



UPLANDS FARM WASTEWATER IMPROVEMENT PROJECT  
REQUEST FOR PROPOSAL

OCTOBER 25, 2017

**CONFIDENTIAL**

Disclose and Distribute Solely to Employees of The Nature Conservancy having a need to know  
and to Recipient's Employees with a need to know.

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# 1. GENERAL ADMINISTRATIVE PROVISIONS

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## 1.1. Statement of Purpose

It is the intention of The Nature Conservancy (“Customer”), to solicit Proposals to design a wetlands system for collecting, conveying, treating, and dispersing the wastewater generated at our Uplands Farm campus, that significantly reduces nitrogen and propose construction costs, assist with construction bidding and oversee construction of this system. Those receiving this Request for Proposal (“RFP”) are referred to as “Contractor”.

### **THIS IS NOT AN ORDER.**

THE NATURE CONSERVANCY (TNC) is a District of Columbia, USA, non-profit corporation with its principal place of business in Arlington, Virginia, USA. TNC has offices in over 28 countries around the world.

Since 1951, The Nature Conservancy has been working with communities, businesses and people like you to protect more than 116 million acres around the world. Our mission is to conserve the lands and waters on which all life depends. Please see [www.nature.org](http://www.nature.org) for more details on what we do and where we work.

## 1.2. TNC’s Procurement Process

Procurement activities will be conducted in a nondiscriminatory manner with fair treatment given to all Contractors.

## 1.3. Customer's Obligations

Customer incurs no obligation or liability whatsoever by reason of issuance of this RFP or action by anyone relative thereto.

## 1.4. Contractor's Obligations

Contractor must analyze and respond to all sections of this RFP providing sufficient information to allow Customer to evaluate the Proposal. Contractor, by submitting its Proposal, agrees that any costs incurred by the Contractor in responding to this RFP, are to be borne by Contractor and may not be billed to Customer.

Contractor’s proposal must match the order in which the RFP was submitted or clearly state where the information resides. If Customer has any confusion or difficulty in retrieving the required information from a Contractor’s proposal, it may result in such proposal to be disqualified. **Contractor may not have the ability to resubmit their proposal to Customer.**

Customer requests firm fixed pricing for your proposal. *If you are chosen as an award winner and any additional costs are presented at the time of agreement negotiations or implementation, Customer has the right to rescind your organization as the award winner.*

1.5. Contractor Submission Requirements

Contractor will send their response to this RFP, via email. which must include a detailed scope of work, budget and timeline.

Address and email for Contractor's Submission of Proposal:

**Christopher Clapp, Marine Scientist, The Nature Conservancy on Long Island**  
**Email:** [cclapp@tnc.org](mailto:cclapp@tnc.org)

**The Nature Conservancy**  
**142 Sag Harbor Turnpike**  
**East Hampton, NY 11973**  
**Phone: (631) 329-3981 ext.18**

1.6. Critical Dates

1.6.1. Questions Regarding the RFP

Contractor will submit questions to customer by November 7, 2017. Customer will use its best efforts to answer questions by November 14, 2017. Answers may be shared by e-mail with all Contractors. Contractor understands and agrees that it has a duty to inquire about and clarify any RFP questions that the Contractor does not fully understand or believes may be interpreted in more than one way. Customer, however, is not required to answer all questions that are not pertinent to the RFP or considered to be Customer's proprietary information.

1.6.2. Proposal Due Date

Proposals shall be delivered to The Nature Conservancy on or before December 5, 2017.

1.6.3. Table of Critical Dates

<b>RFP Activities</b>	<b>Due Date</b>
Distribute RFP	October 25, 2017
Final day to Submit Clarification Questions	November 7, 2017
Contractor site visits by appointment	November 21, 2017
Contractor Proposals Due	December 5, 2017
On-site meeting w/Project Team	December 12, 2017
Select Firm	December 15, 2017

1.7. Restricted Communications

It is the policy of Customer to avoid situations which (1) place it in a position where its judgment may be biased; (2) create an appearance of conflict of interest with respect to rendering an impartial, fair, technically sound, and objective decision prior to selection; or (3) give an unfair competitive advantage to competing Contractors. Therefore, to ensure an ethical evaluation process, all inquiries or other communications regarding this RFP shall be exclusively directed to Customer's authorized Agent, to the person and location specified in Article 1.5.2 of this RFP. Contractors are hereby expressly instructed not

to communicate with Customer, officers, or employees regarding this RFP. This prohibition is also applicable to Contractors' affiliates, officers, employees, agents, Contractors, and subcontractors.

1.8. Disposition of Proposals

All material submitted in response to this RFP will become the property of Customer and may be returned only at the option of Customer and at the expense of the Contractor. Successful and unsuccessful bidders will be notified in writing. Customer shall not be obligated to detail any of the results of the evaluation.

1.9. Contractual Commitment of Proposal

The contents of submitted Proposals will be considered obligations of the successful Contractor. No information should be submitted that is not intended to be incorporated into the Proposal and any contract, which may result from such Proposal.

1.10. Confidentiality

Any data, documentation, or other business information furnished or disclosed to the Contractor shall be deemed the property of Customer and must be returned to Customer upon request.

1.11. Disclosure Statement

The Nature Conservancy, being a non-profit organization, relies heavily on contributions from its members. In order to eliminate any conflict of interest or perceived conflict of interest, the Contractor is required to sign the attached TNC Disclosure Form.

## 2. SCOPE OF WORK AND BUDGET/TIMELINE

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### 2.1 Scope of Work

The Nature Conservancy is seeking bids from design professionals licensed in the State of New York for the design of a wetlands system for collecting, conveying, treating, and dispersing the wastewater generated at our Uplands Farm Campus that significantly reduces nitrogen to a target concentration of >10 mg/l or as close to zero as practical. The Uplands Farm campus includes:

- Barn - a office building approximately 6700 sq. foot that serves up to 16 staff. The Barn has an auditorium used for meetings and events (maximum capacity approximately 50 people), and restroom access for the general public utilizing the hiking trails (estimated annual/seasonal visitorship is 5000).
- Weld Building - a office building, approximately 2000 sq. foot currently unoccupied, with office space for approximately 10 staff.
- Cottages - Other buildings on the campus include one 3-bedroom cottage and two 2-bedroom cottages.

This RFP is soliciting bids for the design of a system that would serve the Barn and the Weld building only. The cottages are **not** included in this RFP.

To facilitate the process the Conservancy will make available an as built site plan consisting of a detailed contoured survey, test hole data (raw sediment data available upon request), and mark-out and report of existing drain lines, cesspools, and other underground utilities.

**We are seeking a detailed scope of work that includes, at a minimum, the following project elements:**

- A. Planning & Engineering
  - a) Planning & Engineering conceptual designs
  - b) Permitting plans and permit filing
  - c) Other site-specific evaluations (perc tests, soil samples, additional test holes, etc.)
  - d) Engineering certification
  - e) Preparation of final construction/record drawings
  - f) Identify other Planning needs not listed above
- B. Projected costing of conceptual design for each element of the system (collection, conveyance, treatment and disposal)
- C. Monitoring
  - a) Development of required monitoring plan to comply with permit
  - b) Identify other Monitoring needs not listed above
- D. Assist in the development of the RFP for the construction phase
- E. Assist in the review and evaluation of the construction bids
- F. Oversight of construction/build according to plan and consultation on required modifications
- G. Operation/Maintenance
  - a) Preferred maintenance schedule

- b) Identification and training of local maintenance provider
- c) System hardware and operation warranty specification
- d) Identify other Operations/Maintenance needs not listed above

## **2.2 Budget/Timeline**

Provide a detailed budget and projected timeline for each work element identified in the above scope of work.

## **2.3 Attachments**

2.3.1 The Nature Conservancy's Disclosure Form

2.3.2 The Nature Conservancy's Standard Contract for Services

## **2.4 Other**

Selection of contractors will be based upon the ability to satisfy all the previously mentioned criteria and the performance, reliability, and efficiency of the proposed system. Consideration will also be given to the contractors previous experience and knowledge of wetland systems.

