



**INVITATION
FOR
BIDS**

**CLEAN ENERGY COMMUNITIES PROGRAM
ROOF MOUNTED SOLAR ARRAY**

FOR THE TOWN OF GERMANTOWN, NY

October 18, 2024

Contract ID No. 2024-03

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
INVITATION FOR BIDS NOTICE	1
INTRODUCTION	2
SPECIFICATIONS	2
INSTRUCTIONS	3
TENTATIVE SCHEDULE	6
QUALIFICATIONS OF BIDDER	7
ASSURANCES	8
AFFIDAVIT	9
STATEMENT ON SEXUAL HARASSMENT	10
NON-COLLUSIVE BIDDING CERTIFICATION	11
BID SHEET	13
MODEL CONTRACT	
APPENDIX A: STANDARD CONTRACT CLAUSES	
APPENDIX B: PREVAILING WAGE SCHEDULE	

INVITATION FOR BIDS

NOTICE IS HEREBY GIVEN that sealed bids for the Clean Energy Communities Roof Mounted Solar Array Project for the Town of Germantown will be received at the address listed below until **1 p.m. local time on November 22, 2024**, at which time they will be publicly opened and read. Bids not physically received by the Town at **1 p.m. local time on November 22, 2024** will not be considered. All bids must be addressed to:

Town of Germantown
Re: [contractor's name]
Proposal for Clean Energy Communities Roof Mounted Solar Array Project
Attention: David Helsley, Supervisor
Germantown Town Hall
50 Palatine Park Road
Germantown, New York 12526

No bid shall be withdrawn for a period of forty-five (45) days after the bid opening date without the consent of the Town.

A Pre-Bid Conference will be held on **October 25, 2024 at 1 p.m.** in the Town Hall located at 50 Palatine Park Road, Germantown, New York 12526. Failure to inspect the work site shall not be accepted later as a valid basis for alteration or termination of bid.

This Invitation for Bids may be examined online at nyscr.ny.gov and www.germantownny.org, and is available by email upon request to David Helsley at 12526supervisor@gmail.com.

The bidder must be capable of obtaining a performance bond in the amount sufficient to cover the cost of the entire project.

Each bidder must comply with the New York State Labor Law, including the payment of prevailing wages.

The Town Board of the Town of Germantown reserves the right to accept or reject any or all bids and to waive any informalities at its discretion.

Dated: October 18, 2024
Town Board
Town of Germantown

INTRODUCTION

The Town of Germantown (“Town”) is requesting bids for the installation roof mounted solar array with a minimum size of 20.25 kW on the Town’s salt shed building located at 65 Palatine Park Road, Germantown, New York 12526 according to the specifications contained herein. The salt shed building is approximately 140’ x 50’ with an estimated pitch of 12/12. The asphalt roof was replaced in 2021.

SPECIFICATIONS

Scope of Work: The contractor shall provide all engineering design, labor, supervision, materials, supplies, equipment, insurance, vehicles, bonds, permits, and administration necessary to install roof mounted solar array with a minimum size of 20.25 kW. All work shall be in conformance with the Town of Germantown’s Building Code. The contractor shall:

1. Provide and install roof mounted solar panels and PV equipment as a direct grid tie installation in accordance with the National Electric Code.
2. Provide and install a data communications system and software to provide system data.
3. Prepare electrical drawings of system.
4. Locations for all equipment must be approved by the Town prior to installation.
5. Install all wiring in the interior of the salt shed building in PVC conduit.
6. Provide tarp as necessary to protect building and grounds.
7. Clean up and haul away all debris.
8. Follow all applicable safety codes, regulations, and laws during all phases of the work.
9. Ensure safe passage of persons around work site; conduct operations to prevent injury to adjacent properties, buildings, structures, other facilities, and persons.
10. Promptly repair damages caused to adjacent facilities or properties by contractor at no cost to the Town.
11. Obtain and pay for all Federal, State and/or local permits required by governing authorities.
12. Upon completion of the project, return the site to the same condition that existed prior to work being done.
13. Provide no less than 5-year warranty on workmanship, PV equipment and installation.
14. Prepare all documentation and plans, and coordinate installation and approval of system from NYSERDA, the utility company, and the Town in order to qualify for the New York State PV Incentive Program.
15. Coordinate with Town to provide information reasonably requested in order to qualify for additional tax credits, rebates, grants or incentives.

Base Bid: The base bid for the Clean Energy Communities Roof Mounted Solar Array Project shall include all items listed in the Scope of Work above and a maximum total cost not to exceed \$50,000.00. The amount of all available NYSERDA incentives, including the New York State PV Incentive Program, must be deducted from the final project cost. In addition to final project cost, the bid must include a total cost per watt for the installed system. All materials must be quoted FOB destination. The successful bidder agrees to execute all documents within the IFB

and provide certificates of insurance within fifteen (15) days after the receipt of the Notice of Award and the contract. The successful bidder agrees to begin work no later than ten (10) days after receipt of the Notice to Proceed, weather permitting. Substantial completion must be met prior to July 3, 2025, time being of the essence. The contractor can perform the work from 7 a.m. to 3:30 p.m., Monday through Friday, or as amended with the approval of the Highway Superintendent.

Permit(s): The contractor must work with the Town’s Code Enforcement Officer to obtain the necessary permit(s) for this project. Inspections will be made by the Town Code Enforcement Officer.

