, acceptance and final settlement certificates, payments, notices, orders, directions, and determinations for the performance of the work. The mailing address will be considered the joint Contractors' address and any communications directed to such address will be considered to have been received by the joint Contractors.

All checks for the payment of estimates and the final settlement certificate will be made to the order of the joint Contractors in the same form in which they have signed the contract and will be mailed to the designated mailing address.

Change of the mailing address will not be recognized by or be binding upon the New York State Canal Corporation, until written notice, signed by the joint Contractors, has been received by the Manager of Engineering and Maintenance.

If the contract, together with the Surety Bonds and the Insurance Certificate(s) providing adequate insurance coverage, as provided in Section 107-06, is not properly executed and returned, the proposal guarantee will be forfeited to the New York State Canal Corporation as liquidated damages.”

103-06 SAMPLE FORM OF CONTRACT AGREEMENT.

Delete all the information in this section and **Substitute** “A Sample New York State Canal Corporation Agreement is included elsewhere in this Proposal.”

103-07 SAMPLE FORM OF FAITHFUL PERFORMANCE BOND.

Add the following:

“New York State Canal Corporation forms will be supplied to the apparent low bidder.”

103-08 SAMPLE FORM OF LABOR AND MATERIAL BOND.

Add the following:

“New York State Canal Corporation forms will be supplied to the apparent low bidder.”

SECTION 104 - SCOPE OF WORK**104-01 WORK REQUIRED.**

Delete the second sentence of the first paragraph.

104-02 CHANGES, CONTINGENCIES, EXTRA WORK AND DEDUCTIONS.

Delete the first, second and third sentences of the first paragraph and **Substitute** the following:

“The provisions of Article 8, Alterations and Omissions of the Contract Agreement shall apply. Whenever the Corporation determines that from any unforeseen cause the terms of any contract should be altered to provide for changes, contingencies, extra work, or the deletion of work, an order-on-contract or field change order may be issued to the Contractor who shall promptly proceed with the performance of the work and the furnishing of the materials and equipment necessary for its accomplishment in accordance with the pertinent specifications.”

104-08 MAINTAINING TRAFFIC.**A. Closing of Highway.**

Delete this section in its entirety.

B. Use of Restricted Highway.

Delete this section in its entirety.

104-10 VALUE ENGINEERING CHANGE PROPOSAL (VECP)

Delete this section in its entirety and **Substitute** the following:

A. PURPOSE. After the award of the contract, the Contractor may submit to the Corporation Value Engineering Change Proposals (VECP) that change the contract documents resulting in Direct Cost Savings and Indirect Cost Savings. Direct Cost Savings is the difference between 1) the Corporation’s cost to complete all contract work without implementing the VECP and 2) the Corporation’s cost to complete all the contract work if the VECP is implemented (this includes any changes to quantities or unit prices across the entire contract if affected by the VECP). Indirect Cost Savings, for the purposes of this provision, include any savings resulting from the VECP to project inspection costs or to operating costs of the Corporation’s Maintenance Program. The Corporation will share with the Contractor any Direct Cost Savings and Indirect Cost Savings that result from an approved VECP proposal and will also pay for reasonable Design Costs after conceptual VECP approval.

B. GENERAL REQUIREMENTS. The VECP must conform to all current requirements of the New York State Canal Corporation including but not limited to design and construction requirements of the New York State Department of Transportation and Federal and State environmental requirements and permit requirements. The VECP must maintain the essential functions and characteristics of the work it proposes to replace including but not limited to safety, service life, ease of maintenance, and appearance. The Contractor shall submit a conceptual VECP to the Corporation for review, after which additional information may be requested by the Corporation to complete their review. If the Corporation approves the conceptual VECP, the Contractor shall then submit a formal VECP including revised plans and specifications stamped by a New York State licensed Professional Engineer with current registration, a comparative analysis of costs and time between completing contract work with implementing the VECP and without implementing the VECP (*all VECP costs shall be generated in accordance with 109-05 – Extra Work and Time Related Compensation*), permit requirements as applicable, and other information as requested by the Corporation upon approval of the conceptual VECP.

C. CONDITIONS. The Corporation will be the sole judge of the VECP in determining the following:

1. Approval or Disapproval
2. Direct Cost Savings
3. Indirect Cost Savings
4. Reasonable Design Costs after conceptual VECP approval
5. Advantages and/or Disadvantages

The contractor agrees that the time required to prepare a VECP shall be considered insufficient to justify a request to extend the contract completion date or a delay claim.

Approval of the conceptual VECP does not obligate the Corporation to approve the formal VECP. The contractor shall have no claim against the Corporation as the result of a rejection of any such conceptual or formal VECP except as otherwise provided in *104-10D* below.

Subcontractors may not submit a VECP except through the Contractor.

If unsatisfactory results are being achieved or adjustments are necessary during implementation of the VECP, the rejection of work, removal of work, addition of work, or revision of work shall be evaluated in accordance with the contract.

No work related to a VECP will be performed under force account. Agreed prices must be reached for any contract pay items related to the VECP before the VECP is approved.

Any costs associated with material orders placed prior to the approval of the formal VECP shall be at the Contractor's risk.

The description of what will be considered a "significant change" associated with a VECP are identified in §104-04 *Significant Changes in the Character of Work*. Once a formal VECP is approved, any future significant change is no longer based on the original contract bid conditions (quantity, nature or kind of a material involved), but rather on the conditions as adjusted by the VECP (adjusted quantities, anticipated site conditions and materials, etc.). Any item that was identified as a Major Item in the original contract documents is still considered a Major Item, regardless of the change in quantity or price due to the VECP. All significant changes shall be agreed upon prior to formal VECP approval. If after formal VECP approval, an unforeseen change in the VECP work causes a significant change in the character of work, quantities and prices may be adjusted and the VECP savings shall be adjusted accordingly.

D. PAYMENT. If the Corporation approves the formal VECP and the VECP is implemented, the Corporation will, in addition to progress payments for the completed VECP work, pay the Contractor the following at the time of final contract accounting unless otherwise agreed to at the time of formal VECP approval:

- 50% of the Direct Cost Savings
- 50% of the Indirect Cost Savings
- 100% of the reasonable Design Costs after conceptual VECP approval

In the event that at final contract accounting the implementation of the VECP actually results in no or reduced savings, then the above Direct Cost Saving, Indirect Costs Savings, and reasonable Design Costs will be adjusted by the Corporation accordingly and the contractor's payment will be revised accordingly.

In the event the Corporation approves the conceptual VECP and subsequently rejects a formal VECP, 50% of the total reasonable Design Costs incurred, after conceptual VECP approval, will still be reimbursed to the Contractor. There will be no reimbursement for any costs incurred for the conceptual VECP or prior preparations.

SECTION 104 - SCOPE OF WORK

Add the following:

“104-11 REMOVAL AND REPLACEMENT OF IDENTIFICATION SIGNS.

Structure identification plaques, bridge identification number (B.I.N.) plates, milepost markers, street name signs , culvert identification signs, and permit plates shall be protected during the Contractor’s operations or removed, stored and remounted after construction is completed, without any additional cost to the Corporation.”

SECTION 105 - CONTROL OF WORK

105-03 METHODS AND EQUIPMENT.

Add the following after the second paragraph:

“Equipment which the Engineer feels could damage Corporation Facilities shall not be allowed to operate until adequate protective measures are provided such as wooden mats, bridging devices or rubber pads. The Engineer’s approval of such protective devices shall not relieve the Contractor from responsibility for damage. The Contractor shall be responsible for keeping equipment in good working condition. Operators shall be knowledgeable in all aspects of equipment operation and shall know the limitations of the equipment. Under no circumstances, including changed or unforeseen work conditions, shall the Corporation be held responsible or reimburse the Contractor for equipment damaged or broken during the progress of this Contract.”

C. Structural Painting.

Delete the third and fourth paragraphs.

105-06 COOPERATION WITH UTILITIES AND OTHER CONTRACTORS.

Delete the first sentence of the first paragraph and **Substitute** the following:

“The Contractor shall cooperate with Utilities, Canal Corporation maintenance forces and other contractors and arrange or adjust its progress schedule to coordinate with the other parties as indicated in the contract documents”

105-14 DISPUTED WORK AND DISPUTE RESOLUTION.

H. Contract Closeout Process.

Delete this section in its entirety and **Substitute** the following:

“H. Administrative Construction Contract Settlement Procedure. In an attempt to reach mutually satisfactory resolutions to contract disputes between the Corporation and its construction Contractors, the Corporation affords the Contractors a final opportunity to meet and discuss their unresolved disputes with the General Counsel and the Manager of Engineering and Maintenance or their representatives. The Administrative Construction Contract Settlement Procedure, described below, is not a fourth stage of disputed work. This procedure provides an opportunity to address disputes and other matters of equity that do not necessarily fit neatly within the bounds of the Disputed Work clauses of the General Specifications, as modified and adopted by the Corporation. Contractor presentations should include any new facts and findings and should be directed to illustrate why the Disputed Work determinations at the project and review levels were not justified.

In this procedure, after Acceptance, but before Final Payment, the Contractor makes a written request to the NYPA Regional Manager - Canals for a meeting to discuss those matters that remain unresolved, which have exhausted the formal disputed work process during the contract life. The Contractor must submit an Agenda for the meeting with this request. At the meeting, the Contractor shall present information on each issue on their Agenda. Representatives of the Engineering Services Division and Legal Department will attempt to resolve the issues with the Contractor within the framework of the contract. Any subsequent contract modification is subject to approval by any other shareholders to the Contract. The Contractor will be notified of the Corporation’s final position in writing. If any dispute or claim, or portion thereof, remains unresolved following the meeting(s) and the payment of the final agreement, the Contractor may file a claim in accordance with law and the provisions of the Contract.”

105-16 SHOP DRAWING APPROVAL.

Add the following:

“The Contractor shall review, redline and approve-stamp shop drawings and samples from its suppliers prior to submission to the Engineer. By approving and submitting shop drawings and samples, the Contractor represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data and that he has checked and coordinated each shop drawing and sample with the requirements of the contract documents. Shop drawings will be reviewed and approved by the Project Engineer (or the Corporation or its agent). The reviewer cannot verify field dimensions. All substitutions and/or deviations must be noted including a proposed credit, if applicable. Any deviation from the requirements of the contract documents, unless the Contractor has informed the Project Engineer of the deviation in a separate writing at the time of submission and received written approval of the specific deviations, is unacceptable. If inadvertently "approved", that approval will be invalid. Once approved, the Contractor is responsible to submit a reproducible set of shop drawings for inclusion in the final project records.

Any waiver of specifications or contract requirements is exclusively for the Corporation’s benefit and purposes, and as such is subject to revocation without requirement for advance notice or statement of cause. Also, approval or disapproval of requests for waivers will be transmitted without statement of reason or cause and shall not be subject to administrative review or appeal under the contract.

Prior to final payment, the contractor shall provide the Corporation with the original approved shop drawings and complete final signature approved shop drawings in electronic format acceptable to the Corporation.”

105-19 CONTRACTOR WARRANTIES.

Delete this section in its entirety.

105-21 CIVIL RIGHTS MONITORING AND REPORTING.

Delete this section in its entirety

SECTION 106 - CONTROL OF MATERIAL**106-01 SOURCES OF SUPPLY.**

Delete “notify the Deputy Chief Engineer, Structures (DCES), with a copy to the Engineer, of” in the first line of the first paragraph and **Substitute** “submit to the Project Engineer”.

SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**107-05 SAFETY AND HEALTH REQUIREMENTS.**

Add the following before the first sentence of the first paragraph in this section:

“Included with the submission of the bid, the Contractor shall submit to the Corporation a Safety Performance Questionnaire capturing data from the previous 3 years plus the year-to-date that includes each years’ Experience Modification Rate, Recordable Injury/Illness Rate, Lost Time Injury/Illness Rate and any fatalities that may have occurred in any one of those years.”

C. Emergency Contact Person.

Delete this section in its entirety and **Substitute** the following:

“**C. Emergency Call Out List.** At the preconstruction meeting, the Contractor shall provide the Corporation a list of a minimum of four (4) responsible personnel, available on a 24-hour basis, for call out if conditions

arise that require the Contractor's attention at the construction site. In addition to providing on- and off-hour phone numbers, all persons on the Call Out List shall be equipped with telephone call activated paging devices which display the call back number, or cell phones, or other approved paging devices. Any person on the Emergency Call Out List shall have the authority to promptly call out personnel and resources necessary to respond to an emergency and protect the public. The Call Out List shall also include field office and main office telephone numbers and be updated as changes occur."

R. Confined Spaces.

Add the following after the last paragraph:

"Work operations in confined space and permit-required confined space as defined in 29 CFR 1910, Section 146 are particularly hazardous. These operations shall be specifically addressed in the Contractor's comprehensive Project Specific Safety and Health Plan and, in the case of permit-required spaces, a supplemental plan detailing the permit-required space program that the Contractor will follow and of any hazards confronted or created in permit-required spaces. These plans shall be submitted for review prior to the start of work. Indicated confined spaces are not intended to limit or define Contractor or subcontractor regulatory compliance requirements. In addition to confined spaces indicated on the drawings, other confined spaces may be present or created by the work of this contract. The Contractor shall furnish, at no additional cost to the Canal Corporation, personnel, and equipment to allow the Engineer to enter confined space and permit-required confined space in compliance with in 29 CFR 1910, Section 146."

107-06 INSURANCE.

Delete all the information in this section and **Substitute** the following:

a) General Requirements

The Contractor, and each subcontractor, will keep in force at its own cost, until final acceptance of the Work, the insurance coverages listed herein. The Contractor will not commence Work until the Corporation has been furnished a completed certificate or certificates of insurance. Contractor shall ensure that all subcontractors comply with these requirements, and that these requirements are expressly incorporated in each of the Contractor's sub-contractor agreements. Failure to maintain the required insurance throughout the term of the Contract, including any Contract term modifications, is a material breach of the Contract and may result in a stop work order or termination of the Contract for cause.

All coverages, except Workers' Compensation (see b).i., below), should be evidenced on an Acord form accompanied by the following two (2) endorsements: **Additional Insured** with the identifying policy number, specifically naming the New York State Canal Corporation, New York Power Authority, the State of New York and any and all additional insureds named in the contract documents as additional insureds to the policy and **Waiver of Subrogation** endorsement. The insurance afforded to the additional insureds shall be at least as broad as that afforded the first named insured.

The form and sufficiency of each insurance policy required to be obtained herein will be subject to the Corporation's approval and with insurance companies acceptable to the Corporation. The Contractor shall notify the Corporation no later than 10 days prior to the effective date of a change to or cancellation of insurance policies required herein. The Contractor will deliver or cause to be delivered to the Corporation, upon request, a copy of each such insurance policy.

b) Any and all deductibles or self-insured retentions, in or relating to the below described insurance policies shall be assumed by and be for the account of, and at the sole risk of the Contractor.

- i) Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation/Occupational Disease Laws, including Employer's Liability Insurance with a minimum limit of **\$1,000,000**. When applicable, coverage shall include The United States Longshoreman's and Harbor Workers' Compensation Act (44 U.S. Stat 1424) and the Jones Act (41 U.S. Stat 988). Under Sections 57 & 220 Subd. 8 of the New York State Workers' Compensation Law, it is required that Contractors doing business with a Municipal or State entity evidence proof of workers' compensation coverage on approved forms, as listed below:
1. If coverage is with a private insurance carrier, the entity must provide evidence of coverage on a completed C105.2 form. The C105.2 form is supplied and completed by the insurance carrier or its authorized agent.
 2. If coverage is with the State Insurance Fund, the entity must provide a completed U-26.3 form provided by the Fund.
 3. If the business entity has been approved by the Workers' Compensation Board's Office of Self Insurance as a qualified self-insurer, a completed SI-12 form is required. The SI-12 form is provided by the Board's Office of Self Insurance.
 4. Or Form CE-200, Certificate of Attestation of Exemption, if the business is not required to carry NYS specific workers' compensation insurance.
- ii) Commercial General Liability Insurance, which includes Contractual Liability and Products/Completed Operations Liability coverages covering all operations required to complete the Work where applicable coverage for damage caused by any explosion, underground or collapse with a minimum limit of at least **\$10,000,000** per occurrence for bodily injury and property damage. Excess/Umbrella Liability Insurance may be combined with Primary Commercial General Liability Insurance to achieve the **\$10,000,000** per occurrence coverage only if such policies are written on a follow form basis or are at least as broad in coverage as all underlying policies and "drop down" for defense and indemnity in the event of the exhaustion of the underlying insurance.
1. The limits contained on the Insurance Policies Declaration page must be equal to or greater than the limits stated herein.
 2. The Corporation, New York Power Authority, the State of New York and any and all additional insureds named in the contract documents must be named and scheduled as additional insureds to the Contractor's policy and, if applicable, each subcontractor's policy, including cross-liability coverage evidenced on the certificate(s) furnished to the Corporation. The policy must contain an endorsement stating that the insurer will have no right of recovery or subrogation against the Corporation, New York Power Authority, the State of New York, and any and all additional insureds named in the contract documents. The Contractor must submit evidence satisfactory to the Corporation of its compliance with this requirement. It is the intent of the parties that the insurance placed in accordance with the provisions of this paragraph will be primary and non-contributory insurance and will protect the Contractor, the Corporation, New York Power Authority, the State of New York and, any and all additional insureds named in the contract documents for all losses arising from all operations, activities, work, services, items or performance relating to the Contract. The insurance afforded to the additional insureds shall be at least as broad as that afforded the first named insured.
 3. If Additional insured coverage is afforded by blanket endorsement it is required to be on ISO form CG 20 38 04 13.
 4. The Products/Completed Operations Liability coverage will be provided for a period of at least two (2) years after the completion of the Work.

5. The Contractual Liability Insurance coverage will insure the performance of the contractual obligations of the Contractor contained in this Contract, including, without limitation, all contractual indemnity obligations.
- iii) A Business Automobile Policy protecting the Contractor and each subcontractor for automobile bodily injury and property damage liability, including coverage for liability arising out of owned, hired, or non-owned vehicles. Such insurance will cover all vehicles with a gross vehicle weight less than 10,000 pounds bearing or required to bear by the motor vehicle laws of the state of registry, licenses, or registration plates in limits of at least **\$1,000,000** each accident. For vehicles with a gross vehicle weight of 10,000 pounds and greater bearing or required to bear by the motor vehicle laws of the state of registry, licenses, or registration plates in limits of at least **\$2,000,000** each accident.
 - iv) If required a Cyber Liability Policy with minimum limits of **\$5,000,000** per claim is required. Coverage shall be sufficiently broad to respond to claims including, but not limited to, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses to respond to these obligations.
 - v) If the Work requires professional services, such as, but not limited to, accounting, architectural, engineering, legal, medical, and surveying, a standard professional liability insurance policy with a minimum limit of \$5,000,000. If applicable, the policy is to be endorsed to include “fee for service” coverage and evidence of endorsement must be furnished to the Authority. An additional insured endorsement is not required for the professional liability policy.
 - vi) If the Work requires activity on navigable waterway using barges or other watercraft or the work is connected to water related activities, Marine Protection & Indemnity and Hull and Machinery coverage is required. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment. The Contractor shall obtain Protective and Indemnity Liability insurance for all marine operations under the contract with a minimum limit of **\$5,000,000** per occurrence including marine pollution coverage.
 - vii) If the Work and/or services requires the use of an unmanned underwater vehicle/remotely operated underwater vehicle, Unmanned Underwater Vehicle (UUV)/Remotely Operated Underwater Vehicle (ROV) Liability is required. The Contractor and any and all subcontractor(s) shall maintain such policy covering third-party liability for bodily injury and property damage arising out of the use of Unmanned Underwater Vehicle (UUV)/Remotely Operated Underwriter Vehicle (R0V). Limits will be determined based on the level of exposure.
 - viii) If the Work requires the use of an unmanned aircraft systems (UAS), UAS Liability Insurance with a minimum limit of **\$1,000,000** per occurrence is required. The Contractor warrants that each UAS pilot or operator, either as a direct employee of the Contractor or as an independent contractor or subcontractor, will have all necessary current licenses and/or certificates to properly operate the UAS being used.
 - ix) If the Work poses an environmental risk, known or suspected, the Contractor shall procure and maintain, either through an endorsement to a commercial general liability policy or through a separate policy, Pollution Liability Coverage protecting the Contractor, corporation, New York Power Authority and the State of New York from the liability and financial loss relating to Contractor’s contamination of water or soil including but, not limited to, the accidental release of petroleum products, chemicals and/or toxic gases from broken pipelines, utilities and stationary and mobile fuel tanks that can result from Contractors operations. Such coverage shall be written on policy form providing coverage for contamination both on and off the premises and shall provide coverage with minimum limits of **\$5,000,000** per occurrence is required.

- x) If the Work requires the use of scaffolding, derrick or a crane, Riggers Liability Insurance is required with a minimum limit of **\$10,000,000** per occurrence.
 - xi) If the Work requires commercial divers, then either an endorsement to the Watercraft policy or a Marine & Diving Contractor's CGL Policy is required. Limits will be evaluated based upon exposure.
 - xii) If the Work requires asbestos abatement, then an endorsement to the contractors Pollution policy to include asbestos coverage is required.
 - xiii) If the Work involves construction of a structure a Builders Risk policy must be maintained from the inception of the work until a permanent certificate of occupancy is issued. The coverage is to extend to the building being constructed (including additions, fixtures, machinery, and equipment) and temporary structures (on-site offices), materials, equipment and supplies.
 - xiv) Care, Custody and Control: All Corporation material/equipment while in the care custody and control of the Contractor must be insured through the Contractor's property insurance policy for full replacement cost value; or the Contractor may have the "care, custody and control" exclusion removed from their Commercial General Liability Policy.
 - xv) For Work on, over, under, or adjacent to railroads, the Contractor shall maintain Railroad Protective Liability insurance in the name of the affected railroad and with limits of coverage as specified in the Special Notes of Railroad Insurance or if no limits of coverage are specified, the limits shall be not less than \$5,000,000 combined bodily injury liability and/or property damage for each occurrence. Policy shall be subject to approval of the railroad and comply with 23 CFR 646 Subpart A.
 - xvi) The Contractor shall be responsible for obtaining insurance it deems necessary to cover its own risks, including without limitation: business interruption, such as gross earnings, extra expense, or similar coverage, and/or property damage.
- c) At the execution of this Agreement and on an annual basis during the term of this agreement and any extended period for during which insurance must be maintained, each insuring party will deliver to the Corporation the forms required under Section a) General Requirements above for all coverage required hereunder. The Corporation has no obligation either to review the forms or policies or to inform any insuring party if the forms and or underlying policies do not comply with the requirements of this agreement. The Corporation will be given at least 30 days' notice of cancelation, material modification or expiration of the aforementioned insurance. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Corporation requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

If the contractor or any other insuring party fails to furnish the forms or maintain the coverage required under this section or if any of the insurance is canceled, the Corporation may (1) immediately terminate this agreement and Contractor will reimburse the Corporation for any and all losses resulting from Contractor's failure to have the insurance required hereunder, or (2) the Corporation may procure such insurance and the insuring party which failed to maintain the required insurance shall reimburse the Corporation for all associated costs including insurance premiums or such costs will be offset against amounts otherwise payable to such insuring party under this agreement. In the event any insuring party's failure to comply with any aspect of this

Insurance Section results in payment for defense or indemnity by any indemnitee's insurance, such indemnitee's remedy against such insuring party shall include the amount of coverage (payment of defense, indemnity, etc.) that would have been available to such indemnitee had the insuring party complied with this Insurance Section, and such insuring party shall not be entitled to an off set for any amounts indemnitee receives, or is entitled to receive, from any other insurance.

- d) In lieu of Commercial General Liability Insurance, at the Corporation’s discretion, it may agree to accept an Owners and Contractors Protective Liability Policy naming the Corporation, New York Power Authority, and the State of New York as the named insureds, and with the following minimum limits:

Bodily Injury Liability **\$10,000,000** per occurrence

Property Damage Liability **\$10,000,000** per occurrence

This policy, the cost of which will be borne by the Contractor, will cover the liability of the Corporation, New York Power Authority, and the State of New York with respect to the Work, services, or items to be furnished hereunder, or contract to be performed, including omissions or supervisory acts of the Corporation, if any.

Such insurance will contain provisions which state that the policy will also respond to claims or suits by employees of the Contractor or subcontractor against the Corporation, New York Power Authority the State of New York and any and all additional insureds named in the contract documents, or by the Corporation, New York Power Authority, the State of New York and any and all additional insureds named in the contract documents, against the Contractor or any other insured thereunder.

- e) Depending on the scope of work/services, contractor must meet all applicable requirements and limits in the aforementioned. Certain insurance coverage may be removed or added based on the scope of work/ services to be provided.

SECTION 107-07 PROTECTION OF UNDERGROUND FACILITIES.

C. Notification.

Delete the first sentence and **Substitute** the following:

“The Contractor shall contact the One-Call notification system serving the area (UDigNY 811) and the NYSCC a minimum of 2 days and a maximum of 10 days, not including the date of the call, prior to work.”

SECTION 107-09 DAMAGE.

C. Obligation to Indemnify by the Contractor.

Delete the first two (2) sentences of the first paragraph and **Substitute** the following:

“To the fullest extent permitted by law, the Contractor shall indemnify, defend and save harmless the Corporation, the Power Authority of the State of New York, the State of New York, any municipality in which the work is being performed, and/or any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work (collectively “Indemnitees”), from all suits, claims, actions, damages and costs, of every name and description arising from the work under its contract during its prosecution and until the final acceptance thereof any pay any loss, damage, cost or expense (including without limitation, judgments, reasonable attorney’s fees, and court costs) which the Indemnitees incur because of injury to or death of any person or on account of damage to property, or any claim arising out of, in connection with, or as a consequence of the work performed and/or any act or omission of the Contractor or any of its subcontractors, agents or anyone directly or indirectly employed by Contractor or anyone for whose acts the Contractor may be liable. The Contractor shall also indemnify and save harmless, to the fullest extent permitted by law, any consultant working for or on the project from suits, claims, actions, damages, and costs involving personal injury and property damage arising from the Contractor’s work under the contract during its prosecution and until the final acceptance thereof.”

Delete the third (3rd) paragraph of Section C in its entirety.

Add the following:

SECTION 107-14 CODE COMPLIANCE PERMIT REQUIREMENTS

In accordance with Part 1204, Title 19 of the Codes, Rules, and Regulations of the State of New York (Title 19 NYCRR), the New York Power Authority (NYPA) has been designated a construction permitting agency. As such, NYPA's Code Compliance Manager shall be responsible for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code for work performed at a NYPA or Canal Corporation owned facility or property. NYPA shall have sole jurisdiction for the issuance of construction permits for such work as well as for design reviews, inspections, witness of testing and issuance of code compliance certificates relative to such permits. All design and construction work shall comply with the New York State Uniform Fire Prevention and Building Code.

Any firm performing construction or construction management work for projects at any NYPA or Canal Corporation facility shall be responsible to comply with the following requirements as part of NYPA's construction permitting process:

- a) No construction work which is deemed to require a NYPA construction permit shall be started without the issuance of such permit. In specific instances, NYPA's Code Compliance Manager may authorize certain preparatory work to be performed prior to issuance of the construction permit.
- b) The construction permit and the associated "permit conditions" shall be posted in a conspicuous location at the job site. The permit shall be protected from weather exposure or damage.
- c) The Contractor/Construction Manager shall be cognizant of the "permit conditions" regarding required inspections, witness of testing of systems/equipment, and submittal of documents verifying system or equipment acceptability (test reports, drawings, manufacturers technical information, etc.).
- d) If the Contractor fails to notify the Authority's Code Compliance Manager of an inspection or testing activity required by the construction permit and proceeds with the work, the Contractor may be directed to stop all affected work. At such time, the Contractor shall provide any necessary access for required inspections (including demolition of installed work) and shall perform (or repeat) any required testing in the presence of the Authority's Code Compliance Manager. Any additional costs or delays to the work for such instances shall be the Contractor's responsibility and shall not be compensated.
- e) The Contractor shall install all work in accordance with the drawings listed as part of the construction permit. Any revisions to the drawings must be submitted to NYPA's Code Compliance Manager for review prior to proceeding with the affected installation work.
- f) The Contractor/Construction Manager shall provide a construction schedule updated monthly (or sooner if necessary) which depicts code compliance inspection and witness points and submittals of required documents.
- g) In the event that during an inspection, the Code Compliance Manager observes work, completed or in progress, which violates the conditions of the construction permit or the NYS Uniform Code, a "Stop Work Notice" will be issued to stop all affected work. The "Notice" will not be rescinded until the violation has been corrected by the Contractor and re-inspected and accepted by NYPA's Code Compliance Manager.
- h) The Contractor/Construction Manager shall sign and seal NYPA's "Construction Compliance Certification" form to verify that the final construction complies with the design documents and the New York State Uniform Fire Prevention and Building Code.
- i) No building, structure, or system for which a NYPA Construction Permit was issued, shall be occupied, or placed into service until a "Code Compliance Certificate" has been issued by NYPA's Code Compliance Manager.