This Contract will be funded by Suffolk County (the "Prime Award"). Therefore, all work/travel must be carried out in compliance with the terms and conditions of the Prime Award and any pertinent Suffolk County regulations and laws.

In accordance with the Uniform Guidance Act 2 CFR 200.319 (a ) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements."

### 3. CONTRACTOR QUESTIONNAIRE

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Please answer each of the following questions in the space provided. If additional space is required, please continue on a separate sheet and attach it to this form.

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#### General Information:

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Years in Business: \_\_\_\_\_

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#### Customer Information:

Please indicate if you have done business with TNC in the past and provide contact information below:

\_\_\_\_\_

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#### Employee Information

Number of Employees: \_\_\_\_\_

Are there any geographical areas that your company is not able to serve?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, please list.

\_\_\_\_\_

\_\_\_\_\_

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#### Minority and Women - Owned Business Enterprise

Please indicate below if your firm is at least 51% minority or women owned, controlled and operated. Identify the % of minority or women ownership.

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#### Legal

If your firm is bonded, please indicate type:

Performance Bond \_\_\_\_\_ YES \_\_\_\_\_ NO  
Labor & Material Payment Bond \_\_\_\_\_ YES \_\_\_\_\_ NO

Are there any judgments, suits or claims pending against your firm?  
\_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, please explain:

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**Financial Information (required for bids of \$150,000 or more)**

Indicate your annual sales (in thousands of \$) for the past three (3) years


What is your company's Dun & Bradstreet Number? \_\_\_\_\_

Please provide the following supporting documentation as attachments to this questionnaire:

- a. Income Statement
- b. Balance Sheet
- c. Annual Report (if applicable)
- d. Current Certificate of Insurance

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Has your firm operated under a different name? (Please provide)

Dun & Bradstreet Number of that firm: \_\_\_\_\_

Attachment 2.3.1

The Nature Conservancy

CONFLICT OF INTEREST DISCLOSURE FORM

It is the policy of The Nature Conservancy ("TNC") to identify actual, potential or perceived conflicts of interest in any situation in which TNC has a significant business interest. To assist TNC in complying with this policy, we request that all individuals and/or organizations that will be involved in a proposed transaction with TNC complete this form.

TRANSACTION (TNC staff complete transaction section)

For Real Estate transactions, describe the property, its size and the type of deal (e.g., purchase or sale, gift, fee, easement, or other).

For all other transactions, describe the type of agreement (e.g., service contract, grant, etc.).

Total dollar value of transaction: \$ \_\_\_\_\_

[For cashless barter transactions, provide the value of the benefits being provided each party.]

PARTIES

Please check the box to indicate the type of party for which this form is being completed, list all individuals and/or organizations that will be involved in this transaction, then complete the applicable section that follows. An "organization" includes a for profit corporation, partnership, trust, estate, joint venture, limited liability corporation, professional corporation or unincorporated entity of any kind, a foundation, public board, commission, and a 501(c)(3) or other charitable organization.

- Individuals (list all, then complete Section 1): \_\_\_\_\_
For Profit Organizations (list all, then complete Section 2): \_\_\_\_\_
Not for Profit Organizations (list all, then complete Section 3): \_\_\_\_\_

Note: Please refer to the attached list of TNC key employees and current and prior members of TNC's Board of Directors when completing the rest of this form.

1. INDIVIDUALS:

Please check all that apply and attach an explanation for any "Yes" answers.

Table with 3 columns: Question, Yes, No. Rows include questions about being a TNC key employee, TNC employee/Chapter Trustee/Country Program Advisory Council member, and contributing to TNC U.S. \$5 million or more.

<p>d. To your knowledge, are you a <b>Family Member</b> of any individual identified in paragraph a, b or c above? (For these purposes, the term “Family Member” includes the individual’s spouse, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren; and any person with whom the covered person shares living quarters under circumstances that closely resemble a marital relationship or who is financially dependent upon the covered person.)</p>		
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**2. FOR PROFIT ORGANIZATIONS:**

**Please check all that apply and attach an explanation for any “Yes” answers.**

	Yes	No
<p>a. Has the organization made total aggregate contributions to TNC (i) U.S. 5 million or more during the current fiscal year (July 1 – June 30), or (ii) U.S. \$25 million or more, cumulatively, during the current fiscal year and the prior four fiscal years?</p>		
<p>b. Now or at the time of the proposed transaction, does or will any <b>Substantial Contributor</b> (as defined in 1.c.); <b>TNC employee (includes former TNC employee who left within the last 12 months); member of TNC’s Board of Directors or key employees (see list attached); or TNC Chapter Trustee or Advisory Council member (includes former ones who served within the last 12 months)</b>, individually or collectively with other such persons (including <b>Family Members</b> of such persons; see Section 1(d) above for definition of Family Members), <b>own more than 35% of the stock or value of the organization</b> (directly or indirectly), or have the legal or <i>de facto</i> <b>power to exercise a controlling influence over the organization’s management or policies</b>, e.g., as an officer, key management employee, board member or partner?</p>		
<p>c. Now, or at the time of the proposed transaction, have or will any members of <b>TNC’s current Executive Team or Board of Directors</b> (see attached list) serve as:</p> <ul style="list-style-type: none"> <li>• an officer, director, trustee, key employee, or partner; or</li> <li>• if the entity is a limited liability corporation, a member; or</li> <li>• if the entity is a professional corporation, a shareholder?</li> </ul>		

**3. NON PROFIT ORGANIZATIONS**

**Please check all that apply and attach an explanation for any “Yes” Answers.**

	Yes	No
<p>a. Now or at the time of the proposed transaction, have or will any <b>Substantial Contributor</b> (as defined in 1.c.); <b>TNC employee (includes former TNC employee who left within the last 12 months); member of TNC’s Board of Directors or key employees (see list attached); Chapter Trustee or Advisory Council member (includes former ones who served within the last 12 months)</b>, or <b>Family Members</b> of any of these, individually or collectively, <b>have the ability to control management of the entity?</b> See Section 1(d) above for definition of Family Members.</p>		

**Individuals who in the current fiscal year (FY17) are or during the preceding five fiscal years have been a Conservancy “key employee” or a member of the Board of Directors:**

**Key Employees**

**Current Executive Team**

Kacky Andrews  
Jim Asp  
Justin Adams  
David Banks  
Charles Bedford  
Giulio Boccaletti  
Mark Burget  
Maria Damanaki  
William Ginn  
Wisla Heneghan  
Steve Howell  
Joe Keenan  
Marianne Kleiberg  
Brian McPeek  
Pascal Mittermaier  
Hugh Possingham  
Glenn Prickett  
Aurelio Ramos  
Lynn Scarlett  
Heather Tallis  
Mark Tercek  
Michael Tetreault  
Peter Wheeler  
Janine Wilkin  
Heather Wishik

**Other/Former Key Employees**

Karen Berky  
Rebecca Bowen  
John Cook  
Mario D’Amico  
Addison Dana  
Santiago Gowland  
Peter Kareiva  
Michelle Lakly  
Russell Leiman  
Robert McKim  
Catherine Nardone  
Craig Neyman  
Karen Poiani  
Lois Quam  
Geof Rochester  
Angela Sosdian  
Michael Sweeney  
Philip Tabas

**Current Board of Directors (FY ‘17)**

Shona L. Brown  
Gretchen C. Daily  
Laurence Fink

Joseph H. Gleberman  
William Frist  
Calestous Juma  
Jane Lubchenco  
Jack Ma  
Claudia Madrazo  
Craig McCaw  
Thomas J. Meredith  
Ana M. Parma  
Stephen Polasky  
James E. Rogers  
Vincent Ryan  
Rajiv Shah  
Brenda Shapiro  
Mark Tercek  
Thomas J. Tierney  
Moses Tsang  
Frances A. Ulmer  
P. Roy Vagelos  
Margaret C. Whitman  
Ying Wu

**Prior Board Members (FYs ‘12-’16)**

Teresa Beck  
David Blood  
Gordon Crawford  
Steven A. Denning  
Jeremy Grantham  
Frank E. Loy  
Thomas Middleton  
Roger Milliken, Jr.  
James C. Morgan  
Roberto Hernández Ramirez  
John P. Sall  
Cristián Samper  
Muneer A. Satter  
Shirley Young

**SIGNATURES**

The undersigned certifies that the information in the disclosure form is true and correct to the best of his/her knowledge.

