

05/07/2026

**TOWN OF ESOPUS
TOWN BOARD WORKSHOP
May 7, 2026, 7:00 PM**

A regularly scheduled Town Board Workshop was held in person on May 7, 2026, at 1 Town Hall Way, Ulster Park. The following persons in attendance:

Present:
Supervisor Roscoe Pecora
Councilman Evelyn Clarke
Councilman Jared Geuss
Councilman Paul Brooks
Councilman Stephanie Yeh

Recording Administrator: Erin McNierney, Deputy Town Clerk

PUBLIC COMMENT | IN-PERSON | (845) 331-0676 | ASSISTANT@ESOPUS.GOV
1) State your first and last name, 2) What hamlet/town you live in, 3) Keep comments to 3 mins maximum, and 4) Be sure to include your “request” or “ask” of the Town Board

Supervisor Pecora called the meeting to order at 7:05 pm.

PLEDGE TO THE FLAG

PUBLIC COMMENT

Chris Marta, 153 Parsell St, Connelly - Surprised that the Town failed to credit him for the work associated with the trash clean up at Sleightsburgh Park until after it was brought to their attention. He challenges the Town to take the clean-up at Sleightsburgh Park seriously and repeat this effort next year.

**PRESENTATION - TIGHE & BOND PROPOSAL FOR AMENDMENT FOR 2026 MS4
STORMWATER PERMIT COMPLIANCE ACTIVITIES – Dan Valentine – See Appendix A.**

Tighe & Bond has provided the Town of Esopus with this proposal amendment to continue assisting the Town of Esopus with compliance activities required under the NYSDEC’s MS4 General Permit, effective date of coverage January 3, 2024. Additionally, the EPA completed an audit of Esopus’s MS4 Program and has issued a Summary of Findings dated February 24, 2026, and an Administrative Compliance Order (ACO) dated March 31, 2026, with provisions, a compliance schedule and information request. The scope of work includes tasks to address the ACO and additional tasks not yet completed and due by the start of Year 3 of the 2024 MS4 General Permit (January 2027) (**See Exhibit A of Presentation**).

04/02/2026

Tighe & Bond has put forth a proposal to assist the town through the audit process, collection of data, and the implementation of the stormwater management program, which will help the town to be compliant with MS4 general permit requirements for the year, and the total amount of services will not exceed \$25,700.00.

Supervisor Pecora read the following resolution:

RESOLUTION APPROVING AGREEMENT FOR SUPPLEMENTAL MS4 ENGINEERING SERVICES WITH T&B ENGINEERING & LANDSCAPE ARCHITECTURE, P.C.

WHEREAS, the Town of Esopus (the “Town”) is subject to the requirements of the New York State Pollutant Discharge Elimination System (SPDES) Municipal Separate Storm Sewer System (MS4) General Permit; and

WHEREAS, the Town Board has determined that it is necessary and in the best interests of the Town to retain professional engineering services to assist with compliance and implementation of MS4 program requirements; and

WHEREAS, T&B Engineering & Landscape Architecture, P.C. (the “Consultant”) has demonstrated expertise and qualifications in providing such professional engineering services; and

WHEREAS, the Town and the Consultant have negotiated an Agreement for Professional Services (Engineering Services Contract – 2026) for supplemental MS4 engineering services, which includes a Scope of Services attached as Exhibit B; and

WHEREAS, the total compensation under said Agreement shall not exceed Twenty-Five Thousand Seven Hundred Dollars (\$25,700.00), unless amended by further resolution of the Town Board; and

WHEREAS, the Town Board has reviewed the terms and conditions of the Agreement and finds them to be fair and reasonable;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Esopus hereby approves the Agreement for Professional Services between the Town of Esopus and T&B Engineering & Landscape Architecture, P.C. for supplemental MS4 engineering services, in an amount not to exceed \$25,700.00; and

BE IT FURTHER RESOLVED, that the Town Supervisor is hereby authorized to execute said Agreement and any related documents necessary to effectuate the purposes of this Resolution; and

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

04/02/2026

Moved by: Supervisor Pecora
Seconded by: Councilman Yeh

Vote:

Councilman Brooks	Yes
Councilman Clarke	Yes
Councilman Geuss	Yes
Councilman Pecora	Yes
Councilman Yeh	Yes

Resolution duly adopted 5-0.

Tighe and Bond – Dan Valentine – NYS Drinking Water Revolving Fund

The Town previously completed a Water System Engineering Report in 2019 in connection with the Drinking Water State Revolving Fund Project. The Town Board has determined that it is necessary and in the best interest of the Town to update the Engineering Report to reflect work completed to date, revised infrastructure information, updated water main break data, and revised recommendations for distribution system improvements. The Town Board finds that the proposed services in the amount of \$3,300 are necessary for continued planning, maintenance, and improvement of the Town’s water infrastructure and to support potential state funding opportunities. **(Exhibit B).**

Supervisor Pecora read the following resolution:

RESOLUTION APPROVING THE AGREEMENT FOR PROFESSIONAL SERVICES TO UPDATE DRINKING WATER ENGINEERING REPORT AND ENROLLMENT OF PORT EWEN WATER DISTRICT IN NYS IUP SRF PROGRAM BY MAY 29th DEADLINE - TIGHE & BOND

WHEREAS, the Town of Esopus operates and maintains its municipal water distribution system; and

WHEREAS, the Town previously completed a Water System Engineering Report in 2019 in connection with Drinking Water State Revolving Fund (“DWSRF”) Project No. 18744; and **WHEREAS**, the Town Board has determined that it is necessary and in the best interests of the Town to update the Engineering Report to reflect work completed to date, revised infrastructure information, updated water main break data, and revised recommendations for distribution system improvements; and

WHEREAS, the Town Board has received and reviewed a proposal from Tighe & Bond to provide professional engineering services consisting of:

04/02/2026

- Updating the 2019 Engineering Report to document work completed under DWSRF 18744;
- Updating existing water distribution system infrastructure, population, and consumption information;
- Updating water main break data for the years 2019–2025;
- Revising the proposed distribution system improvements to recommend r replacement of water mains on East Main Street and Tilden Street;
- Preparing an Opinion of Probable Cost for the revised recommended alternative;
- Preparing an updated Water System Engineering Report in a format acceptable to the New York State Department of Health (“NYSDOH”) and Environmental Facilities Corporation (“EFC”);
- Providing draft and final electronic and hard copies of the report;
- Presenting a summary of recommendations and alternatives at one Town Board meeting; and
- Supporting the Town in preparation of an Intended Use Plan (“IUP”) Listing Form for funding application purposes; and

WHEREAS, the Town Board finds that the proposed services in the amount of \$3,300 are necessary for continued planning, maintenance, and improvement of the Town’s water infrastructure and to support potential state funding opportunities;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Esopus hereby approves the professional services agreement with Tighe & Bond for the scope of services described herein; and be it further

RESOLVED, that the Town Supervisor is hereby authorized to execute the agreement and any related documents necessary to effectuate the services described therein, subject to review and approval by the Town Attorney as to form; and be it further

RESOLVED, that this Resolution shall take effect immediately.

Moved by: Supervisor Pecora
Seconded by: Councilperson Geuss

Dan Valentine explained that the NYS drinking water revolving fund is a fund that municipalities can borrow large sums of money to make improvements then pay back into the fund. The Town has been pursuing congressional grant funding for these improvements and will need to be on the Intended Use Plan to be considered for the grant funding. This is just an application indicating to the state that the Town is interested in getting on the SRF list, it does not require or obligate the Town to borrow from the SRF fund.

04/02/2026

Vote:

Councilman Brooks	Aye
Councilman Clarke	Aye
Councilman Guess:	Aye
Councilman Pecora:	Aye
Councilman Yeh:	Aye

Resolution was duly adopted 5-0.

SUPERVISOR'S OFFICE

Hinchey's Constituent Services – representatives will be at Town Hall on Monday, May 11th from 10:00-1:00.

Black Creek Preserve – Supervisor, Deputy Supervisor and Confidential Assistant site visit with representatives from Scenic Hudson and discussion for future cooperation on a visitor's center. More to be discussed at a later date.

NYS Comptroller Office Financial Workshop – scheduled for June 4th. Supervisor Pecora and Councilperson Stephenie Yeh are scheduled to attend.

Let's talk local Government – NYS Association of Towns Lobby Day in Albany.

Supervisor Pecora reviewed the following issues from the NYAOT Legislation supporting Town Government:

Modernizing Public Notice – Is a big initiative of the Association. This allows municipalities to post legal notices on their .gov website instead of in a newspaper, but only after enacting a local law authorizing this.

- Statutory print notices cost towns between \$6 million and \$8 million annually.
- Print notices slow down projects as towns sometimes must submit notices 30 – 60 days in advance.

Competitive Bidding Thresholds – Increase bidding thresholds from \$20,000 to \$75,000 for commodities and \$35,000 to \$125,000 for public works.

New York's competitive bidding thresholds have not been updated in roughly 15 years.

- Rising costs means more routine purchases now trigger formal bidding requirements
- Higher thresholds would give towns greater flexibility while preserving safeguards for larger contracts.

04/02/2026

Create dedicated funds for water and sewer infrastructure. Senator Hinchey is sponsoring this legislation and Supervisor Pecora is advocating for funds for water / sewer infrastructure.

- NY faces tens of billions of dollars in drinking water and wastewater infrastructure needs.
- Existing grant and loan programs are important but cannot meet the full-scale need.
- Predictable, dedicated funding helps towns plan, budget and address infrastructure needs before they become emergencies.
- Reliable water and sewer infrastructure is essential for public health, environmental protection, and housing development.

Increase retiree salary cap – increase the earnings limitation from \$35,000-\$65,000 in 2027.

- Current law limits most public retirees under age 65 to earn \$35,000 in public employment before their pension is reduced.
- The cap has not kept pace with inflation and has only been increased twice since.
- The state has already shown flexibility by waiving the cap for school districts.
- Raising the cap would help towns fill vacancies with experienced workers.
- Retirees can step in quickly, reduce training costs, and help maintain local services.

Allow towns to create reserve funds for Other Post Employment Benefits (OPEB).

- Towns face significant long-term costs for retiree health benefits and other post – employment benefits.
- Current law limits towns' ability to set aside money in a dedicated reserve for these future obligations.
- Without OPEB reserve, towns are forced to manage these costs year-to-year.
- OPEB reserves would help protect taxpayers by allowing towns to save gradually for know future costs and avoid sudden budget spikes.

Councilman Clarke asked who Supervisor Pecora met with? Supervisor Pecora said that there was a full schedule for the day and he met with many senate people as well as Senator Hinchy, who was very receptive to our needs.

Monthly Town Supervisor's Association Meeting Updates

Municipal Commercial Driving (CDL) Training at the Community College offered to municipal employees if needed for job. This would be beneficial to local municipalities.

Marc Rider from UCRRA gave an update. Suspended Composting for 60 days as of 4/21/26.

04/02/2026

Health Department – issues regarding climate change. There will be a conference where 2 individuals from each municipality will attend to engage and interact regarding climate change issues including energy control.

ULSTER COUNTY TRANSPORTATION COUNCIL

Monthly UCTC meeting – appointed to technical committee for program revisions.

Approval of UCTC Resolution 2026-005 Memorandum of Understanding – MHV Transportation Management Area for the Poughkeepsie-Newburgh, NY Urban Area. Urban areas of greater than 200,000 population are classified as Transportation Management Areas; the Mid-Hudson Valley Transportation Management Areas consists of those Metropolitan Planning Organizations (MPOs) operating within the Poughkeepsie-Newburgh, NY urbanized area. Those MPOs include Dutchess County, Orange County and Ulster County Transportation Council.

These three MPOs are responsible for coordinating aspects of transportation planning and programming in the MHVTMA. As such, a Memorandum of Agreement detailing the nature of this shared responsibility is required.

UCTC Resolution – Amendment of the UCTC Federal Fiscal Year 2026-2030 Transportation Improvement Program. At the request of the NY S Dept. of Transportation, Resolution 2026-07 will amend the 2026-2030 UCTC Transportation Improvement to add a project. The project will resurface Rte. 209/55 from Lippman Park to Main Street in the towns of Rochester and Wawarsing to bring them to a state of good repair.

UCTC Resolution 2026-08-\$2,223,631 in FTA 5307/5340 funds were apportioned to Publicly owned operators of transit service within the Kingstn Urbanized Area in 2025. Ulster County, operator of Ulster County Area Transit (UCAT), is the only publicly owned transit service within the Kingston Urbanized Area. As such, Draft Resolution 2026-08 allocated 100% of available funds to Ulster County. This action helps streamline the administrative and management processes for NYDOT, Trailways, CDTA, and UCTC.

UCTC Draft Resolution 2026-09: Authorizing the Transfer of Administrative and Management Responsibilities for Ulster County Commuter Bus Carrier's Share of FFY 2024 FTA Section 5307 TMA Formula Funds to the Capital District Transportation Authority. The transfer will move administrative responsibilities from Ulster County to the Capital District Transportation Authority in Albany, NY, through the FTA policy referred to as "capital cost of contracting." FTA will allow the recipient to consider a percentage of leased service or contracted maintenance capital costs without further justification and will provide assistance for 80% of the resultant amount.

Open Meeting Law (OML) and FOIL TRAINING – May 18, 9:00-12:00

04/02/2026

Neighborhood Watch meeting – Sleightsburgh Park 4-30-26.

Supervisor Pecora attended the meeting with the Sleightsburgh Park Ad Hoc Committee and the Ulster County Sheriff's Department to discuss issues at the Sleightsburgh Park. The Supervisor was asked by the Sheriff Department to write a letter to the Ulster County Sheriff's Office, reinforcing Town policy, requesting that any person found on Town Park properties after permitted hours be subject to enforcement and prosecution as appropriate.

Councilman Yeh asked if the parks close at dusk. Supervisor Pecora said yes but at Sleightsburgh Park there is a sensor that will open the gate to allow individuals who may periodically get off the water after 9:00 pm, the ability to leave the parking lot and not be locked in.

Councilman Brooks asked if the decision of putting the gate down and letting the people get locked in at their own risk should be a Board decision?

Supervisor Pecora said he researched the issue and, at the recommendation of the Ulster County Sheriff's Department, made the decision to leave the sensor gate as is to allow people out of the parking lot after 9:00 pm. Supervisor Pecora also wrote a letter that was previously sent by Supervisor Barnett, allowing the Ulster County Sheriff Department enforcement authority when needed. Supervisor said that this was all that was needed for this issue.