SECTION 108 - PROSECUTION AND PROGRESS

108-01 PROGRESS SCHEDULE.

Delete this section in its entirety and **Substitute** the following:

“108-01 START AND PROGRESS OF WORK.

A. General Requirements. No on-site work may be performed until the contract is awarded. The Canal Corporation may issue a Work Permit, for Contractor employees, to make field measurements before award of the contract is received. Unless otherwise indicated in the contract documents, or if written consent to begin at a later date is given by the Director of Construction Bureau, the Contractor must commence operations within 10 days of the award of this contract. The Contractor shall notify, in writing, the Director of Construction Bureau, as well as any parties designated by the Corporation, 10 days prior to starting or stopping work. The Contractor will be required to give the proper municipalities and utility companies at least 48 hours’ notice before doing any work which may interfere with the operations of their utilities.

1. Pre-Award Project Schedule. Within 21 days of the Letting, the successful low bidder must furnish to the Engineer, a project schedule showing the order in which the Contractor proposes to carry on the work, the date on which it will start the major items of work and activities to be performed and the critical features and the contemplated dates for completing the same, considering seasonal weather limitations; and phase duration or milestone events, if applicable. The chart shall be in a suitable scale to indicate graphically the total percentage of work scheduled to be completed at any time. The Corporation may also require that this pre-award schedule include a time and money curve.

2. Obligation to Progress the Project. The Contractor shall employ and supply a sufficient force of workers, materials and equipment and shall prosecute the work with such diligence so as to maintain the rate of progress indicated on the progress schedule to prevent work stoppage and ensure completion of the project within the contract time. Any additional or unanticipated costs or expense required to maintain the schedule shall be solely the Contractor’s obligation and shall not be charged to the Corporation unless provided for in other provisions of the contract.

3. Failure to Submit Project Schedule. If the Contractor fails to submit a progress schedule within the time period described or any revision or update when required, the Engineer may withhold approval of progress payment estimates pursuant to Article 8 of the contract until such time as the Contractor submits the required progress schedule.

B. Detailed Requirements.

1. Schedule Requirements. The construction of the project shall be planned and recorded with a conventional critical path method (CPM) schedule in the form of an activity on node diagram based on the principles defined by the most recent issue of the Construction Planning & Scheduling Manual published by the Associated General Contractors of America. An activity on arrow diagram or Gantt chart may be used in conjunction with a CPM, if approved by the Engineer. The schedule shall be used by the Contractor for coordination and monitoring of all work under the contract including all activities of subcontractors, vendors, and suppliers. The cost of preparing the CPM schedule, including updating monthly shall be included in the total amount bid for all contract items.

The Contractor shall, not later than 21 calendar days after the award, submit a complete schedule of operations to the Engineer, fully describing the intended progress of the work and showing in detail how the work will be completed within the time limit specified in the contract, including completion of the intermediate phases as required. This submission shall be in electronic format created using the latest version of the project scheduling software required as part of the Engineer’s Office computer system. Additionally, a PERT chart styled hard copy printout shall also be provided to the Engineer. The purpose of this requirement is to ensure adequate planning and execution of the work.

A pre-award and/or a pre-construction meeting will be held with the successful low bidder. At this meeting, it is expected that the successful low bidder will furnish, and be prepared to discuss, their complete schedule of operations, in CPM format. A 60-calendar day, preliminary schedule of proposed Contractor activities may be submitted at this meeting to enable the beginning of contract work preparation such as material orders, preparation of

working drawings, and mobilization of equipment while the CPM schedule is being prepared. The Contractor's schedule will be used by the Engineer for coordinating Corporation operations, evaluating progress of the work, comparing the work performed to the contract time and phasing requirements, monitoring, and coordinating the work of all related contracts, and to assign necessary resources for inspection and administration of the contract.

For "Incentive/Disincentive", "A+B Projects" or other forms of contract where project completion and/or phase completion is utilized to determine payments, no contract work items may be pursued on the project unless the complete schedule of operations has been submitted to and found acceptable by the Engineer.

2. Schedule Submittal. As stated above, the Contractor must, within 21 calendar days after the award, submit a complete schedule of operations to the Engineer. Acceptance of the Contractor's Schedule as meeting the requirements of this subsection shall not be construed to imply approval of any particular method or sequence of construction or to relieve the Contractor of providing sufficient materials, equipment, and labor to guarantee completion of the project in accordance with the contract proposal, plans and specifications. Nor shall acceptance be construed to modify or amend the agreement or the date of completion therein. Schedules deviating from the time related requirements of the contract are unacceptable, unless the Contractor has made application in a separate writing and received written approval of the requested change, and if such a schedule is inadvertently "approved" that "approval" will be invalid. Contractor requests for alternative scheduling to that outlined in the contract documents, will be entertained as a request for a waiver of specifications. Bids shall be based upon the time related requirements in the bidding documents.

3. Technical Requirements for the Schedule. The schedule of operations must be prepared in the critical path format utilizing activity nodes with identification numbers, arrows and pertinent symbols to fully describe the activities and their duration, the progress of the work and the order in which the Contractor proposes to carry on the work, the date on which it will start the major items of work, the critical features, and the contemplated dates for completion of the same. No activity duration shall be longer than 15 workdays. The Corporation requires that the progress schedule, at a minimum, include the following items: (a) activities required for the performance of all items of work, including sequence and interdependence; (b) planned labor and equipment resources associated with each activity, (c) seasonal weather limitations; (d) time and money curve, and (e) all phase duration or milestone events, holidays and shutdown periods shall be shown as applicable.

The scheduled activities are to be described so that the work is easily identifiable, and the progress of each activity can be measured. For each activity, the Contractor shall identify the trade or entity performing the work, the duration of the activity in days worked, the resources involved by trade, the equipment involved, the location of the work and the total dollar value. The Contractor shall also provide the works days per week, holidays, number of shifts per day, number of hours per shift, and major equipment to be used for each activity. If requested by the Engineer, the Contractor shall furnish production rates or other information needed to verify the reasonableness of the activity duration. Allowance for time lost to seasonal weather conditions such as precipitation and temperature, shall be included in the planning and scheduling of all activities.

4. Schedule of Submittals (CC-4010). In addition to the schedule of operations, within thirty (30) calendar days of the contract award, the Contractor must also submit a Schedule of Submittals (CC-4010) required under the contract. Submittals include shop drawings, working drawings, coordination drawings, required permits, erection/demolition plans, product data, samples, quality assurance and quality control submittals (i.e., design data, test reports, certificates, manufacturer's instructions, or field reports) and information submittals. No portion of the work requiring a shop drawing or sample submission may be started until the appropriate submission has been approved by the Engineer. This schedule of submittals shall be coordinated with the list of subcontracts, and the schedule of operations, arranged in chronological order by dates required by the construction schedule and show a scheduled submission date for each submittal, identifying the earliest activity affected by each of the submittals (time allowance for reviews, any resubmittals, ordering, manufacturing, fabrication, and delivery must be included when establishing scheduled dates). This schedule of submittals shall be updated and revised monthly and/or with each schedule submission, to reflect the actual progression of the work.

Failure to submit a revised Schedule of Submittals, as requested by the Engineer, shall constitute non-compliance in accordance with the provisions of the contract.

5. Schedule Maintenance and Required Updating. During the time of the contract, the Contractor is required to maintain an "as-built" schedule updated and revised monthly reflecting the actual progression of the work, showing actual dates of activities started and completed, the percent of work completed to date on each activity started but not yet completed, the current allocation of staff resources and major equipment and the status of critical materials showing actual progression of the work vs. the approved schedule. The schedule of actual progression shall be available to the Engineer at all times. Failure to submit an "as-built" schedule and monthly schedule updates, or updates as requested by the Engineer, shall constitute non-compliance in accordance with the provisions of the contract. The Engineer will conduct periodic reviews of the updated schedule at progress or other meetings. This review, which may address slippage, remedies, revisions, and other relevant issues, may result in the need for submission of revised schedules. The Contractor's appropriate field and scheduling personnel must attend this review. If, in the opinion of the Engineer, the specified work falls behind that schedule, the Contractor shall take such actions as necessary to improve its progress. If the Contractor is behind schedule any month, the Contractor shall indicate what measures it will take in the next thirty (30) days to put the work back on schedule so as to meet the contract completion date specified in the contract. The Contractor shall not be entitled to any additional compensation unless provided for in other provisions of the contract on account of the requirements to put the work back on schedule. In preparing the revised schedule, the Contractor shall consider increasing its work force, construction plant and equipment, or the number of work shifts, etc. If the Engineer finds the proposed plan not acceptable, he/she may require the Contractor to submit a new plan. The Corporation may request that progress meetings be held by the Contractor at least on a monthly basis and be attended by the Engineer who shall monitor the Contractor's progress and performance.

6. Changes to the Approved Project Schedules. The CPM construction schedule must accurately reflect the manner in which the Contractor intends to proceed with the project and shall incorporate the impact of delays and orders-on-contracts when these factors can be accurately determined. All changes made to the schedule, i.e. the addition of activities, changes in logic or changes in the activity durations shall be submitted in writing and shall be subject to approval by the Engineer before inclusion in the CPM construction schedule. To initiate changes to the approved schedule, the Contractor must meet with the Engineer and provide the information necessary to prepare a revised (updated) activity on node diagram. No revision to any contract milestones, or contractually mandated schedule provision will be permitted without written authorization from the Engineer.

7. Compliance with the Schedule. The Contractor will be required to proceed with the construction in a sequence that is consistent with the "Schedule of Operations" or to submit a revised schedule. Should the Contractor or any subcontractor fail to maintain progress according to schedule or cause delay to another Contractor or subcontractor, that Contractor or subcontractor shall provide such additional manpower, equipment, additional shifts, or other measures as directed to bring the operations back on schedule. The Contractor shall employ and supply a sufficient force of workers, materials and equipment and shall prosecute the work with such diligence so as to maintain the rate of progress indicated on the approved schedule to prevent work stoppage and ensure completion of the project within the contract time. Any additional or unanticipated costs or expenses required to maintain the schedule shall be solely the Contractor's obligation and shall not be charged to the Canal Corporation unless provided for in other provisions of the contract. In the event a notice is received of a change to the contract which is likely to cause or is causing delays, the Contractor shall notify the Engineer, in writing, within 10 calendar days of the effect, if any, of such change, or extra work, or suspension or other conditions upon the project construction schedule and shall state in what respects, if any, the approved CPM construction schedule should be revised with the reasons therefore. The reasons for these revisions must be succinct, comprehensive, and factual to merit consideration."

108-03 FAILURE TO COMPLETE WORK ON TIME

B. Liquidated Damages.

Add the following: "**C. Failure to Complete Stage/Phase on Time.** Should such be a term and condition of the Contract, liquidated damages in accordance with Table 108-1 of the Standard Specifications shall be calculated and deducted from any money due the Contractor, as long as work shall remain uncompleted for a stage/phase after the date specified in the contract for an intermediate completion.

D. Failure to Comply with Requirements to Close or Open the Canal to Public Use or for Canal Maintenance. Should such be a term and condition of the Contract, liquidated damages in accordance with Table

108-1 of the Standard Specifications shall be calculated and deducted from any money due the contractor, as long as the contractor's work results in non-compliance with such term or condition.

108-05 SUBLETTING OR ASSIGNING THE CONTRACT.

Delete the first sentence in the first paragraph and **Substitute** the following:

“The Contractor shall perform, with its own organization, contract work amounting to not less than 25 percent of the total contract bid price.”

Add the following to the first paragraph:

“Subcontractors will not be approved by the New York State Canal Corporation until such time as they are registered with the New York State Department of State

A. Subcontract Provisions.

In the fifth paragraph **Delete** §108-05D.and **Substitute** §108-05F.

B. Subcontractors.

Add the following under “1. Subcontractor approval is required for:”

- “On-Site Trucking and Owner/Operator Trucking”

Delete the second bulleted sentence under “2. Subcontractors do not include the following:” and **Substitute** the following:

“Work Services and Professional Services not accounted through labor, equipment, and materials. Work Services are further defined as firms that perform the on-site completion of a portion of the work that does not constitute a complete contract item, and that occurs over less than an aggregate of 10 workdays on the contract site.”

Delete the third bulleted sentence in its entirety.

Delete the first and second bulleted sentences under “3. Subcontractor Approval” and **Substitute** the following:

- “AAPHC 89 CC-1037 D/M/WBE UTILIZATION WORKSHEET AND APPROVAL TO SUBCONTRACT

C. Professional Services.

Delete the second bulleted sentence and **Substitute** the following:

- “M/WBE & SDVOB Utilization Plan form provided by the Authority/Corporation (required for all M/WBE & SDVOB firms);”

D. Trucking Firms.

Delete in its entirety and **Substitute** with the following:

“Trucking Approval shall follow the procedures for Subcontractor Approval 108-05B. Subcontractors. 3. Subcontractor Approval.”

“Owner/Operator Trucking. Owner/Operators are individual businesses operated by the owner, who do not have employees, and therefore are not subject to prevailing wage rates.”

E. DBE Program Assurance.

Delete this section in its entirety.

108-06 COMMENCEMENT OF ACTIONS ON STATE PUBLIC WORKS CONTRACTS.

Delete the name and address for “New York State Department of Transportation” and **Substitute** the following:

“New York State Canal Corporation
Construction Bureau
30 South Pearl Street
Albany, NY 12207”

SECTION 109 – MEASUREMENT AND PAYMENT

109-05 EXTRA WORK AND TIME RELATED COMPENSATION.

B. Force Account Work.

1. Contractor Costs.

a. Labor.

(1) Wages and Fringe Benefits.

Delete the first paragraph and **Substitute**:

“Personnel will be reimbursed separately at the prevailing wage rate for their actual labor class. The Contractor shall obtain the approval of the Engineer for wage rates for individual workers over 110% of the prevailing wage rate prior to that individual starting work. The wage rate for an individual worker may be approved at a rate greater than 110% of the prevailing wage rate at the discretion of the NYSCC. For consideration, the Contractor must document through certified payrolls that the worker has and continues to be paid more than the prevailing wage rate for contract work. Fringe benefits will be paid at 100% of the supplemental benefits.”

d. Insurance.

Delete the first sentence and **Substitute**:

“The contractor will be reimbursed for Commercial General Liability, Commercial Umbrella Liability, Owners/Contractors Protective Liability, Builders’ Risk, and Railroad Protective Liability insurances required in accordance with 107-06 Insurance, at the rate paid by the Contractor, in accordance with the method procured from its insurer(s).”

D. Time Related Dispute Compensation.

3. Non-Recoverable Costs.

- a. **Delete** “109-05D.1.h” and **Substitute** “109-05D.1.i”.
- b. **Delete** “109-05D.1.i” and **Substitute** “109-05D.1.j”.

109-06 CONTRACT PAYMENTS.***For Non-Federal Aid Contracts Only:***

Add the following to the end of the first paragraph:

“When a performance bond is approved, 5% shall be retained from each progress payment or estimate until final acceptance of the work.”

Delete the first sentence of the second paragraph and **Substitute** the following:

“In order to enable the Authority/ Canals to process a contract payment properly and expeditiously, the Contractor shall submit weekly certified payroll statements for the Contractor and each Subcontractor, required material certifications, Subcontractor/ Vendor prompt payment data, and other required documents and submissions, as may be appropriate to this contract.”

Delete the last paragraph and **Substitute** the following:

“The following Contractor submittals covering the current estimate period must be submitted to and checked by the Engineer for the Engineer's certification that payment can be made:

- a. A notarized Affidavit of Payment to Subcontractors, Form CC 44118 (or notarized NYS HC 258 form); required for every estimate after the Contractor has received their first payment.
- b. Certified payrolls for the Prime and each Subcontractor.
- c. Up-to-date CPM Schedule

The Contractor's attention is called to the fact that processing of progress payments is contingent upon Contractor documentation of compliance with all Contract requirements. Forms listed below may be required and shall cover the period since the last reporting period. Specific forms and schedule will be stipulated at the pre-award or pre-construction meeting: The following reporting shall reflect up-to-date status: M/WBE Utilization, and Actual Utilization Plan for all Subcontractors.

No completed quantity will be included in the progress payment unless all required documentation for the installation is received in a timely fashion. Failure by a Subcontractor to provide certified payrolls and/or required documentation for the performance of their work items will make those work items ineligible for inclusion in the Prime Contractor's progress payment.

No direct payment will be made for any of the work described and specified under the caption “General Notes” or for any work described and specified under the caption “Special Notes” unless specifically stated in the note. The cost there of shall be included in the prices bid for the various contract items.

The value of the Engineer's office and the mobilization item are not included in the calculation of the work done for determining eligibility for the first progress payment.

The Department of Engineering has determined that it will require an audit period of thirty (30) days for all progress billings. All payments made under this contract will be processed in conformation with Public Authorities Law §2880, as detailed in 21 NYCRR Part 109 (Prompt Payment), which requires the Corporation to make payment on highway construction projects within certain time frames. If the Corporation unjustifiably fails to pay within the prescribed time, it may be required to pay interest for each day in excess of the prescribed time.

In addition, 5.0% retainage will be held from each contractor pay estimate and release of retainage is subject to written requirements found elsewhere in the contract documents”

109-09 FINAL ACCEPTANCE AND FINAL AGREEMENT.***D. Final Payment.***

Delete all the information in this section and **Substitute** the following:

“The provisions of Article 10 of the Contract Agreement shall apply. All payments made under this contract will be processed in conformation with Public Authorities Law §2880, as detailed in 21 NYCRR Part 109

(Prompt Payment) per §109-06. The Department of Engineering has determined that it will require an audit period of sixty (60) days for a final billing. In order for the Corporation to process the final supplemental agreement and the final payment in an expeditious manner, Contractors are advised of the following general procedure:

Following the completion of all required work and a final inspection by the Corporation, the Contractor shall have 30 calendar days to provide the following documents and submissions to the Engineer:

- Final documentation to support any Outstanding Claims and Disputes filed during the progress of the work;
- Extra Work Cost Accounts;
- Final Supplemental Agreement with or without signature;
- Final Labor Affidavits;
- Wage Rates Subcontractor;
- Approved Reproducible Shop Drawings;
- Material Certifications;
- Certified Payrolls;
- Tax Clearance for "Foreign" (out of State) Corporations or entities;
- DBE and/or MWBE Payment Report as required;

The above list is general, every item may not be applicable to every contract and other documents and submissions may be required to properly process the final supplemental agreement. Any time taken by the Contractor beyond the 30-calendar day period after final inspection to satisfy or furnish the above information may delay the approval of the final supplemental agreement and the subsequent final payment process.

109-10 UNCOMPLETED WORK AGREEMENTS.

Delete this section in its entirety.

Add the following:

“109-11 RECOVERY OF MONIES BY THE CANAL CORPORATION. Whenever it is provided in the contract documents that the Contractor shall pay or return monies for any reason, or that the Corporation or Engineer may charge against the Contractor certain costs, assessments, or fines, or that the Corporation can recover any sum for any reason from the Contractor, the Corporation may offset the monies from amounts otherwise due to the Contractor. It is understood that the Corporation may determine, in its sole discretion that any monies are due the Corporation, and upon such determination it has available to it any monies due or that may become due the Contractor under the contract and any other contracts between the Contractor and the Corporation.

Such other contracts shall include joint ventures in which the Contractor is a participant but only to the extent of its participation. The right to offset against the Contractor as herein provided is in addition to and does not affect the right of the Corporation to seek recovery against the Contractor or surety under the contract, bonds, or as otherwise allowed by the law.”

SPECIAL SPECIFICATIONS

The following special specifications are intended to refine the requirements of the work under this Contract. Any reference to the “Authority” shall be interpreted as meaning the “New York State Canal Corporation.”

The following Special Specifications are used on this project:

203.02000012	UNCLASSIFIED EXCAVATION AND DISPOSAL OF SEDIMENT
304.07010012	CRUSHER RUN LIMESTONE
607.41010010	TEMPORARY PLASTIC FENCE
607.43----12	WOOD RAIL FENCE (THREE RAIL)
637.11----12	ENGINEER'S FIELD OFFICE – TYPE 1

ITEM 203.02000012 – Unclassified Excavation and Disposal of Sediment

1. **DESCRIPTION:** The work shall consist of the excavation, transportation and disposal of sediment in conformance with an accepted Sediment Handling and Management Plan and the notes and payment lines shown in the contract documents. For shipping and disposal purposes, the regulatory classification of the sediment will be based on the results of laboratory analysis as required by the New York State Canal Corporation (NYSCC) or by the disposal facility.
2. **MATERIALS:** none specified
3. **CONSTRUCTION DETAILS:**
 - 3.01 Work activities shall be performed in accordance with the contract documents and approved Sediment Handling and Management Plan. All the applicable provisions of §203-3 shall apply.
 - 3.02 Prior to beginning any sediment removal operations, the Contractor must submit a Sediment Handling and Management Plan to the Project Engineer for review and approval by the NYSCC Environmental Representative. The Sediment Handling and Management Plan must include the following:
 - a. Detailed sediment removal techniques;
 - b. Proposed dewatering area and containment details;
 - c. Name of disposal facility, address, telephone number and contactperson or location of approved Upland Disposal Site (UDS);
 - d. Copy of applicable permits and/or licenses held by the disposal facility;
 - e. EPA Identification Number and/or State Facility Identification Number issued to disposal facility;
 - f. Signed letter from disposal facility stating it is authorized under law to accept the type of waste being generated, their intent to accept the sediment generated by this contract, and a list of the laboratory tests required by the facility;
 - g. Name of waste transporter, address, telephone number and contact person;
 - h. EPA Identification Number and/or State Transporter Identification Number issued to waste transporter; and
 - i. Copies of all waste transporter permits and/or license plate numbers for vehicles that will be used for transport of sediment from the site to the intended disposal facility.
 - 3.03 The Contractor shall perform any sampling and analysis as required by the NYSCC or by the disposal facility. The following information shall be included in the Sediment Handling and Management Plan and submitted to the NYSCC for review and approval;
 - a. Name, address, telephone number, and ELAP certification number of the proposed NYSDOH ELAP accredited laboratory;
 - b. Name, address, experience and qualification of each individual who will collect sediment samples. Each individual shall be thoroughly trained in sampling protocols, handling and chain of custody procedures, and laboratory requirements;
 - c. List of all laboratory tests required by the disposal facility;
 - d. Describe the sample collection and handling procedures to be used; and
 - e. Sampling schedule or a description of the sampling frequency to be used to facilitate disposal of sediment.
 - 3.04 Sediment shall not be transported until it is sufficiently dewatered and all sampling and analysis, as required by the NYSCC or by the Disposal facility, have been performed and laboratory reports have been provided and accepted by the NYSCC.

ITEM 203.02000012 – Unclassified Excavation and Disposal of Sediment**a. Transportation Off-Site**

For the duration of transportation off-site, roll-off containers and truck beds shall be completely covered with secured waterproof tarpaulins to prevent water infiltration, evaporation of contaminants and spillage of sediment.

The Contractor shall take immediate action to remedy any situation involving a release of sediment during loading or while in transit.

Sediment shall not be combined with material from any other source.

Sediment shall be transported in vehicles with valid Waste Transporter permits for New York State (and other required permits/licenses from any other states as applicable). The Contractor shall provide a copy to the Engineer of the waste transporter permit documenting that the transporter is authorized to transport waste to the intended disposal facility. The Contractor shall complete any required shipping papers, labeling, placarding, and weighing/load measurements and shall provide copies of required documentation to the Project Engineer.

b. Disposal

The Contractor shall dispose of sediment by the methods and procedures described in the accepted Sediment Handling and Management Plan. Sediment characterization information, field identification and confirmation laboratory analyses will be used to determine appropriate classification and category of sediment for disposal. The Contractor shall manage all sediment materials in the performance of the contract in accordance with applicable federal, state, and local laws and regulations.

The Contractor shall complete under this item any sampling and analysis required by the disposal facility.

c. Documentation

The Contractor shall provide the Project Engineer with copies of all receipts from the disposal facility which indicate the actual quantity of sediment received within 2 workdays of receipt from the facility. Any manifest discrepancies, including the need for exception reporting, shall be reported immediately to the Project Engineer and shall be resolved by the Contractor.

4. **METHOD OF MEASUREMENT:** The quantity to be measured for payment will be the number of cubic yards of sediment removed, dewatered and properly disposed of, computed to the nearest whole cubic yard.

5. BASIS OF PAYMENT:

The unit price bid shall include the cost of furnishing all labor, materials, and equipment as necessary to complete the work. Incidental costs such as special test requirements, stockpiling, dewatering, re-handling of materials, providing environmental protection, local permits, and tipping fees for the disposal facility shall be included in the unit price for this item.

ITEM 304.07010012 - CRUSHER RUN LIMESTONE COURSE**DESCRIPTION**

The work shall consist of furnishing, placing and compacting crusher run limestone in conformity with the lines, grades, thicknesses and typical sections shown on the Plans, or as determined by field conditions and ordered in writing by the Engineer.

MATERIALS

Test and Control Methods. The Department will perform materials tests and quality control methods pertaining to the work of this section in conformance with the procedures contained in the appropriate Departmental publications which are current on the date of advertisement for bids. These publications are available upon request to the Regional Director or the Director, Geotechnical Engineering Bureau.

Material Requirements. Material shall consist of crusher run limestone. All materials furnished shall be well graded and free from unsuitable materials. All processing shall be completed at the source.

A. Gradation

<u>Sieve Size Designation</u>	<u>Percent Passing by Weight</u>
½" inch	100
¼" inch	80-100
No. 10	55-75
No. 40	10-40
No. 200	0-20

B. Soundness. Material will be accepted on the basis of a Magnesium Sulfate Soundness Loss after 4 cycles of 20 percent or less.

C. Plasticity Index. The Plasticity Index of the material passing the No. 40 mesh sieve shall not exceed 5.0.

D. Elongated Particles. Not more than 30 percent, by weight, of the particles on a ½" inch sieve shall consist of flat or elongated particles. A flat or elongated particle is defined herein as one which has its greatest dimension more than 3 times its least dimension. Acceptance for this requirement will normally be based on a visual inspection by the Engineer. When the State elects to test for this requirement, material with a percentage greater than 30 will be rejected.

E. Stockpiling. All material shall be stockpiled. No more than one project shall be supplied from a stockpile if the material is measured in the pile.

ITEM 304.07010012 - CRUSHER RUN LIMESTONE COURSE**CONSTRUCTION DETAILS**

The crusher run limestone course shall be placed to grade with a paver. The Engineer may waive this requirement, in writing, for locations where it is deemed not practical. In these situations, trucks shall be carefully unloaded on the grade at locations which minimize the distance the material must be moved. Uncontrolled spreading from piles dumped on grade will not be permitted.

Material shall be compacted in accordance with the requirements of §203-3.12, Compaction. Compaction of this course shall not lag spreading operations by more than 500 linear feet.

Should the subbase become mixed with the crusher run limestone course or any other material, the Contractor shall, at his expense, remove such mixture and replace it with approved materials.

The Contractor shall assume full responsibility for any contamination and degradation of any part of this course during construction and shall, at no cost to the State, remove any and all portions of this course which does not conform to the requirements of this specification and replace these portions with approved material.

After completion, the final surface of the course shall not extend more than ¼" inch above nor more than ¼" inch below true grade for the course at any location.

METHOD OF MEASUREMENT

The quantity to be paid for under this item will be the number of cubic yards of material, computed from payment lines shown on the Plans, or as ordered by the Engineer.

BASIS OF PAYMENT

The unit price bid for this work shall include the cost of furnishing all labor, material and equipment necessary to complete the work. The cost of adding water shall be included in the price bid unless the item for applying water is included in the Contract. No direct payment will be made for losses of material resulting from erosion or any other cause. The cost of such losses shall be included in the price bid for this item. No deductions shall be made for the volumes occupied by manholes, catch basins and other such objects.

Progress payments will be made after the crusher run limestone course has been properly placed and compacted. Payment will be made at the unit price bid for seventy-five (75%) of the quantity. The balance will be paid for after the final surface is accepted.

ITEM 607.41010010 - TEMPORARY PLASTIC BARRIER FENCE**DESCRIPTION:**

This work shall consist of furnishing, installing, and maintaining Temporary Plastic Barrier Fences of the type and at the locations shown in the plans or where directed by the Engineer.

MATERIALS:

Materials for Temporary Plastic Barrier Fences shall meet the following requirements:

- **Fence:** High-density polyethylene mesh, ultraviolet-stabilized min. 2 years; minimum height 4.0 feet. Color: high-visibility orange.
- **Posts:** Rigid metal or wood posts, minimum length 6.0 feet.
- **Ties:** Steel wire, #14 gauge or nylon cable ties.
- **Warning signs:** Sheet metal, plastic or other rigid, waterproof material with black letters on a white background and text as indicated on the plans.

CONSTRUCTION DETAILS:

Fences shall be erected prior to moving construction equipment onto any area designated for protection.