**Signatures for Organizations:**

Name of Organization: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed name of person: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Signatures for Individuals**

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_



Contract Number:	
Accounting Information –	
Project Name:	
Project-Award-Activity Number:	P101753-A103548
Source of funds:	U.S. Government <input type="checkbox"/> State Government <input type="checkbox"/> Local <input checked="" type="checkbox"/> Private <input type="checkbox"/> Private as Gov't Match <input type="checkbox"/>

**CONTRACT FOR SERVICES**

This Contract is entered into by and between **The Nature Conservancy**, a nonprofit corporation (“TNC”), through the following U.S. office:

TNC Business Unit:	NY - Long Island Chapter
Contact:	Chris Clapp
Address:	142 Sag Harbor Tpk. East Hampton 11937
Telephone:	(631) 329-3981 X18
Email Address:	<a href="mailto:cclapp@tnc.org">cclapp@tnc.org</a>

and the following person or entity (“**Contractor**”):

Name of Contractor:	
Contact:	
Address:	
Telephone:	
Email Address:	

1. **Services.** Contractor agrees to perform the services described in **Exhibit A**, including any deliverables cited (collectively, the “Services”), in accordance with the “Standard Terms and Conditions” attached as **Exhibit B** and any other exhibits or attachments to this Contract, all of which are incorporated by reference into this Contract. Unless otherwise noted, in the event of a conflict between the terms of **Exhibit A** and any other terms of this Contract, including any other Exhibit, such other terms will control. If any of the Services are to be performed on land that is not owned by Contractor or TNC, Contractor must obtain the landowner’s permission before entering upon such land. The parties acknowledge that none of the Services are to be performed or delivered outside of the United States.

2. **Payments.** TNC will compensate Contractor for the Services as follows:
- a. Contract Fee.
  - b. No Expense Reimbursement.
  - c. Invoices and Payments. TNC’s payment terms are net 30 days from receipt of invoices. Requests for payment of the Contract Fee and any authorized reimbursements must be submitted to TNC in the form of an invoice summarizing the work performed and reimbursable expenses incurred during the invoice period. Any expenses authorized for reimbursement by TNC must be: (i) substantiated by proper and adequate

documentation (such as receipts), if requested by TNC; (ii) reasonable in amount; and (iii) related to and in furtherance of the Contract purposes. Invoices will be subject to review and approval by TNC, and TNC may deny payment of requests received more than sixty (60) days after the final deadline for completion of the Services. TNC will make all payments by check, subject to TNC's receipt from the Contractor of a properly completed IRS Form W-9.

3. **Contract Commencement and Expiration.** Unless otherwise indicated in **Exhibit A**, Contractor must begin performing the Services after this Contract has been signed by both parties and must complete all of the Services within three (3) from notice to proceed, weather permitting, or, as to specific tasks, such earlier date(s) as may be specified in **Exhibit A** (provided that no work may commence before the later signature date below). Any deadline(s) set forth in **Exhibit A** may be extended only with TNC's prior written consent. This Contract will expire automatically once all the Services have been completed and final payment by TNC has been made. Upon such expiration, the parties will have no further rights or obligations under this Contract, except as otherwise provided in **Exhibit B**.

4. **DEBARMENT CERTIFICATION.** The Contractor certifies, by signature on this Contract, that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any U.S. Federal department or agency. Where the Contractor is unable to certify to this statement, the Contractor shall attach an explanation to this Contract, and, at the Conservancy's option, this Contract shall become null and void. In the event Contractor, or one of its employees or subcontractors, is debarred participation or becomes otherwise ineligible to participate in any such program during the Term of the Contract, the Contractor shall notify the Department in writing within three (3) days after notice of such debarment. Upon the occurrence of such event, whether or not such notice is given to the Contractor, the Conservancy reserves the right to immediately terminate the Contract.

5. **Suffolk County Laws and Regulations.** The Contractor understands that this Contract will be funded by Suffolk County Funding and that the Contractor shall be responsible for ensuring that all work/travel is carried out in compliance with any pertinent regulations and laws including but not limited to those listed in the Appendix A entitled "County Terms and Conditions" and Appendix B entitled "Suffolk County Legislative Requirements". In the event of a conflict between the terms of this Contract (including Exhibits A and B) and the terms of Appendix A and Appendix B, the terms of Appendix A and Appendix B will control.

**The Nature Conservancy**

By: \_\_\_\_\_  
(signature)

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
(signature)

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A**  
**Description of the Services**

**Exhibit B**  
**Standard Terms and Conditions**

**1. Conflict of Interest Determination.** Contractor represents that to the best of its knowledge the information it has provided on TNC's Disclosure Form, now or up to two years prior to the commencement date of this Contract, is true and correct.

**2. Independent Contractor.** The parties intend this Contract to create an independent contractor-client relationship and Contractor is solely responsible for the conduct and control of the Services and fulfilling its duties and obligations under this Contract. Contractor is not an agent or employee of TNC, and no joint venture or principal-agent relationship exists. Contractor and its employees, if applicable, are not entitled to any of the benefits that TNC provides for its employees. Neither TNC nor Contractor will have any right, power, or authority by virtue of this Contract to create any obligation, express or implied, on behalf of the other.

**3. Performance of Work.** Contractor represents that it is qualified and willing to perform the Services in accordance with the highest standards of Contractor's profession or craft. Contractor will not be paid for any Services found by TNC to be unsatisfactory.

**4. Assignment; Subcontract.** Contractor must not assign this Contract or subcontract any portion of the Services without TNC's prior written consent, which may be withheld in TNC's sole discretion.

**5. Termination; Remedies.** TNC may terminate this Contract at any time, in its sole discretion, upon two (2) weeks' notice to Contractor. Should this occur, Contractor must cease all work immediately upon receipt of the termination notice and TNC will pay Contractor for the Services that have been satisfactorily completed, as determined by TNC, as of the termination date. In addition, if Contractor defaults in the performance of any duty, obligation, or covenant under this Contract, whether for circumstances within or beyond Contractor's control, or if TNC determines at any time that the Services cannot be performed in accordance with applicable law and/or TNC's policies and standard operating procedures, then TNC may immediately terminate this Contract by notice to Contractor. Should termination occur as a result of

Contractor's default, TNC may, without limiting any other remedies available to it under applicable law, recover damages from Contractor resulting from Contractor's default and may offset any amounts payable to Contractor against such damages. TNC will pay to Contractor any remaining balance of such payable amounts.

**6. Liability; Indemnification; Insurance.** Contractor acknowledges and agrees that it is performing the Services entirely at its own risk, and agrees to indemnify, defend, and hold TNC and its directors, officers, employees and agents harmless from and against any and all liabilities, demands, damages, claims, losses, costs, or expenses, including reasonable attorneys' fees, to the extent that they arise out of or result, directly or indirectly, from the negligence, misconduct, breach of warranty, representation, or covenant, or any act or omission by Contractor or any of its employees or agents (including any permitted subcontractors) in performing the Services. Contractor's indemnity and defense obligations under this Contract will survive for a period of three (3) years after the expiration or earlier termination of this Contract with respect to any matters that occurred, or rights that accrued, prior to such expiration or earlier termination. Contractor must also carry, throughout the term of this Contract, one or more insurance policies providing: (a) workers' compensation insurance, as and to the extent required by applicable law; (b) commercial liability insurance written on an occurrence basis, with a liability limit of at least \$1,000,000 per occurrence; (c) motor vehicle liability insurance, covering all owned and non-owned vehicles used in performing the Services, with a liability limit of at least \$500,000 per occurrence; and (d) if Contractor is providing consulting services, professional liability insurance written on a claims made basis. Contractor's policy(ies) must be primary insurance to any other valid and collectible insurance available to TNC with respect to any claim arising out Contractor's performance of the Services. If requested by TNC, Contractor must have TNC named as an additional insured on Contractor's commercial liability insurance policy on a primary, non-contributory basis and provide TNC with evidence

that the required coverage is in effect before any work under the Contract commences.