Councilman Brooks asked if the Board should be making the decision on the gate closure, additional cameras and hiring someone to collect money. This needs to be put on the agenda soon.

Supervisor Pecora said that his office will be sending a thank you letter to the Sleightsburgh Park Ad Hoc Committee indicating they will no longer be needed because their recommendations have been met and thanked them for their efforts on this matter. A letter will also be sent to the Board outlining recommendations from the Ad Hoc Committee as well as a copy of policy recommendations from the Supervisor's Office. This letter can be expected in the June timeframe.

MOTION MADE BY COUNCILPERSON CLARKE TO AUTHORIZE SUPERVISOR PECORA TO PURCHASE SOLITE IN THE AMOUNT OF \$3,881.09 TO BE USED TO IMPROVE THE CONDITIONS ON THE ROAD, PARKING LOT AND AREA AROUND THE PORTA POTTIES AT SLEIGHTSBURGH PARK. COUNCILPERSON GEUSS SECONDED THE MOTION. ALL IN FAVOR, MOTION CARRIED.

Overview of monthly H7 Strategic Planning – Meeting May 4, 2026.

The strategic meeting gave an overview of the 501(C) (3), which would clarify for the town the core purpose, mission statement, goals, objectives, and implementation tracking of the bigger picture and how it will support H7. We were able to get outside counsel to assist with this process. This discussion is in progress and will be discussed further in the next H7 meeting.

Councilman Clarke asked if there is a follow-up regarding CHPE concerns. Supervisor Pecora said this was not discussed at this meeting. Assessor Harris and Councilman Yeh are monitoring the state assessment issue and will bring any new developments forward.

FEE REQUEST WAIVER FOR THE SHERIFF’S ANNUAL RETIREMENT WELLNESS PICNIC IS SCHEDULED FOR FRIDAY, JULY 17TH.

SUPERVISOR PECORA MADE A MOTION TO WAIVE THE FEE FOR THE RENTAL OF FREE PARK FOR THE SHERIFF’S ANNUAL RETIREMENT WELLNESS PICNIC SCHEDULED FOR FRIDAY, JULY 17TH. COUNCILMAN CLARKE SECONDED THE MOTION. ALL MEMBERS PRESENT IN FAVOR: MOTION CARRIED.

FEE REQUEST WAIVER FOR ST. REMY COMMUNITY DAY AT CAS LANDI PARK

SUPERVISOR PECORA MADE A MOTION TO GRANT PERMISSION TO THE ST. REMY FIRE DEPARTMENT TO ERECT A 20’ X 20’ TENT AT THE ST. REMY COMMUNITY DAY AT CAS LANDI PARK ON JUNE 14TH. COUNCILPERSON GEUSS SECONDED THE MOTION. ALL MEMBERS PRESENT IN FAVOR; MOTION CARRIED.

ENVIRONMENTAL BOARD CO-CHAIRS – NINA NICHOLAS AND CHRIS DECICCO

Every few years, we need to update our climate-smart task force by appointing a climate-smart coordinator. Nina was asked to give a brief explanation about the Climate Smart Community.

A Climate Smart Community is very common in all towns in this area. There are different levels such as gold, bronze certification and points are received with each level of classification. We receive points by proving that the Town has set up certain climate-smart agenda items, such as setting up the Task Force, trying to have open spaces in town, and setting plans for green, sustainable buildings. The task force would try and come up with different policies which would hopefully result in receiving higher grant money. The grant could be used to promote pollination on private land, develop educational material supporting natural pollinators in the area or place natural pollinators around town signs. Nina and Lee, along with other members of the

04/02/2026

Environmental Board, will be writing the grant. We will use the existing pollinator garden for this grant and there is no match for this grant. There is 5K-20K grant money available to support pollinator projects.

Councilperson Yeh asked that Nina send the Town Board members the information for the events so it can be put on all their social media.

SUPERVISOR PECORA MADE A MOTION TO AUTHORIZE THE ENVIRONMENTAL BOARD TO SUBMIT AN APPLICATION FOR THE NY COMMUNITY TRUST POLLINATOR GRANT. COUNCILPERSON CLARKE SECONDED THE MOTION. ALL MEMBERS PRESENT IN FAVOR; MOTION CARRIED.

Supervisor read the following resolution:

RESOLUTION APPOINTING CLIMATE SMART COORDINATOR JENNA ICE

TOWN OF ESOPUS

RESOLUTION APPOINTING JENNA ICE AS THE CLIMATE SMART COMMUNITY COORDINATOR FOR THE TOWN OF ESOPUS

WHEREAS, the Town of Esopus (the “Town”) adopted the Climate Smart Communities Pledge in December 27 2017; and

WHEREAS, to maintain a proactive stance on climate change and to pursue certification as a Climate Smart Community, the Town Board of the Town of Esopus wishes to appoint a dedicated coordinator; and

WHEREAS, the position of Climate Smart Community Coordinator is crucial for acting as a single point person and liaison among the Town Board, staff, and the Climate Smart Communities Task Force;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Esopus hereby appoints **Jenna Ice, 8 Brookview Lane, Ulster Park, NY12487** as the Climate Smart Community Coordinator for the Town of Esopus; and

BE IT FURTHER RESOLVED, that the duties of the Climate Smart Community Coordinator shall include:

- Acting as the primary point of contact for the New York State Department of Environmental Conservation Climate Smart Communities Program;
- Liaising with the Esopus Environmental Board, Town Board, municipal staff, and the community to implement climate action initiatives;
- Leading the documentation of municipal efforts for Climate Smart Communities certification;
- Assisting in tracking municipal energy use and promoting greenhouse gas reduction initiatives; and

04/02/2026

BE IT FURTHER RESOLVED, that this position is voluntary and shall continue until a successor is appointed or the position is terminated.

Offered by: Supervisor Roscoe Pecora
Seconded by: Councilman Clarke

Vote:

Supervisor Roscoe Pecora	Yes
Councilman Evelyn Clarke	Yes
Councilman Jared Geuss	Yes
Councilman Paul Brooks	Yes
Councilman Stephanie Yeh	Yes

Resolution was duly adopted 5-0.

Supervisor Pecora read the following resolution:

RESOLUTION APPROVING LETTER OF ENGAGEMENT BETWEEN THE TOWN OF ESOPUS AND RBT CPAs, LLP FOR GENERAL ACCOUNTING SERVICES

WHEREAS, the Town Board of the Town of Esopus has determined that professional accounting assistance is necessary to support the Town's financial operations, reporting, budgeting, and audit preparation; and

WHEREAS, the Town has received a Letter of Engagement from RBT CPAs, LLP to provide accounting and consulting services for the fiscal year ending December 31, 2026; and

WHEREAS, the services to be provided include assistance with monthly, quarterly, and annual financial reporting; reconciliations of bank accounts, receivables, payables, and grants; budget-to-actual analyses; preparation of the annual budget; preparation of supporting schedules for the annual audit; recommendations regarding internal controls and recordkeeping; and ongoing accounting consultation; and

WHEREAS, the engagement shall remain in effect through December 31, 2026, and RBT CPAs, LLP has represented that it will maintain independence in accordance with the standards of the American Institute of Certified Public Accountants (AICPA);

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Esopus hereby approves the Letter of Engagement between the Town of Esopus and RBT CPAs, LLP for accounting services through December 31, 2026; and be it further

RESOLVED, that the Town Supervisor is hereby authorized to execute the Engagement Letter and any related documents necessary to effectuate the services described therein; and be it further

RESOLVED, that this Resolution shall take effect immediately.

04/02/2026

Offered by: Supervisor Roscoe Pecora
Seconded by: Councilman Stephanie Yeh

Supervisor Roscoe Pecora	Aye
Councilman Evelyn Clarke	Aye
Councilman Jared Geuss	Aye
Councilman Paul Brooks	Aye
Councilman Stephanie Yeh	Aye

Resolution was duly adopted 5-0.

Supervisor Pecora read the following resolution:

RESOLUTION APPROVING ENGAGEMENT LETTER WITH RBT CPAs, LLP FOR ACCOUNTING AND CONSULTING SERVICES RELATED TO THE DEVELOPMENT OF A CAPITAL PLAN

WHEREAS, the Town Board of the Town of Esopus has determined that it is in the best interests of the Town to develop and implement a comprehensive Capital Plan to support long-term planning and financial sustainability; and

WHEREAS, the Town desires to retain professional accounting and consulting services to assist with the development and implementation of such Capital Plan; and

WHEREAS, RBT CPAs, LLP has submitted an Engagement Letter to provide accounting and consulting services to the Town of Esopus, including assistance with the development of a comprehensive Capital Plan, establishment of standardized templates and processes, integration of the Capital Plan with the annual budget process, and collaboration with Town personnel regarding annual updates and key planning assumptions; and

WHEREAS, the term of the Engagement Letter shall remain in effect through December 31, 2026; and

WHEREAS, the Town Board has reviewed the Engagement Letter and finds the terms thereof to be acceptable and in the best interests of the Town;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Esopus hereby approves the Engagement Letter between the Town of Esopus and RBT CPAs, LLP for accounting and consulting services related to the assistance in development of a Capital Plan; and be it further

RESOLVED, that the Town Supervisor is hereby authorized and directed to execute the Engagement Letter and any related documents necessary to effectuate the purposes of this Resolution; and be it further

RESOLVED, that this Resolution shall take effect immediately.

04/02/2026

Offered by: Supervisor Roscoe Pecora
Seconded by: Councilman Stephanie Yeh

Discussion Capital Plan – RBT

The Capital Plan was requested by Supervisor Pecora, he had promised the voters to create a five-year Capital Plan. At this time the town does not have a formalized process, and I would like to ensure we meet the State requirements for standard municipal practices and RBT will help to create the 5-year Capital Plan. The Capital Plan recommendations will go in front of the board for review.

Councilman Brooks asked, "Can you explain to me what the preparation of the annual budget entails and what is the Bookkeeper's role? Councilperson Clarke explained that the budget entailed meeting with all Department Heads and Boards to understand what their asks are and what amount of money was needed for each department and how that would fit into the annual budget. The Bookkeeper knows how much money is in each line item and ensures the Town does not go over the tax cap. Councilman Brooks said legally we cannot go over the tax cap. Supervisor Pecora said that is not true; the Board would need to pass a resolution recommended by the State Comptroller that would enable the town to go over the tax cap.

Councilman Yeh asked is this a different service than that which falls under "accounting services?" Supervisor Pecora said yes, this is a separate project for RBT and he confirmed with the Bookkeeper that there was \$12,000 available which is more than enough to cover all expenses associated with accounting services and the creation of the capital plan for 2026.

Councilman Brooks asked, what would be included in a Capital Plan?

Supervisor Pecora shared a few thoughts on items the town would need to plan for in near future; a new scale at the Transfer Station, the salt shed at the Highway Department, more bays at the Highway Dept as well as improvements to the main building at the Highway Dept. park improvements and grants.

Darrin Dekoskie, planning board member, said the Capital Plan could be used for any infrastructure improvements the Town would like to see. Items in the plan can be added or removed as the Board sees fit. This is something the Town should do every year.

Supervisor Pecora said this resolution will move the Town in the direction that the taxpayer would like to see.

Vote:

Supervisor Roscoe Pecora	Aye
Councilman Evelyn Clarke	Aye
Councilman Jared Geuss	Aye
Councilman Paul Brooks	Aye
Councilman Stephanie Yeh	Aye

Resolution was duly adopted.

04/02/2026

Supervisor Pecora read the following resolution:

RESOLUTION AUTHORIZING THE TOWN OF ESOPUS TO GO OUT FOR RFP FOR WORK TO BE PERFORMED AT RIVERVIEW CEMETERY THROUGH A DASNY GRANT

AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS (RFP) FOR THE REHABILITATION OF RIVERVIEW CEMETERY

WHEREAS, the Town of Esopus owns and maintains Riverview Cemetery located on Broadway in Port Ewen, New York; and

WHEREAS, the Town Board has identified the need to rehabilitate and preserve Riverview Cemetery in order to maintain its historic character, improve safety, and enhance accessibility; and

WHEREAS, the proposed project includes, but is not limited to, restoration and stabilization of headstones and foundations, resetting of displaced markers, and site improvements; and

WHEREAS, the Town of Esopus has received grant funding through the Dormitory Authority of the State of New York to support this Project; and

WHEREAS, the Town Board has determined that the rehabilitation of Riverview Cemetery is in the best interests of the Town and its residents; and

WHEREAS, received grant funds of \$50,900, that are available to fund the Project;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Esopus hereby authorizes the issuance of a Request for Proposals (RFP) entitled "Riverview Cemetery Rehabilitation Project," Project No. 24857, dated May 4, 2026; and

BE IT FURTHER RESOLVED, that the Town Supervisor, Town Clerk, and/or their designees are hereby authorized to advertise for sealed proposals, distribute the RFP, and take all actions necessary to solicit and receive proposals in accordance with applicable laws and Town procurement policies; and

BE IT FURTHER RESOLVED, that the Town Board reserves the right to reject any and all proposals, to waive any informalities, and to award the contract in a manner deemed to be in the best interests of the Town; and

BE IT FURTHER RESOLVED, that the Town Board may award the contract in phases or adjust the scope of work based on funding considerations and project priorities; and

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

Offered by: Supervisor Roscoe Pecora
Seconded by: Councilman Jared Geuss

04/02/2026

Supervisor Pecora explained that the Riverview Cemetery no longer has a board and has been turned over to the Town. As such, the Town is responsible for the upkeep of the cemetery.

Councilman Yeh asked if the \$50,000 the Town received from the grant can only be used for cemetery improvements? Supervisor Pecora said yes only for the cemetery rehabilitation.

Councilman Brooks asked if the families have been notified?

The Confidential Assistant explained that it was actually someone who had family in the cemetery who procured the Grant for the rehabilitation of the Riverview Cemetery. The families will need to be notified, and the money received from the grant will be used to restore the head/foot stones only. The Town will go out for competitive bids, but we have to wait to see what comes in as there are not a lot of companies that do this type of work.

Vote:

Supervisor Roscoe Pecora	Aye
Councilman Evelyn Clarke	Aye
Councilman Jared Geuss	Aye
Councilman Paul Brooks	Aye
Councilman Stephanie Yeh	Aye

Resolution was duly adopted 5-0.