The line of fences as indicated on the plans shall be staked or marked out on the ground by the Contractor and approved by the Engineer before any fence is installed. Where used for protection of individual trees, fence shall be placed at the drip line (extent of canopy). If not possible, placement shall be as close to the drip line as possible and in no case less than 5.0 feet away from the tree trunk.

On approval of the stakeout, posts shall be securely driven on 10.0 foot-maximum centers, normal to the ground, to a depth 1/3 of the total post length. Plastic barrier fence shall be placed along the side of all posts. Ends of fencing segments shall overlap a distance of at least one half the fence height.

Fencing shall be secured to posts with wire or cable ties at top, middle and bottom of post. Fastener shall be tight enough to prevent the fencing from slipping down. Overlaps shall also be securely fastened.

Warning signs shall be mounted on the fence at no more than 50-foot intervals.

Maintenance shall commence immediately after erection of the fence and continue until one week prior to acceptance of the contract, and shall consist of: replacing damaged post(s) and fencing; re-fastening and tightening fencing; and restoring fence to its intended height.

Fencing used for tree or other vegetation protection shall not be temporarily removed to allow equipment access over a protected area, except as required for items of work specifically shown on the plans and approved by the Engineer in writing.

METHOD OF MEASUREMENT:

The quantity to be measured for payment will be the number of feet of Temporary Plastic Barrier Fence erected, measured along the top, to the nearest whole foot.

BASIS OF PAYMENT:

The unit price bid shall include the cost of all labor, materials and equipment necessary to satisfactorily complete the work. Relocation of a fence from one location to another as directed by the Engineer shall be considered as a new location and will be separately paid.

Seventy percent (70%) of the price bid will be paid after satisfactory installation of the fence. The remaining Thirty percent (30%) will be paid after complete removal of the fence.

ITEM 607.42 - - - - 12 - WOOD RAIL FENCE (TWO RAIL), LF
ITEM 607.43 - - - - 12 - WOOD RAIL FENCE (THREE RAIL), LF

1. DESCRIPTION:

1.01 Under this item a post and rail fence shall be installed at the locations and according to the details shown in the plans.

2. MATERIALS:

2.01 Rail and post shall meet all requirements of Section 710-13 of the New York State Department of Transportation Standard Specifications.

2.02 Connection to post shall be as detailed in the plans.

2.03 All provisions in Section 607-2.01 shall apply.

3. CONSTRUCTION DETAILS:

3.01 All provisions in Section 607-3.01 shall apply.

4. METHOD OF MEASUREMENT:

4.01 The quantity to be paid for all fencing will be measured as the number of feet along the top of fencing from center to center of the end posts, properly furnished and installed in accordance with the plans, specifications, standard sheets and directions of the Engineer.

5. BASIS OF PAYMENT:

5.01 The unit price bid per linear foot of fencing shall include the cost of furnishing all labor, materials, tools and equipment necessary to satisfactorily complete the work, including clearing and grubbing, excavation and disposal, concrete and backfill, bracing and all other necessary materials.

- ITEM 637.11----12 – ENGINEER’S FIELD OFFICE – TYPE 1
- ITEM 637.12----12 – ENGINEER’S FIELD OFFICE – TYPE 2
- ITEM 637.13----12 – ENGINEER’S FIELD OFFICE – TYPE 3
- ITEM 637.14----12 – ENGINEER’S FIELD OFFICE – TYPE 4
- ITEM 637.15----12 – ENGINEER’S FIELD OFFICE – TYPE 5

1. **DESCRIPTION.** This work shall consist of providing, for the Engineer’s use, a building or a portion thereof, or a modular trailer of a specified type erected at a location approved by the Engineer. In addition, all computer hardware, software and internet communications described in this specification shall be provided for the duration of the contract.

2. **MATERIALS:**

2.01 **Engineer’s Field Office.** The Engineer’s Field Office shall be within a secured, weatherproof building or mobile trailer. If two (2) or more mobile trailer units are provided, they shall be joined with weatherproof connections. Mobile trailers shall be in new or like new condition. The Contractor may furnish equivalent facilities in an existing building, provided that the building is located to provide convenient service. The Contractor shall supply the Engineer with a copy of the Certificate of Occupancy for the existing building.

The Engineer’s Field Office shall be in accordance with the requirements of the New York State Uniform Fire Prevention and Building Code, 19 NYCRR, and any applicable local codes.

The electrical system shall be able to continuously operate all equipment and be provided with adequate receptacles. To accommodate computer equipment, the field office shall be provided with a dedicated 20-amp electrical service and a vacant floor-to-ceiling area with a 39 inch by 39-inch footprint along a wall for the installation of a computer hardware rack/cabinet. Electric light shall be provided by non glare-type luminaires to provide a minimum illumination level of 1,000 lux at desk-height level. An ambient air temperature of 70 °F ±10 °F shall be maintained.

Fire extinguishers and smoke and carbon monoxide detectors shall be provided and installed.

The Engineer’s Field Office shall be partitioned to provide separate rooms, defined as either “small” or “large”, with adjoining doors. Table 637-1 contains the minimum area requirements for each of the office types.

TABLE 637-1 ENGINEER’S FIELD OFFICE AREA REQUIREMENTS					
Physical Requirement	Engineer’s Field Office Type				
	1	2	3	4	5
Min. total floor area (ft ²)	540	860	1300	2475	2700
Min. number of small rooms	2	3	2	3	6
Min. floor area of each small room (ft ²)	100	100	120	150	175
Min. number of large rooms	1	1	2	2	2
Min. floor area of each large room (ft ²)	200	200	240	300	350

A. **Potable Water.** From a local municipal water supply, certified well or bottled with a heating/refrigerator unit to provide hot and cold water. An exterior frost-free hose bib shall be provided in a location adjacent to the Engineer’s Field Office. The hose bib need not be installed on a potable water line, and if the water in the line is not potable, it shall be clearly marked as such.

- ITEM 637.11----12 – ENGINEER'S FIELD OFFICE – TYPE 1
ITEM 637.12----12 – ENGINEER'S FIELD OFFICE – TYPE 2
ITEM 637.13----12 – ENGINEER'S FIELD OFFICE – TYPE 3
ITEM 637.14----12 – ENGINEER'S FIELD OFFICE – TYPE 4
ITEM 637.15----12 – ENGINEER'S FIELD OFFICE – TYPE 5

- B. **Restroom.** A separately enclosed room, lockable from the inside, that is properly ventilated and in compliance with applicable sanitary codes. The Contractor shall provide all lavatory amenities, necessary paper and soap products, hot and cold running water and a toilet. The toilet shall be flush-type where sanitary facilities are available, and a type approved by the Engineer prior to installation where sanitary facilities are not available. The minimum required number of restrooms to be provided is specified in Table 637-2.
- C. **Parking Area.** The Contractor shall provide and/or construct paved or hard surfaced (gravel or bankrun material) secure parking area with dedicated parking spaces adjacent to the Engineer's Field Office. Each parking space shall be 9 feet by 18 feet, and the minimum required number of spaces to be provided is specified in Table 637-2.
- D. **Field Office Signs.** The sign panel material shall be aluminum, fiberglass, plywood or lightweight plastic. The sign sheeting shall be ASTM Type III. The sign panel shall be 36 inches high by 48 inches wide with white legend on green background with the phrases as positioned and described below. If erected at a location where the sign might be struck by an errant vehicle, the sign support shall be a breakaway type.

The letters in the phrase "FIELD OFFICE" shall be 6-inch C series with the top of the letters 6 inches below the top of the panel. The letters in the phrase "ENGINEER-IN-CHARGE" shall be 6-inch B series with the top of the letters 18 inches below the top of the panel. The letters in the phrase "N.Y.S. CANAL CORPORATION" shall be 1½ inch E series with the top of the letters 30 inches below the top of the panel. All phrases shall be centered horizontally on the panel.

If the Engineer's Field Office is not located within or adjacent to the contract limits, two (2) additional signs shall be displayed conspicuously within the contract limits. The signs shall be similar to the above description, except that they shall be 48 inches high by 64 inches wide and have an additional bottom line of text containing the street address of the Engineer's Field Office. The letters in the street address shall be 6-inch B series with the top of the letters 36 inches below the top of the panel and centered horizontally on the panel.

- E. **Mailbox.** Standard mailbox (with post if necessary) or post office box meeting the requirements of the U.S. Postal Service.
- F. **Telephone and Answering System.** A separate telephone and digital answering system for the exclusive use of the inspection staff. The minimum required number of telephone voice lines to be provided is specified in Table 637-2. The telephone and answering system shall provide the ability to answer all voice lines from each voice line, transfer calls to all voice lines and be equipped with a single, dedicated answering system.

A minimum of one (1) telephone shall be cordless and a minimum of one (1) telephone shall be equipped with speaker and conference call capability. The remaining telephones, at least one (1) per required voice line, shall be extension telephones with minimum 25-foot-long cords. The digital answering system shall be capable of recording outgoing messages up to 60 seconds long and receiving a minimum of 40 incoming messages of 60 seconds duration. The system must include automated voice marking of time and day of each message received and provide a message mark so that new messages may be played back without erasing old messages. The system shall include

ITEM 637.11----12 – ENGINEER’S FIELD OFFICE – TYPE 1
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remote programming of playback, backspace, and outgoing message re-record and allow for the retrieval of messages without a remote-control unit.

- G. **Photocopier.** Heavy duty, electric, dry-process photocopying machine. The machine shall be an all-in-one copy machine with black & white and color copying, black & white and color printing and black & white and color scanning capabilities. Machine shall have at least three paper bins (8½ x 11 inches, 8½ x 14 inches and 11 x 17 inches), enlarging and reducing capabilities, and collating, sorting stapling and double-sided copying. Set-up, printer drivers, software and networking are required. All on-site staff email addresses shall be set up and programmed for ease of scanning. Maintenance shall be provided, as required, including repairs and all necessary toner cartridges and staples for the life of the contract and until final completion. One (1) case (5,000 sheets, 20 lb, white) of each paper size shall be provided as initial stock.
- H. **Paper Shredder.** Automatic start, heavy duty cross-cut paper shredder. The shredder shall be able to receive 8½ inch wide paper and shred a minimum of 15 sheets simultaneously along with CDs and staples.
- I. **Pencil Sharpener.** Manual or electric pencil sharpener, minimum 1 per room.
- J. **Exterior Bulletin Board.** An installed 4 foot by 8-foot weatherproof bulletin board in front of or adjacent to the Engineer’s Field Office. The bulletin board may be attached to an outside wall of the office. The location selected must be handicapped accessible and clearly visible.
- K. **Interior Bulletin Board.** An installed, wall-mounted 4 foot by 6-foot bulletin board made of cork or similar material in a large room, and one (1) 2 foot by 4-foot wall mounted bulletin board installed per room.
- L. **Dry Erase Board.** Installed, wall-mounted 2 foot by 4-foot dry erase boards, minimum one (1) per room.
- M. **Storage Locker.** Metal or wood storage locker with shelves, a tumbler lock and two (2) keys for the storage of survey, GPS and testing equipment. The total locker space footprint provided shall be a minimum of 9 square feet with a minimum height of 6 feet.
- N. **Fire Resistant Cabinet.** Fire resistant, legal size filing cabinet with locks and two (2) keys each, meeting the requirements of ANSI/UL Standard 72 for Insulated Filing Devices, Class 350-1 hour. Each office shall be provided with two (2) 2-drawer cabinets, and the required number of additional 4-drawer cabinets as specified in Table 637-2.
- O. **Bookcase.** Self-standing, 3-shelf metal or wood bookcase, approximately 4 feet high, 4 feet wide and 1 foot deep. The minimum required number of bookcases to be provided is specified in Table 637-2.
- P. **Wastebasket.** Minimum 7-gallon wastebasket, minimum one (1) per desk.
- Q. **Refrigerator.** Electric, top-freezer type providing a minimum storage space of 15 cubic feet for Engineer’s Field Office Types 1 and 2, and a minimum storage space of 21 cubic feet for Types 3, 4 and 5.

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- R. **Kitchenette.** To include a minimum 1 cubic foot, 1,300 watt microwave oven, a sink with hot and cold running water with minimum dimensions of 15 inch by 15 inch by 6 inch deep, usable counter space with minimum dimensions of 5 feet long by 2 feet deep and cabinet space with minimum dimensions of 5 feet long by 1½ feet deep by 2½ feet high. If the water in the sink is not potable, it shall be clearly marked as such.
- S. **Stove.** Electric, propane or bottle gas stove with a minimum of two (2) burners adequate for rapid drying of soil samples, including fuel or electrical supply. A stove is required when a separate Field Laboratory is not included.
- T. **First Aid Kit.** A Type III kit in accordance with ANSI Z308.1 *Minimum Requirements for Workplace First Aid Kits*. The minimum number of first aid kits to be provided is specified in Table 637-2.
- U. **Thermometer.** A minimum-maximum thermometer displaying in degrees Fahrenheit and mounted with an external probe to give the temperature both indoors and outdoors.
- V. **Coat Rack.** A metal or wood coat rack or closet capable of holding at least 4 coats. The minimum required number of coat racks to be provided is specified in Table 637-2. A single coat rack may be provided as long as it holds the minimum number of coats as per Table 637-2.
- W. **Office Desk and Chair.** Fully assembled freestanding office desks and chairs. Each desk shall have a 5-foot-long by 2½ foot wide work surface and a height of 30 inches, at least 2 lockable drawers and include an adjustable shelf approximately 1 foot wide and no less than 2½ feet long. Each desk shall also be provided with an adjustable chair with arms, 5 legs with casters and be adjustable from approximately 16 inches to 24 inches in height. Each desk shall have a dedicated electrical outlet receptacle. The required number of office desks and chairs to be provided is specified in Table 637-2.
- X. **Office/Conference Table.** Commercial-grade rectangular table with weather/spill resistant top a minimum of 8 feet long by 2½ feet wide by 30 inches high. The minimum required number of office/conference tables to be provided is specified in Table 637-2.
- Y. **Folding Chair.** Commercial-grade, folding steel chair with approximate overall dimensions of 30 inches by 19 inches wide by 21 inches deep. The minimum required number of folding chairs to be provided is specified in Table 637-2.
- Z. **Drafting Table.** Adjustable height, tilting top drafting table with brackets and legs and approximate dimensions of 6 feet long by 3 feet wide by 3 feet high. The minimum required number of drafting tables to be provided is specified in Table 637-2.
- AA. **Drafting Stools.** Adjustable height stool with backrest. The minimum required number of drafting stools to be provided is specified in Table 637-2.

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TABLE 637-2 ENGINEER’S FIELD OFFICE FURNISHING REQUIREMENTS					
Furnishing Description	Required Number per Engineer’s Field Office Type				
	1	2	3	4	5
Restrooms	1	1	2	2	3
Parking Spaces	6	8	12	18	22
Telephone Voice Lines	1	2	3	3	4
Fire Resistant Cabinets (4-drawer)	2	3	4	6	8
Bookcases	5	7	10	12	16
First Aid Kits	1	1	1	2	2
Coat Racks	1	2	3	4	5
Office Desks and Chairs	4	8	12	18	22
Office/Conference Tables	2	2	3	4	5
Folding Chairs	8	10	10	12	15
Drafting Tables	1	1	2	3	3
Drafting Stools	2	2	4	6	6
Vertical Plan Filing Racks	1	1	2	3	8
Roll File Units	1	1	1	2	4
Flatbed Scanner	1	1	1	1	1
Personal Computer or Laptop Computer (Hardware and Software)	2	4	6	8	8
LaserJet printer	1	2	3	3	3
Additional Software	1	1	2	2	3
Digital Camera with Motion Picture Functionality	1	1	1	2	2

2.02 **Information Technology.** The minimum required number of personal computers or laptop computers to be provided is specified in Table 637-2. The minimum requirements for each computer are:

A. Hardware

- CPU (2.9 GHz minimum base frequency) to operate Windows 10 for Business (64-bit edition) and all other software listed in this specification;
- 12 GB minimum RAM;
- 250 GB minimum Internal Hard Drive;
- USB Port(s);
- 24” LCD monitor (1920 x 1080 resolution minimum) for personal computers or 15” min. screen size for laptop computers;
- One (1) 500 GB External Hard Drive;
- Locking cabinet(s) which encloses all computer hardware;
- Surge protection device;

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- External mouse;
 - External Speakers;
 - Modem for internet connectivity
- B. Required Software.** Substitutions for the specified software shall not be permitted unless noted otherwise. All manuals shall be provided.
- Windows 10 (or newer) for Business (64-bit edition);
 - Microsoft Office 365 (at minimum Word, Excel, and Teams required) or Microsoft Office 2022 (or newer) versions of Word, Excel, and Teams;
 - Norton Internet Security (latest version for Windows 10) set up to run in Auto-Protect Mode and Auto Update Mode (monthly), or McAfee Internet Security Suite (latest version);
- Note:* Microsoft Office 2016 Standard Edition may be used in lieu of Word 2022 and Excel 2022.
- Adobe Acrobat Professional (latest version)
- C. Additional Software.** The following software shall also be provided on the number of computers specified in Table 637-2 for Office Types 4 & 5:
- Scheduling software (Microsoft Project or similar) capable of meeting all scheduling requirements of the NYS Canal Corporation’s Addendum to the Standard Specifications §108-01 *Start and Progress of Work* and compatible with the operating system supplied under this specification.
- D. Internet Communication.**
- **Cable Internet Service.** 10/100 Ethernet cable network card and high-speed cable modem capable of transferring data at a minimum of 100 megabits per second;
 - Subscription to an Internet Service Provider capable of providing high-speed Internet service;
 - Network/Wireless – Ethernet or wireless card to be compatible with the selected internet and office network connections;
 - In areas where high speed internet service is not available via hard wire or cable, cellular or satellite internet service shall be provided.
- E. LaserJet Printer.** Photo-quality color LaserJet printer capable of printing on 8½ by 11 inch and 8½ by 14-inch paper. Supply with spare toner cartridge, standard LaserJet and photo paper.
- F. Digital Camera.** The digital camera system shall meet the requirements below. All necessary hardware, cables, operating manuals, and other pertinent media required for the operation of the camera unit itself, including connecting the camera to the office computer system shall be provided. The camera must be able to download the images to a computer without any proprietary software having to be installed on a computer.
- Minimum 16.0-megapixel resolution with 20x optical zoom and autofocus operation;
 - 3-inch LCD screen and optical viewfinder;

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- Built-in intelligent flash (auto/on/off);
- Time/date stamp on each picture;
- A total of two (2) rechargeable sets of batteries (Lithium-Ion) and high-capacity (approximately 1 hour) charging unit;
- Two (2) SDHC highest capacity and speed (Class) memory cards that are compatible with the camera;
- Soft storage/carry case with shoulder strap;
- Motion Video: 640 x 480 resolution capability at 30 frames per second (MPEG Video).

3. **CONSTRUCTION DETAILS.** The Contractor shall be responsible, until use and occupancy is relinquished by the NYSCC, for any and all damage, direct or indirect, of whatever nature, occurring to the property of the NYSCC and property of the inspection staff which is kept in the Engineer's Field Office. The Engineer will provide the Contractor with a detailed list of items kept in the office, with corresponding dollar values, and will provide the Contractor with updates when something on the list changes. Non-NYSCC-owned property shall only be those items used in the performance of contract-related work activities. Such property shall be replaced within 30 days of the reported damages and would include any loss caused by, but not limited to, fire, theft, vandalism or malicious mischief. The Contractor shall not be responsible for items kept in the Engineer's Field Office that are not on this list.

The Contractor shall install the Engineer's Field Office sign at a location approved by the Engineer. If the Engineer's Field Office is not located within or adjacent to the contract limits, two (2) additional signs shall be displayed conspicuously within the contract limits in locations directed by the Engineer.

The Engineer's Field Office shall be fully equipped and made available for use and occupancy by the inspection staff prior to the start of any contract work and shall be made available after contract final acceptance as directed in writing by NYSCC Construction Management. The NYSCC may house inspection staff from other projects in the field office. The Contractor is not responsible for additional resources in regards to outside staff.

All furniture and equipment shall be fully assembled, operational, clean and serviceable. The Engineer's Field Office shall be cleaned weekly or more often if required, and the timing of the cleaning operations shall be coordinated with the Engineer. The Contractor shall remove and dispose of all rubbish generated in the office and shall keep the office free from pests. The Contractor shall remove snow from all areas subject to vehicular circulation and parking.

After completion, all portable buildings or trailers, fencing, surfacing and utilities shall be removed from the location and the areas cleaned, loamed and restored as required.

The Contractor shall be responsible for providing all necessary computer hardware, software and peripheral devices as well as high-speed Internet service to the Engineer's Field Office until use and occupancy of the Engineer's Field Office is relinquished by the NYSCC. Only internet services that can provide a minimum data transfer rate of 2 Megabits per second will be considered acceptable. The Contractor shall be responsible for providing all necessary service connections to the Engineer's Field Office and Engineer's Field Office computer(s). In addition, the Contractor shall provide a cable or DSL modem and any other equipment necessary to provide the minimum specified data transfer rate.

4. **METHOD OF MEASUREMENT.** The Engineer's Field Office will be measured for payment as the number of months satisfactorily provided, measured to the nearest 0.25 months.

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5. **BASIS OF PAYMENT.** The unit price bid per month for the Engineer’s Field Office shall include the cost of all labor, materials and equipment necessary to complete the work including property rental, utility charges and incidental expenses. Payment will be made for each month of availability for occupancy by the Engineer and inspection field staff.

No payment will be made under Engineer's Field Office when deficiencies in compliance with these requirements are not promptly addressed by the Contractor after notification by the Engineer. Should the aggregate of non-compliance days exceed 3 days in any one month, no payment shall be made for the entire month in which deficiencies were cited.

Monthly payments may be terminated prior to contract final acceptance by written notification by the NYSCC Construction Manager that such office will no longer be required on the contract. Payment for each month's occupancy of the Engineer’s Field Office after the date of contract final acceptance will be made as part of the final contract payment. Failure of the Contractor to supply documentation required to complete the final estimate may result in nonpayment during this delaying period.

During periods of contract extension of time where Engineering Charges are assessed, no payment will be made for occupancy and services, except that payment for each month's occupancy after the date of final acceptance will be made as part of the final estimate.

SPECIAL NOTES

**COVID-19 AND CONTRACTOR’S HEALTH AND SAFETY
PLAN (HASP) REQUIREMENTS**

The Contractor shall abide by all current New York State COVID-19 protocols and COVID-19 related safety plans.

CONFIDENTIAL INFORMATION

1. **Confidential Information:** “Confidential Information” means any information not generally known to the public, whether oral or written, that the New York State Canal Corporation (NYSCC) claims is confidential and discloses to Contractor for the purposes of performing work on the Project. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, reports, product information and data, business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the NYSCC deems confidential. The NYSCC will identify written Confidential Information by marking it with the word “Confidential” and will identify oral Confidential Information as confidential at the time of disclosure to the Contractor.
2. **Exempt Materials:** Confidential Information does not include information which, at the time of the NYSCC disclosure to Contractor; (a) is already in the public domain or becomes publicly known through no act of Contractor; (b) is already known by Contractor free of any confidentiality obligations; (c) is information that the NYSCC has approved in writing for disclosure; or (d) is required to be disclosed by Contractor pursuant to law so long as Contractor provides the NYSCC with notice of such disclosure requirement and an opportunity to defend prior to any such disclosure.
3. **Permitted Use:** Contractor may use Confidential Information solely for the purposes of performing work on the Project. Contractor may share Confidential Information with its employees, consultants, sub-consultants, sub-contractors, suppliers, and agents that are necessary to perform work on the Project (“Authorized Personnel”), but must ensure that such Authorized Personnel execute a Confidentiality and Non-Disclosure Agreement as set forth in the Minimum requirements for the Handling and Treatment of confidential Information. The NYSCC's disclosure of Confidential Information to Contractor shall not convey to Contractor any right to or interest in such Confidential Information and the NYSCC shall retain all right and title to such Confidential Information at all times.
4. **Protections:** Contractor shall hold Confidential Information confidential to the maximum extent permitted by law. Contractor shall safeguard Confidential Information in accordance with the Minimum Requirements for the Handling and Treatment of Confidential Information.
5. **Return of Confidential Information:** Upon the written request of the NYSCC, Contractor shall return all written Confidential Information to the NYSCC.

EXTERNAL CONNECTIONS

If in order to perform work on the Project, Contractor must make an external connection to the NYSCC's data communications infrastructure and/or access NYSCC information systems, Contractor shall in all respects comply with all NYSCC policies and procedures regarding such connections and information systems access and undertake whatever actions are necessary in the discretion of the NYSCC to ensure such compliance. Contractor shall be responsible for all costs associated with ensuring that its own network security measures comply with all NYSCC policies and procedures regarding external connections.

MINIMUM REQUIREMENTS FOR THE HANDLING AND TREATMENT OF CONFIDENTIAL INFORMATION

Contractor shall meet the following minimum requirements relative to project information that is identified as **CONFIDENTIAL**.

Authorized Personnel:

Contractor shall require that all authorized individuals or entities (e.g., employees, consultants, sub-consultants, sub-contractors, suppliers and agents) (“Authorized Personnel”) to which it discloses **CONFIDENTIAL** information sign a Confidentiality and Nondisclosure Agreement (“Agreement”). Such Agreement shall provide that Authorized Personnel: are personally responsible at all times for protecting **CONFIDENTIAL** information that is in their possession or control; must always use proper precautions to safeguard against the unauthorized access and disclosure of **CONFIDENTIAL** information; must notify Contractor of any known or suspected instances of loss or theft of, or unauthorized access to, **CONFIDENTIAL** information; and must return all **CONFIDENTIAL** information to Contractor upon completion of the project. Contractor shall be responsible for enforcing the provisions of such Agreement through personal observation and supervision of Authorized Personnel and utilization of appropriate processes. Contractor shall maintain a list of all Authorized Personnel which have access to **CONFIDENTIAL** information and must provide the NYSCC with such list upon the NYSCC's request. Contractor shall update such list monthly and notify the NYSCC of any changes in such list.

Inventory Control:

Contractor shall create and maintain an inventory of all **CONFIDENTIAL** information that it provides to Authorized Personnel. Upon completion of the project, Contractor shall check all **CONFIDENTIAL** information returned from Authorized Personnel against the inventory. Contractor shall provide a copy of the checked inventory to the NYSCC.

Use and Storage:

Contractor shall implement reasonable processes during normal working hours to prohibit unauthorized individuals from gaining access to **CONFIDENTIAL** information that is within the Contractor's custody and control. At times other than normal working hours, Contractor shall store **CONFIDENTIAL** information in a secure area, such as a fire-proof safe, locked desk, cabinet or other secure storage facility, where access can be controlled. Contractor shall control the access that Authorized Personnel have to **CONFIDENTIAL** information stored in such secure areas through the use of manual or automated locks and keys. Contractor shall maintain a list of Authorized Personnel who have access to such secure areas and the specific **CONFIDENTIAL** information therein.

Reproduction:

Contractor may reproduce **CONFIDENTIAL** information only to the extent necessary to carry out contract performance. Contractor must stamp/mark all **CONFIDENTIAL** information that is reproduced with the word **CONFIDENTIAL** and protect it in the same manner as the original.

Transportation:

To the extent feasible and reasonable, Contractor shall hand deliver **CONFIDENTIAL** information with instructions that only the addressee is allowed to open or view it. Contractor may send **CONFIDENTIAL** information that cannot be hand delivered via the U.S. Postal Service or express mail services (e.g., FEDEX) provided: it is packaged and sealed in a way that does not disclose its contents or the fact that it is **CONFIDENTIAL** information, and a signature from the recipient is required. Under no circumstances shall a transportation method be used that cannot guarantee that **CONFIDENTIAL** information is accessed only by the intended recipient.

Disposal:

Contractor shall dispose of all **CONFIDENTIAL** information, regardless of its form or format, using a destruction method that prevents its unauthorized retrieval (e.g., crosscut or micro shredding, degaussing).

Loss, Theft or Unauthorized Access:

Contractor shall provide timely notice to the NYSCC upon discovery of any incident involving the loss or theft of, or unauthorized access to, **CONFIDENTIAL** information.

AVAILABILITY OF ELECTRONIC BID DOCUMENTS**1. SUMMARY:**

Using the SAP Ariba platform, the New York State Canal Corporation (NYSCC) and New York Power Authority (NYPA) will be directly providing electronic bid documents and supplemental information, responses to RFIs, amendments/addenda, and other communications to potential bidders for this Proposal.

Bidders must submit their bid in Ariba.

2. PARTICIPATION AND RELATIONSHIP TO PAPER DOCUMENTS:

Bidders must print out, sign, execute, scan and return documents electronically per the direction provided by NYSCC/NYPA Procurement through Ariba or otherwise directed. No paper bids or other supporting bid documents will be required to be submitted.