## **7. Intellectual Property Rights.**

- A. Works Made for Hire. With the exception of works that are original to or otherwise owned by Contractor prior to the commencement date of this Contract, all right, title, and interest, including copyright, in any reports, studies, photographs, software (including programming codes), drawings, designs, writings, or other works or documents produced in performing the Services, along with all related drafts, versions, and other material created as part of the Services (collectively the “Works”), are “works made for hire” as defined under the copyright laws of the United States. To the extent that any of the Works are not works made for hire, Contractor, through this Contract, unconditionally assigns to TNC and its successors and assigns all right, title, and interest, including copyright and other intellectual property rights, in and to the Works in all media (whether now known or later developed) throughout the world in perpetuity. Contractor further assigns to TNC all rights in any supporting data and material used in creating the Works, if and to the extent that the copyright is not held by others. Contractor also grants to TNC a worldwide, non-exclusive, royalty-free, perpetual license to use any works created or otherwise owned by Contractor prior to the commencement date of this Contract that are used to produce, or are otherwise incorporated into, the Works.
- B. Delivery of Works and Other Documentation. Upon request from TNC, Contractor must deliver to TNC (i) all tangible copies (including digital copies) of the Works or any portion of the Works, supporting data, or material not previously delivered to TNC, and (ii) any further documentation of TNC’s ownership of the Works as provided under this Contract as may be requested by TNC.
- C. Authorized Use by Contractor. Contractor may use the Works, supporting data and material only with TNC’s prior written consent, and any such use must include an acknowledgment that the Works, supporting data, and material used are the property of TNC. Unless otherwise provided in this Contract,

to the extent that any portion of the Works consists of research reports or studies, Contractor may use, publish or distribute that portion of the Works in academic papers and scientific or academic journals, with or without co-authors, provided that Contractor acknowledges that funding for such research reports or studies was provided by TNC.

- D. Warranty. Contractor warrants to TNC and covenants that (i) the Works will be original to Contractor alone and will not infringe the intellectual property rights of others, and (ii) to the extent that the Works contain any intellectual property owned by others, Contractor has been authorized, by license or otherwise, to assign to TNC the rights described in this Contract.

**8. Use of TNC Name and Logo.** Contractor must not use TNC’s name, logo or other intellectual property in any manner, whether in conjunction with the Services or otherwise, except (a) to the extent reasonably necessary in order to perform the Services; (b) in order to deliver invoices or other notices to TNC; and (c) if and to the extent otherwise explicitly stated in this Contract.

**9. Confidential Information.** In performing the Services, Contractor might have access to materials, data, strategies, trade secrets, proprietary information, systems, or other information relating to TNC and its programs that are intended for internal use only. Contractor must not, without TNC’s prior written consent, use, publish, or divulge any such information to any person, firm, or corporation, or use it in any advertising or promotion regarding Contractor or Contractor’s services, unless required to do so by law or by a court of competent jurisdiction or if such information becomes part of the public domain. Contractor must return to TNC promptly upon completion of the Services any and all TNC confidential information Contractor has in its possession.

**10. Taxes.** Contractor is responsible for filing and paying its own taxes and for complying with the requirements of any applicable tax laws. TNC will not withhold or pay on behalf of Contractor or any of its employees any U.S. Federal, state, or local income tax or payroll tax of any kind.

**11. Compliance with Laws.** Contractor represents, warrants and agrees as follows, wherever applicable to the performance of the Services: (a) Contractor can lawfully work in the United States; (b) Contractor will obtain, at its own expense (except to the extent otherwise explicitly stated in this Contract) any permits or licenses required to perform the Services; and (c) Contractor will comply with all statutes, laws, ordinances, rules, regulations, court orders, and other governmental requirements of the United States, the state(s) in which the Services are performed (and the state in which the TNC Business Unit set forth on the first page of this Contract is located, if different), and any other U.S. jurisdiction(s) in which Contractor is organized or authorized to do business. Contractor must not take any actions that might cause TNC to be in violation of any such laws.

**12. Notices.** Any formal notice, request, or demand made by one of the parties pursuant to this Contract (each, a "Notice") must be in writing and given to the respective named contact above by at least one of the following delivery methods, unless another form of delivery is explicitly required elsewhere in this Contract: (a) in person, (b) certified mail (return receipt requested, postage prepaid), (c) nationally recognized next day delivery service, or (d) electronic mail ("email"). A Notice will be deemed given: (1) immediately, if delivered in person; (2) if sent by certified mail, on the earlier to occur of: (i) the date of first attempted delivery; or (ii) the third business day after being deposited in the mail; (3) if sent by next day delivery service, on the following business day; and (4) if sent by email, on the date it is transmitted, unless the transmission is completed on a non-business day or after 5:00 p.m. in the recipient's time zone, in either of which cases it will be deemed given on the next following business day.

**13. Binding Effect; Amendments.** This Contract will become binding when signed by both parties. This Contract supersedes all prior or contemporaneous communications and negotiations, both oral and written, and constitutes the entire agreement between the parties relating to the activities described in this Contract. No amendment will be effective except in writing signed by both parties.

**14. Governing Law; Forum.** This Contract and claims relating to this Contract, whether based on contract, tort, or other law, will be interpreted, construed and governed by the laws of the state in which the TNC Business Unit set forth on the first page of this Contract is located (excluding such state's choice of law principles, if any), and such other U.S. laws as are applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Contract, the parties agree that litigation will be conducted in the state in which the TNC Business Unit set forth on the first page of this Contract is located.

**15. Severability; No Waiver.** If any provision of this Contract is found to be invalid by a court of competent jurisdiction, the other provisions will not be affected by that finding. No delay in exercising any right or remedy under this Contract will constitute a waiver of that right or remedy or of any other right or remedy under this Contract or under applicable law.

**16. Joint and Several Liability.** If two or more persons or entities are identified as Contractor in this Contract, their obligations under this Contract are and will be joint and several.

**17. Counterparts; Facsimile Signatures.** This Contract may be executed in one or more counterparts, each of which will be deemed an original and all of which, taken together, constitute the complete Contract. Facsimile or scanned signatures on this Contract and any related documents, and digital or electronic signatures where authorized under applicable law, will be fully binding for all purposes under this Contract, although any documents that are to be recorded must be executed by both parties with original signatures (and delivered promptly to the party responsible for recording).

**18. Compliance with Anti-Terrorism Laws.** Contractor must not use any funds received under this Contract in violation of any applicable antiterrorist financing and asset control laws, regulations, rules and executive orders, including the USA Patriot Act of 2001 and Executive Order 13224.

*[End of Exhibit B]*



**APPENDIX A**

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COUNTY TERMS AND CONDITIONS

**1. Elements of Interpretation**

As used throughout the Contract:

a. Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa. Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons, and shall include successors and assigns.

b. Capitalized terms used, but not otherwise defined herein, shall have the meanings assigned to them in the Contract.

**2. Meanings of Terms**

As used in the Contract:

“**Comptroller**” means the Comptroller of the County of Suffolk.

“**Contract**” means all terms and conditions herein forming all rights and obligations of the Contractor and the County.

“**Contractor**” means the signatory person, partnership, corporation, association or other entity, its officers, officials, employees, agents, servants, sub-contractors and any successor or assign of any one or more of the foregoing performing the Services.

“**County**” means the County of Suffolk, its departments, and agencies.

“**County Attorney**” means the County Attorney of the County of Suffolk.

“**Department**” means the signatory department approving the Contract.

“**Engineering Services**” means the definition of the practice of engineering and the definition of practice of land surveying, as the case may be, under Section 7201 and Section 7203 of the State Education Law, respectively.