Supervisor Pecora read the following resolution:

RESOLUTION AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION BY THE TOWN OF ESOPUS TO THE HUDSON RIVER VALLEY GREENWAY RELATED TO THE MCHENRY GRANT PROGRAM

WHEREAS, the Town of Esopus adopted a comprehensive plan in 2019, and zoning amendments were subsequently adopted in 2021 to effectuate the recommendations of the adopted comprehensive plan; and

WHEREAS, the Planning Board has, over the course of approximately six (6) years of administering and applying Chapter 123, Zoning, identified omissions, inconsistencies, and areas requiring clarification through its review of development applications; and

WHEREAS, based on the Planning Board's experience and input, the Town Board has determined that amendments to Chapter 123 are necessary to address such omissions and

04/02/2026

inconsistencies and to improve the clarity and effectiveness of the Town's zoning regulations; and

WHEREAS, the Zoning Amendments project includes but is not limited: to definition of ridgelines, better alignment of tourism-related standards with the intent of the plan and protection of residential neighborhoods, streamlining and updating procedures related to Planning Board review and approval or applications; and

WHEREAS, the Hudson River Valley Greenway / National Heritage Area McHenry Planning Grant Program provides funding assistance for planning projects; and

WHEREAS, the proposed project is consistent with the 2019 Town of Esopus Comprehensive Plan 2019, and the mission of the Hudson River Valley Greenway as set forth in the application; and

WHEREAS, the Town of Esopus requests funding in the amount of \$25,000 and agrees to provide a funding match and/or in-kind match in the amount of \$12,500; and

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Esopus hereby approves and endorses the application for a grant under the Hudson River Valley Greenway McHenry Planning Grant Program, for a project known as Zoning Amendments and located within this community; and

BE IT FURTHER RESOLVED, that the Town Supervisor is authorized to execute and submit all applications, agreements, certifications, and documents necessary to complete the grant application process and, if awarded, to accept and administer grant funds on behalf of the Town of Esopus; and

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately and shall be transmitted immediately to the Hudson River Valley Greenway upon its adoption.

Offered by: Supervisor Roscoe Pecora
Seconded by: Councilman Paul Brooks

Planning consultant Bonnie Franson recommended the zoning amendment project include: definition of ridgelines, better alignment of tourism-related standards with the intent of the plan and protection of residential neighborhoods, streamlining and updating procedures related to planning Board review and approval or applications These recommendations came out of the 2019 Comprehensive Plan.

Councilman Brookes said this resolution discusses the need to clarify the definition of ridgeline and tourism-related standards. There is a need to apply for the grant in a timely manner since the deadline is June 1st with milestones to be met within 2 years. We should get word on the award of the grant in the June timeframe.

Councilman Geuss asked, since this is a Greenway specific grant, is this the only zone that can be addressed? Darrin DeKoskie said no, all zones can be addressed.

04/02/2026

Councilman Clarke asked, are we changing the code? Darrin said yes, we will be changing the code for definitions for ridgelines and things like that. Essentially, to get more clarity in the code.

Councilman Clarke asked, when does the code enforcement officer come into play? Darrin said the Building Inspector makes interpretations of the code. Applicants can disagree with those interpretations within 60 days.

Councilman Brooks discussed the role of the Zoning Board of Appeals. This is an appellate court which is in place to decide when something is unclear or to dispute the ruling of the Planning Board and Building Department. The Zoning Board of Appeals would make the final decision.

Councilman Clarke asked if this was a way to go around the Building Inspector?

Planning Board member, Roxanne Pecora explained that they have a list of items that came out of the Comprehensive Plan that will need to be revisited. If we can get the grant through, they are hoping to focus on those items within the code.

Councilman Geuss said all suggested revisions to the zoning code will have to go in front of the Board for review and local laws will need to be established.

Supervisor Pecora and Councilman Brooks will follow up with the Building Inspector for his list of changes to the code.

Councilman Yeh confirmed that the Town has the required \$12,500 match already in place for when the grant is awarded.

Vote:

Supervisor Roscoe Pecora	Aye
Councilman Evelyn Clarke	Aye
Councilman Jared Geuss	Aye
Councilman Paul Brooks	Aye
Councilman Stephanie Yeh	Aye

Resolution was duly adopted 5-0.

EXECUTIVE SESSION

SUPERVISOR ROSCOE PECORA MADE A MOTION AT 8:36 PM TO ENTER INTO EXECUTIVE SESSION TO DISCUSS A PARTICULAR PERSONNEL MATTER PERTAINING TO CONTINUED CANDIDATE INTERVIEW RE: ALTERNATE FOR PLANNING BOARD. COUNCILMAN YEH SECONDED THE MOTION. ALL MEMBERS PRESENT WERE IN FAVOR, AND THE MOTION CARRIED.

SUPERVISOR PECORA MOTIONED TO EXIT THE EXECUTIVE SESSION AT 9:15 PM. COUNCILMAN YEH SECONDED THE MOTION. ALL MEMBERS PRESENT WERE IN FAVOR, AND THE MOTION CARRIED.

ACTION :

SUPERVISOR PECORA MADE A MOTION TO APPOINT DERICK KARABEC AS AN ALTERNATE TO THE PLANNING BOARD TERM TO EXPIRE 12/31/26. COUNCILMAN CLARKE SECONDED THE MOTION.

Vote:

Supervisor Roscoe Pecora	Aye
Councilman Evelyn Clarke	Aye
Councilman Jared Geuss	No
Councilman Paul Brooks	Aye
Councilman Stephanie Yeh	Aye

MOTION CARRIED.

SUPERVISOR ROSCOE PECORA MADE A MOTION AT 9:17 PM TO ENTER INTO EXECUTIVE SESSION TO DISCUSS THE EMPLOYMENT HISTORY FOR A PARTICULAR INDIVIDUAL. COUNCILMAN CLARKE SECONDED THE MOTION. ALL MEMBERS PRESENT IN FAVOR. MOTION CARRIED.

SUPERVISOR PECORA MOTIONED TO EXIT THE EXECUTIVE SESSION AT 9:50 PM. COUNCILMAN YEH SECONDED THE MOTION. ALL THE MEMBERS PRESENT WERE IN FAVOR, AND THE MOTION CARRIED.

NO ACTION TAKEN.

04/02/2026

Next Town Board Meeting scheduled for May 21, 2026

5.11.26 Seniors Meeting Park,nY	Town Hall Community Center, Ulster	
1:00pm		
5.13.26 Recreation Commission	Town Hall, One TownHall Way,Ulster Park NY	7:00pm
5.14.26 Water/Sewer	Town Hall Community Center, Ulster Park, NY	7:00pm
5.18.26 Planning Board	Town Hall, One Town Hall Way, Ulster Park,NY	7:30pm
5.19.26 ZBA Community Center	Town Hall, One Town Hall Way, Ulster Park, NY	7:00pm
5.20.26 Environmental Board	Town Hall, One Town Hall Way, Ulster Park, NY	7:00pm
5.21.26 Public Hearing LWRP	Town Hall, One Town Hall Way, Ulster Park, NY	7:00pm
5.21.26 Town Board Meeting	Town Hall, One Town Hall Way, Ulster Park, NY	7:00pm
5.28.26 WAB	Town Hall, One Town Hall Way, Ulster Park, NY	7:00pm

AJOURNMENT

**SUPERVISOR PECORA MADE A MOTION TO CLOSE THE MEETING AT 9:55 P.M.
COUNCILMAN CLARKE SECONDED THE MOTION. ALL THE MEMBERS PRESENT WERE
IN FAVOR, AND THE MOTION CARRIED.**

*Respectfully Submitted,
Evin McNierney
Deputy Town Clerk*

14-5006-0016

April 20, 2026

Roscoe T. Pecora
Supervisor
Town of Esopus
1 Town Hall Way
Ulster Park, NY 12487

**Re: Amendment for 2026 MS4 Stormwater Permit Compliance Activities
Town of Esopus, SPDES No: GP-0-24-001, NOI No: NYR20A427**

Dear Supervisor Pecora:

Tighe & Bond, who provides services in New York as T&B Engineering and Landscape Architecture, PC (Tighe & Bond) is pleased to provide you with this proposal amendment to continue assisting the Town of Esopus with compliance activities required under the NYSDEC's MS4 General Permit (GP-0-24-001), effective date of coverage (EDC) January 3, 2024. Additionally, the EPA completed an audit of Esopus's MS4 Program and has issued a Summary of Findings dated February 24, 2026 and an Administrative Compliance Order (ACO) dated March 31, 2026 with provisions, a compliance schedule and information request. This scope of work includes tasks to address the ACO and additional tasks not yet completed and due by the start of Year 3 of the 2024 MS4 General Permit (January 2027).

Scope of Services

The 2026 SWMP Plan was drafted under a previous contract after EPA's audit and prior to issuance of the ACO; therefore some of the missing elements referenced in the ACO have already been incorporated into the plan. Other items identified in the ACO Compliance Schedule are underway by the Town and only require information or clear documentation be provided. We assume the Town will be responsible for addressing the following ACO items and will not require assistance from Tighe & Bond:

- Maintain all records required by the Permit for five (5) years after they are generated, in accordance with Part V.A of the Permit.
 - Appendix G of the current draft of the 2026 SWMP Plan contains some existing records and provides a location to document other records required by the Permit.
- Notify construction site owner/operators of SWPPP acceptance using the NYSDEC MS4 SWPPP Acceptance Form which is available on NYSDEC's website, in accordance with Part VI.D.6 of the Permit.
- Conduct inspections of active construction sites and ensure inspections are documented utilizing the NYSDEC Construction Site Inspection Report Form, or an equivalent form containing the same information, and include copies of completed inspection reports in the SWMP Plan in accordance with Parts VI.D.8.c and VI.D.8.e of the Permit.
 - The Town should provide completed forms to Tighe & Bond for inclusion in Appendix G of the draft 2026 SWMP Plan Update.

Tighe & Bond proposes the following scope of services to assist the Town with compliance activities under the 2024 MS4 General Permit and ACO. Deliverables will be formatted to easily incorporate into the SWMP Plan Updates.

433 River Street
Suite 6003
Troy, NY 12180

TIGHEBOND.COM

T 518.833.6560

Task 1 - Audit Report Comment Response Letter

As per the ACO, the Town of Esopus "is required to submit a response to the Areas of Concern identified in the Audit Report to EPA and NYSDEC no later than May 15, 2026."

Tighe & Bond will review the Areas of Concern and draft a response for the Town to review and request revisions as needed. Following any discussion or revisions, Tighe & Bond will finalize the response as a PDF and send to the Town for submission to EPA and NYSDEC.

TASK 1 DELIVERABLES

- PDF Response to Audit Report Areas of Concern that can be submitted to EPA and NYSDEC.

Task 2 - Enforcement Response Plan (ACO Schedule Item f)

Part IV.F.1 of the 2024 MS4 General Permit requires the development and implementation of an enforcement response plan (ERP) which clearly describes the action(s) to be taken for violations that the MS4 Operator has enacted for illicit discharge, construction, and post-construction. The ERP must be documented in the SWMP Plan.

As per the ACO, the Town of Esopus is out of compliance with the above requirements and must develop an Enforcement Response Plan by May 15, 2026.

This task includes the drafting of this document, an opportunity for the Town to review and provide feedback and comments for one (1) round of revisions, and, upon completion.

TASK 2 DELIVERABLES

- A PDF of the draft Enforcement Response Plan for the Town to provide one (1) round of revisions and a PDF of the final Enforcement Response Plan for submission to EPA and NYSDEC by May 15, 2026 (ACO Schedule Item f) and for inclusion in the 2026 SWMP Plan Update

Task 3 - Construction Site and Post-Construction Stormwater Management Practice (SMP) Inventory Updates

Subtask 3.1 - Construction Site Inventory Updates (ACO Schedule Item g)

Part VI.D.4.a. of the 2024 MS4 General Permit states that the MS4 Operator must "develop and maintain an inventory of all applicable construction sites (Part VI.D.1.a.) in the SWMP Plan."

As per the EPA's Summary of Findings, "the Town's inventory [does] not include all required information. Specifically, it [does] not include receiving waterbody names and classes, receiving waterbody WI/PWL Segment IDs, SPDES identification numbers, and SWPPP approval dates. Additionally, the EPA Audit Team observed that the construction site inventory was not documented as part of the SWMP Plan."

This Subtask includes updating the Town's Construction Site Inventory to comply with the requirements of the 2024 MS4 General Permit.

Additionally, staff will provide guidance on developing a schedule for SWPPP inspections at relevant construction sites as needed.

Subtask 3.2 - Post-Construction SMP Inventory Updates (ACO Schedule Item h)

As per the EPA's Summary of Findings, the Town-provided mapped inventory of post-construction SMPs did not include all the information required by the 2024 MS4 General Permit. Additionally, the Town does not have a formal post-construction inspection and maintenance program or procedures within the 2022 SWMP Plan.

This Subtask includes updating the SMP Inventory in the Town's GIS mapping to comply with the requirements of the 2024 MS4 General Permit. Additionally, language will be drafted to formalize and describe the Town's post-construction SMP inventory, maintenance program, and/or procedures within relevant sections of the 2026 SWMP Plan.

TASK 3 DELIVERABLES

- An updated Excel file containing the updated Construction Site Inventory with all required fields and populated information for submission to EPA and NYSDEC by May 15, 2026 (ACO Schedule Item g), as well as a PDF printout for inclusion in the 2026 SWMP Plan Update
- An updated GIS layer of the Town's SMPs with all required attributes as well as a PDF version of attribute table printout for submission to EPA and NYSDEC by May 15, 2026 (ACO Schedule Item h).
- Updated sections of the 2026 SWMP Plan that describe the Town's post-construction SMP procedures (ACO Schedule Item h).

Task 4 - Comprehensive GIS System Mapping Updates (ACO Schedule Item i)

As per the ACO, "the Town's map [does] not include all mapping information as required by the Permit. Specifically, Town mapping [does] not include interconnections and all required basemap information such as land use, waterbody classification and Waterbody Inventory/Priority Waterbodies List impairment status and pollutants of concern (if applicable)."

The Town has comprehensive GIS mapping for its drainage system; however, the 2024 Permit requires specific organization of the data and layer be displayed to facilitate the Town's SWMP. The following subtasks will update the Town's MS4 GIS Mapping with the required provisions.

Subtask 4.1 - Identify System Interconnections and Municipal Facility Intraconnections

This Subtask includes the development of an Interconnections layer (interconnections are currently identified as a data field within the "MS4 Outfall" layer, but are now required to be identified separately) and a Municipal Facility Intraconnections layer to be added to the Town's MS4 GIS mapping. These layers will include all required information, such as land use, waterbody classification, Waterbody Inventory/Priority Waterbodies List impairment status, and pollutants of concern as applicable.