3. PROPOSAL NOTES AND CHANGES BY AMENDMENT:

Contractors are solely responsible for recognizing and properly responding to any and all special notes and circumstances printed in the Contract Proposal and any and all changes by amendment/addendum from the amendment/addendum documents and/or notices communicated to them by NYSCC/NYPA Procurement for this Proposal.

Do not bid without carefully reviewing the Proposal, bid proposal form, and any and all changes by amendment/addendum. Proposal notes and circumstances include, but are not limited to, information on alternate, fixed and/or limited cost items and/or special circumstances regarding item placement and use.

SPECIAL NOTE

The NYS Surety Bond Assistance Program (NYSBAP) provides technical and financial assistance to help contractors secure surety bonding. Contractors may be eligible to receive a guarantee of up to 30% to secure a surety bond line, bid bond or a performance and payment bond on State projects. Training is also available to contractors requiring technical support on how to become bond ready. For more information and to fill out a NYSBAP application, visit <http://esd.ny.gov/BusinessPrograms/BondingAssistance.html> or contact Ms. Huey-Min Chuang at Empire State Development at 212-803-3238 or BAP @esd.ny.gov.

**REQUIREMENTS FOR CONTRACTOR'S UTILIZATION OF AREAS
OUTSIDE OF THE RIGHT-OF-WAY**


1. Before the contractor can utilize any area outside of the New York State Canal Corporation (NYSCC) Right of Way (or outside of a temporary easement obtained for the project by the NYSCC), for any work associated with this project, written approval to do so shall be obtained from the NYSCC through the Project Engineer. The contractor's request for approval shall be in writing and the NYSCC shall be allowed 2 weeks to review the request and respond. Requests for approval may be determined by the NYSCC to have the potential to affect cultural or historic resources, and in such cases the NYSCC will require the New York State Historic Preservation Office (SHPO) be provided 30 days to review and respond. Any requests for further information or requirements for mitigation are to be addressed to the satisfaction of the requesting agency.
2. This requirement applies to areas such as, but not limited to: borrow areas, stockpiles, equipment and/or material storage areas, haul roads, batching areas, water points, shop areas, and all similar areas. This requirement does not apply to the Contractor's established and permanent headquarters, commercial borrow sources, commercial gravel pits, commercial quarries, and all similar areas. Spoil areas outside the NYSCC Right of Way are not allowed under this Contract, with the exception of Solid Waste Disposal Facilities and Construction & Demolition (C&D) recycling Debris facilities.
3. The contractor's written request for approval shall include a letter report prepared by an Environmental Professional, acceptable to the NYSCC, documenting the investigation of the proposed site. The expectation is that an Environmental Professional visit the site, performs an assessment of the proposed use against all applicable environmental requirements, and then documents their findings and recommendations. The letter report shall include the following unless otherwise authorized by the NYSCC:
 - a) A written description of the activities the contractor wishes to perform at the proposed site, including timeframes.
 - b) Maps showing Federal and State regulated wetlands including the State 100-foot adjacent area (buffer). The area proposed for use shall be depicted on each map.
 - c) A site location map which accurately shows the area proposed for use, adjacent property boundaries/owners, the location of all wetland boundaries observed, and any required erosion and sediment control measures. If present, wetlands shall be delineated in the field by the Environmental Professional with stakes and ribbon, and wetland delineation data forms shall be completed.
 - d) Photos of the proposed site.
 - e) A written statement prepared by the Environmental Professional regarding the presence of any rare animals or plants or significant natural communities. The Environmental Professional shall use the New York State Department of Environmental Conservation Environmental Resource Mapper to make this determination. If any rare species are identified, then determine if the rare species are listed as endangered or threatened and whether the NYSDEC determines the proposed use may be harmful to the species or their habitat. If so, address to the satisfaction of the NYSDEC.
 - f) A copy of the applicable SPDES permit and any local municipal permits related to use of the site.
 - g) A listing of other Environmental Permits which were obtained by the NYSCC for the project. These are referenced in the contract proposal.
 - h) A completed NYSCC Property Release form. The form is available through the Project Engineer.
 - i) A plan showing all restoration work. This includes, but is not limited to, plans for grading, surface restoration details, and erosion and sediment control.
4. This requirement does not waive other provisions of the contract related to use of lands outside the Right of Way. Rather, it shall be viewed as supplementary. The following contract provisions still remain in effect:

§107-08 Protection and Restoration of Property and Landscape, Subsection B. Outside the Right of Way

REQUIREMENTS FOR TEMPORARY CONSTRUCTION EMERGENCY ACTION PLANS
(TCEAPs)

The Contractor shall provide a TCEAP as per NYSCC Engineering & Maintenance Bulletin EMB-2021-009: (The Template TCEAP is attached as only an example)



 <p style="text-align: center;">ENGINEERING & MAINTENANCE BULLETIN</p> <p><i>Ambrose Barbuto</i> 6/10/24 Director of Waterways Maintenance DATE</p>	NUMBER: EMB-2024-009
	<p>SUBJECT: Requirements for Temporary Construction Emergency Action Plans (TCEAPs) for Canal Dam and Water Impounding Structure Construction and Maintenance Projects</p> <p>DISTRIBUTION: All NYS Canal Corporation Staff</p>

**FOR CONSTRUCTION AND MAINTENANCE PROJECTS AND WORK OCCURRING ALONG
THE CANAL SYSTEM WITHIN A TEMPORARY COFFERDAM SYSTEM OR AT A CANAL
WATER IMPOUNDING STRUCTURE, A TEMPORARY CONSTRUCTION EMERGENCY
ACTION PLAN WILL BE REQUIRED TO PROTECT THE SAFETY OF THE PUBLIC, CANAL
PERSONNEL AND THE ENVIRONMENT**

Purpose: The purpose of a Temporary Construction Emergency Action Plan (TCEAP) is to reduce the probability of loss of life or injury associated with the failure of temporary water impoundment or control structure on the Canal system.

A TCEAP is required where NYPA/Canal personnel, contractors, construction workers or the Public would be endangered by inundation of water released from failure of the temporary cofferdam or water control work and/or where construction work may be occurring on or at a Canal Dam, Embankment or water impounding structures. This includes lock pump outs performed by contractors and Canal personnel.

The "Project Sponsor", or party responsible for managing, overseeing and coordinating the work, may be a member of Canals Design, Dam Safety Shared Services, NYPA Project Management, the Canals Region or other internal stakeholder group. The requirements of this bulletin applies to whomever is serving as the Project Sponsor.

"Work" is defined as any activity in which professional or contracted person(s) are conducting work for any party, including the public, the Canal, any private entity or local municipal, State or Federal Agency. "Modifications" include any repairs, rehabilitations, improvements or other changes to the structure. The purpose of documenting the planned work is to ensure the work is fully scoped, completed safely and in a manner agreed upon by the interested parties in Canals/NYPA. The purpose of documenting the completed work is to provide assurance the work was executed to the plan and so the records of modifications are available for future use.

"Water Impounding Structure" is defined as any Canal structure that seasonally or permanently impounds water at an elevation above surrounding lands whose failure could cause the release of impounded waters. The Canal Corporation Owner's Dam Safety Policy provides a detailed list of structure asset classes considered Water Impounding Structures.

The TCEAP shall be submitted by the Project Sponsor/Manager at least fourteen (14) calendar days before scheduled start of work. Work shall not commence prior to approval of the TCEAP. Emergent Projects will be subject to accelerated review. The TCEAP document shall be distributed to the following groups for review:



- Canal Region/Section Management (Regional Canal Engineer, Transportation Maintenance Engineer and Section Superintendent);
- Crisis Management;
- Environment, Health & Safety Shared Services Group;
- Waterways Dam Safety Shared Services Group;
- Community, Government and Media Relations.

Final approval of the TCEAP will be issued by the Regional Canal Engineer.

The TCEAP shall include the following:

1. A notification list of emergency response authorities.
2. A plan drawing showing the proposed arrangement of the structure.
3. The location of safety devices and escape routes.
4. Action levels (based on the Construction Potential Failure Mode Analysis if applicable), when the plan will be activated and when evacuation will occur.
5. Description of inspection processes, reporting and example activation incidents or conditions for the temporary water impoundment or control structure (e.g. seepage through earthen cofferdam)
6. A brief description of testing procedures for the plan.
7. A description or method to account for all employees after an emergency evacuation has occurred
8. Rescue and medical duties for any staff that are trained and designated to perform them or if reliance will be on outside services.
9. A statement that all staff will immediately evacuate during an emergency, or identify any procedures for staff who will remain to operate critical operations before they evacuate

Suggested outline of the TCEAP is as follows:

1. Introduction
 - a. Description of the project, the scope of excavation or temporary cofferdam works, including duration of temporary cofferdam or water control works.
2. Briefing and Initial Training
 - a. Description of contractor's briefing and training plans for the TCEAP. All contractors, consultants and employees on site during construction shall be provided Dam Safety Awareness training prior to commencing work. The TCEAP shall be discussed during weekly safety or tailgate meetings.
 - b. Identification of any staff who will have rescue and/or medical duties or identify that outside emergency services will be the designated manner of providing rescue and/or medical services.
3. Notifications
 - a. Description of key site personnel contact information and notification flow chart for communication of emergency conditions on site to the Canal Corporation and NYPA.



4. Evacuation of Work Area
 - a. Description of contractor's evacuation plan for personnel working within the temporary cofferdam or water control work, staffing for attending/monitoring the workers and work site and description of the evacuation process, including specific audio/visual communication and assignment of head count checks for staff on site to ensure that the evacuation has been completed.
 - b. Statement that all staff will evacuate during an emergency. If there are staff that will remain to operate critical equipment, such staff and the tasks to be performed prior to evacuation must be identified.

5. Posting of Plan
 - a. Description of where TCEAP will be posted on site and personnel it will be distributed to. The TCEAP shall be posted at a strategic location at the construction site visible to all workers.

6. Warning and Signage Plan
 - a. Description of plans and measures to provide signage and notice for areas that are impacted by the breach or failure of a temporary cofferdam or water control works, evacuation route and rally point signage, visual and audible notification devices or systems to alert workers and the public of failure or breach of a temporary cofferdam or water control works and potentially dangerous increases in water levels.

7. Monitoring
 - a. Description of monitoring plan for the temporary cofferdam or water control works. Include information identifying the responsible personnel, frequency and format of inspection and communication and routing of observations and reports. Include description of events or incidents that may warrant activation of the TCEAP.

8. Testing:
 - a. Periodic testing of the plan shall be performed at least quarterly and be documented by the contractor and NYPA/Canals safety personnel. Contractors' supervisor shall test staff at random to assure understanding of the Plan.

Appendices

- A - Notification Flow Chart (Example)
- B - Site Plan with Evacuation Routes, Rally Points
- C - Plan and details of all temporary cofferdam or impoundment works

A Template TCEAP is attached for reference.

This Bulletin is to be used in addition to notification processes that have been established at the Region or Section. This Bulletin does not supersede other required health and safety plans, external notifications or permit authorizations.

Compliance with this bulletin does not equate to approval or permission from Legal, Environmental, Health and Safety to complete the work.



Temporary Construction Emergency Action Plan (TCEAP)

for

Pump-Out & Rehabilitation of Lock AAAAAAA

located in/at

BBBBBBB, New York

during the period

October 25, 2021 - December 22, 2021

prepared by/for

New York State Canal Corporation (NYSCC)

Eastern/Western Region Canal Engineer

Approval block



1. Introduction

Description of the project, the scope of excavation or temporary cofferdam works, including duration of temporary cofferdam or water control works.

- Hazards:
 - Create HASP - Upgrade from JHA
 - Breach of temporary dam & rapid inundation of work zone
 - Drowning, Impact force from water + debris, Sediment
 - Limited egress paths
 - Equipment/Scaffolding/Crane dislocation
 - Warning time is critical
 - Inspection of temporary dams
 - Public at Risk? Downstream activities?
 - Public access/traffic routing/detours?

2. Briefing and Initial Training

Description of Contractor's briefing and training plans for the TCEAP. All contractors, consultants, and employees on site during construction shall be provided Dam Safety Awareness training prior to commencing work. The TCEAP should be discussed during weekly safety or tailgate meetings.

- _____ will provide training on the proper use of the TCEAP during a project pre-construction meeting.
- _____ to provide training on the TCEAP to in-house forces and contractors workers prior to commencement of activities.
- Newly assigned personnel to be trained prior to starting work on site.
- These on site staff: _____ are designated to perform rescue and/or medical duties as follows :
_____. If no staff on site are designated to perform rescue and/or medical duties, outside medical services will be used, including for any such need greater than detailed above.

3. Notifications

Description of key site personnel and notification flow chart for communication of emergency conditions on site to the Canal Corporation and NYPA. Arrange in logical order, not a full EAP tree

- Pre-project notifications to stake holders/emergency response
- Local law enforcement, fire/rescue, and ambulance personnel
- Canals-NYPA personnel, downstream facilities
- Canals Duty Officer procedure
- Crisis Management



4. Evacuation of Work Area

Description of Contractor's evacuation plan for personnel working within the temporary cofferdam or water control works, staffing for attending/monitoring the workers and work site and description of the evacuation process, including specific audio/visual communication and head count checks for staff at identified rally points on site.

- Personnel Tracking (off/on-site, PTO, etc.)
- Visitor check-in/orientation
- Counter Measures: PFD's? Rally Points? Sirens? Enclosed ladders? Head counts?
- Statement that all staff will evacuate.
- Specific description if there are any staff who will not evacuate immediately because they need to operate critical equipment. Identify the equipment and staff that will be designated to operate the equipment. If not applicable, indicate N/A. _____

- Describe how all staff will be accounted for after an evacuation has occurred, include who will be responsible for ensuring the staff are accounted for: _____

5. Posting of Plan

Description of where TCEAP will be posted on site and personnel it will be distributed to. The TCEAP shall be posted at a strategic location at the construction site visible to all workers.

- Post TCEAP at the site in a strategic location visible to all workers and discussed during weekly safety meetings

6. Warning and Signage Plan

Description of plans and measures to provide signage and notice for areas that are impacted by the breach or failure of a temporary cofferdam or water control works, evacuation route and rally point signage, visual and audible notification devices or systems to alert workers and the public of failure or breach of a temporary cofferdam or water control works and potentially dangerous increases in water levels.

7. Monitoring

Description of monitoring plan for the temporary cofferdam or water control works. Include information identifying the responsible personnel, frequency and format of inspection and communication and routing of observations and reports.

- Inspection of temporary dams say ... 3x per day (morn/noon/COB)
 - Instrumentation?



8. Testing

Periodic testing of the plan should be performed at least quarterly and be documented by the Contractor and NYPA/Canals safety personnel. Contractors' supervisor should test staff at random to assure understanding of the Plan.

- _____ to periodically test workers at random concerning their knowledge of the procedures.



Appendix A

Emergency Notification Flow Chart (Example)

Name	Title	Email	Phone
NYS Canal Corporation			
	Director, Waterways Maintenance		
	Eastern/Western Regional Canal Engineer		
	Director, Construction Bureau		
	Eastern/Western Construction Manager		
	Transportation Maintenance Engineer		
	Section Superintendent		
New York Power Authority			
	Regional Manager - Canals		
	Director, Waterways Dam Safety		
	Director, Crisis Management		
	Senior Hydrologist - Waterways		
Consultants			
	Designer of Record		
	Construction Management		
Construction Contractor			
Additional Stakeholder #1			
Additional Stakeholder #2			

Note for editor: Titles listed in table are to be required in each TCEAP document. Other individuals and organizations may be added to the table as deemed necessary.



Appendix B

Site Safety Plan

Appendix C

Temporary Cofferdam/Impoundment Works Plans & Details

UNANTICIPATED DISCOVERIES OF ARCHAEOLOGICAL RESOURCES

The Contractor is advised that efforts to avoid or mitigate effects to known historic and cultural resources have been completed for this project. However, it is possible that ground disturbing activities for this project could still result in unanticipated discoveries of archaeological resources. Unanticipated discoveries include, but are not limited to: human remains (e.g. skeletal, cremated); burial of large working/farm animals (e.g. mules); arrowheads and stone tools; funerary objects; charcoal or charcoal-stained soil indicative of open fire; clusters of very old cans, glass bottles, and/or ceramic dishes (intact or broken); and structural remains and/or other signs of human settlement. If unanticipated discoveries are encountered during work operations the following preventative actions must be taken to ensure that the resources are handled sensitively and respectively and the necessary professionals are on site within 24 hours to mitigate:

- The Contractor shall immediately stop work at this location and notify the Project Engineer. Upon notification the Project Engineer must notify the NYPA Director of Environment, Health and Safety, who is the acting Agency Preservation Officer (APO).
- If the discovery is of human remains, the Project Engineer will immediately notify local law enforcement. The guidance of the local law enforcement and the medical examiner must be followed.
- The Contractor shall secure the discovery site as directed by the Project Engineer from damage and disturbance to the fullest extent possible, including installing a physical barrier. Remains and resources are to remain *in situ* and remains are not to be photographed without express direction from the Project Engineer at the direction of the NYPA APO.
- The Project Engineer at the direction of the NYPA APO will advise what work, if any, can continue in the project area while investigations into the discovery are on-going. An on-call archaeologist will be available to be on-site within 24 hours of notification. The archaeologist will help mitigate any work-restrictions in a timely manner.
- Work shall not continue at the site of the discovery until the Project Engineer at the direction of the NYPA APO notifies the Contractor that work can resume. This is dependent upon the completion in full of all law enforcement/medical examiner investigations and/or archaeological mitigation.

US CUSTOMARY FUEL PRICE ADJUSTMENT

FUEL PRICE ADJUSTMENT¹ CONVERSION FACTORS		
MATERIAL DESCRIPTION	CONVERSION FACTOR	ITEM NUMBER²
Unclassified Excavation	0.35 gal/yd ³	203.02
Embankment	0.10 gal/yd ³	203.03, 620.xx
Fill	0.45 gal/yd ³	203.05, 203.06, 203.07, 203.08xx, 203.20, 203.21, 203.25
Controlled Low Strength Material	1.00 gal/yd ³	204.01, 204.02, 204.03, 204.04
Trench/Culvert/Structure Excavation	0.50 gal/yd ³	206.01, 206.0201
Bituminous Stabilized Course	1.40 gal/yd ³	302.01, 307.01
Sub-base Course	1.00 gal/yd ³	304 Items
Hot Mix Asphalt	2.50 gal/ton	402 Items ³ , 405.01, 608.020102 ³ , 619.0601 ⁴ , 624.02xxxx ^{3,4} , 633.14 ^{3,4} , 633.15 ^{3,4} , 633.16 ^{3,4}
Milling	0.10 gal/yd ²	490 Items
Portland Cement Concrete Pavement	1.00 gal/yd ³	502 Items ³ , 503.1010, 503.1011, 503.1012
Fill Type Retaining Walls	0.45 gal/yd ³	554.30xx ⁵ , 554.31 ⁵ , 554.4x ⁵
Footing Concrete & Concrete for Structures - All classes	1.00 gal/yd ³	555 Items, 582.05
Approach Slabs	0.33 gal/yd ²	557.2001, 557.2002, 557.2003, 557.2009, 557.22
Structural Slabs with bottom formwork	0.25 gal/yd ²	557.01xx, 557.07, 557.30
Structural Slabs - no bottom formwork	0.15 gal/yd ²	557.05xx, 557.09
Class D Concrete	0.05 gal/yd ²	557.13, 584 Items
Concrete Barrier, Type A	0.16 gal/ft	606.3001, 606.3021, 606.3031
Concrete Barrier, Type B	0.19 gal/ft	569.01, 606.3002, 606.3022, 606.3032
Concrete Barrier, Type C	0.22 gal/ft	606.3003, 606.3023, 606.3033
Concrete Barrier, Half Section	0.11 gal/ft	569.02, 606.3004, 606.3024, 606.3034

US CUSTOMARY FUEL PRICE ADJUSTMENT

FUEL PRICE ADJUSTMENT¹ CONVERSION FACTORS		
MATERIAL DESCRIPTION	CONVERSION FACTOR	ITEM NUMBER²
Concrete Median Barrier, Single Slope	0.23 gal/ft	569.05, 606.3041, 606.3043, 606.3044
Concrete Median Barrier Wide, Single Slope	0.28 gal/ft	606.3051, 606.3053, 606.3054
Concrete Barrier Half Single Slope	0.17 gal/ft	569.04, 606.3061, 606.3063, 606.3064
Vertical Faced Concrete Parapet	0.10 gal/ft	569.03
Gravel, Stone, Slag	1.00 gal/yd ³	411.01, 411.02, 411.03, 623.1x
Concrete Sidewalks and Driveways	1.00 gal/yd ³	608.01xx
Topsoil	0.45 gal/yd ³	610.10, 610.11xx, 610.14xx
<p>Notes:</p> <ol style="list-style-type: none"> 1. In accordance with Standard Specification §698-3.02, the index value for the fuel price adjustment is the posted price for the month of bid letting. 2. Item Number - This is the contract pay item number under which these materials are most frequently paid. Unless indicated otherwise, materials similar to those indicated under the column entitled "Material Description" are also eligible for adjustment using the factor listed for a similar material with the same pay units regardless of the actual contract pay item number. 3. Quality Adjustment Items (402/502/608/624) are not eligible for fuel price adjustment. 4. Fuel Price Adjustment Conversion Factor based on units of TONS of asphalt placed, not the pay units of this item. 5. Fuel Price Adjustment Conversion Factor based on units of CY of backfill paid under this item, not the pay units of this item. 		

ENVIRONMENTAL COMPLIANCE REQUIREMENTS

COFFERDAM AND WATERWAY CONSERVATION NOTES

If the Contractor elects to utilize a cofferdam as part of their means and methods or if the contract documents require the use of a cofferdam, the following notes apply:

1. The following conceptual types of cofferdams may be utilized for the indicated locations of this project:

Bladder Cofferdam	Braced Cofferdam
Earth Fill Cofferdam	Filled Structural Unit Cofferdam
Sandbag Cofferdam	Sheet Pile Cofferdam
Structural Unit Cofferdam	Portable Cofferdam

The fill for the chosen cofferdam shall also be placed on a separation barrier, and any steel or concrete sections, or any equipment that has come into contact with the existing sediments, shall be washed before removal from the site in accordance with the “Site Health and Safety Requirements” included in this Contract.

2. Prior to any field work, the Contractor is required to submit a plan for the proposed method of dewatering the work area for approval as per the cofferdam item requirements. As part of the approval process, a copy of the plans may be submitted to the U.S. Army Corps of Engineers (USACE) for their verification that the proposed plan conforms to the permit authorization.

Should the proposed plan exceed the maximum permitted fill volume, exceed the maximum permitted dewatered work area, or be an alternate method of cofferdamming the work area, a permit modification, prepared by the Canal Corporation, will be submitted to the U.S. Army Corps of Engineers (USACE) and/or NYS Department of Environmental Conservation (NYSDEC), as appropriate, for their approval.

The Contractor is hereby notified that the NYS Canal Corporation does not have control over the USACE or NYSDEC approval procedures and are not responsible for any delay associated with obtaining the necessary approvals of the permit modifications. The Contractor shall make timely submissions of all necessary information to minimize all delays.

3. To accommodate the work and staging areas, the Contractor shall minimize the cutting of trees over six inches (6”) in diameter to only those specifically allowed by the Engineer.
4. A buffer of trees and native plant material shall be maintained along the edges of the waterway.
5. Any fill used in construction of the cofferdam shall be clean, uncontaminated granular fill with a maximum of 10%, by weight, passing a No. 200 sieve as measured in accordance with C136. The source of any fill shall be identified by the Contractor and approved by the Engineer.

CONTROLLING EXPOSURE TO DIESEL EXHAUST

The Contractor shall exercise measures to protect “Sensitive Receptors” from the impacts of diesel exhaust fumes. Sensitive Receptors include, but are not limited to: hospitals, schools, daycare facilities, building fresh air or ventilation intakes, elderly housing or convalescent facilities. The Contractor shall ensure that diesel powered engines are located away from building air conditioners and windows.

The goal is to minimize exposure of Sensitive Receptors in close proximity to diesel exhaust, in terms of both concentration and time. In general, close proximity is defined as within 50 feet of a Sensitive Receptor. Mitigation techniques include positioning stationary equipment exhausts greater than 50 feet from Sensitive Receptors, extension of equipment exhausts through the use of flexible tubing; protecting building air intakes; and the use of moving operations.

Idling time for diesel powered equipment shall be limited to three consecutive minutes for delivery and dump trucks and all other diesel-powered equipment except as follows:

- When a “mobile source” (vehicle) is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control.
- When it is necessary to operate a loading, unloading or processing device.
- When the outdoor temperature is less than 25°F.
- When the “mobile source” is being repaired.

Arrow panels and portable variable message signs shall be solar powered wherever possible or practical.

Whenever possible and practicable, the Contractor shall establish staging areas for diesel powered vehicles waiting to load or unload materials at the work site. Such areas shall be located where diesel emissions have the least impact on Sensitive Receptors and the general public.

DUST CONTROL

The Contractor shall minimize dust from disturbed soil surfaces or other materials that can cause off-site damage, health hazards and traffic safety problems. Dusty conditions resulting from the Contractor's operations shall be corrected at no additional cost to the NYSCC.

The Contractor's Operations shall be scheduled as to minimize the amount of area disturbed at any one time. Buffer areas of vegetation should be left where practical. Water quality shall be considered when selecting materials for dust control. An approved dust palliative may be used in conformance with applicable conditions placed on its use. A list of acceptable dust palliatives is available at: <https://www.dot.ny.gov/divisions/engineering/technical-services/geotechnical-engineering-bureau/dust-palliatives>.

For areas not subject to traffic, products and materials may be applied or placed on soil surfaces to prevent airborne migration of soil particles, including:

- Vegetative Cover –provides the most practical method of dust control.
- Mulch (including rolled erosion control products) –provides a fast, effective method of dust control.
- Spray Adhesives –Generally composed of polymers in a liquid or solid form mixed with water to form an emulsion that is sprayed on the soil surface. The mixing ratios and application rates will be in accordance with the manufacturer's recommendations for the specific soils on the site. Adhesives shall not be applied to wet soils or if there is a probability of precipitation within 48 hours.

For areas subject to traffic (traveling public or construction traffic) products and materials may be applied or placed on soil surfaces to prevent dust movement from the traffic surface into the air, including:

- Water Sprinkling – The site may be sprayed with water until the surface is wet. This is especially effective on haul roads and access routes.
- Polymer Additives –Polymers shall be mixed with water and applied to the driving surface using mixing ratios and application rates in accordance with the manufacturer's recommendations. No application of the polymer will be made if there is a probability of precipitation within 48 hours of its proposed use. Any polymers must be used in accordance with the NYSDEC issued “Conditions for Use” and “Application Instructions.” This information can be obtained from the NYSDEC website.
- Barriers – Woven geotextiles or stone can be placed on the driving surface to effectively reduce dust throw and particle migration on haul roads.

- Windbreak – A silt fence or similar barrier can control air currents at horizontal intervals equal to ten times the barrier height. Preserve existing vegetation that acts as a wind barrier as much as practical.
- Wheel Washing – Mechanical or manual wet-method cleaning of on-road construction vehicle tires prior to leaving site.

GENERATOR KNOWLEDGE FOR DISPOSAL OF TREATED WOOD

The U.S. Environmental Protection Agency (EPA) and New York State Department of Environmental Conservation (NYSDEC) technique for evaluating whether a material is hazardous for toxicity is the Toxicity Characteristic Leaching Procedure (TCLP). TCLP testing of pentachlorophenol (“penta”) and creosote treated wood by the Electric Power Research Institute, Association of American Railroads, and others has conclusively demonstrated that treated wood products are not a hazardous waste. Under EPA’s and NYSDEC’s rules, such “generator knowledge” can be utilized in place of testing to determine that a waste is not hazardous. This information can be used as evidence that treated wood products can be disposed as non-hazardous waste, based on generator knowledge, in lieu of physical testing.

Generator knowledge information, obtained from the American Wood Preservers Institute (AWPI) can be viewed at their web site located at www.awpi.org. AWPI’s information comes from studies conducted by the Electric Power Research Institute (EPRI), the Washington Public Ports Association (WPPA), and the Association of American Railroads (AAR). EPRI test results are for both penta-treated and creosote-treated wood. WPPA and AAR test results are for creosote-treated wood.

NOTE: Arsenically-treated (*e.g.*, chromated copper arsenate [CCA]) wood products disposed by the end user are exempt from classification as a federal hazardous waste regardless of the TCLP results for specified constituents from any individual sample. Also, wood products treated with preservatives that contain no TCLP constituents (*e.g.*, Kodiak Preserved Wood containing Copper Dimethyldithiocarbamate) are not hazardous waste.

BIRD / BAT WASTE AWARENESS

The Contractor should be aware that there may be bird/bat waste in the work area. The waste may contain trace amounts of metals and the fungus *Histoplasma capsulatum*. Exposure to this fungus can result in the disease histoplasmosis. Proper health and safety precautions shall be identified in the contractor’s health and safety plan in accordance with section 107-05. The disposal facility that accepts the bird/bat waste may need documentation as to its composition to determine that it is non-hazardous and/or otherwise suitable for disposal at that location.