“**Event of Default**” means

a. the Contractor’s failure to perform any duty required of it under paragraphs 4 through 7 of this Exhibit 1 of the Contract; or

b. the Contractor’s failure to maintain the amount and types of insurance with an authorized insurer as required by the Contract; or

c. the Contractor’s failure to maintain insurance required by the Contract with an insurer that has designated the New York Superintendent of Insurance as its lawful agent for service of process; or

d. The Contractor’s failure to comply with any Federal, State or local law, rule, or regulation, and County policies or directives; or

e. The Contractor’s bankruptcy or insolvency; or

f. The Contractor’s failure to cooperate in an Audit; or

g. The Contractor’s falsification of records or reports, misuse of funds, or malfeasance or nonfeasance in financial record keeping arising out of, or in connection with, any contract with the County; or

h. The Contractor’s failure to submit, or failure to timely submit, documentation to obtain Federal or State funds; or

i. The inability of the County or the Contractor to obtain Federal or State funds due to any act or omission of the Contractor; or

j. Any condition the County determines, in its sole discretion, that is dangerous.

“**Federal**” means the United States government, its departments and agencies.

“**Fund Source**” means any direct or indirect sum payable to the Contractor by the County pursuant to any lawful obligation.

“**Legislature**” means the Legislature of the County of Suffolk.

“**Services**” means all that which the Contractor must do, and any part thereof arising out of, or in connection with, the Contract as described in **Article I** “Description of Services.”

“**State**” means the State of New York.

“**Suffolk County Payment Voucher**” means the document authorized and required by the Comptroller for release of payment.

“**Term**” means the time period set forth on page one of the Contract and, if exercised by the County, the option period.

**2.**

**3. Contractor Responsibilities**

- a. It shall be the duty of the Contractor to discharge, or cause to be discharged, all of its responsibilities, and to administer funds received in the interest of the County in accordance with the provisions of the Contract.
- b. The Contractor shall promptly take all action as may be necessary to render the Services.
- c. The Contractor shall not take any action that is inconsistent with the provisions of the Contract.
- d. Services provided under this Contract shall be open to all residents of the County.

2.1.1.1.1.1.

**2.1.1.1.1.2.4. Qualifications, Licenses, and Professional Standards**

- a. The Contractor represents and warrants that it has, and shall continuously possess, during the Term, the required licensing, education, knowledge, experience, and character necessary to qualify it to render the Services.
- b. The Contractor shall continuously have during the Term all required authorizations, certificates, certifications, registrations, licenses, permits, and other approvals required by Federal, State, County, or local authorities necessary to qualify it to render the Services.

2.1.1.1.1.3.

**5. Notifications**

- a. The Contractor shall immediately notify the County, in writing, of any disciplinary proceedings, commenced or pending, with any authority relating to a license held by any person necessary to qualify him or the Contractor to perform the Services.
- b. In the event that a person is no longer licensed to perform the Services, the Contractor must immediately notify the County, but in no event shall such notification be later than five (5) days after a license holder has lost the license required to qualify the license holder or the Contractor to perform the Services.

- c. In the event that the Contractor is not able to perform the Services due to a loss of license, the Contractor shall not be reimbursed for the Services rendered after the effective date of termination of such license. Without limiting the generality of the foregoing, if any part of the Contract remains to be performed, and the termination of the license does not affect the Contractor's ability to render the Services, every other term and provision of the Contract shall be valid and enforceable to the fullest extent permitted by law.

**2.1.1.1.1.4. 6. Documentation of Professional Standards**

The Contractor shall maintain on file, in one location in Suffolk County, all records that demonstrate that it has complied with paragraphs 4 and 5 above. The address of the location of the aforesaid records and documents shall be provided to the County no later than the date of execution of the Contract. Such documentation shall be kept, maintained, and available for inspection by the County upon twenty-four (24) hours notice.

**2.1.1.1.1.5.7. Credentialing**

- a. In the event that the Department, or any division thereof, maintains a credentialing process to qualify the Contractor to render the Services, the Contractor shall complete the required credentialing process. In the event that any State credential, registration, certification, or license, Drug Enforcement Agency registration, or Medicare or Medicaid certification is restricted, suspended, or temporarily or permanently revoked, it is the duty of the Contractor to contact the Department, or division thereof, as the case may be, in writing, no later than three (3) days after such restriction, suspension, or revocation.

- b. The Contractor shall forward to the Department, or division thereof, as the case may be, on or before July 1 of each year during the Term, a complete list of the names and addresses of all persons providing the Services, as well as their respective areas of certification, credentialing, registration, and licensing.

2.1.1.1.1.6.

**8. Engineering Certificate**

In the event that the Contract requires any Engineering Services, the Contractor shall submit to the County, no later than the due date for submission for approval of any engineering work product, the Certificate of Authorization ("Certificate"), issued pursuant to § 7210 of the New York Education Law, of every person performing any Engineering Services. The failure to file, submit or maintain the Certificate shall be grounds for rejection of any engineering work product submitted for approval.

**9. Termination**

2.1.1.1.1.7.a.

**Thirty Days Termination**

The County shall have the right to terminate the Contract without cause, for any reason, at any time, upon such terms and conditions it deems appropriate, provided, however, that no such termination shall be effective unless the Contractor is given at least thirty (30) days notice.

2.1.1.1.1.8.b. Event of Default; Termination on Notice

i.) The County may immediately terminate the Contract, for cause, upon such terms and conditions it deems appropriate, in the Event of Default.

ii.) If the Contractor defaults under any other provision of the Contract, the County may terminate the Contract, on not less than five (5) days notice, upon such terms and conditions it deems appropriate.

2.1.1.1.1.9.c.

Termination Notice

Any notice providing for termination shall be delivered as provided for in paragraph 33 of this **Exhibit 1**.

2.1.1.1.1.10.

2.1.1.1.1.11.d.

Duties upon Termination

i.) The Contractor shall discontinue the Services as directed in the termination notice.

ii.) Subject to any defenses available to it, the County shall pay the Contractor for the Services rendered through the date of termination.

iii.) The County shall be released from any and all liability under the Contract, effective as of the date of the termination notice.

iv.) Upon termination, the Contractor shall reimburse the County the balance of any funds advanced to the Contractor by the County no later than thirty (30) days after termination of the Contract. The provisions of this subparagraph shall survive the expiration or termination of the Contract.

v.) Nothing contained in this paragraph shall be construed as a limitation on the County's rights set forth in paragraphs 5(c) and 15 of this **Exhibit 1**.

**10. Indemnification and Defense**

a. The Contractor shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses caused by the negligence or any acts or omissions of the Contractor, including reimbursement of the cost of reasonable attorneys' fees incurred by the County, its agents, servants, officials, and employees in any action or proceeding arising out of or in connection with the Contract.

b. The Contractor hereby represents and warrants that it will not infringe upon any copyright in performing the Services. The Contractor agrees that it shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses arising out of any claim asserted for infringement of copyright, including reimbursement of the cost of reasonable attorneys' fees incurred by the County, its agents, servants, officials, and employees in any action or proceeding arising out of or in connection with any claim asserted for infringement of copyright.

c. The Contractor shall defend the County, its agents, servants, officials, and employees in any proceeding or action, including appeals, arising out of, or in connection with, the Contract, and any copyright infringement proceeding or action. Alternatively, at the County's option, the County may defend any such proceeding or action and require the Contractor to pay reasonable attorneys' fees or salary costs of County employees of the Department of Law for the defense of any such suit.