Additionally, the Town's existing municipal facilities GIS layer will be priority-ranked and assigned "High" or "Low" status based on the requirements of the 2024 MS4 General Permit.

Subtask 4.2 - Identify and Priority-Rank Monitoring Locations

The EPA's Summary of Findings determined that the Town is performing wet weather inspections but is not performing dry weather inspections. The Town is required to identify and priority-rank monitoring locations to determine which sites must undergo dry and/or wet weather inspections. Additionally, the Town is responsible for following the required procedures and maintaining inspection documentation for dry and wet weather inspections at identified monitoring locations.

A Monitoring Locations GIS layer will be developed to comply with the requirements of the 2024 MS4 General Permit. Monitoring locations will be priority-ranked to determine where dry and wet weather inspections are needed.

Subtask 4.3 - Identify Focus Areas

The 2024 MS4 General Permit requires that the comprehensive system mapping be updated to include Focus Areas. This Subtask will develop a Focus Areas layer that meets the requirements outlined in Part VI.A.1.a to be added to the Town's MS4 GIS mapping.

TASK 4 DELIVERABLES

- Interconnection GIS layer and a Municipal Facility Intraconnections GIS layer to be added to the Town's MS4 GIS mapping
- Addition of a Rank attribute to the Municipal Facilities MS4 GIS mapping layer and a list in excel and PDF format of facilities with a "High" ranking for future SWPPP development
- Monitoring Locations GIS layer to be added to the Town's MS4 GIS mapping, including an attribute for Priority Ranking
- Focus Areas GIS layer to be added to the Town's MS4 GIS mapping
- An updated system map PDF including the above-mentioned GIS layers to satisfy required provisions under the 2024 MS4 General Permit for submission to EPA and NYSDEC by June 30, 2026 (ACO Schedule Item i) and for inclusion in the 2026 SWMP Update.

Task 5 - Construction Oversight Program Development (ACO Schedule Item k and l)

The EPA's Summary of Findings noted that the Town did not provide construction oversight program procedures as specified in the 2024 MS4 General Permit. Specifically, there were no written procedures for SWPPP review requirements, pre-construction oversight requirements, construction site inspection requirements, construction site close-out requirements, and the enforcement process/expectations for compliance.

Task 5.1 - Technical Memorandum

Tighe & Bond will prepare a technical memorandum to summarize MS4 requirements and provide an outline of the necessary procedures for the Town to maintain compliance. Required inspection forms or other reference documents will be included as attachments to the memorandum. The technical memorandum will outline the procedures required by the 2024 MS4 General Permit.

The text provided in this memorandum will be used to replace relevant sections of the 2026 SWMP Plan and attachments will be appended to the appropriate appendices.

Task 5.2 - Virtual Meeting

Tighe & Bond will conduct one (1) virtual meeting with the Town to review the technical memorandum, discuss the attachments, and answer any questions. Tighe & Bond will also make revisions to the technical memorandum based on feedback received during the virtual meeting.

TASK 5 DELIVERABLES

- One (1) hard copy and one (1) electronic PDF copy of the Construction Oversight Program technical memorandum for the Town to keep on file for submission to EPA and NYSDEC by June 30, 2026 (ACO Schedule Item k), and to include in the 2026 SWMP Plan Update
- A meeting agenda and notes

Task 6 - Illicit Discharge Detection, Track Down, and Elimination Procedures

As per the ACO, "the Respondent's SWMP Plan [must be updated] to include all required elements in accordance with Part IV.B of the [2024 MS4 General] Permit."

The 2024 MS4 General Permit requires the development and implementation of an illicit discharge detection and track down program as well as an illicit discharge elimination program to identify the source of illicit discharges and the responsible party. The monitoring locations inspection and sampling program as well as the illicit discharge elimination program must be documented in the SWMP Plan.

This Subtask includes the drafting of this document, an opportunity for the Town to review and provide feedback and comments for one (1) round of revisions, and, upon completion, inclusion in the 2026 SWMP Update.

TASK 6 DELIVERABLES

- A PDF of the draft Illicit Discharge Detection, Track Down, and Elimination Procedures for the Town to provide one (1) round of revisions and a PDF of the final Illicit Discharge Detection, Track Down, and Elimination Procedures for inclusion in the 2026 SWMP Plan Update

Task 7 - 2026 SWMP Plan Update

As per the ACO, "the Respondent's SWMP Plan [must be updated] to include all required elements in accordance with Part IV.B of the [2024 MS4 General] Permit, and all revisions required by this Order. Respondent shall ensure the SWMP Plan includes all minimum information specified in Part VI Through Part IX of the [2024 MS4 General Permit]."

Tighe & Bond will update the drafted 2026 SWMP Plan as required by appending or incorporating Task 1-6 deliverable documents as appropriate and submit a copy to EPA and NSYDEC by the ACO required deadline of August 30, 2026,

TASK 7 DELIVERABLES

- An updated 2026 SWMP Plan with required provisions from the EPA Compliance Order

Task 8 - Interim Progress Certification Assistance

The 2024 MS4 General Permit reporting requirements include the completion of a First Period Interim Progress Certification. The reporting period for the First Interim Certification is a 6-month period from January 3 through June 30 of each calendar year. In 2026, this Certification is due to EPA and NYSDEC by October 1, 2026.

Under this task, Tighe & Bond will review the 2026 First Period Interim Progress Certification submission drafted by the Town and will provide feedback ahead of the submission deadline. Tighe and Bond will host one (1) virtual meeting with the Town to discuss the Interim Certification submission.

TASK 8 DELIVERABLES

- A PDF of markups to the 2026 Interim Report due on October 1, 2026.

Schedule and Fee

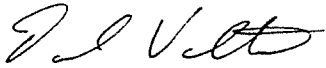
Tighe & Bond will perform these services as noted below. Services in all tasks below will be performed for a lump sum fee of \$25,700 invoiced monthly based on percentage complete.

Our attached Terms and Conditions are part of this letter agreement. The included schedule and fees are based on the above scope of work and assumptions. The schedule includes reasonable allowances for review and approval times by applicable parties. This schedule may need to be adjusted as the project progresses, allowing for changes in scope, character or size of the project requested by you, or for delays or other causes beyond our reasonable control.

In an effort to provide clear and consistent communication, the table below provides a summary of individual costs for each task. The summary is presented to give the Town a better understanding of how the project budget was developed. Invoices will be submitted based on the total project fee and not individual line-item budgets.

Task	Deadline	Fee
Task 1 - Audit Report Comment Response Letter	5/15/2026	\$3,600
Task 2 - Enforcement Response Plan (ACO Schedule Item f)	5/15/2026	\$2,800
Task 3 - Construction Site and Post-Construction Stormwater Management Practice (SMP) Inventory Updates	5/15/2026	\$3,500
Task 4 - Comprehensive GIS System Mapping Updates	6/30/2026	\$5,600
Task 5 - Construction Oversight Program Development	6/30/2026	\$2,600
Task 6 - Illicit Discharge Detection, Track Down, and Elimination Procedures	8/15/2026	\$2,800
Task 7 - 2026 SWMP Plan Update	8/15/2026	\$2,800
Task 8 - Interim Progress Certification Assistance	10/1/2026	\$2,000
Total		\$25,700

Respectfully yours,
T&B Engineering and Landscape Architecture, P.C.



Daniel Valentine, PE
SENIOR PROJECT MANGER



Erin More, PE, BCEE
VICE PRESIDENT

ACCEPTANCE:

On behalf of **Town of Esopus** the scope, fee, and the attached terms and conditions are hereby accepted and T&B Engineering and Landscape Architecture, P.C., is hereby authorized to proceed.

Authorized Representative

Date

Enclosures: Terms and Conditions - REV 04/2020
Copy: Salvatore Morello, III (w/encl)
Mark Jaffee (w/o encl)

J:\E\5006 Town of Esopus\016 - 2025 MS4 Permit Compliance\Proposal\2026 MS4 Permit Compliance\draft 2026 MS4 Compliance Letter Proposal - Esopus.docx

"CLIENT" is defined in the acceptance line of the accompanying proposal letter or the name the proposal is issued to; T&B Engineering and Landscape Architecture, P.C. is hereby referenced as "CONSULTANT"; "PROJECT" is defined in the accompanying proposal letter

1. SCHEDULE OF PAYMENTS

1.1 Invoices will generally be submitted once a month for services performed during the previous month. Payment will be due within 30 days of invoice date. Monthly payments to CONSULTANT shall be made on the basis of invoices submitted by CONSULTANT and approved by CLIENT. If requested by CLIENT, monthly invoices may be supplemented with such supporting data as reasonably requested to substantiate them.

1.2 In the event of a disagreement as to billing, the CLIENT shall pay the agreed portion.

1.3 Interest will be added to accounts in arrears at the rate of one and one-half (1.5) percent per month (18 percent per annum) or the maximum rate allowed by law, whichever is less, of the outstanding balance. In the event counsel is retained to obtain payment of an outstanding balance, CLIENT will reimburse CONSULTANT for all reasonable attorney's fees and court costs.

1.4 If CLIENT fails to make payment in full within 30 days of the date due for any undisputed billing, CONSULTANT may, after giving seven days' written notice to CLIENT, suspend services and retain work product until paid in full, including interest. In the event of suspension of services, CONSULTANT will have no liability to CLIENT for delays or damages caused by such suspension.

2. SUCCESSORS AND ASSIGNS

2.1 CLIENT and CONSULTANT each binds itself, its partners, successors, assigns and legal representatives to the other parties to this Agreement and to the partners, successors, assigns and legal representatives of such other parties with respect to all covenants of this Agreement. CONSULTANT shall not assign, sublet or transfer its interest in this Agreement without the written consent of CLIENT, which consent shall not be unreasonably withheld.

2.2 This Agreement represents the entire and integrated Agreement between CLIENT and CONSULTANT and supersedes all prior negotiations, representations or Agreements, whether written or oral. This Agreement may be amended only by written instrument signed by both CLIENT and CONSULTANT. References to this agreement include these Terms & Conditions, any accompanying proposal or description of services, as well as any other documents referenced or incorporated therein. In the event one or more provisions of any of the foregoing documents conflict with the provisions of these Terms & Conditions, the provisions of these Terms & Conditions shall control.

2.3 Nothing contained in this Agreement shall create a contractual relationship or cause of action in favor of a third party against CLIENT or against CONSULTANT.

3. STANDARD OF CARE

3.1 In providing services, CONSULTANT will use that degree of care and skill ordinarily exercised under similar circumstances by individuals providing such services in the same or similar locality for similar projects.

4. TERMINATION

4.1 This Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In addition, CLIENT may terminate this Agreement for its convenience at any time by giving written notice to CONSULTANT. In the event of any termination, CLIENT will pay CONSULTANT for all services rendered and reimbursable expenses incurred under the Agreement to the date of termination and all services and expenses related to the orderly termination of this Agreement.

5. RECORD RETENTION

5.1 CONSULTANT will retain pertinent records relating to the services performed for the time required by law, during which period the records will be made available upon reasonable request and upon reimbursement for any applicable retrieval/copying charges.

5.2 Samples - All soil, rock and water samples will be discarded 30 days after submission of CONSULTANT's report, unless mutually agreed otherwise or unless CONSULTANT's customary practice is to retain for a longer period of time for the specific type of services which CONSULTANT has agreed to perform. Upon request and mutual agreement regarding applicable charges, CONSULTANT will ship, deliver and/or store samples for CLIENT.

6. OWNERSHIP OF DOCUMENTS

6.1 All reports, drawings, specifications, computer files, field data, notes, and other documents, whether in paper or electronic format or otherwise ("documents"), are instruments of service and shall remain the property of CONSULTANT, which shall retain all common law, statutory and other reserved rights including, without limitation, the copyright thereto. CLIENT's payment to CONSULTANT of the compensation set forth in the Agreement shall be a condition precedent to the CLIENT's right to use documents prepared by CONSULTANT.

6.2 Documents provided by CONSULTANT are not intended or represented to be suitable for reuse by CLIENT or others on any extension or modification of this PROJECT or for any other projects or sites. Documents provided by CONSULTANT on this PROJECT shall not, in whole or in part, be disseminated or conveyed to any other party, nor used by any other party, other than regulatory agencies, without the prior written consent of CONSULTANT. Reuse of documents by CLIENT or others on extensions or modifications of this project or on other sites or use by others on this PROJECT, without CONSULTANT's written permission and mutual agreement as to scope of use and as to compensation, if applicable, shall be at the user's sole risk, without liability on CONSULTANT's part, and CLIENT agrees to indemnify and hold CONSULTANT harmless from all claims, damages, and expenses, including attorney's fees, arising out of such unauthorized use or reuse.

6.3 Electronic Documents - CONSULTANT cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic writeable format. If CONSULTANT provides documents in writeable electronic format for CLIENT's convenience, CLIENT agrees to waive any and all claims against CONSULTANT resulting in any way from the unauthorized use, alteration, misuse or reuse of the electronic documents, and to defend, indemnify, and hold CONSULTANT harmless from any claims, losses, damages, or costs, including attorney's fees,

arising out of the unauthorized use, alteration, misuse or reuse of any electronic documents provided to CLIENT.

6.4 Electronic Data Bases - In the event that CONSULTANT prepares electronic data bases, geographical information system (GIS) deliverables, or similar electronic documents, it is acknowledged by CLIENT and CONSULTANT that such PROJECT deliverables will be used and perhaps modified by CLIENT and that CONSULTANT's obligations are limited to the deliverables and not to any subsequent modifications thereof. Once CLIENT accepts the delivery of maps, databases, or similar documents developed by CONSULTANT, ownership is passed to CLIENT. CONSULTANT will retain the right to use the developed data and will archive the data for a period of three years from the date of PROJECT completion.

7. INSURANCE

7.1 CONSULTANT will retain Workmen's Compensation Insurance, Professional Liability Insurance with respect to liabilities arising from negligent errors and omissions, Commercial General Liability Insurance, Excess Liability, Unmanned Aircraft, Cyber Liability, and Automobile Liability during this PROJECT. CONSULTANT will furnish certificates at CLIENT's request.