FOREST INSECT DISEASE CONTROL - MOVEMENT OF WOOD MATERIALS FROM PROJECT SITES

Pursuant to New York State Department of Environmental Conservation (NYSDEC) Regulations, 6NYCRR, part 192.5, *Firewood Restrictions to Protect Forests from Invasive Species*, it is unlawful to transport any firewood material more than 50 miles from its point of origin to limit the spread of invasive insect species. “Firewood” shall mean all wood of any species, cut or not cut, split or not split, regardless of length which is (a) in a form and size appropriate for use as a fuel, or (b) which is destined for use as a fuel. Firewood shall not include kiln-dried dimensional lumber, wood that has been chipped to a maximum piece size that is no greater than 1-inch in two dimensions, or logs or wood being transported to sawmills or other manufacturing facilities for use in their primary operations. All New York State Canal Corporation (NYSCC) projects are subject to this requirement. Additional information can be found at the following link: <http://www.dec.ny.gov/regs/2493.html>

If firewood is to be moved within 50 miles of its point of origin a “Self-Issued Certificate of Origin for Transport and Possession of Untreated Firewood” must be completed. This form can be found at the following link: http://www.dec.ny.gov/docs/lands_forests_pdf/selfisscert.pdf

INVASIVE SPECIES AND QUARANTINE MATERIALS MOVEMENT

Pursuant to NYSDEC Regulations, 6NYCRR, part 192.6, *Quarantine Orders*, no person shall fail to comply with the provisions of any quarantine order issued by the Department pursuant to Environmental Conservation Law (ECL) section 9-1303. To the extent the provisions of section 192.5 *Firewood Restrictions to Protect Forests from Invasive Species* and such quarantine order are in conflict, the more restrictive provision shall apply. The Contractor shall be familiar with and comply with all Federal and State regulations regarding the movement of wood materials. It is unlawful to transport regulated wood materials from a quarantine area. Therefore, any parts of tree species of concern within a quarantined area, including leaves, bark, stumps, limbs, branches, roots, and logs of any length, and firewood (see above for definition of firewood) from **ANY** tree species, are all considered regulated articles and must be handled properly. Additional information can be found at the following link: <https://www.dec.ny.gov/animals/28722.html>.

In addition, the Contractor must follow the NYSDEC's guidelines to transport any ash material from this project, including leaves, bark, stumps, limbs, branches, roots, and ash logs of any length within New York. Any applicable Federal regulations still apply to interstate and international movement of ash wood (see guidelines at [https://www.dec.ny.gov/animals/45409.html#For the Wood Products Industry](https://www.dec.ny.gov/animals/45409.html#For%20the%20Wood%20Products%20Industry)).

Tree-felling, clearing and grubbing operations at project sites may result in the contractor's need to handle materials from tree species of concern and/or firewood or chips from **ANY** tree species. To the greatest extent possible in areas of clearing and grubbing, tree species of concern should be pre-identified and marked prior to commencement of construction to promote the proper handling of these materials. Firewood from **ANY** tree species may never be moved more than 50 miles and never from a quarantine area, into non-quarantine areas. Transport of any wood needs the required transport certificate: http://www.dec.ny.gov/docs/lands_forests_pdf/selfisscert.pdf

Any materials chipped to a size no greater than 1-inch in at least two dimensions is considered safe to be transported outside a quarantine zone, but only in accordance with a Chip/Mulch Agreement and Transport Agreement received from the NYS Department of Agriculture and Markets (NYSDAM). If any regulated materials must be moved outside of a currently quarantined area, a certification from the NYS Department of Agriculture and Markets (NYSDAM) or USDA Animal & Plant Health Inspection Service (APHIS) must be obtained.

INVASIVE SPECIES INFESTED TOPSOIL EXCAVATION AND DISPERSION

When excavating, moving, stockpiling, or spreading topsoil, the contractor shall take all reasonable precautions to comply with current federal, state and local guidelines and requirements to prevent the spread of invasive plant species, specifically phragmites australis (common reed), lythrum salicaria (purple loosestrife), polygonum cuspidatum (Japanese knotweed) and any other noxious or invasive plants identified. Refer to NYSDOT Standard Specification Sections 107-01 and 713-01 for additional invasive species precautions. If noted on the plans, refer to NYSDOT Standard Specification Section 617-01 for site specific information.

STOCKPILES OF SOIL

Stockpile locations shall be located as shown on the plans, at the Contractor's discretion as approved by the Project Engineer, or as directed by the Project Engineer.

All stockpiles of erodible material (such as topsoil or fill) must be protected as per the soil erosion and sediment control details. At a minimum, temporary stockpiles shall be contained with silt fence or alternative materials designed to prevent sediment transport. Stockpiles and areas of stockpiles left inactive for longer than 14 days shall have temporary seed and/or mulch applied or be covered in a manner that will prevent erosion. Any measures used to protect or cover stockpiles shall be maintained to ensure their effectiveness. No payment will be made to provide erosion control measures for contractor stockpiles

SILICA

The Contractor shall provide protection to all workers from exposure to hazardous levels of silica in accordance with 29 CFR 1926.55 and 29 CFR 1926.1153 Respirable Crystalline Silica.

The Contractor shall identify and address silica safety and health with a Silica Exposure Control Plan (SECP) as a part of the written Project Safety and Health Plan. The SECP shall identify the methods to be used from Table 1 in 29 CFR 1926.1153 Respirable Crystalline Silica. If Table 1 will not be used, the contractor shall be able to provide documentation that the alternative exposure control method has been proven effective by an exposure assessment. The SECP shall be kept on site.

The Contractor shall be able to provide, upon request, documentation that medical surveillance was made available to workers who are required to wear a respirator for more than 30 days per year for protection from respirable crystalline silica. The Contractor shall identify and implement worker training, engineering controls, work practices, and respiratory protection in accordance with regulations.

CONTAMINATED MATERIALS SITE HEALTH AND SAFETY REQUIREMENTS

The Contractor is responsible for Federal Occupational Safety and Health Administration, as well as New York State Department of Labor requirements for their employee's health and safety as it relates to the project site. Within ten (10) days of Contract Award, the Contractor shall identify a qualified health and safety professional who will oversee the development, implementation and oversight of a site health and safety plan that will be prepared by the Contractor, under Section 107-05 of the Standard Specifications, to cover site activities including potentially contaminated materials.

During contract development, samples of existing soil and sediment were collected at the project site. These samples were subsequently analyzed for various contaminants of concern, including PCBs, Pesticides, VOCs, SVOCs, metals, etc. The results of the sample analyses have been provided as supplemental information to assist the Contractor in developing the site health and safety plan's Contaminated Materials Handling Plan (CMHP) in accordance with Section 205-3.01B.1.

The Contractor and their qualified health and safety professional shall review the existing data and determine the need for additional samples. If additional samples are needed, Sampling and Analysis shall conform to Section 205-1.04. Transportation and Disposal of these samples shall be in accordance with Section 205-1.05 of the Standard Specifications, the requirements of the New York State Department of Environmental Conservation and any landfill accepting solid waste generated from the site.

Sample Analysis

If additional samples are obtained, all costs associated with collecting, analyzing, reporting, and sample disposal shall be performed at no additional cost to the NYSCC. The Contractor's qualified health and safety professional shall determine which contaminants that the samples shall be analyzed for. The following list, which is provided for reference only, indicates typical testing requirements for the indicated contaminant.

- a. Pesticides and PCB's using USEPA Method 8081, MDL of 0.1 ppm for each PCB Arochlor
- b. Mirex using USEPA Method 8081
- c. Volatile Organic Compounds including BTEX using USEPA Method 8260, MDL per method
- d. Semi-Volatile Organic Compounds including PAHs using USEPA Method 8270, MDL per method
- e. Dioxin/Furans using USEOPA Method 1613B, MDL per method
- f. Total Organic Carbon using EPA Method 9060, MDL of 0.1%
- g. Total Volatile Solids, MDL of 0.1%
- h. Inorganic Metals, Target Analyze List (TAL):

<u>Inorganic Metals</u>	<u>Method Detection Limit</u>	<u>EPA Method</u>
Cadmium (Cd)	0.5 ppm	6010
Lead (Pb)	0.3 ppm	6010
Mercury (Hg)	0.02 ppm	7471

All sample results shall be analyzed by a New York State Department of Health (NYSDOH) Environmental Laboratory Approval Program (ELAP) certified laboratory. The Contractor shall provide a figure showing the sample locations, one (1) copy of the ASP "B" data package and one (1) electronic copy of the analytical data obtained under this contract to the NYSCC Project Engineer with the sample locations identified (indicated by GPS coordinates, in UTM Zone 18, NAD 83 format), within 48 hours of receipt of the data.

**STATE POLLUTANT DISCHARGE ELIMINATION
SYSTEM (SPDES) GENERAL PERMIT**

A site-specific Stormwater Pollution Prevention Plan (SWPPP) as required by the NYS Department of Environmental Conservation's (NYSDEC's) SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001) has been prepared for this site as the estimated area of disturbance for this project is approximately 2.3 acres. The SWPPP is part of the Contract documents for the project which reflects the runoff characteristics of the project site and employs stormwater management practices that minimize the mobilization of pollutants during runoff events. The Contractor shall read, understand and follow the requirements of the site specific SWPPP and GP-0-20-001. The project shall not disturb greater than 5 acres of soil at any one time without prior authorization from the NYSCC. A copy of the SWPPP must be maintained on site.

The New York State Canal Corporation (NYSCC) has filed with the NYSDEC a Notice of Intent (NOI) for stormwater discharge associated with construction activity to be performed for this project under the General Permit for Stormwater Discharges (GP-0-20-001). The Contractor will not be allowed to proceed until verification of coverage under GP-0-20-001 has been provided by the NYSCC.

The SWPPP for this site has been certified by the NYSCC, therefore, any proposed changes or modifications to the SWPPP deemed necessary due to changes in field conditions shall be reviewed and approved by the NYSCC's Qualified Professional in accordance with GP-0-20-001. The Contractor and all subcontractors will be required to sign the "Contractor/Subcontractor SPDES Permit Certification" form pertaining to compliance with the SPDES Stormwater General Permit. Each Contractor/Subcontractor shall designate a trained individual who meets the requirements in GP-0-20-001 for the "trained contractor" for the duration of the project. A copy of the new General Permit (GP-0-20-001) is available at <http://www.dec.ny.gov/chemical/43133.html>

CONR 5
(9/17)

Contractor / Subcontractor SPDES Permit Certification

Contract No.: _____ PIN: _____

Description: _____

Town, Village, City: _____

County: _____

Check Applicable Box: Prime Contractor Subcontractor

Name of Contractor/
Subcontractor: _____

Address: _____

City: _____ State: _____ ZIP: _____

Phone: _____ Fax: _____

Core Pay Item Groups for which the Contractor/Subcontractor will be responsible (e.g. 203, 207, 209, etc.): _____

Mandatory Certification: The SPDES General Permit for Stormwater Discharges from Construction Activities requires the Prime Contractor and subcontractors to certify they understand the Stormwater Pollution Prevention Plan (SWPPP), the General Permit conditions, and their responsibilities for compliance. The certification must be signed prior to performing any contract work. The certification shall be signed by an Owner, Principal, President, Secretary or Treasurer of the firm in accordance with the signature requirements of 102-05 *Proposal Submission* of the Standard Specifications.

"I hereby certify under penalty of law that I understand and agree to comply with the terms and conditions of the SWPPP and agree to implement any corrective actions identified by the qualified inspector during a site inspection. I also understand that the owner or operator must comply with the terms and conditions of the most current version of the New York State Pollutant Discharge Elimination System ("SPDES") general permit for stormwater discharges from construction activities and that it is unlawful for any person to cause or contribute to a violation of water quality standards. Furthermore, I am aware that there are significant penalties for submitting false information, that I do not believe to be true, including the possibility of fine and imprisonment for knowing violations."

Signature: _____ Date: _____

Name: _____ Title: _____

Required Training: Effective April 30, 2010, the SPDES General Permit also requires the Prime Contractor and all subcontractors **performing earthwork or soil-disturbing activities** to identify at least one trained individual **from each company** who will be responsible for implementing the SWPPP and who shall be on-site on a daily basis when the company is performing soil disturbance activities. These activities include clearing, grubbing, grading, filling, excavation, stockpiling, demolition, landscaping, and installation and maintenance of Erosion & Sediment Control practices. Training must consist of 4 hours of NYSDEC-endorsed Erosion & Sediment Control Training every 3 years. (Training is not required if the individual is a licensed Professional Engineer, registered licensed Landscape Architect, or CPESC.) Provide the information below for trained individuals who will be on-site and responsible for SWPPP implementation on this Contract (attach a separate sheet if needed for additional Trained Individuals):

Trained Individual Name/Title : _____

Name of Training Course: _____

Trainee Number: _____ Date of Training: _____

Trained Individual Name/Title : _____

Name of Training Course: _____

Trainee Number: _____ Date of Training: _____

**SPECIAL
CONSTRUCTION
SIGNS**

**M/WBE
and
SDVOB
PARTICIPATION
REQUIREMENTS**

**MINORITY/WOMEN'S BUSINESS ENTERPRISE (M/WBE) AND
SERVICE-DISABLED VETERAN-OWNED BUSINESS (SDVOB)
PARTICIPATION REQUIREMENTS**

The NYSCC has established M/WBE and SDVOB utilization goal(s) for this contract, expressed as a percentage of the total contract bid amount. For Contract utilization goals as well as clarification of M/WBE and SDVOB Requirements, refer to Appendix C of this Proposal (See Ariba for Appendix C).

**STATE
WAGE RATE
INFORMATION**

WAGE RATES

The New York State Canal Corporation (NYSCC) does not represent or warrant that the accompanying schedule of wages with the classification of workmen, mechanics and laborers, as required by Section 220 of the Labor Law, is complete and it reserves the right to revise such schedule when required.

In the event that revisions are made before the letting date, an amendment will be issued by the NYSCC of purchasers of plans. In the event that the current wage rate schedule should expire before the contract for this project becomes effective the said wage rate schedule will be recertified and the Contractor will be bound by such revised schedule as recertified.

Labor classifications not appearing on this rate sheet can be used only with the consent of the Manager, Engineering and Maintenance, NYSCC and then the rate to be paid will be given by the Manager, Engineering and Maintenance, NYSCC after consulting with the State Department of Labor.

All requests for minimum wage rates for additional occupations shall be directed through the Manager, Engineering and Maintenance, NYSCC.

By legislation effective August 9, 1975, if the prevailing rate of wages or the prevailing practices for supplements as determined by the State Labor Department changes after the contract is let, the NYSCC shall request of the State Labor Department a redetermination of the schedules of wages and supplements and such revised wage rates and supplements shall be annexed to and form a part of the contract for the work. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the work is being performed. The bidder shall take into account in his bid prices all changes in wage rates and supplements that may be forthcoming during the time the contract is in force.

The bidder shall take into account in his bid prices all changes in wage rates and supplements that may be forthcoming during the time the contract is in force.

Pursuant to Section 220-A of the New York State Labor law, the prime Contractor must provide each approved subcontractor with a copy of the schedule of wages and any supplements as specified in this Contract.

The prime Contractor must immediately obtain from each approved subcontractor a certification (AC 2948) of their receipt of, and agreement to pay the applicable prevailing wages as specified in this contract. The prime Contractor shall retain all Subcontractor certifications and provide these certifications to the NYSCC prior to the processing of the final payment.

The prime Contractor must submit an affidavit (AC 2947) verifying the proper payment of wages to its own employees prior to the processing of the final payment. All completed certifications and affidavits must be originals and be properly signed and notarized.

SPECIAL NOTICE TO BIDDERS IN RELATION TO OVERTIME DISPENSATION

All bidders, in submitting their bids, should base their bids and work progression on the assumption that Overtime Dispensation pursuant to Article 8 of the New York State Labor Law, for any workmen, laborers and mechanics to work more than 8 hours in any one calendar day or more than five days in any one week will not be granted for any operation for the contract duration. Subsequent to award, where the contract documents have imposed specific scheduling and/or phasing requirements or where it is determined by the NYSCC to be in the best interest of the public, the NYSCC may process, for approval by the New York State Department of Labor, requests for Overtime Dispensation on certain specific operations and, in the event approval is granted, there shall be no adjustments therefore in any bid prices.

SPECIAL NOTE
STATE PREVAILING WAGE RATES

The Contractor shall ensure that workers are paid the appropriate wages and supplemental (fringe) benefits. Throughout the contract, the Contractor shall obtain and pay workers in accordance with periodic wage rate schedule updates from the NYS Department of Labor (NYSDOL). Wage rate amendments and supplements are available on the NYSDOL web site at www.labor.ny.gov. All changes or clarification of labor classification(s) and applicability of prevailing wage rates shall be obtained in writing from the Office of the Director, NYSDOL Bureau of Public Work.

The NYSDOL prevailing wage rate schedule for this contract has been determined and is available on the internet. The prevailing wage rate schedule is accessed by visiting the NYSDOL web site, navigating to the appropriate web page, and entering the Prevailing Rate Case No. PRC# 2024009054. The web link is:

<https://apps.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1573326>

Upon written request, the prevailing wage rate schedule will be provided by the New York State Canal Corporation to prospective bidders. A copy of the project specific prevailing wage rate schedule will be provided to the successful bidder upon award of the contract.

The prime Contractor must submit an affidavit (AC 2947) verifying the proper payment of wages to its own employees prior to the processing of the final payment. All completed certifications and affidavits must be originals and be properly signed and notarized.



Kathy Hochul, Governor

Roberta Reardon, Commissioner

New York Power Authority
Chesney Ealey, SSM Buyer
123 Main St
White Plains NY 10601

Schedule Year 2024
Date Requested 07/18/2024
PRC# 2024009054

Location Thomas Road
Project ID# K24-10359171NF
Project Type Tree clearing and stump removal, excavation for culvert, Box culvert fabrication, Installation of box culvert and rip rap armoring, 10,000 feet of stone dust trail grading and resurfacing.

PREVAILING WAGE SCHEDULE FOR ARTICLE 8 PUBLIC WORK PROJECT

Attached is the current schedule(s) of the prevailing wage rates and prevailing hourly supplements for the project referenced above. A unique Prevailing Wage Case Number (PRC#) has been assigned to the schedule(s) for your project.

The schedule is effective from July 2024 through June 2025. All updates, corrections, posted on the 1st business day of each month, and future copies of the annual determination are available on the Department's website www.labor.ny.gov. Updated PDF copies of your schedule can be accessed by entering your assigned PRC# at the proper location on the website.

It is the responsibility of the contracting agency or its agent to annex and make part, the attached schedule, to the specifications for this project, when it is advertised for bids and /or to forward said schedules to the successful bidder(s), immediately upon receipt, in order to insure the proper payment of wages.

Please refer to the "General Provisions of Laws Covering Workers on Public Work Contracts" provided with this schedule, for the specific details relating to other responsibilities of the Department of Jurisdiction.

Upon completion or cancellation of this project, enter the required information and mail **OR** fax this form to the office shown at the bottom of this notice, **OR** fill out the electronic version via the NYSDOL website.

NOTICE OF COMPLETION / CANCELLATION OF PROJECT

Date Completed: _____ Date Cancelled: _____

Name & Title of Representative: _____

Phone: (518) 457-5589 Fax: (518) 485-1870
W. Averell Harriman State Office Campus, Bldg. 12, Room 130, Albany, NY 12226



Kathy Hochul, Governor

Roberta Reardon, Commissioner

New York Power Authority
 Chesney Ealey, SSM Buyer
 123 Main St
 White Plains NY 10601

Schedule Year 2024
 Date Requested 07/18/2024
 PRC# 2024009054

Location Thomas Road
 Project ID# K24-10359171NF
 Project Type Tree clearing and stump removal, excavation for culvert, Box culvert fabrication, Installation of box culvert and rip rap armoring, 10,000 feet of stone dust trail grading and resurfacing.

Notice of Contract Award

New York State Labor Law, Article 8, Section 220.3a requires that certain information regarding the awarding of public work contracts, be furnished to the Commissioner of Labor. One "Notice of Contract Award" (PW 16, which may be photocopied), **MUST** be completed for **EACH** prime contractor on the above referenced project.

Upon notifying the successful bidder(s) of this contract, enter the required information and mail **OR** fax this form to the office shown at the bottom of this notice, **OR** fill out the electronic version via the NYSDOL website.

Contractor Information
 All information must be supplied

Federal Employer Identification Number: _____		
Name: _____		
Address: _____ _____		
City: _____	State: _____	Zip: _____
Amount of Contract: \$ _____	Contract Type:	
Approximate Starting Date: ____/____/____	<input type="checkbox"/> (01) General Construction	
Approximate Completion Date: ____/____/____	<input type="checkbox"/> (02) Heating/Ventilation	
	<input type="checkbox"/> (03) Electrical	
	<input type="checkbox"/> (04) Plumbing	
	<input type="checkbox"/> (05) Other : _____	

Phone: (518) 457-5589 Fax: (518) 485-1870
 W. Averell Harriman State Office Campus, Bldg. 12, Room 130, Albany, NY 12226

SPECIAL NOTE:
RATES OF WAGES AND SUPPLEMENTS

- A. The rates of wages and supplements determined by the Commissioner of Labor as prevailing in the locality of the Facilities at which the Services as herein specified will be performed may be from the link provided below within Subsection I.
- B. If pursuant to the Amendment to Section 220 of the Labor Law by Chapter 752 of the laws of 1975 any re-determination of prevailing rates of wages or practices is later made by the Industrial Commissioner of the schedule of wages and supplements, all such re-determinations shall be annexed to and made part of this Agreement. Notwithstanding discrepancies or charges in the wage rates or supplements affected by any re-determination there shall be no changes in any price under this Proposal and Agreement.
- C. Section 220 of the Labor Law provides, among other things, that it shall be the duty of the Commissioner of Labor to decide of the schedule of wages to be paid to all laborers, workers and mechanics employed on public work projects including supplements for welfare, pension, vacation and other benefits. These supplements include hospital, surgical or medical insurance or benefits; life insurance or death benefits; accidental death or dismemberment insurance; and pension or retirement benefits. If the number of supplements provided by the employer is less than the total supplements shown on the wage schedule, the difference shall be paid in cash to employees.
- D. Section 220 of the Labor Law also provides that the supplements to be provided to laborers, workers and mechanics upon public work "shall be in accordance with the prevailing practices in the locality...". The amount for supplements listed in the schedule does not necessarily include all types of prevailing supplements in the locality, and a future determination of the Commissioner of Labor may require the Contractor to provide additional supplements.
- E. The Contractor shall provide statutory benefits for disability benefits, workers' compensation, unemployment insurance and social security.
- F. The job classifications set forth in the schedule and in any such re-determinations shall in no event be construed as a representation by the Corporation that no other classification will be necessary in the course of the performance of the Agreement; or that all such enumerated classifications will be utilized during such performance; or that such classifications are accurate; or that the offer of payment of the stipulated rates will insure an adequate labor supply for the Contractor or any of its subcontractors.
- G. Following the Contractor's acceptance of the Corporation's contract award, but prior to the commencement of its activities, the Contractor shall submit to the Corporation, for review and approval, the Contractor's proposed format of payroll reporting demonstrating its compliance. The Contractor's payroll records shall indicate, but not be limited to, the following:
 - 1) Each employee's full name, home address, home phone number, badge number, social security number, local union classification, and the applicable payroll reporting period.

- 2) Hours worked by each employee during the reporting period, and the wage rate paid for straight time and premium time hours worked.
- 3) Gross amount paid that employee, during the applicable reporting period, only for Services performed under this Agreement.
- 4) All deductions from each employee's gross amount earned for Federal and State income taxes withheld, F.I.C.A. (social security tax) withheld, mandated deductions for workers' compensation and disability insurance, and all deductions permitted by the employee in accordance with any applicable local union agreement.
- 5) All amounts contributed by the employer to the various funds administered by the local unions, in accordance with the current local union agreements, for the employees' benefit as a result of the hours worked or amounts earned by each employee.
- 6) All amounts required by Federal or State law to be paid by the employer, such as the employer's contributions for F.I.C.A., Federal and State unemployment insurance, and Workers' Compensation, as a result of the hours worked or amounts earned by each employee.
- 7) All such payroll records shall be preserved for seven years from the date of termination of this Agreement.

H. The Contractor and all subcontractors shall submit to the Corporation, within thirty (30) days after issuance, of its first payroll and every thirty (30) days thereafter, a transcript of the original payrolls, subscribed and affirmed as true under penalty of perjury. The filing of the payrolls by the Contractor, with the Corporation, as required by Labor Law Section 220, is a condition precedent to payment of any sums due and owing the Contractor for the work.

I. Article 8 - Construction/Reconstruction Work Contracts

The contract shall be executed to the provisions of Worker's Compensation Law and Article 8 of the New York State Labor Law.

The "Prevailing Rate Schedule" referred to therein, is hereby incorporated and made a part of this specification.

For Prevailing Wage Updates, use the following link:

<https://apps.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1573326>

The applicable Prevailing Rate Chart is PRC#2024009054 for this Proposal.

General Provisions of Laws Covering Workers on Article 8 Public Work Contracts

Introduction

The Labor Law requires public work contractors and subcontractors to pay laborers, workers, or mechanics employed in the performance of a public work contract not less than the prevailing rate of wage and supplements (fringe benefits) in the locality where the work is performed.

Responsibilities of the Department of Jurisdiction

A Department of Jurisdiction (Contracting Agency) includes a state department, agency, board or commission; a county, city, town or village; a school district, board of education or board of cooperative educational services; a sewer, water, fire, improvement and other district corporation; a public benefit corporation; and a public authority awarding a public work contract.

The Department of Jurisdiction (Contracting Agency) awarding a public work contract MUST obtain a Prevailing Rate Schedule listing the hourly rates of wages and supplements due the workers to be employed on a public work project. This schedule may be obtained by completing and forwarding a "Request for wage and Supplement Information" form (PW 39) to the Bureau of Public Work. The Prevailing Rate Schedule MUST be included in the specifications for the contract to be awarded and is deemed part of the public work contract.

Upon the awarding of the contract, the law requires that the Department of Jurisdiction (Contracting Agency) furnish the following information to the Bureau: the name and address of the contractor, the date the contract was let and the approximate dollar value of the contract. To facilitate compliance with this provision of the Labor Law, a copy of the Department's "Notice of Contract Award" form (PW 16) is provided with the original Prevailing Rate Schedule.

The Department of Jurisdiction (Contracting Agency) is required to notify the Bureau of the completion or cancellation of any public work project. The Department's PW 200 form is provided for that purpose.

Both the PW 16 and PW 200 forms are available for completion [online](#).

Hours

No laborer, worker, or mechanic in the employ of a contractor or subcontractor engaged in the performance of any public work project shall be permitted to work more than eight hours in any day or more than five days in any week, except in cases of extraordinary emergency. The contractor and the Department of Jurisdiction (Contracting Agency) may apply to the Bureau of Public Work for a dispensation permitting workers to work additional hours or days per week on a particular public work project. There are very few exceptions to this rule. Complete information regarding these exceptions is available on the "[4 Day / 10 Hour Work Schedule](#)" form (PW 30.1).

Wages and Supplements

The wages and supplements to be paid and/or provided to laborers, workers, and mechanics employed on a public work project shall be not less than those listed in the current Prevailing Rate Schedule for the locality where the work is performed. If a prime contractor on a public work project has not been provided with a Prevailing Rate Schedule, the contractor must notify the Department of Jurisdiction (Contracting Agency) who in turn must request an original Prevailing Rate Schedule form the Bureau of Public Work. Requests may be submitted by: mail to NYSDOL, Bureau of Public Work, State Office Bldg. Campus, Bldg. 12, Rm. 130, Albany, NY 12240; Fax to Bureau of Public Work (518) 485-1870; or electronically at the NYSDOL website www.labor.state.ny.us.

Upon receiving the original schedule, the Department of Jurisdiction (Contracting Agency) is REQUIRED to provide complete copies to all prime contractors who in turn MUST, by law, provide copies of all applicable county schedules to each subcontractor and obtain from each subcontractor, an affidavit certifying such schedules were received. If the original schedule expired, the contractor may obtain a copy of the new annual determination from the NYSDOL website www.labor.state.ny.us.

The Commissioner of Labor makes an annual determination of the prevailing rates. This determination is in effect from July 1st through June 30th of the following year. The annual determination is available on the NYSDOL website www.labor.state.ny.us.

Payrolls and Payroll Records

Every contractor and subcontractor MUST keep original payrolls or transcripts subscribed and affirmed as true under penalty of perjury. Payrolls must be maintained for at least Five (5) years from the project's date of completion. [See Spota Bill Notice](#). At a minimum, payrolls must show the following information for each person employed on a public work project: Name, Address, Last 4 Digits of Social Security Number, Classification(s) in which the worker was employed, Hourly wage rate(s) paid, Supplements paid or provided, and Daily and weekly number of hours worked in each

classification.