**11. Insurance**

a. The Contractor shall continuously maintain, during the Term of the Contract, insurance in amounts and types as follows:

i.) **Commercial General Liability** insurance, including contractual liability coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence for bodily

injury and Two Million Dollars (\$2,000,000.00) per occurrence for property damage. The County shall be named an additional insured.

ii.) **Automobile Liability** insurance (if any non-owned or owned vehicles are used by the Contractor in the performance of the Contract) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per person, per accident, for bodily injury and not less than One Hundred Thousand Dollars (\$100,000.00) for property damage per occurrence. The County shall be named an additional insured.

iii.) **Workers' Compensation and Employer's Liability** insurance in compliance with all applicable New York State laws and regulations and **Disability Benefits** insurance, if required by law. The Contractor shall furnish to the County, prior to its execution of the Contract, the documentation required by the State of New York Workers' Compensation Board of coverage or exemption from coverage pursuant to §§57 and 220 of the Workers' Compensation Law. In accordance with General Municipal Law §108, the Contract shall be void and of no effect unless the Contractor shall provide and maintain coverage during the Term for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

iv.) **Professional Liability** insurance in an amount not less than Two Million Dollars (\$2,000,000.00) on either a per-occurrence or claims-made coverage basis.

b. The County may mandate an increase in the liability limits set forth in the immediately preceding paragraphs (11)(a)(i), (ii), and (iv).

c. All policies providing such coverage shall be issued by insurance companies authorized to do business in New York with an A.M. Best rating of A- or better.

d. The Contractor shall furnish to the County, prior to the execution of the Contract, declaration pages for each policy of insurance and certificates, other than a policy for commercial general liability insurance, and upon demand, a true and certified original copy of each such policy evidencing compliance with the aforesaid insurance requirements.

e. In the case of commercial general liability insurance, and business use automobile insurance, the Contractor shall furnish to the County, prior to the execution of the Contract, a declaration page or insuring agreement and endorsement page evidencing the County's status as an additional insured on said policy, and upon demand, a true and certified original copy of such policy evidencing compliance with the aforesaid insurance requirements.

f. All evidence of insurance shall provide for the County to be notified in writing thirty (30) days prior to

any cancellation, nonrenewal, or material change in the policy to which such evidence relates. It shall be the duty of the Contractor to notify the County immediately of any cancellation, nonrenewal, or material change in any insurance policy.

g. In the event the Contractor shall fail to provide evidence of insurance, the County may provide the insurance required in such manner as the County deems appropriate and deduct the cost thereof from a Fund Source.

## 12. Independent Contractor

The Contractor is not, and shall never be, considered an employee of the County for any purpose. Notwithstanding anything herein, the Contract shall not be construed as creating a principal-agent relationship between the County and the Contractor or the Contractor and the County, as the case may be.

## 13. Severability

It is expressly agreed that if any term or provision of the Contract, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of the Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term and provision of the Contract shall be valid and shall be enforced to the fullest extent permitted by law.

## 14. Merger; No Oral Changes

It is expressly agreed that the Contract represents the entire agreement of the parties and that all previous understandings are herein merged in the Contract. No modification of the Contract shall be valid unless in written form and executed by both parties.

## 15. Set-Off Rights

The County shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold from a Fund Source an amount no greater than any moneys due and owing to the County for any reason. The County shall exercise its set-off rights subject to approval by the County Attorney. In cases of set-off pursuant to a Comptroller's audit, the County shall only exercise such right after the finalization thereof, and only after consultation with the County Attorney.

## 16. Non-Discrimination in Services

a. The Contractor shall not, on the grounds of race, creed, color, national origin, sex, age, disability, sexual orientation, military status, or marital status:

i.) deny any individual the Services provided pursuant to the Contract; or

- ii.) provide the Services to an individual that is different, or provided in a different manner, from those provided to others pursuant to the Contract; or
- iii.) subject an individual to segregation or separate treatment in any matter related to the individual's receipt of the Services provided pursuant to the Contract; or
- iv.) restrict an individual in any way from any advantage or privilege enjoyed by others receiving the Services provided pursuant to the Contract; or
- v.) treat an individual differently from others in determining whether or not the individual satisfies any eligibility or other requirements or conditions which individuals must meet in order to receive the Services provided pursuant to the Contract.

b. The Contractor shall not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, creed, color, national origin, sex, age, disability, sexual orientation, military status, or have the effect of substantially impairing the Contract with respect to individuals of a particular race, creed, color, national origin, sex, age, disability, sexual orientation, military status, or marital status, in determining:

- i.) the Services to be provided, or
- ii.) the class of individuals to whom, or the situations in which, the Services will be provided; or
- iii.) the class of individuals to be afforded an opportunity to receive the Services.

**17. Nonsectarian Declaration**

The Services performed under the Contract are secular in nature. No funds received pursuant to the Contract shall be used for sectarian purposes or to further the advancement of any religion. The Services will be available to all eligible individuals regardless of religious belief or affiliation.

**18. Governing Law**

The Contract shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws. Venue shall be designated in the Supreme Court, Suffolk County, the United States District

Court for the Eastern District of New York, or, if appropriate, a court of inferior jurisdiction in Suffolk County.

**19. No Waiver**

It shall not be construed that any failure or forbearance of the County to enforce any provision of the Contract in any particular instance or instances is a waiver of that

provision. Such provision shall otherwise remain in full force and effect, notwithstanding any such failure or forbearance.

**20. Conflicts of Interest**

The Contractor shall not, during the Term, pursue a course of conduct which would cause a reasonable person to believe that he or she is likely to be engaged in acts that create a substantial conflict between its obligations under the Contract and its private interests. The Contractor is charged with the duty to disclose to the County the existence of any such adverse interests, whether existing or potential. This duty shall continue as long as the Term. The determination as to whether or when a conflict may potentially exist shall ultimately be made by the County Attorney after full disclosure is obtained.

**21. Cooperation on Claims**

The Contractor and the County shall render diligently to each other, without compensation, any and all cooperation that may be required to defend the other party, its employees and designated representatives against any claim, demand or action that may be brought against the other party, its employees or designated representatives arising out of, or in connection with, the Contract.

**22. Confidentiality**

Any document of the County, or any document created by the Contractor and used in rendering the Services, shall remain the property of the County and shall be kept confidential in accordance with applicable laws, rules, and regulations.

**23. Assignment and Subcontracting**

a. The Contractor shall not delegate its duties under the Contract, or assign, transfer, convey, subcontract, sublet, or otherwise dispose of the Contract, or any of its right, title or interest therein, or its power to execute the Contract, or assign all or any portion of the moneys that may be due or become due hereunder, (collectively referred to in this paragraph 23 as "Assignment"), to any other person, entity or thing without the prior written consent of the County, and any attempt to do any of the foregoing without such consent shall be void ab initio.

b. Such Assignment shall be subject to all of the provisions of the Contract and to any other condition the County requires. No approval of any Assignment shall be construed as enlarging any obligation of the County under the terms and provisions of the Contract. No Assignment of the Contract or assumption by any person of any duty of the Contractor under the Contract shall provide for, or otherwise be construed as, releasing the Contractor from any term or provision of the Contract.

**24. Changes to Contractor**

**a.** The Contractor may, from time to time, with the County’s consent, enter into a Permitted Transfer. For purposes of the Contract, a Permitted Transfer means:

**i.)** if the Contractor is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of the partners, or transfer of partnership interests (other than the purchase of partnership interests by existing partners, by the partnership itself or the immediate family members by reason of gift, sale or devise), or the dissolution of the partnership without immediate reconstitution thereof, and

**ii.)** if the Contractor is a closely held corporation (i.e. whose stock is not publicly held and not traded through an exchange or over the counter),

**1.** the dissolution, merger, consolidation or other reorganization of the Contractor,

**2.** the sale or other transfer of twenty percent (20%) or more of the shares of the Contractor (other than to existing shareholders, the corporation itself or the immediate family members of shareholders by reason of gift, sale or devise).

**b.** If the Contractor is a not-for-profit corporation, a change of twenty percent (20%) or more of its shares or members shall be deemed a Permitted Transfer.