7.2 Risk Allocation - To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the CONSULTANT to the CLIENT and anyone claiming by or through the CLIENT, for any and all claims, losses, costs or damage, of any nature whatsoever, the liability of CONSULTANT to all claimants with respect to this PROJECT will be limited to an aggregate sum not to exceed \$100,000 or CONSULTANT's compensation for consulting services, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

7.3 Damages - Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither CLIENT nor CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the PROJECT or to this Agreement. This mutual waiver of certain damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that may be incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both CLIENT and CONSULTANT shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this PROJECT.

7.4 CLIENT agrees that any and all limitations of CONSULTANT's liability or waivers of damages by CLIENT to CONSULTANT shall include and extend to those individuals and entities CONSULTANT retains for performance of the services under this Agreement, including but not limited to CONSULTANT's officers, partners, and employees and their heirs and assigns, as well as CONSULTANT's subconsultants and their officers, employees, and heirs and assigns.

8. DISPUTE RESOLUTION

8.1 In the event of a disagreement arising out of or relating to this Agreement or the services provided hereunder, CLIENT and CONSULTANT agree to attempt to resolve any such

disagreement through direct negotiations between senior, authorized representatives of each party. If any disagreement is not resolved by such direct negotiations, CLIENT and CONSULTANT further agree to consider using mutually acceptable non-binding mediation service in order to resolve any disagreement prior to proceeding to litigation.

9. SITE ACCESS

9.1 Right of Entry - Unless otherwise agreed, CLIENT will furnish right-of-entry on the land for CONSULTANT to make any surveys, borings, explorations, tests or similar field investigations. CONSULTANT will take reasonable precautions to limit damage to the land from use of equipment, but the cost for restoration of any damage that may result from such field investigations is not included in the agreed compensation for CONSULTANT. If restoration of the land is required greater than those included in the scope of work, upon mutual agreement this may be accomplished as a reimbursable additional service at cost plus ten percent.

9.2 Damage to Underground Structures - Reasonable care will be exercised in locating underground structures in the vicinity of proposed subsurface explorations. This may include contact with the local agency coordinating subsurface utility information and/or a review of plans provided by CLIENT or CLIENT representatives for the site to be investigated. CONSULTANT shall be entitled to rely upon any information or plans prepared or made available by others. In the absence of physically confirmed underground structure locations, CLIENT agrees to accept the risk of damage and costs associated with repair and restoration of damage resulting from the exploration work.

10. OIL AND HAZARDOUS MATERIALS

10.1 If, at any time, evidence of the existence or possible existence of asbestos, oil, or other hazardous materials or substances is discovered, outside of any agreed scope of work or greater than those anticipated in any agreed scope of work, CONSULTANT reserves the right to renegotiate the fees for CONSULTANT's services and CONSULTANT's continued involvement in the PROJECT. CONSULTANT will notify CLIENT as soon as practical if evidence of the existence or possible existence of such hazardous materials or substances is discovered.

10.2 The discovery of the existence or possible existence of hazardous materials or substances, outside or greater than any proposed in the agreed scope of work, may make it necessary for CONSULTANT to take accelerated action to protect human health and safety, and/or the environment. CLIENT agrees to compensate CONSULTANT for the cost of any and all measures that in its professional opinion are appropriate to preserve and/or protect the health and safety of the public, the environment, and/or CONSULTANT's personnel. To the full extent permitted by law, CLIENT waives any claims against CONSULTANT and agrees to indemnify, defend and hold harmless CONSULTANT from any and all claims, losses, damages, liability, and costs, including but not limited to cost of defense, arising out of or in any way connected with the existence or possible existence of such hazardous materials substances at the site.

11. SITE INVESTIGATIONS

11.1 In soils, groundwater, soil gas, indoor air, or other investigations, conditions may vary between successive test points and sample intervals and for locations at or between where observations, exploration, and investigations have been

made. Because of the variability of conditions and the inherent uncertainties in such evaluations, explorations, or investigations, changed or unanticipated conditions may occur that may affect overall PROJECT costs and/or execution. These variable conditions and related impacts on cost and PROJECT execution are not the responsibility of CONSULTANT.

11.2 CLIENT recognizes that special risks occur whenever engineering or related disciplines are applied to provide information regarding subsurface conditions. Even an agreed sampling and testing program, implemented with appropriate equipment and personnel with the assistance of a trained professional performing in accordance with the applicable professional standard of care, may provide data or information which differs significantly from that discovered or encountered subsequently. Environmental, geological, and geotechnical conditions, that CONSULTANT may infer to exist between sampling points may differ significantly from those discovered or encountered subsequently. The passage of time also should be considered, and CLIENT recognizes that due to natural occurrences or direct, or indirect human intervention at or near the site, actual conditions may quickly change. CONSULTANT shall not be responsible for the identification of emerging contaminants for which no current regulatory provisions exists nor shall CONSULTANT be held liable for not identifying or discussing these compounds even if those compounds are detected at a later date. CLIENT realizes that these risks cannot be eliminated. The services included in this agreement are those agreed to, or selected, consistent with CLIENT's risk preferences and other considerations including cost and schedule.

11.3 By authorizing CONSULTANT to proceed with the site investigation services, CLIENT confirms that CONSULTANT has not created nor contributed to the presence of any existing hazardous substances or conditions at or near the site. CLIENT recognizes that there is an inherent risk in drilling, borings, punching or driving probes, excavating trenches or implementing other methods of subsurface exploration at or near a site contaminated by hazardous materials. Further, CLIENT recognizes that these are inherent even through the exercise of the Standard of Care. CLIENT accepts the risk and agrees to defend, indemnify, and hold CONSULTANT and each of CONSULTANT's subcontractors, consultants, officers, directors, and employees harmless against and all claims for damages, costs, or expenses direct or consequential, in connection with a release of hazardous substances, except to the extent that such claims, damages, or losses are adjudicated to have resulted from CONSULTANT's gross negligence or willful misconduct in the performance of the services.

12. FEDERAL AND STATE REGULATORY AGENCY AUDITS

12.1 For certain services rendered by CONSULTANT, documents filed with federal and state regulatory agencies may be audited after the date of filing. In the event that CLIENT's PROJECT is selected for an audit, CLIENT agrees to compensate CONSULTANT for time spent preparing for and complying with an agency request for information or interviews in conjunction with such audit. CLIENT will be notified at the time of any such request by an agency, and CONSULTANT will invoice CLIENT based on its standard billing rates in effect at the time of the audit.

13. CLIENT'S RESPONSIBILITIES

13.1 Unless otherwise stated in the Agreement, CLIENT will obtain, arrange, and pay for all notices, permits, and licenses

required by local, state, or federal authorities; and CLIENT will make available the land, easements, rights-of-way, and access necessary for CONSULTANT's services or PROJECT implementation.

13.2 CLIENT will examine CONSULTANT's studies, reports, sketches, drawings, specifications, proposals, and other documents and communicate promptly to CONSULTANT in the event of disagreement regarding the contents of any of the foregoing. CLIENT, at its own cost, will obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CLIENT deems appropriate; and render in writing decisions required by CLIENT in a timely manner.

14. OPINIONS OF COST, FINANCIAL ANALYSES, ECONOMIC FEASIBILITY PROJECTIONS, AND SCHEDULES

14.1 CONSULTANT has no control over cost or price of labor and materials required to implement CLIENT's PROJECT, unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs, competitive bidding procedures and market conditions, time or quality of performance by operating personnel or third parties, and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, CONSULTANT makes no warranty, expressed or implied, that CLIENT's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from any opinions, analyses, projections, or estimates which may be provided by CONSULTANT. If CLIENT wishes additional information as to any element of PROJECT cost, feasibility, or schedule, CLIENT at its own cost will employ an independent cost estimator, contractor, or other appropriate advisor.

15. CONSTRUCTION PHASE PROVISIONS

The following provisions shall be applicable should the CONSULTANT be retained to provide Construction Phase Services in connection with the PROJECT:

15.1 CLIENT and Contractor - The presence of CONSULTANT's personnel at a construction site, whether as onsite representatives or otherwise, does not make CONSULTANT or CONSULTANT's personnel in any way responsible for the obligations, duties, and responsibilities of the CLIENT and/or the construction contractors or other entities, and does not relieve the construction contractors or any other entity of their respective obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction contract documents and for providing and/or enforcing all health and safety precautions required for such construction work.

15.2 Contractor Control - CONSULTANT and CONSULTANT's personnel have no authority or obligation to monitor, to inspect, to supervise, or to exercise any control over any construction contractor or other entity or their employees in connection with their work or the health and safety precautions for the construction work and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except CONSULTANT's own personnel.

15.3 On-site Responsibility - The presence of CONSULTANT's personnel at a construction site is for the purpose of providing to CLIENT an increased degree of confidence that the

completed construction work will conform generally to the construction documents and that the design concept as reflected in the construction documents generally has been implemented and preserved by the construction contractor(s). CONSULTANT neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents.

15.4 Payment Recommendations - Recommendations by CONSULTANT to CLIENT for periodic construction progress payments to the construction contractor(s) are based on CONSULTANT's knowledge, information, and belief from selective observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by CONSULTANT to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that CONSULTANT has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to CLIENT free and clear of liens, claims, security interests, or encumbrances; or that there are no other matters at issue between CLIENT and the construction contractors that affect the amount that should be paid.

15.5 Record Drawings - Record drawings, if required as part of CONSULTANT's agreed scope of work, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. CONSULTANT is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.

16. DESIGN WITHOUT CONSTRUCTION PHASE SERVICES

The following provisions shall be applicable should the CONSULTANT be retained to provide design services but not be retained to provide Construction Phase Services in connection with the PROJECT:

16.1 It is understood and agreed that the CONSULTANT's Scope of Services under this proposal does not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided by the CLIENT or others. The CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation, and the CLIENT waives any claims against the CONSULTANT that may be in any way connected thereto.

16.2 In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, directors, employees and subconsultants (collectively, CONSULTANT) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the CONSULTANT.

17. SCHEDULE

17.1 The CLIENT agrees that the CONSULTANT is not responsible for damages arising directly or indirectly from any delays for causes beyond the CONSULTANT's reasonable control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters, pandemics, or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by the CLIENT or the CLIENT's contractors or consultants.

17.2 The CONSULTANT's schedule includes reasonable allowances for review and approval times required by the CLIENT, performance of services by the CLIENT's consultants, and review and approval times required by public authorities having jurisdiction over the PROJECT. This schedule shall be equitably adjusted as the PROJECT progresses, allowing for changes in scope, character or size of the PROJECT requested by the Client, or for delays or other causes beyond the Consultant's reasonable control.

18. MISCELLANEOUS TERMS

18.1 GOVERNING LAW - The CLIENT and the CONSULTANT agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the jurisdiction where the PROJECT is located, without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions.

18.2 LENDERS' REQUIREMENTS- The CONSULTANT shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the sole judgment of the CONSULTANT, increase the CONSULTANT's contractual or legal obligations or risks, or adversely affect the availability or cost of its professional or general liability insurance.

18.3 CORPORATE PROTECTION - Notwithstanding anything to the contrary contained herein, the CLIENT agrees that as the CLIENT's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the CONSULTANT, a Massachusetts corporation, and not against any of the CONSULTANT's individual employees, officers or directors.

18.4 TITLES - The section headings used in this Agreement are intended principally for convenience and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the parties to this Agreement.

18.5 Upon execution, these terms as incorporated into the accompanying proposal represent the final intent of the parties. Any modification, rescission, or waivers of these terms shall only be effective and binding if agreed to in writing by the parties.



E5006-P008

May 1, 2026

Roscoe Pecora
Supervisor, Town of Esopus
1 Town Hall Way
Ulster Park, NY 12487

Nicholas Butler
Port Ewen Water/Sewer Superintendent
131 River Road
Ulster Park, NY 12487

**Re: Port Ewen Water District Drinking Water Main Improvement Report Update
Engineering Services - Fee Proposal**

Dear Supervisor Pecora and Superintendent Butler:

In response to your request, Tighe & Bond, whose services are provided in NY by T&B Engineering and Landscape Architecture, PC (Tighe & Bond) has developed this proposal for Additional Drinking Water Infrastructure Assessment - Engineering Services. We appreciate the opportunity to continue to serve the Town of Esopus with water system improvement services. This proposal is to provide services to develop a revised preliminary engineering report for the Town to solicit a new round of funding for the project.

Background

In August of 2019, Tighe & Bond submitted a Drinking Water Infrastructure Assessment and Capital Improvement Plan (CIP) report to the Town of Esopus and Port Ewen Water Board. This engineering report for the Port Ewen Water District included multiple alternatives for the Town to consider that would address the needs of the water system. Alternative No. 2, Immediate and Category A improvements, was selected by the Town. Using Alternative No. 2 from the engineering report as a basis for the application, the Town successfully applied for a Water Infrastructure Improvement Act (WIIA) grant and Drinking Water State Revolving Fund (DWSRF) low-interest loan.

Prior to design of the water main improvements Port Ewen Water requested that Broadway water main replacement be added to the list of priority water mains due to the critical nature and current condition of this water main. Subsequently East Stout Avenue was identified as a priority for water main improvements. The grant and DWSRF funding have been used to address water main improvement in Broadway, Hasbrouck, and East Stout. Due to rising costs for materials and labor, the Town was not able to construct the next priority improvements from the CIP report with the allocated budget. At this time, the Town would like to revisit the distribution improvements and would like to go after grant and loan funding to allow the Town to complete and updated list of high priority water main improvements identified in Tighe & Bond's March 2026 Esopus Water Main Replacement Priorities memorandum. Each of these mains are currently designed to approximately the 60% level and can be quickly advanced to a bid level of design development when funding presents itself. The high priority mains are as follows:

433 River Street
Suite 6003
Troy, NY 12180
T 518.833.6560

TIGHEBOND.COM

am

Priority	Location	Length of Main (LF)
High Priority	East Main Street (8" Main)	1,500
High Priority	Tilden Street (8" Main)	2,750

According to the NYSDOH, the Town can submit an IUP listing form and SRF application for the proposed project to receive SRF loans. They further recommended updating the previous Preliminary Engineering Report (PER) based upon the improvements completed under DWSRF 18744, the Town's current needs, and the improvements that would be completed under the proposed project.