The filing of payrolls to the Department of Jurisdiction is a condition of payment. Every contractor and subcontractor shall submit to the Department of Jurisdiction (Contracting Agency), within thirty (30) days after issuance of its first payroll and every thirty (30) days thereafter, a transcript of the original payrolls, subscribed and affirmed as true under penalty of perjury. The Department of Jurisdiction (Contracting Agency) shall collect, review for facial validity, and maintain such payrolls.

In addition, the Commissioner of Labor may require contractors to furnish, with ten (10) days of a request, payroll records sworn to as their validity and accuracy for public work and private work. Payroll records include, but are not limited to time cards, work description sheets, proof that supplements were provided, cancelled payroll checks and payrolls. Failure to provide the requested information within the allotted ten (10) days will result in the withholding of up to 25% of the contract, not to exceed \$100,000.00. If the contractor or subcontractor does not maintain a place of business in New York State and the amount of the contract exceeds \$25,000.00, payroll records and certifications must be kept on the project worksite.

The prime contractor is responsible for any underpayments of prevailing wages or supplements by any subcontractor.

All contractors or their subcontractors shall provide to their subcontractors a copy of the Prevailing Rate Schedule specified in the public work contract as well as any subsequently issued schedules. A failure to provide these schedules by a contractor or subcontractor is a violation of Article 8, Section 220-a of the Labor Law.

All subcontractors engaged by a public work project contractor or its subcontractor, upon receipt of the original schedule and any subsequently issued schedules, shall provide to such contractor a verified statement attesting that the subcontractor has received the Prevailing Rate Schedule and will pay or provide the applicable rates of wages and supplements specified therein. (See NYS Labor Laws, Article 8, Section 220-a).

Determination of Prevailing Wage and Supplement Rate Updates Applicable to All Counties

The wages and supplements contained in the annual determination become effective July 1st whether or not the new determination has been received by a given contractor. Care should be taken to review the rates for obvious errors. Any corrections should be brought to the Department's attention immediately. It is the responsibility of the public work contractor to use the proper rates. If there is a question on the proper classification to be used, please call the district office located nearest the project. Any errors in the annual determination will be corrected and posted to the NYSDOL website on the first business day of each month. Contractors are responsible for paying these updated rates as well, retroactive to July 1st.

When you review the schedule for a particular occupation, your attention should be directed to the dates above the column of rates. These are the dates for which a given set of rates is effective. To the extent possible, the Department posts rates in its possession that cover periods of time beyond the July 1st to June 30th time frame covered by a particular annual determination. Rates that extend beyond that instant time period are informational ONLY and may be updated in future annual determinations that actually cover the then appropriate July 1st to June 30th time period.

Withholding of Payments

When a complaint is filed with the Commissioner of Labor alleging the failure of a contractor or subcontractor to pay or provide the prevailing wages or supplements, or when the Commissioner of Labor believes that unpaid wages or supplements may be due, payments on the public work contract shall be withheld from the prime contractor in a sufficient amount to satisfy the alleged unpaid wages and supplements, including interest and civil penalty, pending a final determination.

When the Bureau of Public Work finds that a contractor or subcontractor on a public work project failed to pay or provide the requisite prevailing wages or supplements, the Bureau is authorized by Sections 220-b and 235.2 of the Labor Law to so notify the financial officer of the Department of Jurisdiction (Contracting Agency) that awarded the public work contract. Such officer MUST then withhold or cause to be withheld from any payment due the prime contractor on account of such contract the amount indicated by the Bureau as sufficient to satisfy the unpaid wages and supplements, including interest and any civil penalty that may be assessed by the Commissioner of Labor. The withholding continues until there is a final determination of the underpayment by the Commissioner of Labor or by the court in the event a legal proceeding is instituted for review of the determination of the Commissioner of Labor.

The Department of Jurisdiction (Contracting Agency) shall comply with this order of the Commissioner of Labor or of the court with respect to the release of the funds so withheld.

Summary of Notice Posting Requirements

The current Prevailing Rate Schedule must be posted in a prominent and accessible place on the site of the public work project. The prevailing wage schedule must be encased in, or constructed of, materials capable of withstanding adverse weather conditions and be titled "PREVAILING RATE OF WAGES" in letters no smaller than two (2) inches by two (2) inches.

The "[Public Work Project](#)" notice must be posted at the beginning of the performance of every public work contract, on each job site.

Every employer providing workers' compensation insurance and disability benefits must post notices of such coverage in the format prescribed by the Workers' Compensation Board in a conspicuous place on the jobsite.

Every employer subject to the NYS Human Rights Law must conspicuously post at its offices, places of employment, or employment training centers, notices furnished by the State Division of Human Rights.

Employers liable for contributions under the Unemployment Insurance Law must conspicuously post on the jobsite notices furnished by the NYS Department of Labor.

Apprentices

Employees cannot be paid apprentice rates unless they are individually registered in a program registered with the NYS Commissioner of Labor. The allowable ratio of apprentices to journey workers in any craft classification can be no greater than the statewide building trade ratios promulgated by the Department of Labor and included with the Prevailing Rate Schedule. An employee listed on a payroll as an apprentice who is not registered as above or is performing work outside the classification of work for which the apprentice is indentured, must be paid the prevailing journey worker's wage rate for the classification of work the employee is actually performing.

NYSDOL Labor Law, Article 8, Section 220-3, require that only apprentices individually registered with the NYS Department of Labor may be paid apprenticeship rates on a public work project. No other Federal or State Agency of office registers apprentices in New York State.

Persons wishing to verify the apprentice registration of any person must do so in writing by mail, to the NYSDOL Office of Employability Development / Apprenticeship Training, State Office Bldg. Campus, Bldg. 12, Albany, NY 12240 or by Fax to NYSDOL Apprenticeship Training (518) 457-7154. All requests for verification must include the name and social security number of the person for whom the information is requested.

The only conclusive proof of individual apprentice registration is written verification from the NYSDOL Apprenticeship Training Albany Central office. Neither Federal nor State Apprenticeship Training offices outside of Albany can provide conclusive registration information.

It should be noted that the existence of a registered apprenticeship program is not conclusive proof that any person is registered in that program. Furthermore, the existence or possession of wallet cards, identification cards, or copies of state forms is not conclusive proof of the registration of any person as an apprentice.

Interest and Penalties

In the event that an underpayment of wages and/or supplements is found:

- Interest shall be assessed at the rate then in effect as prescribed by the Superintendent of Banks pursuant to section 14-a of the Banking Law, per annum from the date of underpayment to the date restitution is made.
- A Civil Penalty may also be assessed, not to exceed 25% of the total of wages, supplements, and interest due.

Debarment

Any contractor or subcontractor and/or its successor shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with any state, municipal corporation or public body for a period of five (5) years when:

- Two (2) willful determinations have been rendered against that contractor or subcontractor and/or its successor within any consecutive six (6) year period.
- There is any willful determination that involves the falsification of payroll records or the kickback of wages or supplements.

Criminal Sanctions

Willful violations of the Prevailing Wage Law (Article 8 of the Labor Law) may be a felony punishable by fine or imprisonment of up to 15 years, or both.

Discrimination

No employee or applicant for employment may be discriminated against on account of age, race, creed, color, national origin, sex, disability or marital status.

No contractor, subcontractor nor any person acting on its behalf, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates (NYS Labor Law, Article 8, Section 220-e(a)).

No contractor, subcontractor, nor any person acting on its behalf, shall in any manner, discriminate against or intimidate any employee on account of race, creed, color, disability, sex, or national origin (NYS Labor Law, Article 8, Section 220-e(b)).

The Human Rights Law also prohibits discrimination in employment because of age, marital status, or religion.

There may be deducted from the amount payable to the contractor under the contract a penalty of \$50.00 for each calendar day during which such person was discriminated against or intimidated in violation of the provision of the contract (NYS Labor Law, Article 8, Section 220-e(c)).

The contract may be cancelled or terminated by the State or municipality. All monies due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of the anti-discrimination sections of the contract (NYS Labor Law, Article 8, Section 220-e(d)).

Every employer subject to the New York State Human Rights Law must conspicuously post at its offices, places of employment, or employment training centers notices furnished by the State Division of Human Rights.

Workers' Compensation

In accordance with Section 142 of the State Finance Law, the contractor shall maintain coverage during the life of the contract for the benefit of such employees as required by the provisions of the New York State Workers' Compensation Law.

A contractor who is awarded a public work contract must provide proof of workers' compensation coverage prior to being allowed to begin work.

The insurance policy must be issued by a company authorized to provide workers' compensation coverage in New York State. Proof of coverage must be on form C-105.2 (Certificate of Workers' Compensation Insurance) and must name this agency as a certificate holder.

If New York State coverage is added to an existing out-of-state policy, it can only be added to a policy from a company authorized to write workers' compensation coverage in this state. The coverage must be listed under item 3A of the information page.

The contractor must maintain proof that subcontractors doing work covered under this contract secured and maintained a workers' compensation policy for all employees working in New York State.

Every employer providing worker's compensation insurance and disability benefits must post notices of such coverage in the format prescribed by the Workers' Compensation Board in a conspicuous place on the jobsite.

Unemployment Insurance

Employers liable for contributions under the Unemployment Insurance Law must conspicuously post on the jobsite notices furnished by the New York State Department of Labor.

IMPORTANT NOTICE
FOR
CONTRACTORS &
CONTRACTING AGENCIES

Social Security Numbers on Certified Payrolls

The Department of Labor is cognizant of the concerns of the potential for misuse or inadvertent disclosure of social security numbers. Identity theft is a growing problem, and we are sympathetic to contractors' concerns with regard to inclusion of this information on payrolls if another identifier will suffice.

For these reasons, *the substitution of the use of the last four digits of the social security number on certified payrolls submitted to contracting agencies on public work projects is now acceptable to the Department of Labor.*

NOTE: This change does not affect the Department's ability to request and receive the entire social security number from employers during the course of its public work / prevailing wage investigations.

**To all State Departments, Agency Heads and Public Benefit Corporations
IMPORTANT NOTICE REGARDING PUBLIC WORK ENFORCEMENT FUND**

Budget Policy & Reporting Manual

B-610

Public Work Enforcement Fund

effective date December 7, 2005

1. Purpose and Scope:

This Item describes the Public Work Enforcement Fund (the Fund, PWEF) and its relevance to State agencies and public benefit corporations engaged in construction or reconstruction contracts, maintenance and repair, and announces the recently enacted increase to the percentage of the dollar value of such contracts that must be deposited into the Fund. This item also describes the roles of the following entities with respect to the Fund:

- New York State Department of Labor (DOL),
- The Office of the State of Comptroller (OSC), and
- State agencies and public benefit corporations.

2. Background and Statutory References:

DOL uses the Fund to enforce the State's Labor Law as it relates to contracts for construction or reconstruction, maintenance, and repair, as defined in subdivision two of Section 220 of the Labor Law. State agencies and public benefit corporations participating in such contracts are required to make payments to the Fund.

Chapter 511 of the Laws of 1995 (as amended by Chapter 513 of the Laws of 1997, Chapter 655 of the Laws of 1999, Chapter 376 of the Laws of 2003, and Chapter 407 of the Laws of 2005) established the Fund.

3. Procedures and Agency Responsibilities:

The Fund is supported by transfers and deposits based on the value of contracts for construction and reconstruction, maintenance, and repair, as defined in subdivision two of Section 220 of the Labor Law, into which all State agencies and public benefit corporations enter.

Chapter 407 of the Laws of 2005 increased the amount required to be provided to this fund to .10 of one percent of the total cost of each such contract, to be calculated at the time agencies or public benefit corporations enter into a new contract or if a contract is amended. The provisions of this bill became effective August 2, 2005.

To all State Departments, Agency Heads and Public Benefit Corporations
IMPORTANT NOTICE REGARDING PUBLIC WORK ENFORCEMENT FUND

OSC will report to DOL on all construction-related ("D") contracts approved during the month, including contract amendments, and then DOL will bill agencies the appropriate assessment monthly. An agency may then make a determination if any of the billed contracts are exempt and so note on the bill submitted back to DOL. For any instance where an agency is unsure if a contract is or is not exempt, they can call the Bureau of Public Work at the number noted below for a determination. Payment by check or journal voucher is due to DOL within thirty days from the date of the billing. DOL will verify the amounts and forward them to OSC for processing.

For those contracts which are not approved or administered by the Comptroller, monthly reports and payments for deposit into the Public Work Enforcement Fund must be provided to the Administrative Finance Bureau at the DOL within 30 days of the end of each month or on a payment schedule mutually agreed upon with DOL.

Reports should contain the following information:

- Name and billing address of State agency or public benefit corporation;
- State agency or public benefit corporation contact and phone number;
- Name and address of contractor receiving the award;
- Contract number and effective dates;
- Contract amount and PWEF assessment charge (if contract amount has been amended, reflect increase or decrease to original contract and the adjustment in the PWEF charge); and
- Brief description of the work to be performed under each contract.

Checks and Journal Vouchers, payable to the "New York State Department of Labor" should be sent to:

Department of Labor
Administrative Finance Bureau-PWEF Unit
Building 12, Room 464
State Office Campus
Albany, NY 12240

Any questions regarding billing should be directed to NYSDOL's Administrative Finance Bureau-PWEF Unit at (518) 457-3624 and any questions regarding Public Work Contracts should be directed to the Bureau of Public Work at (518) 457-5589.

Construction Industry Fair Play Act

Required Posting For Labor Law Article 25-B § 861-d

- Construction industry employers must post the "Construction Industry Fair Play Act" notice in a prominent and accessible place on the job site.
- Failure to post the notice can result in penalties of up to \$1,500 for a first offense and up to \$5,000 for a second offense.
- The posting is included as part of this wage schedule. Additional copies may be obtained from the NYS DOL website, www.labor.ny.gov.
- If you have any questions concerning the Fair Play Act, please call the State Labor Department toll-free at 1-866-435-1499 or email us at: dol.misclassified@labor.state.ny.us .



New York State Department of Labor
Required Notice under Article 25-B of the Labor Law

**ATTENTION ALL EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS:
YOU ARE COVERED BY THE
CONSTRUCTION INDUSTRY FAIR PLAY ACT**

The law says that you are an employee unless:

- You are free from direction and control in performing your job AND
- You perform work that is not part of the usual work done by the business that hired you AND
- You have an independently established business

Your employer cannot consider you to be an independent contractor unless all three of these facts apply to your work.

IT IS AGAINST THE LAW FOR AN EMPLOYER TO MISCLASSIFY EMPLOYEES AS INDEPENDENT CONTRACTORS OR PAY EMPLOYEES OFF-THE-BOOKS.

Employee rights. If you are an employee:

- You are entitled to state and federal worker protections such as
 - unemployment benefits, if unemployed through no fault of your own, able to work, and otherwise qualified
 - workers' compensation benefits for on-the-job injuries
 - payment for wages earned, minimum wage, and overtime (under certain conditions)
 - prevailing wages on public work projects
 - the provisions of the National Labor Relations Act and
 - a safe work environment
- It is a violation of this law for employers to retaliate against anyone who asserts their rights under the law. Retaliation subjects an employer to civil penalties, a private lawsuit or both.

Independent Contractors: If you are an independent contractor:

- You must pay all taxes required by New York State and Federal Law.

Penalties for paying off-the-books or improperly treating employees as independent contractors:

- **Civil Penalty** First Offense: up to \$2,500 per employee.
 Subsequent Offense(s): up to \$5,000 per employee.
- **Criminal Penalty** First Offense: Misdemeanor - up to 30 days in jail, up to a \$25,000 fine and debarment from performing Public Work for up to one year. Subsequent Offense(s): Misdemeanor - up to 60 days in jail, up to a \$50,000 fine and debarment from performing Public Work for up to 5 years.

If you have questions about your employment status or believe that your employer may have violated your rights and you want to file a complaint, call the Department of Labor at 1(866)435-1499 or send an email to dol.misclassified@labor.state.ny.us. All complaints of fraud and violations are taken seriously and you can remain anonymous.

Employer Name:

WORKER NOTIFICATION

(Labor Law §220, paragraph a of subdivision 3-a)

Effective February 24, 2008

This provision is an addition to the existing prevailing wage rate law, Labor Law §220, paragraph a of subdivision 3-a. It requires contractors and subcontractors to provide written notice to all laborers, workers or mechanics of the *prevailing wage rate* for their particular job classification *on each pay stub**. It also requires contractors and subcontractors to *post a notice* at the beginning of the performance of every public work contract *on each job site* that includes the telephone number and address for the Department of Labor and a statement informing laborers, workers or mechanics of their right to contact the Department of Labor if he/she is not receiving the proper prevailing rate of wages and/or supplements for his/her particular job classification. The required notification will be provided with each wage schedule, may be downloaded from our website www.labor.state.ny.us or made available upon request by contacting the Bureau of Public Work at 518-457-5589.

* In the event that the required information will not fit on the pay stub, an accompanying sheet or attachment of the information will suffice.

New York State Department of Labor
Bureau of Public Work

Attention Employees

THIS IS A: **PUBLIC WORK PROJECT**

If you are employed on this project as a **worker, laborer, or mechanic** you are entitled to receive the **prevailing wage and supplements rate** for the classification at which you are working.

Chapter 629 of
the Labor Laws
of 2007:

These wages are set by law and must be posted at the work site. They can also be found at:

www.labor.ny.gov

If you feel that you have not received proper wages or benefits, please call our nearest office.*

Albany	(518) 457-2744	Patchogue	(631) 687-4882
Binghamton	(607) 721-8005	Rochester	(585) 258-4505
Buffalo Garden	(716) 847-7159	Syracuse	(315) 428-4056
City New York	(516) 228-3915	Utica	(315) 793-2314
City Newburgh	(212) 932-2419	White Plains	(914) 997-9507
	(845) 568-5156		

* For New York City government agency construction projects, please contact the Office of the NYC Comptroller at (212) 669-4443, or www.comptroller.nyc.gov – click on Bureau of Labor Law.

Contractor Name: _____

Project Location: _____

OSHA 10-hour Construction

Safety and Health Course – S1537-A Effective July 18, 2008

This provision is an addition to the existing prevailing wage rate law, Labor Law §220, section 220-h. It requires that on all public work projects of at least \$250,000.00, all laborers, workers and mechanics working on the site, be certified as having successfully completed the OSHA 10-hour construction safety and health course. It further requires that the advertised bids and contracts for every public work contract of at least \$250,000.00, contain a provision of this requirement.

NOTE: The OSHA 10 Legislation only applies to workers on a public work project that are required, under Article 8, to receive the prevailing wage.

Where to find OSHA 10-hour Construction Course

1. NYS Department of Labor website for scheduled outreach training at:

www.labor.state.ny.us/workerprotection/safetyhealth/DOSH_ONSITE_CONSULTATION.shtm

2. OSHA Training Institute Education Centers:

Rochester Institute of Technology OSHA Education Center

Rochester, NY

Donna Winter

Fax (585) 475-6292

e-mail: dlwtpo@rit.edu

(866) 385-7470 Ext. 2919

www.rit.edu/~outreach/course.php3?CourseID=54

Atlantic OSHA Training Center

UMDNJ – School of Public Health

Piscataway, NJ

Janet Crooks

Fax (732) 235-9460

e-mail: crooksje@umdnj.edu

(732) 235-9455

<https://ophp.umdnj.edu/wconnect/ShowSchedule.awp?~~GROUP~AOTCON~10~>

Atlantic OSHA Training Center

University at Buffalo

Buffalo, New York

Joe Syracuse

Fax (716) 829-2806

e-mail: <mailto:japs@buffalo.edu>

(716) 829-2125

http://www.smbs.buffalo.edu/CENTERS/trc/schedule_OSHA.php

Keene State College

Manchester, NH

Leslie Singleton

e-mail: lsingletin@keene.edu

(800) 449-6742

www.keene.edu/courses/print/courses_osa.cfm

3. List of trainers and training schedules for OSHA outreach training at:

www.OutreachTrainers.org

Requirements for OSHA 10 Compliance

Chapter 282 of the Laws of 2007, codified as Labor Law 220-h took effect on July 18, 2008. The statute provides as follows:

The advertised specifications for every contract for public work of \$250,000.00 or more must contain a provision requiring that every worker employed in the performance of a public work contract shall be certified as having completed an OSHA 10 safety training course. The clear intent of this provision is to require that all employees of public work contractors, required to be paid prevailing rates, receive such training “prior to the performing any work on the project.”

The Bureau will enforce the statute as follows:

All contractors and sub-contractors must attach a copy of proof of completion of the OSHA 10 course to the first certified payroll submitted to the contracting agency and on each succeeding payroll where any new or additional employee is first listed.

Proof of completion may include but is not limited to:

- Copies of bona fide course completion card (*Note: Completion cards do not have an expiration date.*)
- Training roster, attendance record of other documentation from the certified trainer pending the issuance of the card.
- Other valid proof

****A certification by the employer attesting that all employees have completed such a course is not sufficient proof that the course has been completed.**

Any questions regarding this statute may be directed to the New York State Department of Labor, Bureau of Public Work at 518-485-5696.

IMPORTANT INFORMATION

**Regarding Use of Form PW30.1
(Previously 30R)**

“Employer Registration for Use of 4 Day / 10 Hour Work Schedule”

To use the ‘4 Day / 10 Hour Work Schedule’:

There MUST be a *Dispensation of Hours (PW30)* in place on the project

AND

You MUST register your intent to work 4 / 10 hour days, by completing the PW30.1 Form.

REMEMBER...

The ‘4 Day / 10 Hour Work Schedule’ applies ONLY to Job Classifications and Counties listed on the PW30.1 Form.

Do not write in any additional Classifications or Counties.

(Please note : For each Job Classification check the individual wage schedule for specific details regarding their 4/10 hour day posting.)

Instructions for Completing Form PW30.1

(Previously 30R)

“Employer Registration for Use of 4 Day / 10 Hour Work Schedule”

Before completing Form PW30.1 check to be sure ...

- There is a *Dispensation of Hours* in place on the project.
- The 4 Day / 10 Hour Work Schedule applies to the Job Classifications you will be using.
- The 4 Day / 10 Hour Work Schedule applies to the County / Counties where the work will take place.

Instructions (Type or Print legibly):

Contractor Information:

- Enter the Legal Name of the business, FEIN, Street Address, City, State, Zip Code; the Company’s Phone and Fax numbers; and the Company’s email address (if applicable)
- Enter the Name of a Contact Person for the Company along with their Phone and Faxnumbers, and the personal email address (if applicable)

Project Information:

- Enter the Prevailing Rate Case number (PRC#) assigned to this project
- Enter the Project Name / Type (i.e. Smithtown CSD – Replacement of HS Roof)
- Enter the Exact Location of Project (i.e. Smithtown HS, 143 County Route #2, Smithtown,NY; Bldgs. 1 & 2)
- If you are a Subcontractor, enter the name of the Prime Contractor for which you work
- On the Checklist of Job Classifications -
 - Go to pages 2 and 3 of the form
 - Place a checkmark in the box to the right of the Job Classification you are choosing
 - Mark all Job Classifications that apply

****Do not write in any additional Classifications or Counties.****

Requestor Information:

- Enter the name of the person submitting the registration, their title with the company, and the date the registration is filled out

Return Completed Form:

- **Mail** the completed PW30.1 form to: NYSDOL Bureau of Public Work, SOBC – Bldg.12 – Rm.130, Albany, NY 12240 **-OR-**
- **Fax** the completed PW30.1 form to: NYSDOL Bureau of Public Work at (518)485-1870



Bureau of Public Work Harriman
State Office Campus
Building 12, Room 130
Albany, New York 12240
Phone: (518) 457-5589 | Fax: (518) 485-1870
www.labor.ny.gov

Employer Registration for Use of 4 Day / 10 Hour Work Schedule

Before completing this form, make sure that:

- There is a **Dispensation of Hours** in place on the project.
- The 4 Day / 10 Hour Work Schedule applies to the Job Classifications you will be using.
- The 4 Day / 10 Hour Work Schedule applies to the County / Counties where the work will take place.

Please **type or print** the requested information and then **mail or fax** to the address above.

Contractor Information

Company Name: _____ FEIN: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone No: _____ Fax No: _____ Email: _____

Contact Person: _____

Phone No: _____ Fax No: _____ Email: _____

Project Information

Project PRC#: _____ Project Name/Type: _____

Exact Location

of Project: _____ County: _____

(If you are Subcontractor)

Prime Contractor Name: _____

Job Classification(s) to Work 4/10 Schedule: *(Choose all that apply on Job Classification Checklist - Pages 3-8)*

***** Do not write in any additional Classifications or Counties*****

Requestor Information

Name: _____

Title: _____ Date: _____

**SAMPLE
AGREEMENT**



AGREEMENT

NEW YORK STATE CANAL CORPORATION

FOR THE

This AGREEMENT effective this ___ day of _____, 2018, by the New York State Canal Corporation, hereinafter referred to as the "Corporation," a public benefit corporation and subsidiary corporation of the Power Authority of the State of New York ("Authority") having a principal place of business at 30 South Pearl Street, Albany, New York, 12207, and _____ a corporation organized and existing under the laws of _____; a partnership or joint venture consisting of _____; an individual trading as _____ of the city of _____ in the State of _____, hereinafter called the "Contractor."

Witnesseth, that the Corporation and the Contractor, for the consideration hereinafter named, agree as follows:

ARTICLE 1. WORK TO BE DONE

The Contractor shall (a) furnish all materials, plant, tools, skill and labor of every kind required, complete in the most substantial and workmanlike manner, the **(name of project)** in strict accordance with this AGREEMENT, New York State Department of Transportation Standard Specifications, the New York State Canal Corporation Addendum to the Standard Specifications, Plans, Drawings and Specifications, all of which are made a part of this Contract, and (b) do everything required by the Contract (Contract Documents) as defined herein.

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT

The Contract (herein also referred to as the Contract Documents) shall be deemed to include the Advertisement or Invitation for Proposals; the Contractor's Itemized Proposal; the AGREEMENT; the Supplemental Conditions, New York State Department of Transportation Standard Specifications, New York State Canal Corporation Addendum to the Standard Specifications; the Schedule for Participation for DBE or MWBE goals; any bond or bonds required and attached hereto; the



Drawings; Specifications (including to the extent of such reference only, any standard specifications referred to therein); all addenda noted below; all written change orders signed by the Corporation and Contractor; all provisions required by law to be inserted in the Contract whether actually inserted or not.

ARTICLE 3. DETERMINATION AS TO VARIANCES

In case of any ambiguity in the Contract Documents, or any conflict between provisions of any of them, the matter shall be immediately submitted to the Corporation in writing who shall adjust the same in writing and its decision in relation thereto will be final and conclusive upon the parties.

ARTICLE 4. EXAMINATION OF DOCUMENTS AND SITE

The Contractor agrees that before making its Proposal that it has carefully examined the proposed Contract Documents, together with the site, as well as its surrounding territory, and it has inquired into and obtained all necessary data as to the existing and presently planned access highways, railroad, water and air transportation facilities, and is fully informed regarding all of the conditions affecting the Work to be done and labor and materials to be furnished for the completion of this Contract, and that its information was secured by personal investigation and research and not from the estimates or records of the Corporation. It further agrees that it will make no claim against the Corporation by reason of estimates, tests or representations of any officer, employee or agent of the Corporation or because of unavailability or difficulties in transportation facilities, including seasonal posting of roads, and seasonal weather variations and fluctuations from normal nor shall such unavailability or difficulty of any particular form or mode of transportation be the basis for any extension of time for completion of the Work or claim for damages.

ARTICLE 5. ADMINISTRATION: AUTHORIZATION TO CHANGE CONTRACT

The Contract will be administered by the Engineer, and all correspondence in connection herewith shall be directed to the Engineer.

Notwithstanding the foregoing, neither the Engineer nor any officer, employee, agent or other representative thereof has any authority to add, delete, change, or otherwise modify this Contract or any of its terms. Amendments and other modifications and changes to the Contract can be made only in writing executed by the Corporation or someone authorized by it in writing to do so. This is not to mean, that the Engineer cannot exercise judgment hereunder where other terms of the Contract Documents provide for such exercise of judgment.



ARTICLE 6. COMMENCEMENT, PROSECUTION AND COMPLETION

The Contractor further agrees that it will do everything to permit it to, and will, begin the Work within 10 days after date of receipt of notice of award of Contract, unless a different date is provided elsewhere in the Contract Documents or unless the written consent of the Corporation is given to begin at a different date, and shall prosecute the Work with such diligence as to fully complete the entire work or such portions thereof on or before the date(s) or within the time(s) specified therefor, unless the written consent of the Corporation is given to complete the Work at a different date or time.

TIME IS OF THE ESSENCE OF THIS CONTRACT and the Work shall be prosecuted in such a manner and with sufficient plant and forces to complete the Work within the time(s) of completion specified.