**c.** The Contractor shall notify the County in writing, which notice (the “Transfer Notice”) shall include:

**i.)** the proposed effective date of the Permitted Transfer, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice;

**ii.)** a summary of the material terms of the proposed Permitted Transfer,

**iii.)** the name and address of the proposed transferee,

**iv.)** such information reasonably required by the County, which will enable the County to determine the financial responsibility, character, and reputation of the proposed transferee, nature of

the proposed assignee/transferee’s business and experience;

**v.)** all executed forms required pursuant to Exhibit 2 of the Contract, that are required to be submitted by the Contractor; and

**vi.)** such other information as the County may reasonably require.

**d.** The County agrees that any request for its consent to a Permitted Transfer shall be granted provided that the transfer does not violate any provision of the Contract, and the transferee has not been convicted of a criminal offense as described under Article II of Chapter 189 of the Suffolk County Code. The County shall grant or deny its consent to any request of a Permitted Transfer within twenty (20) days after delivery to the County of the Transfer Notice, in accordance with the provisions of Paragraph 33 of this **Exhibit 1** of the Contract. If the County shall not give written notice to the Contractor denying its consent to such Permitted Transfer (and setting forth the basis for such denial in reasonable detail) within such 20-day period, then the County shall be deemed to have granted its consent to such Permitted Transfer.

**e.** Notwithstanding the County’s consent,

**i.)** the terms and conditions of the Contract shall in no way be deemed to have been waived or modified, and

**ii.)** such consent shall not be deemed consent to any further transfers.

**25. No Intended Third Party Beneficiaries**

The Contract is entered into solely for the benefit of the County and the Contractor. No third party shall be deemed a beneficiary of the Contract and no third party shall have the right to make any claim or assert any right under the Contract.

**26. Certification as to Relationships**

The Contractor certifies under penalties of perjury that, other than through the funds provided in the Contract and other valid agreements with the County, there is no known spouse, life partner, business, commercial, economic, or financial relationship with the County or its elected officials. The Contractor also certifies that there is no relationship within the third degree of consanguinity, between the Contractor, any of its partners, members, directors, or shareholders owning five percent (5%) or more of the Contractor, and the County. The foregoing certification shall not apply to a contractor that is a municipal corporation or a government entity.

**27. Publications**

Any book, article, report, or other publication related to the Services provided pursuant to this Contract shall contain the following statement in clear and legible print:

“This publication is fully or partially funded by the County of Suffolk.”

**28. Copyrights and Patents**

**a. Copyrights**

Any and all materials generated by or on behalf of the Contractor while performing the Services (including, without limitation, designs, images, video, reports, analyses, manuals, films, tests, tutorials, and any other work product of any kind) and all intellectual property rights relating thereto (“Work Product”) are and shall be the sole property of the County. The Contractor hereby assigns to the County its entire right, title and interest, if any, to all Work Product, and agrees to do all acts and execute all documents, and to use its best efforts to ensure that its employees, consultants, subcontractors, vendors and agents do all acts and execute any documents, necessary to vest ownership in the County of any and all Work Product. The Contractor may not secure copyright protection. The County reserves to itself, and the Contractor hereby gives to the County, and to any other person designated by the County, consent to produce, reproduce, publish, translate, display or otherwise use the Work Product. This paragraph shall survive any completion, expiration or termination of this Contract.

The County shall be deemed to be the author of all the Work Product. The Contractor acknowledges that all Work Product shall constitute “work made for hire” under the U.S. copyright laws. To the extent that any Work Product does not constitute a “work made for hire,” the Contractor hereby assigns to the County all right, title and interest, including the right, title and interest to reproduce, edit, adapt, modify or otherwise use the Work Product, that the Contractor may have or may hereafter acquire in the Work Product, including all intellectual property rights therein, in any manner or medium throughout the world in perpetuity without compensation. This includes, but is not limited to, the right to reproduce and distribute the Work Product in electronic or optical media, or in CD-ROM, on-line or similar format.

**b. Patents**

If the Contractor develops, invents, designs or creates any idea, concept, code, processes or other work or materials during the Term, or as a result of any Services performed under the Contract (“patent eligible subject matter”), it shall be the sole property of the County. The Contractor hereby assigns to the County its entire right, title and interest, if any, to all patent eligible subject matter, and agrees to do all acts and execute all documents, and to use its best efforts to ensure that its employees, consultants, subcontractors, vendors and agents do all acts and execute any documents, necessary to vest ownership in the County of any and all patent eligible subject matter. The Contractor may not apply for or secure for itself patent protection. The County reserves to itself, and the Contractor hereby gives to the County, and to any other person designated by the County, consent to produce or otherwise use any item so discovered and/or the right to

secure a patent for the discovery or invention. This paragraph shall survive any completion, expiration or termination of this Contract.

**29. Arrears to County**

The Contractor warrants that, except as may otherwise be authorized by agreement, it is not in arrears to the County upon any debt,

contract, or any other lawful obligation, and is not in default to the County as surety.

**30. Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction**

In the event that the Contract is subject to the Lawful Hiring of Employees Law of the County of Suffolk, Suffolk County Code Article II of Chapter 353, as more fully set forth in Exhibit 2 entitled "Suffolk County Legislative Requirements," the Contractor shall maintain the documentation mandated to be kept by this law on the construction site at all times. Employee sign-in sheets and register/log books shall be kept on the construction site at all times and all covered employees, as defined in the law, shall be required to sign such sign-in sheets/register/log books to indicate their presence on the construction site during such working hours.

**31. Record Retention**

The Contractor shall retain all accounts, books, records, and other documents relevant to the Contract for seven (7) years after final payment is made by the County. Federal, State, and/or County auditors and any persons duly authorized by the County shall have full access and the right to examine any of said materials during said period. Such access is granted notwithstanding any exemption from disclosure that may be claimed for those records which are subject to nondisclosure agreements, trade secrets and commercial information or financial information that is privileged or confidential. Without limiting the generality of the foregoing, records directly related to contract expenditures shall be kept for a period of ten (10) years because the statute of limitations for the New York False Claims Act (New York False Claims Act § 192) is ten (10) years.

**32. Certification Regarding Lobbying**

Together with this Contract and as a condition precedent to its execution by the County, the Contractor shall have executed and delivered to the County the Certification Regarding Lobbying (if payment under this Contract may exceed \$100,000) as required by Federal regulations, and shall promptly advise the County of any material change in any of the information reported on such Certification, and shall otherwise comply with, and shall assist the County in complying with, said regulations as now in effect or as amended during the term of this Contract.

**33. Notice**

Unless otherwise expressly provided herein, all notices shall be in writing and shall be deemed sufficiently given if sent by regular first class mail and certified mail, or personally delivered during business hours as follows: 1.) to the Contractor at the address on page 1 of the Contract and 2.) to the County at the Department, or as to either of the foregoing, to such other address as the addressee shall have indicated by prior written notice to the addressor. All notices received by the Contractor relating to a legal claim shall be immediately sent to the Department and also to the County Attorney at 100 Veterans Memorial Highway, P.O. Box 6100, (Sixth Floor), Hauppauge, New York, 11788-0099.

**End of Text for Appendix A**



**APPENDIX B**  
**Suffolk County Legislative Requirements**

**NOTE: THE CONTRACTOR'S COMPLETED LEGISLATIVE REQUIRED FORMS REFERENCED HEREIN ARE AVAILABLE ON FILE AT THE DEPARTMENT NAMED ON THE SIGNATURE PAGE OF THIS CONTRACT.**

**1. Contractor's/Vendor's Public Disclosure Statement**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of section A5-8 of Article V of the Suffolk County Code.

Unless certified by an officer of the Contractor as being exempt from the requirements of section A5-8 of Article V of the Suffolk County Code, the Contractor represents and warrants that it has filed with the Comptroller the verified public disclosure statement required by Suffolk County Administrative Code Article V, Section A5-8 and shall file an update of such statement with the Comptroller on or before the 31st day of January in each year of the Contract's duration. The Contractor acknowledges that such filing is a material, contractual and statutory duty and that the failure to file such statement shall constitute a material breach of the Contract, for which the County shall be entitled, upon a determination that such breach has occurred, to damages, in addition to all other legal remedies, of fifteen percent (15%) of the amount of the Contract.

**Required Form:**

Suffolk County Form SCEX 22; entitled "Contractor's/Vendor's Public Disclosure Statement"

**2. Living Wage Law**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Chapter 575, of the Suffolk County Code.

This Contract is subject to the Living Wage Law of the County of Suffolk. The law requires that, unless specific exemptions apply, all employers (as defined) under service contracts and recipients of County financial assistance, (as defined) shall provide payment of a minimum wage to employees as set forth in the Living Wage Law. Such rate shall be adjusted annually pursuant to the terms of the Suffolk County Living Wage Law of the County of Suffolk. Under the provisions of the Living Wage Law, the County shall have the authority, under appropriate circumstances, to terminate the

Contract and to seek other remedies as set forth therein, for violations of this Law.