Scope of Services

The scope of services includes the following:

Preliminary Engineering Report Update

Tighe & Bond will update the 2019 Engineering Report to include the following:

- Documentation of work completed to date under DWSRF 18744.
- Update the existing water distribution system infrastructure, population, and consumption information included in the 2019 report.
- Update water main break figure for data from 2019-2025.
- Revise the proposed alternative for distribution system improvements to recommend both East Main Street and Tilden Street water main replacements.
- Prepare an Opinion of Probable Cost for the revised recommended alternative.
- Develop an updated Water System Engineering Report in a format acceptable to NYSDOH and EFC. We have assumed that the NYSDOH will accept a letter revision to the Water System Engineering Report, rather than a complete report rewrite.
- Deliver one electronic draft copy of the Engineering Report and present a summary of the recommendations and alternatives at one Town Board meeting.
- Incorporate one round of comments to the Engineering Report from the Town and submit one electronic copy and three hard copies of the final Engineering Report.

Funding Application Support

Tighe & Bond will support the Town in preparation of an IUP Listing Form.

Schedule

If authorized, we will submit an updated Engineering Report and support preparation of an IUP Listing Form by the May 29, 2026, deadline.

Fee

Tighe & Bond will perform these services for a lump sum fee of \$3,300, invoiced monthly based on percentage complete. In the event that the scope of work is increased for any reason, the lump sum fee to complete the work shall be mutually revised by written amendment. Our attached Terms and Conditions is part of this letter agreement.

Tighe & Bond acknowledges that the requirements of the EFC as attached and made part of this Agreement. We agree compliance with New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") is not required for contractors equal to or less than \$25,000 for labor, services (including, but not limited to, legal, financial, and other professional services). We further agree that we are not a debarred or suspended party under 2 CFR Part 180, 2 CFR Part 1532 and 40 CFR Part 32. Further, neither Tighe & Bond nor any of its subcontractors have been contracted with, or will contract with, any debarred or suspended party under the forgoing regulations or with any party that has been determined to be ineligible to bid under Section 316 of the NYS Executive Law.

The included schedule and fees are based on the above scope of work.

We hope this letter meets your needs for a water system evaluation. Please contact Dan Valentine at 845-516-5872 or dfvalentine@tighebond.com with any questions.

Respectfully yours,

T&B Engineering and Landscape Architecture, P.C.



Daniel F. Valentine, PE
Senior Project Manager

ACCEPTANCE:

On behalf of the **Town of Esopus** the scope, fee, and terms of this proposal are hereby accepted.

Authorized Representative

Date

Enclosures: Terms and Conditions REV 04/2020
NYS EFC "Program Requirements and Bid Packet for Non-Construction Contracts," Effective
October 1, 2024

"CLIENT" is defined in the acceptance line of the accompanying proposal letter or the name the proposal is issued to; T&B Engineering and Landscape Architecture, P.C. is hereby referenced as "CONSULTANT"; "PROJECT" is defined in the accompanying proposal letter

1. SCHEDULE OF PAYMENTS

1.1 Invoices will generally be submitted once a month for services performed during the previous month. Payment will be due within 30 days of invoice date. Monthly payments to CONSULTANT shall be made on the basis of invoices submitted by CONSULTANT and approved by CLIENT. If requested by CLIENT, monthly invoices may be supplemented with such supporting data as reasonably requested to substantiate them.

1.2 In the event of a disagreement as to billing, the CLIENT shall pay the agreed portion.

1.3 Interest will be added to accounts in arrears at the rate of one and one-half (1.5) percent per month (18 percent per annum) or the maximum rate allowed by law, whichever is less, of the outstanding balance. In the event counsel is retained to obtain payment of an outstanding balance, CLIENT will reimburse CONSULTANT for all reasonable attorney's fees and court costs.

1.4 If CLIENT fails to make payment in full within 30 days of the date due for any undisputed billing, CONSULTANT may, after giving seven days' written notice to CLIENT, suspend services and retain work product until paid in full, including interest. In the event of suspension of services, CONSULTANT will have no liability to CLIENT for delays or damages caused by such suspension.

2. SUCCESSORS AND ASSIGNS

2.1 CLIENT and CONSULTANT each binds itself, its partners, successors, assigns and legal representatives to the other parties to this Agreement and to the partners, successors, assigns and legal representatives of such other parties with respect to all covenants of this Agreement. CONSULTANT shall not assign, sublet or transfer its interest in this Agreement without the written consent of CLIENT, which consent shall not be unreasonably withheld.

2.2 This Agreement represents the entire and integrated Agreement between CLIENT and CONSULTANT and supersedes all prior negotiations, representations or Agreements, whether written or oral. This Agreement may be amended only by written instrument signed by both CLIENT and CONSULTANT. References to this agreement include these Terms & Conditions, any accompanying proposal or description of services, as well as any other documents referenced or incorporated therein. In the event one or more provisions of any of the foregoing documents conflict with the provisions of these Terms & Conditions, the provisions of these Terms & Conditions shall control.

2.3 Nothing contained in this Agreement shall create a contractual relationship or cause of action in favor of a third party against CLIENT or against CONSULTANT.

3. STANDARD OF CARE

3.1 In providing services, CONSULTANT will use that degree of care and skill ordinarily exercised under similar circumstances by individuals providing such services in the same or similar locality for similar projects.

4. TERMINATION

4.1 This Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In addition, CLIENT may terminate this Agreement for its convenience at any time by giving written notice to CONSULTANT. In the event of any termination, CLIENT will pay CONSULTANT for all services rendered and reimbursable expenses incurred under the Agreement to the date of termination and all services and expenses related to the orderly termination of this Agreement.

5. RECORD RETENTION

5.1 CONSULTANT will retain pertinent records relating to the services performed for the time required by law, during which period the records will be made available upon reasonable request and upon reimbursement for any applicable retrieval/copying charges.

5.2 Samples - All soil, rock and water samples will be discarded 30 days after submission of CONSULTANT's report, unless mutually agreed otherwise or unless CONSULTANT's customary practice is to retain for a longer period of time for the specific type of services which CONSULTANT has agreed to perform. Upon request and mutual agreement regarding applicable charges, CONSULTANT will ship, deliver and/or store samples for CLIENT.

6. OWNERSHIP OF DOCUMENTS

6.1 All reports, drawings, specifications, computer files, field data, notes, and other documents, whether in paper or electronic format or otherwise ("documents"), are instruments of service and shall remain the property of CONSULTANT, which shall retain all common law, statutory and other reserved rights including, without limitation, the copyright thereto. CLIENT's payment to CONSULTANT of the compensation set forth in the Agreement shall be a condition precedent to the CLIENT's right to use documents prepared by CONSULTANT.

6.2 Documents provided by CONSULTANT are not intended or represented to be suitable for reuse by CLIENT or others on any extension or modification of this PROJECT or for any other projects or sites. Documents provided by CONSULTANT on this PROJECT shall not, in whole or in part, be disseminated or conveyed to any other party, nor used by any other party, other than regulatory agencies, without the prior written consent of CONSULTANT. Reuse of documents by CLIENT or others on extensions or modifications of this project or on other sites or use by others on this PROJECT, without CONSULTANT's written permission and mutual agreement as to scope of use and as to compensation, if applicable, shall be at the user's sole risk, without liability on CONSULTANT's part, and CLIENT agrees to indemnify and hold CONSULTANT harmless from all claims, damages, and expenses, including attorney's fees, arising out of such unauthorized use or reuse.

6.3 Electronic Documents - CONSULTANT cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic writeable format. If CONSULTANT provides documents in writeable electronic format for CLIENT's convenience, CLIENT agrees to waive any and all claims against CONSULTANT resulting in any way from the unauthorized use, alteration, misuse or reuse of the electronic documents, and to defend, indemnify, and hold CONSULTANT harmless from any claims, losses, damages, or costs, including attorney's fees,

arising out of the unauthorized use, alteration, misuse or reuse of any electronic documents provided to CLIENT.

6.4 Electronic Data Bases - In the event that CONSULTANT prepares electronic data bases, geographical information system (GIS) deliverables, or similar electronic documents, it is acknowledged by CLIENT and CONSULTANT that such PROJECT deliverables will be used and perhaps modified by CLIENT and that CONSULTANT's obligations are limited to the deliverables and not to any subsequent modifications thereof. Once CLIENT accepts the delivery of maps, databases, or similar documents developed by CONSULTANT, ownership is passed to CLIENT. CONSULTANT will retain the right to use the developed data and will archive the data for a period of three years from the date of PROJECT completion.

7. INSURANCE

7.1 CONSULTANT will retain Workmen's Compensation Insurance, Professional Liability Insurance with respect to liabilities arising from negligent errors and omissions, Commercial General Liability Insurance, Excess Liability, Unmanned Aircraft, Cyber Liability, and Automobile Liability during this PROJECT. CONSULTANT will furnish certificates at CLIENT's request.

7.2 Risk Allocation - To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the CONSULTANT to the CLIENT and anyone claiming by or through the CLIENT, for any and all claims, losses, costs or damage, of any nature whatsoever, the liability of CONSULTANT to all claimants with respect to this PROJECT will be limited to an aggregate sum not to exceed \$100,000 or CONSULTANT's compensation for consulting services, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

7.3 Damages - Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither CLIENT nor CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the PROJECT or to this Agreement. This mutual waiver of certain damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that may be incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both CLIENT and CONSULTANT shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this PROJECT.

7.4 CLIENT agrees that any and all limitations of CONSULTANT's liability or waivers of damages by CLIENT to CONSULTANT shall include and extend to those individuals and entities CONSULTANT retains for performance of the services under this Agreement, including but not limited to CONSULTANT's officers, partners, and employees and their heirs and assigns, as well as CONSULTANT's subconsultants and their officers, employees, and heirs and assigns.

8. DISPUTE RESOLUTION

8.1 In the event of a disagreement arising out of or relating to this Agreement or the services provided hereunder, CLIENT and CONSULTANT agree to attempt to resolve any such

disagreement through direct negotiations between senior, authorized representatives of each party. If any disagreement is not resolved by such direct negotiations, CLIENT and CONSULTANT further agree to consider using mutually acceptable non-binding mediation service in order to resolve any disagreement prior to proceeding to litigation.

9. SITE ACCESS

9.1 Right of Entry - Unless otherwise agreed, CLIENT will furnish right-of-entry on the land for CONSULTANT to make any surveys, borings, explorations, tests or similar field investigations. CONSULTANT will take reasonable precautions to limit damage to the land from use of equipment, but the cost for restoration of any damage that may result from such field investigations is not included in the agreed compensation for CONSULTANT. If restoration of the land is required greater than those included in the scope of work, upon mutual agreement this may be accomplished as a reimbursable additional service at cost plus ten percent.

9.2 Damage to Underground Structures - Reasonable care will be exercised in locating underground structures in the vicinity of proposed subsurface explorations. This may include contact with the local agency coordinating subsurface utility information and/or a review of plans provided by CLIENT or CLIENT representatives for the site to be investigated. CONSULTANT shall be entitled to rely upon any information or plans prepared or made available by others. In the absence of physically confirmed underground structure locations, CLIENT agrees to accept the risk of damage and costs associated with repair and restoration of damage resulting from the exploration work.

10. OIL AND HAZARDOUS MATERIALS

10.1 If, at any time, evidence of the existence or possible existence of asbestos, oil, or other hazardous materials or substances is discovered, outside of any agreed scope of work or greater than those anticipated in any agreed scope of work, CONSULTANT reserves the right to renegotiate the fees for CONSULTANT's services and CONSULTANT's continued involvement in the PROJECT. CONSULTANT will notify CLIENT as soon as practical if evidence of the existence or possible existence of such hazardous materials or substances is discovered.

10.2 The discovery of the existence or possible existence of hazardous materials or substances, outside or greater than any proposed in the agreed scope of work, may make it necessary for CONSULTANT to take accelerated action to protect human health and safety, and/or the environment. CLIENT agrees to compensate CONSULTANT for the cost of any and all measures that in its professional opinion are appropriate to preserve and/or protect the health and safety of the public, the environment, and/or CONSULTANT's personnel. To the full extent permitted by law, CLIENT waives any claims against CONSULTANT and agrees to indemnify, defend and hold harmless CONSULTANT from any and all claims, losses, damages, liability, and costs, including but not limited to cost of defense, arising out of or in any way connected with the existence or possible existence of such hazardous materials substances at the site.

11. SITE INVESTIGATIONS

11.1 In soils, groundwater, soil gas, indoor air, or other investigations, conditions may vary between successive test points and sample intervals and for locations at or between where observations, exploration, and investigations have been

made. Because of the variability of conditions and the inherent uncertainties in such evaluations, explorations, or investigations, changed or unanticipated conditions may occur that may affect overall PROJECT costs and/or execution. These variable conditions and related impacts on cost and PROJECT execution are not the responsibility of CONSULTANT.

11.2 CLIENT recognizes that special risks occur whenever engineering or related disciplines are applied to provide information regarding subsurface conditions. Even an agreed sampling and testing program, implemented with appropriate equipment and personnel with the assistance of a trained professional performing in accordance with the applicable professional standard of care, may provide data or information which differs significantly from that discovered or encountered subsequently. Environmental, geological, and geotechnical conditions, that CONSULTANT may infer to exist between sampling points may differ significantly from those discovered or encountered subsequently. The passage of time also should be considered, and CLIENT recognizes that due to natural occurrences or direct, or indirect human intervention at or near the site, actual conditions may quickly change. CONSULTANT shall not be responsible for the identification of emerging contaminants for which no current regulatory provisions exists nor shall CONSULTANT be held liable for not identifying or discussing these compounds even if those compounds are detected at a later date. CLIENT realizes that these risks cannot be eliminated. The services included in this agreement are those agreed to, or selected, consistent with CLIENT's risk preferences and other considerations including cost and schedule.

11.3 By authorizing CONSULTANT to proceed with the site investigation services, CLIENT confirms that CONSULTANT has not created nor contributed to the presence of any existing hazardous substances or conditions at or near the site. CLIENT recognizes that there is an inherent risk in drilling, borings, punching or driving probes, excavating trenches or implementing other methods of subsurface exploration at or near a site contaminated by hazardous materials. Further, CLIENT recognizes that these are inherent even through the exercise of the Standard of Care. CLIENT accepts the risk and agrees to defend, indemnify, and hold CONSULTANT and each of CONSULTANT's subcontractors, consultants, officers, directors, and employees harmless against and all claims for damages, costs, or expenses direct or consequential, in connection with a release of hazardous substances, except to the extent that such claims, damages, or losses are adjudicated to have resulted from CONSULTANT's gross negligence or willful misconduct in the performance of the services.