ARTICLE 7. LIQUIDATED DAMAGES

- a) Liquidated damages and engineering charges, if any, for the Contractor's failure to complete the Work or any specified portion thereof in accordance with all of the terms of the Contract Documents, are to be assessed as set forth in the New York State Department of Transportation Standard Specifications.
- b) Liquidated damages, if any, for the Contractor's violation of any of the other terms of the Contract shall be set forth in the New York State Department of Transportation Standard Specifications.
- c) Such sum or sums as are set forth in accordance with the New York State Department of Transportation Standard Specifications and subparagraphs d(1) and d(2) below, assessed jointly or separately, in view of the difficulty of accurately ascertaining the loss which the Corporation will suffer by reason of delay in completion of the Work, or any specified portion thereof, or by any other specified violation of the Contract terms, are hereby fixed and agreed as the liquidated damages that the Corporation will suffer respectively by reason of such delay, movement, or violation, and not as a penalty. The Corporation will deduct and retain out of the monies which may become due hereunder to the Contractor, the amount of any such liquidated damages, and in case the amount of the monies which may become due hereunder shall be less than the amount of liquidated damages suffered by the Corporation, the Contractor shall pay the difference upon demand by the Corporation.
- d) As required by law, if the Contractor shall fail to comply with the requirements of the Appendix entitled "Minority and Women-Owned Business (M/WBE) Participation Goal Requirement", or any part thereof, the Contractor shall pay the Corporation, as liquidated damages and not as a penalty, the dollar amount equal to the difference between:



1. All sums identified for payment to M/WBEs had the Contractor achieved the contractual M/WBE goals; and
2. All sums actually paid to M/WBEs for work performed or materials supplied under the Contract, or as specified under the terms of the Corporation's Contract Documents as may be further adjusted due to issuance of "Change Orders".

In no case shall the total amount of such liquidated damages be greater than the projected M/WBE goals established for the Contract.

IT IS UNDERSTOOD AND AGREED THESE M/WBE LIQUIDATED DAMAGES ARE REQUIRED BY LAW AND THEREFORE ARE NON-NEGOTIABLE.

ARTICLE 8. ALTERATIONS AND OMISSIONS

- a) The Work shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense of any nature whatsoever to the Corporation other than the consideration named in the Article of this AGREEMENT entitled "Compensation to be Paid Contractor."
- b) The Corporation reserves the right, at any time during the progress of the work, to alter the plans and specifications or to omit any portion of the Work as it may deem reasonably necessary for its or the public interest, making allowance for additions and deductions at the prices specified in the Itemized Proposal, and the Contractor shall have no claim as a result thereof, or as a result of any variances between the estimated and actual quantities of work, for allowances for damages, or for loss of overhead, general administration costs, and anticipated profits. The amount stated in the Article of this AGREEMENT entitled "Compensation to be Paid Contractor" will be modified in accordance with such prices as applied to the altered quantities, or the other provisions cited in this subparagraph (b) whichever are applicable.

ARTICLE 9. EXTRA WORK

Extra work may be performed in accordance with such Change Orders as are executed by the Contractor and the Corporation. The Corporation however, reserves the right to direct in writing the performance of extra work and the furnishing of materials and equipment therefor in order to carry out and complete more fully and perfectly the Work called for hereunder. The prices and payments specified in such executed Change Orders shall be the Contractor's exclusive compensation for such work and the Contractor shall have no additional claim of



any kind relating directly or indirectly from the performance of such work. Extra work shall be paid for in the manner justified in the Standard Specifications of the New York State Department of Transportation as amended.

Nothing in this Article shall excuse the Contractor from proceeding with the extra work provided in a Change Order or as directed by the Corporation.

ARTICLE 10. DISPUTES - CLAIMS

- a) If the Contractor believes that any work it is required to perform should be considered extra work, or that any action or omission of the Corporation or the Engineer is contrary to the provisions of the Contract, the Contractor shall follow the process set forth in the Standard Specifications of the New York State Department of Transportation as amended, with respect to such action or omission or requirement to perform work forming the basis of any claim against the Corporation.
- b) Pending and subsequent to final decision by the Corporation which shall be final and binding on both parties, with respect to any such disputed matter, the Contractor shall proceed diligently with the performance of the Contract and in accordance with all instructions.

ARTICLE 11. LIMITATION OF ACTIONS

No action or proceeding shall lie or be maintained by the Contractor or anyone claiming under the Contractor against the Corporation or the Engineer upon any claim arising out of, or based upon, this Contract, any work performed at the site, or by reason of any act or omission or requirement of the Corporation, the Engineer or their respective agents, unless:

- a) The Contractor shall have strictly complied with all requirements relative to the giving of notice and information with respect to claims as hereinbefore provided, and
- b) Such action or proceeding shall be commenced:
 - i) Within one year after the submission to the Contractor of the Final Estimate, or
 - ii) With respect to any claim based upon monies required to be retained for any period after the date of the Final Estimate, within one year after such monies became due and payable under the terms of this Contract, or
 - iii) If the Contract is cancelled, terminated or declared abandoned by the Corporation, within one year after the effective date of such cancellation, termination or declaration of abandonment, or



- iv) If the action accrues after final payment, within one year from the date of final payment;
- c) And, the action in any event shall have been commenced within three years after the cause therefor shall have accrued.

The Contractor, or any one claiming under the Contractor, shall not be entitled to any additional time to begin anew any other action if an action commenced within the times herein specified be dismissed or discontinued notwithstanding any provisions in the Civil Practice Law and Rules or the Uniform Commercial Code to the contrary.

ARTICLE 12. UNCONTROLLABLE FORCES

- a) The Contractor shall not be liable for loss or damage due to delay in completion resulting from uncontrollable forces, the term uncontrollable forces being deemed for the purpose of this Contract to mean any cause beyond the reasonable control of the Contractor, including but not limited to, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage or restraint by court or public authority, which by exercise of due diligence and foresight, the Contractor could not reasonably have been expected to avoid. If the Contractor is rendered unable to fulfill any obligations by reason of uncontrollable forces, it shall so notify the Corporation in writing, and shall exercise due diligence to remove such inability with all reasonable dispatch. ANY DELAY RESULTING FROM SUCH UNCONTROLLABLE FORCES SHALL NOT GIVE THE CONTRACTOR ANY CLAIM FOR ADDITIONAL COMPENSATION AGAINST THE CORPORATION. THE AMOUNT OF TIME REASONABLY NECESSARY TO COMPLETE THE WORK SHALL EXTEND COMPLETION DATES CORRESPONDINGLY, SUBJECT TO THE APPROVAL OF THE CORPORATION, WHICH EXTENSION SHALL BE THE CONTRACTOR'S SOLE REMEDY. Demonstrations, protests, labor walkoffs or slow downs, acts of vandalism, minor thefts, minor fires and normally occurring seasonal climatic variations such as but not limited to rain, freezing, thawing, or snowfall, shall not be considered uncontrollable forces.

ARTICLE 13. ESTIMATES

- a) The Contractor shall prepare all estimates of progress payments for work performed, together with supporting data and computations as are deemed necessary by the Engineer to determine the accuracy of the estimate. No monthly estimate shall be rendered unless the Contractor has provided acceptable documentation with regard to actions taken to comply the M/WBE goals of the contract and the value of the work done equals 5% of the contract amount or \$1000,



whichever is the lesser. Semi-monthly estimates may be rendered provided (a) the value of the work performed in two successive weeks is more than \$50,000 or (b) the Corporation's Director of Construction Management deems it to be for the best interest of the Corporation to do so. When a performance bond is approved, 5% shall be retained from each progress payment or estimate until final acceptance of the work (Non-Federal Aid Contracts only). The summary of estimates shall be submitted on the form prescribed by the Engineer. Failure of the Contractor to submit estimates of partial payments, or lack of accurate supporting data, shall be sufficient reason for withholding payment until such omissions or errors are rectified.

- b) In computing amounts for estimates of work performed, the lump sum or unit prices or other terms of compensation in the schedule of the Itemized Proposal will be used.
- c) All estimates will be based on actual quantities of work performed and materials in place as determined by the Contractor and approved by the Engineer. The Contractor shall make all surveys, take all measurements and do all computations required to present an accurate estimate of work completed and in place and the value thereof, in accordance with the terms of the Contract. Unless otherwise directed, this estimate in reproducible form, signed and certified as correct by the Contractor, shall be delivered by the Contractor to the Engineer once each month showing the total quantities completed and in place on the last day of the preceding month and the value thereof.
- d) The Contractor's certificate on all estimates shall be as follows:

"I certify that this payment estimate is correct and just and that payment thereof has not been received. I further certify that the Contractor has complied with the provisions of Articles 9, 9-A, 22 and 23 of the Tax Law of the State of New York."

ARTICLE 14. NO PAYMENT OF ESTIMATE ON CONTRACTOR'S M/WBE NON-COMPLIANCE

Contractor expressly agrees to comply with M/WBE compliance requirements of this Contract and acknowledges that if it fails to comply and its actions are determined to be willful and intentional by the Corporation, such determination may result in Contractor being liable for liquidated or other damages equal to or exceeding the dollar value of the M/WBE subcontracting goals established for this contract set forth, as a percentage in the "Goals" section of Appendix C entitled "Minority and Women-Owned Business Enterprise (M/WBE) Participation Goal Requirement."

The Contractor shall not be entitled to have any payment rendered on account of work done or services performed as long as the Contractor is not in compliance with the M/WBE requirements set forth in the Contract.



ARTICLE 15. NO COLLUSION OR FRAUD

The Contractor hereby agrees that the only person or persons interested as principal or principals in the Proposal submitted by the Contractor for this Contract are named therein, and that no person other than those mentioned therein has any interest in the above mentioned Proposal or in the securing of the award, and that this Contract has been secured without any connection with any person or persons other than those named, and that the Proposal is in all respects fair and was prepared and the Contract was secured without collusion or fraud and that neither any officer nor employee of the Corporation has or shall have a financial interest in the performance of the Contract or in the supplies, work or business to which it relates, or any portion of the profits thereof.

ARTICLE 16. DAMAGE

- a) All damage, direct or indirect, of whatever nature resulting from the performance of the Work or resulting to the Work during its progress, from whatever cause, including omissions and supervisory acts of the Corporation or the Engineer, shall be borne by the Contractor, and all work shall be solely at its risk until the Work has been finally inspected and accepted by the Corporation. The Contractor, however, shall not be responsible for damages resulting from faulty designs as shown by the plans and specifications nor the damages resulting from willful acts of officials or employees of the Corporation or the Engineer.
- b) To the extent permitted by law, the Contractor shall assume the entire responsibility and liability for and defense of, and pay and indemnify the Corporation, the Power Authority of the State of New York, the State of New York, and the Engineer against any loss, expense or liability and will hold each of them harmless from and pay any loss, damage, cost or expense (including without limitation, judgments, attorney's fees, and court costs) which the Corporation, the Power Authority of the State of New York, the State of New York or Engineer incurs because of injury to or death of any person or on account of damage to property, or any other claim arising out of, in connection with, or as a consequence of, the performance of the Work and/or any act or omission of the Contractor or any of its subcontractors, employees, agents or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.

ARTICLE 17. CLAIMS BY THIRD PARTIES

No provisions of this Contract shall, directly or indirectly, create or give to third parties including subcontractors, any claim or right of action against the Contractor, the Engineer, the Corporation, the Power Authority of the State of New York, or the People of the State of New York beyond such as may legally exist irrespective of such provision or provisions.



ARTICLE 18. PUBLICITY

No marketing, publicity, promotion, social media or advertising regarding this AGREEMENT will be issued by the Contractor without the Corporation's prior written approval, and, if applicable, also with the prior written approval from the Corporation's customer where the Work will be or is being performed, which approval will not be unreasonably withheld. Any responses to news media inquiries or social media activities developed by the Contractor, related to the AGREEMENT, must be coordinated with the Corporation for review and approval. Letters, speeches, news and/or press releases, articles for publication, website and social media postings, etc. related to the Contract, will be coordinated with the Corporation for review and approval prior to release. Any and all communications, whether verbal or written, must be submitted to the Corporation's Public Affairs department or prior review and approval.

Contractor agrees to abide by these terms regarding public announcements during the term of this Agreement and for a period of two (2) years following the expiration of this Agreement.

ARTICLE 19. RECORDS, ACCOUNTS, INSPECTION AND AUDIT

- A. The Contractor, without additional compensation therefore, shall keep records and books of account, including detailed time sheets, showing the actual cost to it of all items of labor, material, equipment, supplies, services and other expenditures of whatever nature for which reimbursement is authorized under this Agreement. The system of accounting to be employed by the Contractor shall conform to the Contractor's normal practice.
- B. The Contractor's correspondence, records, general ledgers, cancelled checks, time sheets, vouchers and books of account insofar as they pertain to the direct cost of the Services performed or disbursements made for the Corporation's account under this Agreement will be open at all reasonable times during the period of this Agreement, and for three (3) years after the date of final payment under this Agreement, for inspection by the Corporation or any authorized government representative. Copies shall be furnished if requested, at no cost to the Corporation. No additional compensation will be paid for the preservation of records.
- C. The Corporation shall at reasonable times have access to the premises, Services and materials, correspondence, instructions, working papers, plans, drawings, specifications, and memoranda of the Contractor pertaining to said Services, and the Contractor shall provide facilities adequate for examination and audit of same by Corporation. No additional compensation will be paid to the Contractor for audit support.
- D. In the event that the Corporation's audit uncovers overcharges, the Contractor shall reimburse the Corporation for the amount of the overcharges, or, if the Services are ongoing, the Corporation may, at its option, deduct such overcharges from future payments to Contractor that become due.



ARTICLE 20. NOTICES

a) All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (1) via certified or registered United States mail, return receipt requested;
- (2) by facsimile transmission;
- (3) by personal delivery;
- (4) by expedited delivery service; or
- (5) by e-mail.

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

NEW YORK STATE CANAL CORPORATION PROCUREMENT DIVISION

Name: David Mellen
Title: Deputy Director – Engineering, Construction and Maintenance
Address: 149 Northern Concourse, Suite 400
 Syracuse NY 13212
Telephone Number: 315-423-2088
E-Mail Address: David.Mellen@canals.ny.gov

[Contractor Name]

Name:
Title:
Address:
Telephone Number:
Facsimile Number:
E-Mail Address:



- b) 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.
- c) 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.

ARTICLE 21. ASSIGNMENT

The Contractor specifically agrees that 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 previous consent, in writing, of the Corporation and any attempts to assign the Contract without the Corporation's written consent are null and void. The Contractor may, however, assign its right to receive payment without the Corporation's prior written consent.

ARTICLE 22. SUCCESSORS AND ASSIGNS

This Contract as defined herein shall bind the successors, assigns and representatives of the parties hereto.

ARTICLE 23. GOVERNING LAW - VENUE

- a) The rights and obligations of the parties under this AGREEMENT shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods; rather these rights and obligations shall be governed by the law of the State of New York, including its provisions of the Uniform Commercial Code.
- b) Any action at law, suit in equity or judicial proceeding instituted by Contractor for the enforcement of this Contract or any provision thereof shall be instituted only in the courts of the State of New York.



ARTICLE 24. COMPENSATION TO BE PAID CONTRACTOR

The Corporation will pay and the Contractor shall accept in full consideration for the performance of the Contract, subject to additions or deductions as provided herein.

SAMPLE



IN WITNESS WHEREOF, the Corporation and the Contractor have duly executed this AGREEMENT effective as of the date first written above.

NEW YORK STATE CANAL CORPORATION

By: _____

ATTEST:

Secretary

(SEAL)

(Name of Contractor)

By _____
Member of Partnership or - (Signed)
Officer of Corporation

By _____
Member of Partnership or - (Typed)
Officer of Corporation

Title of Office Held: - (Printed)

(WHERE CONTRACTOR IS A CORPORATION, ADD):

ATTEST:

Secretary

(SEAL)

**NYSCC
SAMPLE
BONDS**

CONSTRUCTION PERFORMANCE BOND

(Formerly known as “Faithful Performance” Bond)

Construction Performance Bond

SURETY *(name and address of principal place of business):*

CONTRACTOR *(name and address):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:
Amount:
Description *(name and location):*

BOND

Bond Number:
Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*
Amount:
Modifications to this Bond Form: None See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

(seal)
Contractor's Name and Corporate Seal

(seal)
Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all

Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

CONSTRUCTION PAYMENT BOND

(Formerly known as “Labor and Material” Bond)

Construction Payment Bond

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location)*:

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:

Amount:

Modifications to this Bond Form: None See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

(seal)
Contractor's Name and Corporate Seal

(seal)
Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown

on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

SUPPLEMENTAL CONDITIONS



SUPPLEMENTAL CONDITIONS
NEW YORK STATE CANAL CORPORATION

1. STANDARD STOCK PRODUCTS

- a) All materials and equipment furnished shall, whenever so specified, and otherwise whenever practicable, be the standard stock products of recognized reputable manufacturers. The use of standard stock products of manufacturers other than those specified will be permitted subject to the requirements set forth below in the section of the Supplemental Conditions entitled "Equivalents."
- b) Any changes required in the details and dimensions shown on the Plans/Drawings for the substitution of standard stock products, other than those provided for, shall be properly made as approved by the Engineer, and at the expense of the Contractor. Any references herein to brands and catalog numbers are intended to be descriptive and not restrictive, and are used only to indicate articles that will be satisfactory. Other makes and catalog numbers will be accepted provided that it is established to the satisfaction of the Engineer that they are similar and equal to those specified herein or called for on the Plans/Drawings.
- c) Prior to placing of any purchase order for products of standard manufacture, and sufficiently in advance of the proposed purchase date to enable the Engineer to determine whether the proposed product conforms to the specifications, the Contractor shall submit for the review of the Engineer complete descriptive data consisting of dimensioned drawings, catalog references and specifications, typical performance records, and such other information as may be required to be submitted on special forms to be furnished by the Engineer to identify clearly each product in question. The term "or equal" shall not be used in any descriptive information furnished. Except at the Contractor's risk, no purchase order shall be placed for any product which has not been approved by the Engineer.

2. EQUIVALENTS

- a) The mention of apparatus, machinery, articles or materials by trade name, and such specific description as is made, is intended to establish the degree of excellence required. Except in those instances where the product is designated to match others in use in a particular improvement either completed or in the course of completion, the use of an alternative which the Contractor represents will conform substantially to the standard of excellence established and is at least of equivalent merit, strength, durability and appearance and which will perform the required function for the purpose intended will be permitted, subject to each of the following requirements:



- 1) The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor and it shall furnish all information necessary as required by the Engineer at no additional cost to the Corporation. The Engineer shall be the sole judge as to the quality and suitability of such alternatives and its decision shall be final. Approval by the Engineer of an alternative shall be in writing and shall set forth any adjustment as may be appropriate under subparagraph (7) below.
 - 2) Where use of such alternative involves redesign of or changes to other parts of the Work, the time required to effect such design or changes will be considered in evaluating the suitability of the alternative.
 - 3) No tests or action relating to the approval of an alternative will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the alternative. Such request shall be made in ample time to permit approval without delaying the Work.
 - 4) Whenever classifications, rating or other certification by a body such as UL, NEMA and ANSI is a part of the specification for any equipment or materials, proposals for use of alternatives shall be accompanied by reports from the listed or equivalent testing laboratory indicating compliance with specification requirements.
 - 5) The cost of all testing required to prove equality of the alternative proposed shall be borne by the Contractor.
 - 6) Approval of an alternative shall only be for the characteristics or use named in such approval, and shall not be used to change or modify any Contract requirement, or to establish approval for the alternative to be used on any other phase of the Work.
 - 7) If the alternative approved is of lesser value to the Corporation or involves less cost to the Contractor than the product specified, an adjustment shall be made in favor of the Corporation, and where the amount involved or the importance of the substitution warrants, an order for changes will be issued; otherwise the adjustment will be handled by deductions from payments to the Contractor on the basis of prices stated in the written approval. No payments in excess of prices bid in the schedule will be made because of such substitution of one product for another, or because of the use of one alternative in place of another.
- b) Any changes required in the details and dimensions shown on the Plans/Drawings for the substitution of the alternative shall be properly made as approved by the Engineer and at the expense of the Contractor. Any additional expense incurred by the



Contractor arising from the use of any suitable alternative shall be borne solely by the Contractor. When any change in design or other conditions render unusable any alternate material or apparatus recommended by the Contractor and subsequently approved by the Engineer as an alternate to any standard materials, equipment or apparatus specified on the drawings or in the specifications, the Contractor shall assume all loss incurred and shall be entitled to no additional compensation therefor.

- c) Whenever the words "or equal" appear in the specification, the following shall also be inserted immediately thereafter by virtue of this reference, "in accordance with Supplemental Conditions Paragraph entitled "Equivalents."

3. SAMPLES

- a) Any samples required by the Contract Documents or the Engineer shall:
 - 1) Be submitted within the time specified in the Contract Document or, if no time be specified, within a reasonable time before use to permit inspection and testing.
 - 2) Be shipped prepaid and delivered as specified in the Contract Documents, or as directed by the Engineer.
 - 3) Be properly marked to show the name of the material, trade name of manufacturer, place of origin, name and location of the Work where the material represented by the sample is to be used, the name of the Contractor submitting the sample and the number of the contract under which the Work is being performed.
 - 4) Samples not subject to destructive tests may be retained until completion of the Work but thereafter will be returned to the Contractor, if it so requests in writing, at its own expense. Failure of any sample to pass the specified requirements will be sufficient cause for refusal to consider further any samples from the same manufacturer whose materials fail to pass the tests.

4. TESTS

- a) All materials, equipment, and parts and assemblies thereof, furnished by the Contractor, and entering into the Work, shall be tested as specified in the Contract Documents, or if not specified, in conformity with the best modern approved methods for the particular type and class of Work.
- b) Unless waived in writing by the Engineer, all tests and trials shall be made in the presence of the Engineer. When the presence of the Engineer is so waived, five copies of sworn statements of each test made and its results shall be furnished the Engineer by the Contractor as soon as possible after the test is made.



- e) All costs of tests and trials, excepting the expenses of the Engineer, shall be borne by the Contractor.

5. GUARANTEES

The provisions of this paragraph shall apply unless modified by the Specifications.

- a) All materials, supplies, articles, equipment, parts and assemblies thereof furnished and incorporated in the permanent Work shall be of the highest grade, free from defects and imperfections, of recent manufacture and unused. Workmanship shall be of the highest grade and in accordance with best modern standard practice.
- b) Except where longer periods of guarantee are elsewhere provided for, all Work done under the Contract by the Contractor shall be guaranteed by the Contractor to be free from faulty materials and Workmanship throughout the period ending one year from the date of formal written final acceptance of the entire completed Work under the Contract. Upon receiving notification from the Corporation, the Contractor shall immediately correct, repair, replace, or otherwise remedy, without cost to the Corporation and to the entire satisfaction of the Corporation, all defects, damages or imperfections due to faulty materials or Workmanship appearing in said Work within such period. No payment to the Contractor shall relieve it of any obligation hereunder. In the event the guarantee Work also proves defective within a year following the performance of such Work, the defective Work shall also be repaired, corrected or replaced at the Contractor's cost.
- c) All materials, articles, supplies, equipment, parts and assemblies thereof, of standard manufacture, or for which detail design or other requirements are not prescribed in the Contract Documents, incorporated in the Work shall be guaranteed by the Contractor (1) as suitable and fit for the particular purpose intended and (2) throughout the period ending one year (or throughout such longer periods of time guaranteed by the respective manufacturers) from the date of formal written final acceptance of the entire completed Work under this Contract, against any failure in proper use or operation caused by defective material, Workmanship, design or other failure to meet the requirements of the specifications. Any defects in materials, Workmanship, design or other failure to meet the requirements of the specifications which are disclosed within such periods of time shall be corrected, repaired, replaced or otherwise remedied by the Contractor without additional cost to, and to the entire satisfaction of, the Corporation immediately after notice in writing of the defect or failure shall have been given by the Corporation or the Engineer.
- d) In addition to the foregoing obligations in this section the Contractor shall pay the total actual cost (including but not limited to direct, indirect and overhead costs) to the Corporation of any additional Work by Others arising from the correction, repair, or



replacement of any such defective material or Workmanship or other remedial action necessitated thereby. If the Contractor fails promptly to remove such articles when requested by the Corporation or the Engineer and/or to proceed promptly with such repair, replacement or correction thereof, or other remedial action, the Corporation (1) by contract or otherwise may replace, repair or correct such articles or effect other appropriate remedies and charge to the Contractor the total actual cost as described immediately above occasioned thereby, and/or (2) may terminate this Contract for default. If because of any such defective material, Workmanship, design or other failure to meet the requirement of the specifications immediate remedial action with respect to the articles is required to permit Work hereunder, to continue or to progress the Work by Others or to advance or continue the operation or re-operation of the plant, the Corporation at its option and after notice to the Contractor may proceed with such necessary correction, repair, replacement or other remedial action and such total actual cost thereof shall be charged to the Contractor and deducted from any money due or to become due to it.

- e) The guarantees under this section are in addition to any manufacturer's guarantee or warranty. Manufacturer's guarantees or warranties that extend over a period of time greater than the guarantee periods specified herein shall not be modified or voided by any requirement of this section. The Contractor shall promptly provide the Engineer with copies of all manufacturer's guarantees or warranty documents.

6. MISPLACED MATERIAL

Any material that is deposited other than at the place designated or approved by the Engineer will not be paid for, and the Contractor may be required to remove such material and waste it or redeposit it as directed at its own cost. Should the Contractor, during the progress of Work, lose, misplace, or dump any material, plant, machinery, or appliance on or near the construction site or elsewhere which, in the opinion of the Engineer, may be dangerous, damaging, a nuisance, or which may interfere with the Contractor's Work or the activities of others, the Contractor shall recover and remove the same promptly upon notification by the Engineer of any such misplaced materials. The Contractor shall acknowledge in writing, with a description and location of such material, receipt of such notice, and, when required by the Engineer shall mark such material until the same is removed. Should the Contractor refuse, neglect, or delay compliance with the above requirements, such material may be removed by the Engineer, and the cost of such removal may be charged to the Contractor or deducted from any money due or to become due it.

7. IDENTIFICATION OF CONTRACTOR'S EMPLOYEES, VEHICLES AND PLANT



The Contractor shall provide each of its employees and its subcontractor's employees with a suitable numbered badge bearing the name or initials of the contracting firm. Each employee shall wear his or her badge upon his or her person while at Work on the site in such a manner that it will be plainly visible as a means of identification. All vehicles, boats and other floating or stationary plant used by the Contractor or its subcontractors on the Work shall be clearly marked with the identification of the firm and shall be appropriately numbered. All entries involving labor and equipment on the Contractor's daily time reports and extra Work records, as well as on all payroll and other cost records required to be submitted under these Contract Documents, will include both the name and assigned identification number for all labor and equipment recorded. Each employee shall wear his or her badge when at the Work site. The Contractor shall maintain and deliver to the Engineer records of all identification badges worn and vehicle identification, cards, or stickers issued to the Contractors or subcontractor's employees.

8. OFF SITE MOVEMENT

The Contractor shall limit all travel and movement off the Site or off the right-of-way to permanent public roads and shall not allow such travel or movement of employees or equipment elsewhere without written approval of the Engineer. Such travel or movement elsewhere without such written approval shall constitute a breach of the Contractor's obligations hereunder and the Contractor shall pay to the Corporation the sum of \$1,000 for each and every such occurrence. Such payment may be deducted from any monies due or to become due the Contractor.

9. SECURITY

- a) The Contractor shall employ at all times such usual and ordinary means as may be required to prevent acts of vandalism and theft which would cause injury, loss of life or property, damage to the Work of this or other contracts in connection with this project, or substantial delay in the completion of the Work of this or other contracts. The Contractor shall exclude all unauthorized persons from the vicinity of its construction operation and shall take all protective measures which are usually employed under a contract of this scope, such as a security guard force, security fencing and the like. No payment will be made to the Contractor therefor.
- b) There is a possibility of demonstrations against construction of the subject Work and the Corporation cannot guarantee that there will be no attempts to interfere with the Contractor or contract Work. Should the Corporation hire a guard force, it will be hired to protect the site and will be present for the benefit of the Corporation, not the Contractor. The Contractor will be expected to take such care in protecting its forces and property as circumstances may warrant, at no additional cost to the Corporation.



10. CUSTOMS DUTIES

- a) All material and equipment to be furnished or used under this Contract, if imported into the United States, will be subject to duty requirements of the United States.
- b) Should the custom duties imposed by the United States be increased or decreased prior to the date of importation of the equipment or any of the materials required for the fabrication thereof, payments to the Contractor will be increased or decreased accordingly.
- c) Notwithstanding paragraph (b) above, any additional expense, costs, damages or duties imposed pursuant to the United States Antidumping Act of 1921 (19 U.S. Code Sec. 160 *et seq.*, as amended by 19 U.S.C. § 1673 *et seq.*), the Countervailing Duty Law (19 U.S.C. § 1671 *et seq.*), Sections 337 and 337a of the Tariff Act of 1930 (19 U.S.C. §§ 1337, 1337a, as amended) or arising or alleged to have arisen as a result of unfair trade practices, shall be borne exclusively by the Contractor.