**Required Forms:**

Suffolk County Living Wage Form LW-1; entitled "Suffolk County Department of Labor – Living Wage Unit Notice of Application for County Compensation (Contract)."

Suffolk County Living Wage Form LW-38; entitled "Suffolk County Department of Labor – Living Wage Unit Living Wage Certification/Declaration – Subject To Audit."

**3. Use of County Resources to Interfere with Collective Bargaining Activities**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article I of Chapter 803 of the Suffolk County Code.

County Contractors (as defined by section 803-2) shall comply with all requirements of Chapter 803 of the Suffolk County Code, including the following prohibitions:

- a. The Contractor shall not use County funds to assist, promote, or deter union organizing.
- b. No County funds shall be used to reimburse the Contractor for any costs incurred to assist, promote, or deter union organizing.
- c. No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote, or deter union organizing.

If the Services are performed on County property, the Contractor must adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, non-intimidation agreement, and a majority authorization card agreement.

If the Services are for the provision of human services and are not to be performed on County property, the Contractor must adopt, at the least, a neutrality agreement.

Under the provisions of Chapter 803, the County shall have the authority, under appropriate circumstances, to terminate the Contract and to seek other remedies as set forth therein, for violations of this Law.

**Required Form:**

Suffolk County Labor Law Form DOL-LO1; entitled "Suffolk County Department of Labor – Labor Mediation Unit Union Organizing Certification/Declaration - Subject to Audit."

**4. Lawful Hiring of Employees Law**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article II of Chapter 353 of the Suffolk County Code.

This Contract is subject to the Lawful Hiring of Employees Law of the County of Suffolk. It provides that all covered employers, (as defined), and the owners thereof, as the case may be, that are recipients of compensation from the County through any grant, loan, subsidy, funding, appropriation, payment, tax incentive, contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or an

awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees (as defined) and with respect to the alien and nationality status of the owners thereof. The affidavit shall be executed by an authorized representative of the covered employer or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement with the County; and shall be made available to the public upon request.

All contractors and subcontractors (as defined) of covered employers, and the owners thereof, as the case may be, that are assigned to perform work in connection with a County contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit to the covered employer a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees and with respect to the alien and nationality status of the owners thereof, as the case may be. The affidavit shall be executed by an authorized representative of the contractor, subcontractor, or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement between the covered employer and the County; and shall be made available to the public upon request.

An updated affidavit shall be submitted by each such employer, owner, contractor and subcontractor no later than January 1 of each year for the duration of any contract and upon the renewal or amendment of the Contract, and whenever a new contractor or subcontractor is hired under the terms of the Contract.

The Contractor acknowledges that such filings are a material, contractual and statutory duty and that the failure to file any such statement shall constitute a material breach of the Contract.

Under the provisions of the Lawful Hiring of Employees Law, the County shall have the authority to terminate the Contract for violations of this Law and to seek other remedies available under the law.

The documentation mandated to be kept by this law shall at all times be kept on site. Employee sign-in sheets and register/log books shall be kept on site at all times during working hours and all covered employees, as defined in the law, shall be required to sign such sign-in sheets/register/log books to indicate their presence on the site during such working hours.

**Required Forms:**

Suffolk County Lawful Hiring of Employees Law Form

LHE-1; entitled "Suffolk County Department of Labor – Notice Of Application To Certify Compliance With Federal Law (8 U.S.C. Section 1324a) With Respect To Lawful Hiring of Employees."

Suffolk County Lawful Hiring of Employees Law Form LHE-2; entitled "Affidavit Of Compliance With The Requirements Of 8 U.S.C. Section 1324a With Respect To Lawful Hiring Of Employees"

**5. Gratuities**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Chapter 664 of the Suffolk County Code.

The Contractor represents and warrants that it has not offered or given any gratuity to any official, employee or agent of the County or the State or of any political party, with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of an agreement.

**6. Prohibition Against Contracting with Corporations that Reincorporate Overseas**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of sections A4-13 and A4-14 of Article IV of the Suffolk County Code.

The Contractor represents that it is in compliance with sections A4-13 and A4-14 of Article IV of the Suffolk County Code. Such law provides that no contract for consulting services or goods and services shall be awarded by the County to a business previously incorporated within the U.S.A. that has reincorporated outside the U.S.A.

**7. Child Sexual Abuse Reporting Policy**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article II of Chapter 880 of the Suffolk County Code.

The Contractor shall comply with Article II of Chapter 880, of the Suffolk County Code, entitled "Child Sexual Abuse Reporting Policy," as now in effect or amended hereafter or of any other Suffolk County Local Law that may become applicable during the term of the Contract with regard to child sexual abuse reporting policy.

**8. Non Responsible Bidder**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article II of Chapter 189 of the Suffolk County Code.

Upon signing the Contract, the Contractor certifies that it has not been convicted of a criminal offense within the last ten (10) years. The term "conviction" shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under section 189-5 of the Suffolk County Code under "Nonresponsible Bidder."

**9. Use of Funds in Prosecution of Civil Actions Prohibited**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article III of Chapter 893 of the Suffolk County Code.

The Contractor shall not use any of the moneys, in part or in whole, and either directly or indirectly, received under the Contract in connection with the prosecution of any civil action against the County in any jurisdiction or any judicial or administrative forum.

**10. Youth Sports**

It shall be the duty of the Contractor to read, become familiar with, and comply with Article III of Chapter 730 of the Suffolk County Code.

All contract agencies that conduct youth sports programs are required to develop and maintain a written plan or policy addressing incidents of possible or actual concussion or other head injuries among sports program participants. Such plan or policy must be submitted prior to the award of a County contract, grant or funding. Receipt of such plan or policy by the County does not represent approval or endorsement of any such plan or policy, nor shall the County be subject to any liability in connection with any such plan or policy.

**11. Work Experience Participation**

If the Contractor is a not-for-profit or governmental agency or institution, each of the Contractor's locations in the County at which the Services are provided shall be a work site for public-assistance clients of Suffolk County pursuant to Chapter 281 of the Suffolk County Code at all times during the Term of the Contract. If no Memorandum of Understanding ("MOU") with the Suffolk County Department of Labor for work experience is in effect at the beginning of the Term of the Contract, the Contractor, if it is a not-for-profit or governmental agency or institution, shall enter into such MOU as soon as possible after the execution of the Contract and failure to enter into or to perform in accordance with such MOU shall be deemed to be a failure to perform in accordance with the Contract, for which the County may withhold payment, terminate the Contract or exercise such other remedies as may be appropriate in the circumstances.

**12. Safeguarding Personal Information of Minors**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Suffolk County Local Law No. 20-2013, a Local Law to Safeguard the Personal Information of Minors in Suffolk County.

All contract agencies that provide services to minors are required to protect the privacy of the minors and are strictly prohibited from selling or otherwise providing to any third party, in any manner whatsoever, the personal or identifying information of any minor participating in their programs.

**13. Contract Agency Performance Measures and Reporting Requirements**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Suffolk County Local Law No. 41-2013, a Local Law to Implement Performance Measurement to Increase Accountability and Enhance Service Delivery by Contract Agencies (Article VIII of Chapter 189 of the Suffolk County Code).

All contract agencies having a contract in excess of \$50,000 shall cooperate with the contract's administering department to identify the key performance measures related to the objectives of the service the contract agency provides and shall develop an annual performance reporting plan. The contract agency shall cooperate with the administering department and the County Executive's Performance Management Team to establish working groups to identify appropriate performance indicators for monthly evaluation of the contract agency's performance measures.

**14. Suffolk County Local Laws Website Address**

3. Suffolk County Local Laws, Rules and Regulations can be accessed on the homepage of the Suffolk County Legislature.

**End of Text for Appendix B**