12. FEDERAL AND STATE REGULATORY AGENCY AUDITS

12.1 For certain services rendered by CONSULTANT, documents filed with federal and state regulatory agencies may be audited after the date of filing. In the event that CLIENT's PROJECT is selected for an audit, CLIENT agrees to compensate CONSULTANT for time spent preparing for and complying with an agency request for information or interviews in conjunction with such audit. CLIENT will be notified at the time of any such request by an agency, and CONSULTANT will invoice CLIENT based on its standard billing rates in effect at the time of the audit.

13. CLIENT'S RESPONSIBILITIES

13.1 Unless otherwise stated in the Agreement, CLIENT will obtain, arrange, and pay for all notices, permits, and licenses

required by local, state, or federal authorities; and CLIENT will make available the land, easements, rights-of-way, and access necessary for CONSULTANT's services or PROJECT implementation.

13.2 CLIENT will examine CONSULTANT's studies, reports, sketches, drawings, specifications, proposals, and other documents and communicate promptly to CONSULTANT in the event of disagreement regarding the contents of any of the foregoing. CLIENT, at its own cost, will obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CLIENT deems appropriate; and render in writing decisions required by CLIENT in a timely manner.

14. OPINIONS OF COST, FINANCIAL ANALYSES, ECONOMIC FEASIBILITY PROJECTIONS, AND SCHEDULES

14.1 CONSULTANT has no control over cost or price of labor and materials required to implement CLIENT's PROJECT, unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs, competitive bidding procedures and market conditions, time or quality of performance by operating personnel or third parties, and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, CONSULTANT makes no warranty, expressed or implied, that CLIENT's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from any opinions, analyses, projections, or estimates which may be provided by CONSULTANT. If CLIENT wishes additional information as to any element of PROJECT cost, feasibility, or schedule, CLIENT at its own cost will employ an independent cost estimator, contractor, or other appropriate advisor.

15. CONSTRUCTION PHASE PROVISIONS

The following provisions shall be applicable should the CONSULTANT be retained to provide Construction Phase Services in connection with the PROJECT:

15.1 CLIENT and Contractor - The presence of CONSULTANT's personnel at a construction site, whether as onsite representatives or otherwise, does not make CONSULTANT or CONSULTANT's personnel in any way responsible for the obligations, duties, and responsibilities of the CLIENT and/or the construction contractors or other entities, and does not relieve the construction contractors or any other entity of their respective obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction contract documents and for providing and/or enforcing all health and safety precautions required for such construction work.

15.2 Contractor Control - CONSULTANT and CONSULTANT's personnel have no authority or obligation to monitor, to inspect, to supervise, or to exercise any control over any construction contractor or other entity or their employees in connection with their work or the health and safety precautions for the construction work and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except CONSULTANT's own personnel.

15.3 On-site Responsibility - The presence of CONSULTANT's personnel at a construction site is for the purpose of providing to CLIENT an increased degree of confidence that the

completed construction work will conform generally to the construction documents and that the design concept as reflected in the construction documents generally has been implemented and preserved by the construction contractor(s). CONSULTANT neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents.

15.4 Payment Recommendations - Recommendations by CONSULTANT to CLIENT for periodic construction progress payments to the construction contractor(s) are based on CONSULTANT's knowledge, information, and belief from selective observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by CONSULTANT to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that CONSULTANT has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to CLIENT free and clear of liens, claims, security interests, or encumbrances; or that there are no other matters at issue between CLIENT and the construction contractors that affect the amount that should be paid.

15.5 Record Drawings - Record drawings, if required as part of CONSULTANT's agreed scope of work, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. CONSULTANT is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.

16. DESIGN WITHOUT CONSTRUCTION PHASE SERVICES

The following provisions shall be applicable should the CONSULTANT be retained to provide design services but not be retained to provide Construction Phase Services in connection with the PROJECT:

16.1 It is understood and agreed that the CONSULTANT's Scope of Services under this proposal does not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided by the CLIENT or others. The CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation, and the CLIENT waives any claims against the CONSULTANT that may be in any way connected thereto.

16.2 In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, directors, employees and subconsultants (collectively, CONSULTANT) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the CONSULTANT.

17. SCHEDULE

17.1 The CLIENT agrees that the CONSULTANT is not responsible for damages arising directly or indirectly from any delays for causes beyond the CONSULTANT's reasonable control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters, pandemics, or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by the CLIENT or the CLIENT's contractors or consultants.

17.2 The CONSULTANT's schedule includes reasonable allowances for review and approval times required by the CLIENT, performance of services by the CLIENT's consultants, and review and approval times required by public authorities having jurisdiction over the PROJECT. This schedule shall be equitably adjusted as the PROJECT progresses, allowing for changes in scope, character or size of the PROJECT requested by the Client, or for delays or other causes beyond the Consultant's reasonable control.

18. MISCELLANEOUS TERMS

18.1 GOVERNING LAW - The CLIENT and the CONSULTANT agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the jurisdiction where the PROJECT is located, without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions.

18.2 LENDERS' REQUIREMENTS- The CONSULTANT shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the sole judgment of the CONSULTANT, increase the CONSULTANT's contractual or legal obligations or risks, or adversely affect the availability or cost of its professional or general liability insurance.

18.3 CORPORATE PROTECTION - Notwithstanding anything to the contrary contained herein, the CLIENT agrees that as the CLIENT's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the CONSULTANT, a Massachusetts corporation, and not against any of the CONSULTANT's individual employees, officers or directors.

18.4 TITLES - The section headings used in this Agreement are intended principally for convenience and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the parties to this Agreement.

18.5 Upon execution, these terms as incorporated into the accompanying proposal represent the final intent of the parties. Any modification, rescission, or waivers of these terms shall only be effective and binding if agreed to in writing by the parties.



KATHY HOCHUL
Governor

MAUREEN A. COLEMAN
President and CEO

Environmental Facilities Corporation | Department of Health

Mandatory State Revolving Fund Terms and Conditions

For Contracts Funded with the NYS Clean Water State Revolving Fund
or Drinking Water State Revolving Fund

Identify Contract Type prior to Advertisement for Bid:

Construction

Treatment Works and Drinking Water Projects

Non-Treatment Works

Non-Construction

Effective October 1, 2025

New York State Environmental Facilities Corporation
625 Broadway, Albany, NY 12207-2997
P: (518) 402-6924
www.efc.ny.gov

Contents

INTRODUCTION.....	4
REQUIRED CONTRACT LANGUAGE.....	4
COMMONLY USED TERMS.....	4
SECTION 1 FEDERAL ARCHITECTURAL AND ENGINEERING PROCUREMENT REQUIREMENTS.....	5
SECTION 2 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITY GROUP MEMBERS.....	5
I. General Provisions.....	5
II. Equal Employment Opportunities (EEO).....	6
III. Business Participation Opportunities for MWBEs.....	7
A. Contract Goals.....	7
B. MWBE Utilization Plan.....	8
C. Request for Waiver.....	8
D. Monthly MWBE Contractor Compliance Report ("Monthly MWBE Report").....	8
E. Liquidated Damages - MWBE Participation.....	9
SECTION 3 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES.....	9
SECTION 4 AMERICAN IRON AND STEEL (AIS) REQUIREMENT.....	10
SECTION 5 DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS.....	10
SECTION 6 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT.....	19
SECTION 7 RESTRICTIONS ON LOBBYING.....	20
SECTION 8 CONSTRUCTION SIGNS.....	20
ATTACHMENTS (Required Forms).....	21
Attachment 1 – EFC MWBE Utilization Plan.....	22
Attachment 2 – AIS Contractor’s Certification.....	23
Attachment 3 – Lobbying Certification.....	24

INTRODUCTION

The terms and conditions below must be incorporated verbatim into contracts receiving SRF financial assistance. Additional information relating to each of the requirements is included in the companion guidance document. Recipients, Contractors, Subcontractors, and any other involved entities must also comply with any and all applicable rules and regulations not listed below or in the companion guidance document.

REQUIRED CONTRACT LANGUAGE

COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

Broker means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

Construction means the process by which a contractor or subcontractor builds, alters, repairs, remodels, improves or demolishes infrastructure.

Contract means an agreement between a Recipient and a Contractor.

Contractor means all bidders, prime contractors, surety that is completing performance for a defaulted contractor pursuant to a performance bond, non-construction service providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

Manufacturer means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

MBO is designated and employed by the Recipient as a Minority Business or Compliance Officer responsible for MWBE/DBE/SDVOB/EEO reporting and compliance.

Non-Construction Provider means any individual or business enterprise that provides one or more of the following: legal, engineering, financial advisory, technical, or other professional services, supplies, commodities, equipment, materials, or travel.

Recipient means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part. Responsible through Project Finance Agreement (PFA) to comply with EFC requirements.

State means the State of New York.

Subcontract means an agreement between a Contractor and a Subcontractor.

Subcontractor means any individual or business enterprise that has an agreement, purchase order, or any other contractual arrangement with a Contractor.

Supplier means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Treatment Works is defined in Clean Water Act (CWA) Section 212. This does not include nonpoint source projects as defined in CWA Section 319 and estuary management program projects as defined in CWA Section 320.

SECTION 1 FEDERAL ARCHITECTURAL AND ENGINEERING PROCUREMENT REQUIREMENTS

Any Architectural and Engineering (A/E) services for all CWSRF projects and for DWSRF projects are required to be procured in compliance with 40 USC 1101 et. seq., and 48 CFR Part 36 Subpart 36.6. The Recipient must certify compliance to receive financing. Disregard this section if it does not apply to this Contract.

SECTION 2 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITY GROUP MEMBERS

The Equal Employment Opportunities requirements of this section apply to all Contracts and Subcontracts, with the exception of: (1) the requirements under Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A which apply only to construction Contracts and Subcontracts; and (2) the Federal Affirmative Action Regulations requirements which apply only to construction Contracts and Subcontracts greater than \$10,000.

The Minority- and Women- Owned Business Enterprises ("MWBE") participation requirements of this section apply to the Contracts Meeting Article 15-A Thresholds.

Contracts Meeting Article 15-A Thresholds means Contracts or Subcontracts meeting the thresholds under New York State Executive Law Article 15-A as follows:

- a) Non-Construction Provider Contracts greater than \$25,000;
- b) Non-Construction Provider Contracts that are initially under \$25,000 but subsequent change orders or contract amendments increase the Contract value to above \$25,000;
- c) Construction Contracts greater than \$100,000; and,
- d) Construction Contracts that are initially under \$100,000 but subsequent change orders or contract amendments increase the Contract value to above \$100,000.

Disregard this section if it does not apply to this Contract or Subcontract.

I. General Provisions

A. Contractors and Subcontractors are required to comply with the following provisions:

1. New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State Contracts meeting Article 15-A thresholds.
2. Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7 ("Title VI") for any program or activity receiving federal financial assistance, as those terms are defined therein.
3. Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A ("Title VII") for construction Contracts related to any government programs providing federal financial assistance, as those terms are defined therein.
4. 41 CFR Part 60-4 ("Federal Affirmative Action Regulations") for federal or federally assisted construction Contracts in excess of \$10,000, as those terms are defined therein.

5. Section 504 of the Rehabilitation Act of 1973 ("Section 504") for any program or activity receiving federal financial assistance, as those terms are defined therein.
 6. The Age Discrimination Act of 1975 ("Age Discrimination Act") for any program or activity receiving federal financial assistance, as those terms are defined therein.
 7. Section 13 of the Federal Water Pollution Control Act ("Clean Water Act") Amendments of 1972 ("Section 13") for any program or activity receiving federal financial assistance under the Clean Water Act, as those terms are defined therein.
- B. Upon request from the Recipient and/or EFC, Contractor will provide complete responses to inquiries and all MWBE and EEO records available within a reasonable time or as otherwise determined by EFC.
 - C. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to subsection III(E) of this section, or enforcement proceedings as allowed by the Contract.
 - D. If any terms or provisions herein conflict with Executive Law Article 15-A, the MWBE Regulations, Title VI, Title VII, or Federal Affirmative Action Regulations, such law and regulations shall supersede these requirements.

II. Equal Employment Opportunities (EEO)

- A. Each Contractor and Subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- B. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), Title VI, Title VII, the Federal Affirmative Action Regulations, Section 504, Age Discrimination Act, Section 13, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- C. Contractors and Subcontractors shall have instituted grievance procedures to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 7 is alleged.
- D. Pursuant to 40 CFR § 7.95, the Contractor shall display a copy of the EEO notice at the project site in a visible location. The notice shall accommodate individuals with impaired vision or hearing and should be provided in languages other than English where appropriate. The notice must also identify the employee responsible for its EEO compliance. See guidance document for sample notice.
- E. The Contractor will include the provisions of Subdivisions II(A) and II(C) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.
- F. The Contractor and Subcontractor will comply with the requirements of 41 CFR § 60-1.4(b) and (c), and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender

identity, or national origin. The Contractor and Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- G. **For construction contracts in excess of \$10,000**, the Contractor and Subcontractor will comply with the Affirmative Action Regulations and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor place affirmative action goals on Contracts and Subcontracts, as established by the United States Department of Labor. See guidance document for goals.
- H. Pursuant to 41 CFR Section 60-1.7 for federally assisted construction Contracts, Contractor and Subcontractor will annually file an EEO-1 Report with the Joint Reporting Committee for the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) according to the instructions provided at <https://www.eeoc.gov/employers/eo-1-survey/eo-1-instruction-booklet>, if Contractor or Subcontractor:
1. Is not exempt from compliance pursuant to 41 CFR § 60-1.5;
 2. Has 50 or more employees;
 3. Is a prime Contractor or first tier Subcontractor; or Subcontractor below the first tier which performs construction work at the site of construction; and
 4. Has a Contract, Subcontract, or purchase order amounting to \$50,000 or more.

III. Business Participation Opportunities for MWBEs

Applicable to Contracts Meeting Article 15-A Thresholds

A. Contract Goals

1. **New York State certified MWBE participation goals for this contract are 20%**. For projects funded from the sources listed below, the goals may be achieved through any combination of MBE and/or WBE participation.
 - a. CWSRF, DWSRF & Green Innovation Grant Program (GIGP).
 - b. NYS Water Infrastructure Improvement Act Grants that are also receiving EFC financing.
 - c. NYS Intermunicipal Grants that are also receiving EFC financing.
2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section III-A hereof, the Contractor should reference the directory of New York State Certified MWBEs found at <https://ny.newnycontracts.com>.
3. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as defined in 5 NYCRR § 140.1, may be applied towards achievement of applicable MWBE participation goals.
 - a. For construction and construction-related services Contracts or Subcontracts, the portion of the Contract or Subcontract with an MWBE serving as a Supplier, and so designated in ESD's Directory, that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the Contract or Subcontract. The portion of a Contract or Subcontract with an MWBE serving as a Broker, as denoted by NAICS code 425120, that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
 - b. For Non-Construction Provider Contracts or Subcontracts, the portion of a Contract or Subcontract with an MWBE serving as a Broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.

4. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as Subcontractors or Suppliers in the performance of the Contract.
5. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Recipient for liquidated or other appropriate damages, as set forth herein.

B. MWBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted a completed copy of the MWBE Utilization Plan with all required bid forms to the MBO no later than the execution date of this Contract.
2. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this section.
3. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.
4. The Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the MBO. The Contractor shall indicate the changes to the MBO in the Monthly MWBE Contractor Compliance Report immediately following the change. At EFC's discretion, an updated MWBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the Monthly MWBE Contractor Compliance Report or revised Utilization Plan.
5. The Contractor shall submit copies of all fully executed Subcontracts, agreements, and purchase orders that are referred to in the MWBE Utilization Plan to the MBO within 30 days of their execution.

C. Request for Waiver

1. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver to the MBO documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request aligns with the documentation identified on the Request for Waiver form, the MBO shall forward the request to EFC for evaluation, and EFC will issue a written notice of acceptance or denial within twenty (20) days of receipt.
2. If the MBO, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regard to such non-compliance, the Recipient may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

D. Monthly MWBE Contractor Compliance Report ("Monthly MWBE Report")

1. The Contractor agrees to submit a report to the MBO by the third business day following the end of each month over the term of this Contract documenting the payments made and the

progress towards achievement of the MWBE goals of the Contract. The Monthly MWBE Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check) and proof that Subcontractors have been paid within 30 days of receipt of payment from the Recipient. The final Monthly MWBE Report must reflect all Utilization Plan revisions and change orders.

E. Liquidated Damages - MWBE Participation

1. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, if it has been determined by the Recipient or EFC that the Contractor has willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages, as specified herein and as determined by the Recipient or EFC.
2. Liquidated damages shall be calculated as an amount not to exceed the difference between:
 - a. All sums identified for payment to MWBEs had the Contractor achieved the approved MWBE participation goals; and,
 - b. All sums actually paid to MWBEs for work performed or materials supplied under this Contract.
3. The Recipient and EFC reserve the right to impose a lesser amount of liquidated damages than the amount calculated above based on the circumstances surrounding the Contractor's non-compliance.
4. In the event a determination has been made by the Recipient or EFC which requires the payment of damages identified herein and such identified sums have not been withheld, Contractor shall pay such damages to the Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day the Contractor has filed a complaint with the Empire State Development Corporation – Division of Minority and Women's Business Development ("ESD") pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the damages shall be payable if the Director of ESD renders a decision in favor of the Recipient.

SECTION 3 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

The requirements of this section apply to all Construction Contracts and Subcontracts

- A. New York State Veterans' Service Law Article 3, and 9 NYCRR Part 252, and/or any other related regulations promulgated thereto, provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. New York State recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of EFC Contracts.

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

- B. Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://sdves.ogs.ny.gov/business-search>.
- C. Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or

SECTION 4 AMERICAN IRON AND STEEL (AIS) REQUIREMENT

The requirements of this section apply to (1) all Construction Contracts and Subcontracts for DWSRF projects and CWSRF Treatment Works projects and (2) all Contracts for the purchase of iron and steel products for a DWSRF project or CWSRF Treatment Works project. Disregard this section if it does not apply to this Contract or Subcontract.

The Contractor shall submit with their bid or proposal documents an executed AIS Contractors Certification on the form attached hereto as Attachment 2 acknowledging to and for the benefit of the Recipient of the Clean Water State Revolving Fund ("CWSRF") or the Drinking Water State Revolving Fund ("DWSRF") financial assistance that the Contractor understands the goods and services under this Agreement are being funded with monies made available by the New York State Environmental Facilities Corporation ("EFC") through the CWSRF or the DWSRF and that such funding is subject to certain statutory restrictions requiring that certain iron and steel products used in the project be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants that:

- (a) the Contractor has reviewed and understands the American Iron and Steel Requirement,
- (b) all of the iron and steel products covered by the American Iron and Steel Requirement used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and
- (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Recipient.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Recipient to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Recipient resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EFC or any damages owed to the EFC by the Recipient). While the Contractor has no direct contractual privity with the EFC, as a lender to the Recipient for the funding of this project, the Recipient and the Contractor agree that the EFC is a third-party beneficiary and neither this paragraph, nor any other provision of this Agreement necessary to give this paragraph force or effect, shall be amended or waived without the prior written consent of the EFC.

SECTION 5 DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS

The requirements of this section apply to all Construction Contracts and Subcontracts greater than \$2,000 for either DWSRF projects or CWSRF Treatment Works projects. Disregard this section if it does not apply to this Contract or Subcontract.

For Contracts in Excess of \$2,000:

(a) Required Contract Clauses

1. Minimum Wages

(i) Wage rates and fringe benefits

All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate

on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

As provided in paragraphs (d) and (e) of this section the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

The Davis-Bacon poster (WH-1321) can be found at <https://www.dol.gov/whd/regs/compliance/posters/davis.htm> . Wage determinations may be obtained from the US Department of Labor's website, <https://sam.gov/>.

(ii) *Frequently recurring classifications*

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR Part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (a)(1)(iii) of this section, provided that:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
2. The classification is used in the area by the construction industry; and,
3. The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) *Conformance*

(A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the Contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a

- classification in the wage determination; and
- 2. The classification is used in the area by the construction industry; and,
- 3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

- (B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.
- (C) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (E) The contracting officer must promptly notify the Contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The Contractor must furnish a written copy of such determination to each affected worker, or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iv) *Fringe benefits not expressed as an hourly rate*

Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) *Unfunded plans*

If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *provided*, that the Secretary of Labor has found, upon the written request of the Contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis–Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(vi) *Interest*

In the event of a failure to pay all or part of the wages required by the Contract, the Contractor will be required to pay interest on any underpayment of wages.

2. Withholding.

(i) *Withholding requirements*

The Recipient, Subrecipient at any tier, and/or contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor, so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime Contractor or any Subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by this Contract or any other Federal contract, or federally-assisted contract subject to Davis–Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2).

The necessary funds may be withheld from the Contractor under this contract, any other Federal contract with the same prime contractor, or any other federally-assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the Contractor liability for which the funds were withheld.

In the event of a Contractor's failure to pay any laborer or mechanic, including any apprentice or helper, working on the site of the work (or otherwise working on construction or development of the project under a development statute) all or part of the wages required by the Contract, or upon the Contractor's failure to submit the required records as discussed in paragraph (a)(3)(iv) of this section, the Recipient, Subrecipient at any tier, and/or contracting agency may on its own initiative and after written notice to the Contractor, sponsor, applicant, or owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) *Priority to withheld funds*

The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both over claims to those funds by:

- (A) A Contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its procurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a Contractor, or a Contractor's bankruptcy estate;
- (D) A Contractor's assignee(s)
- (E) A Contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

3. Payrolls and basic records.

(i) *Basic record requirements*

(A) Length of record retention

All regular payrolls and other basic records must be maintained by the Contractor and any Subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in a construction or development of the project under a development statute) for a period of at least three years after all the work on the prime contract is completed.

(B) Information required

Such records must contain the name, Social Security number, last known address, telephone number, and email address of each such worker, each worker's correct classification(s) of work

actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis–Bacon Act), daily and weekly number of hours actually worked in total on each covered contract; deductions made; and actual wages paid.

(C) Additional records relating to fringe benefits

Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 40 U.S.C. 3141(2)(B) of the Davis–Bacon Act, the Contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) *Certified payroll requirements*

(A) Frequency and method of submission

The Contractor or Subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, a copy of all payrolls to the Recipient. The prime contractor is responsible for the submission of all certified payrolls by all Subcontractors. A prime contractor may permit or require Contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the Contractor, the contracting agency, EFC, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the Contractor is unable or limited in its ability to use the electronic system.

(B) Information required

The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i)(B), except that full social security numbers and home addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's social security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/forms> or its successor website. It is not a violation of this section for a prime Contractor to require a Subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Recipient (or the applicant, sponsor, or owner).

(C) Statement of Compliance

Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor, or the Contractor's or Subcontractor's agent who pays or supervises the payment of the persons employed under the Contract and must certify the following:

1. That the certified payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information and records are correct and complete;

2. That each laborer or mechanic (including each helper and apprentice) working on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the Contract.

(D) Use of Optional Form WH-347

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(C) of this section.

(E) Signature

The signature by the Contractor, Subcontractor, or the Contractor's or Subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) Falsification

The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(G) Length of certified payroll retention

The Contractor or Subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iii) *Contracts, Subcontracts, and related documents*

The Contractor or Subcontractor must maintain this Contract or Subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The Contractor or Subcontractor must preserve these Contracts, Subcontracts, and related documents during the course of the work and for a period of 3 years after all work on the prime contract is completed.

(iv) *Required disclosures and access*

(A) Required record disclosures and access to workers

The Contractor or Subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents the Recipient, EFC, EPA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 CFR § 5.1, available for inspection, copying, or transcription by authorized representatives of the Recipient, EFC, EPA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) Sanctions for non-compliance with records and worker access requirements

If the Contractor or Subcontractor fails to submit the required records, make them available, or refuses to permit worker interviews during working hours on the job, the federal agency may, after written notice to the Recipient, Contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records

available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 CFR § 5.12. In addition, any Contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the Contractor or a person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) Required information disclosures

Contractors and Subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the EPA if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the federal agency is not such a party to the contract, the Contractor, Subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the EPA, Recipient, EFC, or subrecipient at any tier, contracting agency, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and trainees.

(i) *Apprentices*

(A) Rate of pay

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA) Training, or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Fringe benefits

Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) Apprenticeship ratio

The allowable ratio of apprentices to journey workers on the job site in any craft classification must not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program must be paid not less than the applicable wage rate on the wage

determination for the work actually performed.

(D) Reciprocity of ratios and wage rates

Where a Contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journey worker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the Contractor's registered program must be observed.

(ii) *Equal employment opportunity*

The use of apprentices and journey workers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5. Reserved

6. Subcontracts

The Contractor or Subcontractor must insert in any Subcontracts the clauses contained in 29 CFR § 5.5(a)(1) through (11) or a link to the DBRA Requirements for Contractors and Subcontractors Under EPA Grants documents on EPA's [Contract Provisions for Davis-Bacon and Related Acts](#) webpage, along with applicable wage determination(s) and such other clauses or contract modifications as the EPA may by appropriate instructions require, and a clause requiring the Subcontractors to include these clauses and wage determination(s) in any lower-tier Subcontracts. The prime Contractor and any Subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of underpayment or loss, due to any workers of lower-tier Subcontractors, and may be subject to debarment, as appropriate.

7 through 9. Reserved

10. Certification of eligibility

- (i) By entering into this Contract, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).
- (ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 40 U.S.C. 6144(b) or 29 CFR 5.12(a).
- (iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. § 1001.

11. Anti-Retaliation

It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any Contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part of 29 CFR part 1 or 3;
- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

For Contracts in Excess of \$100,000, in addition to part (a):

(b) Contract Work Hours and Safety Standards Act (CWHSSA)

1. **Overtime requirements.** No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

3. **Withholding for Unpaid Wages and Liquidated Damages.**

(i) Withholding process

The EPA, EFC, Recipient, Subrecipient at any tier, and/or contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime Contractor or any Subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section, any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the Contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the Contractor liability for which the funds were withheld.

(ii) Priority to withheld funds

The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(1) of this section, or both, over claims to those funds by:

(A) A Contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its procurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A Contractor's assignee(s);

(E) A Contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907

4. **Subcontracts.** The Contractor or Subcontractor must insert in any Subcontracts the clauses set forth in paragraphs (1) through (5) of this section and also a clause requiring the Subcontractors to include these clauses in any lower-tier Subcontracts. The prime contractor is responsible for compliance by any Subcontractor or lower-tier subcontractor with the clauses set forth in paragraphs (1) through (5). In the event of any violations of these clauses, the prime contractor and any Subcontractor(s) responsible will be liable for any unpaid wages for monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. **Anti-Retaliation**

It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any Contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- (ii) Filing any complain, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWSSA or this part;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- (iv) Informing any other person about their rights under CWHSSA or this part.

SECTION 6 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

The requirements of this section apply to all Contracts and Subcontracts.

Contractor and any Subcontractors shall comply with, Subpart C of 2 CFR Part 180 as implemented and supplemented by 2 CFR Part 1532. The Contractor is not a debarred or suspended party under 2 CFR Part 180 or 2 CFR Part 1532, or 29 CFR § 5.12. Neither the Contractor nor any of its Subcontractors have contracted with, or will contract with, any debarred or suspended party under the foregoing regulations.

The Contractor and any Subcontractors have not been debarred from or deemed ineligible for Government Contracts or federally assisted Construction Contracts pursuant to Executive Order 12549.

The Contractor and any Subcontractors have not been deemed ineligible to submit a bid on or be awarded a public contract or subcontract pursuant to Article 8 of the State Labor Law, specifically Labor Law § 220-b. In addition, neither the Contractor nor any Subcontractors have contracted with, or will contract with, any party that has been deemed ineligible to submit a bid on or be awarded a public contract or subcontract under Labor Law § 220-b.

In addition, the Contractor and any Subcontractors have not been deemed ineligible to submit a bid and have not contracted with and will not contract with any party that has been deemed ineligible to submit a bid under Executive Law § 316.

SECTION 7 RESTRICTIONS ON LOBBYING

The requirements of this section apply to all Contracts and Subcontracts greater than \$100,000. Disregard this section if it does not apply to this Contract or Subcontract.

The Contractor and any Subcontractor bidding or proposing a Contract or Subcontract in excess of \$100,000 shall submit with their bid or proposal documents an executed Certification Regarding Lobbying pursuant to 40 CFR Part 34 ("Lobbying Certification") in the form attached hereto as Attachment 3, consistent with the prescribed form provided in Appendix A to 40 CFR Part 34.

SECTION 8 CONSTRUCTION SIGNS

The requirements of this section apply to all EFC projects. Additional permanent signage is required for projects receiving funding from the NYS Bond Act.

If Contractor is expected to provide an EFC Construction Sign, a specification will be included in the enclosed contract documents.