11. LIEN LAW

The attention of the Contractor is specifically called to the provisions of Section 25 and Article 3A of the lien law of the State of New York, as amended, wherein funds received by a contractor for a public improvement are declared to constitute trust funds in the hands of such contractor to be applied first to the payment of certain claims. Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Corporation a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as it has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Corporation, to indemnify it against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Corporation all monies that the latter may be compelled to pay in discharging such a lien, including all costs and reasonable attorney's fee.

12. ARTIFACTS

The Contractor shall comply with Section 233 of the Education Law of the State of New York as it applies to the discovery of artifacts on or under lands owned by the State of New York. No person shall appropriate, excavate, injure or destroy any object of archaeological, cultural or paleontological interest, situated on or under lands



owned by the State of New York, without the written permission of the Commissioner of Education. A violation of this provision shall constitute a misdemeanor. The discovery of such objects shall be forthwith reported to the Construction Manager.

13. PAYMENT OF TAXES

- a) Except as provided in the following subparagraphs of this paragraph, the Contractor shall pay all applicable New York and local sales and compensating use taxes on sales to, or use by, the Contractor of tangible personal property and services employed by the Contractor in the performance of the Contract. The Contractor shall include all costs in connection therewith in the applicable lump sums, unit prices or other payment terms bid in the schedule. The Corporation will not reimburse the Contractor for such taxes paid.
- b) Under the provisions of the New York State Sales and Compensating Use Tax Act, the Corporation is an organization exempt from the payment of such state and municipal taxes on sales to the Corporation of tangible property or services. The Corporation is not required to furnish exemption certificates, and the Corporation's Contract may be accepted in lieu of an exemption certificate with the Contractor's copy as proof that the sales are exempt.
- c) Pursuant to New York State Tax Law Sections 1115(a); 1116(a) and 1210 (a)(1), receipts from tangible personal property sold to a contractor, subcontractor or repairman for use in erecting a structure or building of the Corporation or adding to, altering or improving real property, property or land of the Corporation, as the terms real property, property or land are defined in the Real Property Tax Law, are exempt from the tax on retail sales imposed under Section 1105 of the Tax Law and the compensating use tax imposed under Section 1110 of the Tax Law and corresponding City and County sales and use taxes; provided, however, such tangible personal property is to become an integral component of such structure, building or real property.
- d) Pursuant to Paragraph 12 of subdivision (a) of Section 1115 of the New York State Tax Law and Section 1210(a)(1), receipts from machinery or equipment for use or consumption, directly and predominantly in the production of tangible personal property, electricity or steam for sales by manufacturing, processing, generating or assembling (but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus) are exempt from the tax on retail sales imposed under Section 1105 of the Tax Law, and the Compensating Use

Tax imposed under Section 1110 of the Tax Law, and imposed by any county (except one wholly within a city) or city of less than one million.



- e) If the Contractor is billed for any New York State or local sales or compensating use tax with respect to such machinery or equipment or with respect to such tangible personal property for use in erecting such structure or building and which is to become an integral component part of such structure, building or real property, it shall pay such tax under protest, preserving its rights to a refund, and shall notify the Corporation of any such payment within 15 days of making it. The Corporation will assist the Contractor in obtaining a refund of any such tax. If any such tax is finally determined to be payable by the highest authority from which the Corporation elects to seek a determination as to the legal necessity of such payment, the Corporation will reimburse Contractor for the amount paid, including any penalty or interest.

If requested by the Contractor, the Corporation will reimburse the Contractor prior to such final determination for any such tax paid under protest upon assignment by the Contractor to Corporation of all the Contractor's rights.

- f) The Contractor will not be paid as to any item of tax on the sale or use of tangible personal property which became an integral component part of such structure, building or real property unless it furnishes evidence that any such tax paid thereon was paid under protest.

14. ACCOUNTS PAYABLE INFORMATION

Invoicing of goods and services should be submitted to:

APCanal@nyopa.gov (Preferred Method)

Or via mail:

New York State Canal Corporation

PO Box 1635

White Plains, NY 10602-1635

Attn: Accounts Payable Department

- A. Invoices for compensation shall be submitted in accordance with the payment terms stated in the Purchase Order or Purchase Order Release.
- B. Invoices shall be payable by the Corporation in accordance with the provisions of its Prompt Payment Policy. Invoices shall be subject to post-audit by the Corporation and adjustment, if necessary. Such adjustment shall be applied against the invoices next received after the amount of the adjustment has been determined. Where time charges are a basis for compensation, no payment will be made by the Corporation for time charges which cannot be supported by applicable time card information and/or other records relating to the actual time Contractor's personnel were engaged in providing the Services (Work). Invoices for reimbursable costs, if



any are required to be paid hereunder, shall be supported by relevant documentation.

- C. Payment for invoices submitted shall be rendered electronically unless payment by paper check is expressly authorized by the Corporation upon documentation by the Contractor that acceptance of electronic payment from the Corporation is not possible.
- D. In order to be paid electronically, the Contractor is requested to provide on company letterhead, a responsible parties contact information, signed by a financial official within ten (10) days of execution of this Contract, **Automated Clearing House (ACH) Bank Instructions**, which must include the following:
- Bank Name
 - Bank Account Name
 - Bank ABA No.
 - Bank Account No.
 - Remittance Address
 - Accounts Receivable Department email, phone and fax

E. In addition, the following must be supplied by the bank:

- Bank Name
- Bank Account Name
- Bank ABA No.
- Bank Account No.
- Bank Representative's name and contact information

Note: It is very important to provide **ACH Bank Instructions**, not Wire Transfer Bank Instructions.

- F. A "Proper Invoice" under the terms of this Agreement shall adhere to all of the following requirements:
- The Purchase Order (PO) number. PO numbers start with "4400" and are followed by six additional digits (i.e., 4400123456).
 - Each invoice line item that corresponds to the specific PO line item number in the Contract Document.
 - Written in English, clear, legible and in U.S. currency.
 - Any and all required additional supporting documentation.
 - Invoice must be billed to NYS Canal Corporation



- Subject Line must include Vendor name, Purchase Order Number (& Canal location – if applicable)
- Purchase Order must be valid or invoice will be rejected; do not indicate outdated PO #
- All submissions must be in PDF format only
- Each invoice including all related back-up must be submitted as a Single PDF document
- Multiple Invoices may be sent as individual PDF attachments to one email
- PDF Invoice: only black / white; do not submit any in color
- Freight over \$100 must include a copy of the Freight Bill along with the invoice
- Do not send statements or inquiries to the automated inbox; only PDF invoices

**BID
PROPOSAL**

PROSPECTIVE BIDDERS SHALL NOTE THAT THE FOLLOWING ITEMIZED BID PROPOSAL FORM IS PROVIDED HERE FOR REFERENCE ONLY.

REFERENCES TO NEW YORK STATE DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS AND SPECIFIC REQUIREMENTS SHALL APPLY AND BE CONSIDERED FOR ALL BID ITEMS. THE RESPECTIVE UNIT BID PRICES AND THE BID TOTAL SHALL BE SUBMITTED VIA ARIBA.



EASTERN REGION

ITEMIZED PROPOSAL FOR

**CULVERT REPLACEMENT 1400 FEET WEST OF THOMAS ROAD AND EMPIRE
STATE TRAIL REPAIRS BETWEEN REBER ROAD AND THOMAS ROAD**

ON THE OLD ERIE CANAL

IN ONEIDA COUNTY

AT

WHICH CONSTITUTES CONTRACT NO. K24-10359171NF

The work proposed herein must be completed on or before November 21, 2025.

To the New York State Canal Corporation:

In submitting this bid the undersigned declares that he is or they are the only person or persons interested in the said bid; that it is made without any connection with any person making another bid for the same contract; that the bid is in all respects fair and without collusion, fraud or mental reservation; and that no official of the New York State Canal Corporation, or any person in the employ of the New York State Canal Corporation is directly or indirectly interested in said bid or in the supplies of work to which it relates, or in any portion of the profits thereof.

The undersigned also hereby declares that he has or they have carefully examined the plans, specifications and form of contract, and that he has or they have personally inspected the actual location of the work together with the local sources of supply, has or have satisfied himself or themselves as to all the quantities and conditions, and understand that in signing this proposal he or they waive all right to plead any misunderstanding regarding the same.

The undersigned further understands and agrees that he/she is or they are to furnish and provide for the respective item price bid all the necessary material, machinery, implements, tools, labor, services, etc., and to do and perform all the work necessary under the aforesaid conditions, to complete the improvement in accordance with the specifications for said improvement, which specifications it is agreed are a part of this proposal, and to accept in full compensation therefore the amount of the summation of the products of the approximate quantities multiplied by the unit prices bid. This summation will hereinafter be referred to as the gross sum bid.

The undersigned further agrees to accept the aforesaid unit bid prices as compensation for any additions or deductions caused by variation in quantities due to more accurate measurement, and for use in the computation of the value of the work performed for monthly estimates.

The undersigned further agrees that at any time during the progress of work the New York State Canal Corporation adds, alters, or omits portions of the work he shall so perform such work and accept compensation in accordance with the Standard Specifications.

The undersigned hereby affirms and attests that the firm which he or they represent is not disqualified from submitting

bids to or receiving awards from or entering into contracts with any public authority by virtue of the refusal since July 1, 1959 of a member, partner, director, or officer of the firm to answer an relevant question when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized task for 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 concerning any transaction or contract had with the State, any political subdivision thereof, a public authority, or with a public department, agency or official of the State or of any political subdivision thereof or of a public authority. (Section 2602 Public Authorities Law)

Accompanying this proposal is a bid bond form in the amount of 10% of total bid. In case this proposal shall be accepted by the New York State Canal Corporation, and the undersigned shall fail to execute the contract and return it, together with the required bonds, within 10 days of the receipt thereof, the moneys represented by such bid bond form shall be forfeited and become the property of the New York State Canal Corporation, otherwise to be returned to the depositor in accordance with the provisions of the proposal.

On acceptance of this proposal for said work the undersigned does or do hereby bind himself or themselves to enter into written contract, within 10 days of date of notice of award, with the said New York State Canal Corporation, and to submit bonds, as required by the proposal, within that period.

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PROPOSAL



CONTRACT ID: K24-10359171NF

CULVERT REPLACEMENT 1400 FEET WEST OF THOMAS ROAD AND EMPIRE STATE TRAIL
REPAIRS BETWEEN REBER ROAD AND THOMAS ROAD ON THE OLD ERIE CANAL

COUNTY: ONEIDA

COMPLETION DATE

LIQUIDATED DAMAGES

November 21, 2025

See Standard Liquidated Damage Section of Proposal

DATE OF BID OPENING: NOVEMBER 7, 2024

BIDDERS MUST ENTER ALL UNIT PRICES, MAKE ALL EXTENSIONS AND SUBMIT THEIR
ITEMIZED BID IN ARIBA.

Culvert Replacement 1400 Feet West of Thomas Road and Empire State Trail Repairs Between Reber Road and Thomas Road

LINE NO.	ITEM NO.	DESCRIPTION	EST. OF QUANTITY AND UNIT		UNIT PRICE		BID AMOUNT	
					DOLLARS	CENTS	DOLLARS	CENTS
0002	201.06	CLEARING AND GRUBBING	1.00	LS				
0004	203.02	UNCLASSIFIED EXCAVATION AND DISPOSAL	504.00	CY				
0006	203.02000012	UNCLASSIFIED EXCAVATION AND DISPOSAL OF SEDIMENT	50.00	CY				
0008	203.03	EMBANKMENT IN PLACE	1304.00	CY				
0010	203.07	SELECT GRANULAR FILL	274.00	CY				
0012	206.01	STRUCTURE EXCAVATION	1,997.00	CY				
0014	206.0201	TRENCH AND CULVERT EXCAVATION	97.00	CY				
0016	207.20	GEOTEXTILE BEDDING	115.00	SY				
0018	207.26	PREFABRICATED COMPOSITE STRUCTURAL DRAIN	50.00	SY				
0020	209.13	SILT FENCE - TEMPORARY	329.00	LF				
0022	209.1003	SEED AND MULCH TEMPORARY	1,501.00	SY				
0024	304.07010012	CRUSHER RUN LIMESTONE	487.00	CY				
0026	304.11	SUBBASE COURSE, TYPE 1	8.00	CY				
0028	304.12	SUBBASE COURSE, TYPE 2	75.00	CY				
0030	553.010001	COFFERDAMS (TYPE 1)	1.00	EA				

Culvert Replacement 1400 Feet West of Thomas Road and Empire State Trail Repairs Between Reber Road and Thomas Road

LINE NO.	ITEM NO.	DESCRIPTION	EST. OF QUANTITY AND UNIT		UNIT PRICE		BID AMOUNT	
					DOLLARS	CENTS	DOLLARS	CENTS
0032	553.010002	COFFERDAMS (TYPE 1)	1.00	EA				
0034	553.010003	COFFERDAMS (TYPE 1)	1.00	EA				
0036	556.0203	GALVANIZED BAR REINFORCEMENT FOR STRUCTURES	113.00	LB				
0038	586.0201	DRILLING AND GROUTING BOLTS FOR REINFORCING BARS	68.00	EA				
0040	595.5000018	SHEET APPLIED WATERPROOFING MEMBRANE	854.00	SF				
0042	603.63161015	PRECAST CONCRETE BOX CULVERT, 16 FOOT SPAN, 10 FOOT RISE	38.00	LF				
0044	603.67000001	PRECAST CONCRETE WINGWALL UNITS FOR BOX CULVERTS	71.00	SY				
0046	607.4101001	TEMPORARY PLASTIC BARRIER FENCE	365.00	LF				
0048	607.43---12	WOOD RAIL FENCE (THREE RAIL)	628.00	LF				
0050	610.1403	TOPSOIL-LAWN	275.00	CY				
0052	610.1602	TURF ESTABLISHMENT LAWN	3,294.00	SY				
0054	613.04000001	STOCKPILING AND PLACING EXISTING STREAMBED MATERIALS	54.00	CY				
0056	614.060102	TREE REMOVAL OVER 4 TO 6 INCHES DIAMETER BREST HEIGHT - STUMPS CUT FLUSH	9.00	EA				
0058	614.060202	TREE REMOVAL OVER 6 TO 12 INCHES DIAMETER BREST HEIGHT - STUMPS CUT FLUSH	59.00	EA				
0060	614.060302	TREE REMOVAL OVER 12 TO 18 INCHES DIAMETER BREST HEIGHT - STUMPS CUT FLUSH	55.00	EA				

Culvert Replacement 1400 Feet West of Thomas Road and Empire State Trail Repairs Between Reber Road and Thomas Road

LINE NO.	ITEM NO.	DESCRIPTION	EST. OF QUANTITY AND UNIT		UNIT PRICE		BID AMOUNT	
					DOLLARS	CENTS	DOLLARS	CENTS
0062	614.060402	TREE REMOVAL OVER 18 TO 24 INCHES DIAMETER BREST HEIGHT - STUMPS CUT FLUSH	13.00	EA				
0064	614.060502	TREE REMOVAL OVER 24 TO 36 INCHES DIAMETER BREST HEIGHT - STUMPS CUT FLUSH	11.00	EA				
0066	614.060602	TREE REMOVAL OVER 36 TO 48 INCHES DIAMETER BREST HEIGHT - STUMPS CUT FLUSH	5.00	EA				
0068	615.01010108	MATERIAL FOR STREAMBED REESTABLISHMENT	55.00	CY				
0070	619.01	BASIC WORK ZONE TRAFFIC CONTROL	1.00	LS				
0072	620.06	STONE FILLING (HEAVY)	563.00	CY				
0074	620.0801	BEDDING MATERIAL, TYPE 1	94.00	CY				
0076	623.12	CRUSHED STONE (IN-PLACE MEASURE)	31.00	CY				
0078	625.110001	SURVEY GRADE GPS INSPECTION UNIT	1.00	EA				
0080	637.11---12	ENGINEER'S FIELD OFFICE - TYPE 1	8.00	MNTH				
0082	645.5101	GROUND MOUNTED SIGN PANELS WITHOUT Z BARS	5.00	SF				
0084	645.81	TYPE A SIGN POSTS	2.00	EA				
0088	697.03	FIELD CHANGE PAYMENT	49,900.00	DC				
0090	698.05	FUEL PRICE ADJUSTMENT	1,000.00	DC				
						SUBTOTAL	\$ _____	

Culvert Replacement 1400 Feet West of Thomas Road and Empire State Trail Repairs Between Reber Road and Thomas Road

LINE NO.	ITEM NO.	DESCRIPTION	EST. OF QUANTITY AND UNIT		UNIT PRICE		BID AMOUNT	
					DOLLARS	CENTS	DOLLARS	CENTS
0092	899.040001	MOBILIZATION MUST NOT EXCEED 4% OF SUBTOTAL SHOWN ABOVE	1.00	LUMP SUM				

PLEASE BE SURE A BID IS ENTERED FOR EACH ITEM, EXCEPT AS DIRECTED FOR OPTIONAL ITEMS.

TOTAL OR GROSS SUM WRITTEN IN WORDS:

BY EXECUTING THIS PROPOSAL, THE CONTRACTOR AGREES TO:

1. Complete all work listed in accordance with the Contract Documents including all amendments, found at www.canals.ny.gov/business, Procurement Opportunities, by the Date of Completion and as required in the Schedule and Suspension of Work, as listed and shown in the contract documents, utilizing the Labor Force, Subcontractor Entrepreneurs, and Methods and Materials of Construction as described therein, at the unit prices bid. All Operations will be conducted in accordance with the Rules and Regulations of the Canal Corporation. No assumptions are made that: contract requirements will be waived, extension of Completion Date will be granted, labor hour dispensation will be granted, substitution of non-approved products will be allowed, request for alternatives will be approved, or any Value Engineering Change Proposal will be approved. Any requests for alternates will be accompanied by a price analysis for a credit or illustrating cost equal to or greater than the bid amount.
2. Certification that the Contractor has read and understands any other special notes and clauses required by this proposal and contained herein.
3. Certification, under penalty of perjury, as to the current history regarding suspensions, debarments, voluntary exclusions, determinations of ineligibility, indictments, convictions or civil judgments required by 49 Code of Federal Regulations, Part 29.
4. The Contractor certifies that it has submitted a completed New York State Uniform Contracting Questionnaire CCA 2 Form to the Canal Corporation with this Proposal, and that the information contained in that questionnaire is current and accurate. This Form can be obtained at the following link https://www.osc.state.ny.us/vendrep/form_cca2.htm at the Office of the New York State Comptroller.
5. The Contractor affirms that it has accessed the "Procurement Opportunities" link on the www.canals.ny.gov/business website with respect to reviewing the posted documents available for this inquiry within 24 hours prior to the letting date. This affirmation verifies that the Contractor is aware of all documents (i.e., Plans, Bid Proposal, Supplemental Information, Questions & Answers, Clarifications, Addendum/Addenda, and Amendment(s)) made available by the New York Power Authority/New York State Canal Corporation for this Inquiry.
6. The Contractor affirms that it has submitted the required items as listed within the New York State Canal Corporation Submission Checklist and has complied with the Important Information section of this Proposal.

CONTRACTOR MUST COMPLETE AND SIGN INFORMATION REQUESTED BELOW

The Mailing Address of the bidder is:

_____ Street _____ City, State, Zip Code

_____ Telephone Number

Name _____ If a Corporation Address _____

_____, President _____

_____, Secretary _____

_____, Treasurer _____

If a Partnership

Federal Identification No. _____

Dated _____ 20____

Legal name of individual, partnership or corporation

By _____
Signature (Title)

BID BOND

1. Know all men by these presents, that we

_____ of _____
_____ of _____
_____ of _____
_____ of _____

(hereinafter called the "Principal")

and

of

(hereinafter called the "Surety") are held and firmly bound to the New York State Canal Corporation (hereinafter called the "Canal Corp") in the full and just sum of

_____ Dollars (\$ _____)

good and lawful money of the United States of America, to the payment of which sum of money, well and truly to be made and done, the principal binds himself, his heirs, executors, administrators or assigns and the said surety binds itself, its successors or assigns, jointly and severally, firmly by these presents.

2. Signed, sealed and dated this _____ day of _____ 20_____.

3. Whereas, the principal has submitted the accompanying proposal, herein referred to as the bid, bearing date on the _____ day of _____ 20__ to the authority for

Now, therefore, the condition of this obligation is such that, if the principal shall not withdraw the bid within the period specified therein after the opening of the same, or, if no period be specified, within one hundred eighty (180) days after the opening, and shall within the period specified therefor, or, if no period be specified, within ten (10) days after the prescribed forms are presented to him for signature, execute such further contractual documents, if any, as may be required by the terms of the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of the resulting contract, and for the protection of all persons supplying labor and material in the prosecution of the work provided for in such contract, or in the event of the withdrawal of the bid within the period specified, or the failure to enter into such contract and give such bonds within the time specified, if the principal shall pay the Canal Corp the difference between the amount specified in the bid and the amount for which the Canal Corp procures that required work, supplies, and services, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

Principal

By

Its

(If corporation add seal and attestation)

Attest:

Secretary

Surety

By

Its

Add corporate seal

Attest:

(ACKNOWLEDGMENT BY PRINCIPAL, IF A CORPORATION)

State of

} ss.:

County of

On this _____ day of _____ 20____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say he resides at _____ that he is the _____ of the corporation described in and which executed the foregoing instrument; that he knows the seal of the corporation; that one of the seals affixed to the instrument is such seal; that it was so affixed by order of the Board of Directors of the corporation; and that he signed his name thereto by like order.

Signature of Notary Public or Commissioner of Deeds

(Notary's seal to be attached)

(ACKNOWLEDGMENT BY PRINCIPAL, IF A PARTNERSHIP)

State of

} ss.:

County of

On this _____ day of _____ 20____, before me personally came _____, to me known and known to me to be one of the members of the partnership of _____ described in and who executed the foregoing instrument and he acknowledged to me that he executed the same as and for the act and deed of the partnership.

Notary Public or Commissioner of Deeds

(Notary's seal to be attached)

(ACKNOWLEDGMENT BY PRINCIPAL, IF AN INDIVIDUAL)

State of

} ss.:

County of

On this _____ day of _____ 20____, before me personally appeared _____, to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same.

Notary Public or Commissioner of Deeds

(Notary's seal to be attached)

(ACKNOWLEDGMENT BY SURETY COMPANY)

State of

} ss.:

County of

On this _____ day of _____ 20____, before me personally came _____, to me known, who being by me duly sworn did depose and say that he resides in _____ that he is the _____ of the _____,

the corporation described in and which executed the foregoing instrument; that he knows the seal of the corporation; that one of the seals affixed to the instrument is such corporate seal; that it was affixed by order of the Board of Directors of the corporation; and that he signed his name thereto by like order.

Notary Public or Commissioner of Deeds

(Notary's seal to be attached)

(The Surety Company must append statement of its financial condition, a certified copy of the resolution authorizing the execution of Bonds by Officers of the Company and/or others and proof of the authority of the individual executing this bond on behalf of the Surety so to do.)

STATEMENT OF SURETY'S CONSENT

TO: New York State Canal Corporation

Gentlemen:

We have reviewed the bid of _____ of _____

(Address)

For _____

(Project)

Bids for the above project will be received on _____

(Letting Date)

It is hereby stated that if this bid of the Contractor is accepted and the contract is awarded, we _____

_____ Surety, presently intend to write the bonds necessitated by the

(Surety)

award of such contract.

This consent of Surety is valid for Sixty (60) days, commencing from the bid date listed above.

ATTEST:

Surety's Authorized Signature(s)

Attach Power of Attorney

(Corporate seal if any.

If no seal, write "No Seal" across this
place and sign.)

(The Surety Company must append statement of its financial condition and a copy of the resolution authorizing the
execution of Bonds by officers of the Company.)

NEW YORK STATE CANAL CORPORATION SUBMISSION CHECKLIST

RFP No.: K24-10359171-NF

Project: Culvert Replacement 1400 feet west of Thomas Road and Empire State Trail Improvements between Thomas Road and Reber Road

Letting Date: November 7, 2024

<i>DOCUMENTS TO BE SUBMITTED FOR THIS PROPOSAL SHALL BE SUBMITTED IN THE FOLLOWING ORDER</i>	<u>Required for Bid</u>	<u>Included with Bid</u> (For Bidder Use)	<u>Submitted by Bidder & Accepted</u> (For Agency Use)
Itemized Bid Sheet (Ariba)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Proposal Signature Page	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notarized Bid Bond in the amount of 10% of total bid	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appendix A - Miscellaneous Provisions (Ariba)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appendix C - Supplier Diversity Provisions (Ariba)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supplier Diversity (MWBE/SDVOB) - Utilization Plan (Ariba)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supplier Diversity (MWBE/SDVOB) - Request for Waiver Form, if applicable (Ariba)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Omnibus Procurement Certification (Ariba)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appendix M - Use of Ultra Low Sulfur Diesel Fuel and BART for Heavy Duty Vehicles Certification (Ariba)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contractor Safety Performance Questionnaire	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Statement of Surety's Consent	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NYS Vendor Responsibility Questionnaire, For-Profit Construction (CCA-2 Form)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Current Contracts List	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Preliminary Project Schedule	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anticipated Suppliers, Manufacturers and Subcontractors List	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Bidder Name:

BID PROPOSAL SUBMISSION DOCUMENTATION REQUIREMENTS

PRE-AWARD SUBMISSION DOCUMENTATION REQUIREMENTS*To be furnished by the lowest responsible bidder upon request*

	<u>Required for Award</u>	<u>Item Submitted (For Bidder Use)</u>	<u>Reviewed and Accepted (For Agency Use)</u>	<u>Reviewer Comments (For Agency Use)</u>
Construction Performance Bond	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Construction Payment Bond	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Appendix H - Contractor Certification to Covered Agency - Form ST-220-CA (Ariba)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
P.O. Address of Bidder Form	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Evidence of NYS Worker's Compensation and Disability Insurance Coverage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Evidence of Commercial General Liability Insurance Coverage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Evidence of Business Automobile Policy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Evidence of Standard Professional Liability Insurance Policy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Evidence of Marine Protection & Indemnity and Hull and Machinery Coverage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Evidence of Unmanned Aircraft System Liability Insurance Coverage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Evidence of Pollution Liability Coverage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Evidence of Riggers Liability Insurance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Evidence of Marine & Diving Contractor's CGL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Evidence of Builders Risk Policy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Evidence of Property Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	
Evidence of Railroad Protective Liability Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NYPA	

IMPORTANT INFORMATION

1. **BIDDERS SHOULD BE FAMILIAR WITH THE ELECTRONIC STANDARD SPECIFICATIONS AND STANDARD SHEETS.** The New York State Department of Transportation Standard Specifications and Standard Sheets are available at <https://www.dot.ny.gov/main/business-center/engineering/specifications/busi-e-standards-usc>. These issuances are official documents and form part of the agreement.
2. **NEW YORK STATE CANAL CORPORATION PROJECTS MAY HAVE MINORITY/WOMEN'S BUSINESS ENTERPRISE (M/WBE) AND/OR SERVICE-DISABLED VETERAN-OWNED BUSINESS (SDVOB) GOALS.** If a project has M/WBE and/or SDVOB goals, Contractors should be prepared to meet those goals or document good faith efforts to do so. For further information or assistance, contact the New York Power Authority's Supplier Diversity Program at (914) 681-6976.
3. **BIDDERS MUST BE BONDABLE.** Appropriate statutes, including Section 38 of the Highway Law, require that a low bidder file both a CONSTRUCTION PERFORMANCE BOND and a CONSTRUCTION PAYMENT BOND for the full amount of the contract. A Statement of Surety's Consent must accompany each bid submitted.
4. **DO NOT ALTER THE BID PROPOSAL UNLESS AUTHORIZED BY AMENDMENT/ADDENDUM.** Unauthorized alterations could result in bid being declared informal.
5. **INCORPORATE ALL AMENDMENTS/ADDENDA.** Check **Ariba** for all amendments/addenda associated with the project.
6. **ENTER A UNIT BID PRICE FOR ALL ITEMS.** If a bid price of "0" is intended, indicate with numbers and symbols. A blank space can render a bid informal.
7. **DOUBLE CHECK COMPUTATIONS BEFORE SUBMITTING BID IN ARIBA.** Check decimal points and be sure figures reflect intent. For each item, enter a "unit price" in numeric form. Multiply the "unit price" by the "estimate of quantity" and enter the product in the "bid amount" for each item. Information in the itemized proposal should not be altered except as required by an amendment/addendum.
8. **SUBMIT THE BID IN ARIBA.**
9. **A LIST OF PROSPECTIVE BIDDERS** is available in **Ariba**.
10. **COMPLIANCE WITH NEW YORK STATE CANAL CORPORATION SUBMISSION CHECKLIST.** Prospective bidders shall comply and ensure that the items required for this Bid Proposal submission as listed within the New York State Canal Corporation Submission Checklist section of this Proposal have been included with their bid.