Protection of Property: The contractor must take all reasonable precautions to protect public and private property from undue damage. If the Town determines that the contractor has unnecessarily damaged or destroyed property, it shall be repaired or replaced to the satisfaction of the Town, at the contractor’s expense.

Billing/Invoicing: After completion of the project, the contractor must submit a detailed bill to the Town for audit and approval. Please note bills are approved at the Town Board’s monthly meetings.

INSTRUCTIONS TO BIDDERS

1. Receipt and Opening of Bids: Sealed bids Clean Energy Communities Roof Mounted Solar Array Project for the Town of Germantown will be received at the address listed below by **1 p.m. local time on November 22, 2024**, at which time they will be publicly opened and read. Bids not physically received by the Town at **1 p.m. local time on November 22, 2024** will not be considered. All bids must be addressed to:

Town of Germantown
Re: [contractor’s name]
Proposal for Clean Energy Communities Roof Mounted Solar Array Project
Attention: David Helsley, Supervisor
Germantown Town Hall
50 Palatine Park Road
Germantown, New York 12526

2. Contract Documents and Specifications: This IFB is available at nyscr.ny.gov and www.germantownny.org or by email upon request. For additional information, contact the Town’s Contact:

David Helsley, Supervisor
50 Palatine Park Road
Germantown, New York 12526
Email: 12526supervisor@gmail.com
Phone: 518-537-6687 ext. 1001

3. Pre-Bid Conference: A pre-bid conference is scheduled for **October 25, 2024 at 1 p.m.** in

the Town Hall located at 50 Palatine Park Road, Germantown, NY 12526. This conference is not mandatory; however, failure to inspect the work site shall not be accepted later as a valid basis for alteration or termination of bid. If you plan on attending the Pre-Bid Conference, please email the Town's Contact.

4. Questions: Other than the questions posed at the Pre-Bid Conference, any questions or requests for clarification of the IFB documents or specifications must be submitted in writing, by mail or email to the Town's Contact by November 8, 2024 at 1 p.m. The Town will not respond to questions submitted orally. Answers to questions that materially change the conditions and specifications of this IFB will be posted on the Town's website after November 15, 2024, as an addendum to this document. Additionally, any contractors wanting to be sent any addendums or information by email must provide the Town's Contact with their point of contact email address. Any discussions or documents will be considered non-binding unless incorporated in an addendum to the original. When addenda are issued, the bid opening date may be extended at the discretion of the Town.

5. Preparation of Bids: Each bid must be submitted on the prescribed forms. All blank spaces for bid prices must be filled in, in ink or typewritten. One (1) original and one (1) electronic copy on a compact disc or flash drive shall be submitted in a sealed envelope or box bearing the name and address of the firm and clearly marked with the contractors name and "Proposal for Clean Energy Communities Roof Mounted Solar Array Project."

6. Bids Remain Subject to Acceptance: Regardless of the award of bid, no bidder may withdraw its bid before the expiration of forty-five (45) days after the date of opening the bids. Submittal of a bid indicates acceptance of the conditions contained in the IFB. The Town reserves the right to retain all bids submitted, accept or reject any or all bids, waive informalities, negotiate changes in the scope of work or services to be provided, and otherwise waive any technicalities.

7. Subcontracts: No subcontractors for any portion of the work is permitted except as otherwise provided herein.

8. Qualifications of Bidder: All bidders that submit a proposal shall be required to meet the following minimum qualifications:

- A. The bidder must have a minimum of five (5) years' experience as a solar energy system installer; and
- B. The bidder shall provide references for three similar assignments within the past five (5) years and any certifications they possess.

The Town may make such investigations as it deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Town all such information and data for this purpose as the Town may require. The Town reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Town that such bidder is properly qualified to carry out the obligation of the contract and to complete the work contemplated therein.

9. Length of Contract: The length of this contract shall be approximately six (6) months commencing January 3, 2025 and terminating July 3, 2025. Time is of the essence for completion.

10. Conditions of Work: Each bidder must inform itself fully of the conditions relating to the project and the employment of the labor thereon. Failure to do so will not relieve a successful bidder of its obligation to furnish all material and labor necessary to carry out the provisions of this contract.

11. Laws and Regulations: The contractor shall comply with all applicable federal, state, and local laws, rules and regulations of all authorities having jurisdiction over the project throughout the term of the contract. Each bidder must comply with the New York State Labor Law, including the payment of prevailing wages.

12. Method of Award—Lowest Qualified Bidder: The contract will be awarded to the lowest bid submitted by a responsible bidder. The Town Board of the Town of Germantown reserves the right to accept or reject any or all bids and to waive any informalities at its discretion.

13. Obligations of Bidder: At the time of the opening of bids, each bidder will be presumed to have inspected the work site and to have read and to be thoroughly familiar with the contract documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve the bidder from any obligation in respect to its bid.

The successful bidder agrees to execute all documents within the IFB package and provide certificates of insurance within fifteen (15) days after the receipt of the Notice of Award and the contract.

The successful bidder agrees to begin work no later than ten (10) days after receipt of the Notice to Proceed, unless otherwise provided, and to execute the work in such a manner and with sufficient materials, equipment and labor as will insure its completion within the time limit specified in the bid, it being understood and agreed that time is of the essence and completion within the time limit is an essential part of the contract.

14. Non-Collusive Bidding Certification: Each bidder submitting a bid shall execute and attach thereto, an affidavit substantially in the form herein provided, to the effect that it has not colluded with any other person, firm, or corporation in regard to any bid submitted.

15. Statement on Sexual Harassment: Each bidder submitting a bid shall execute and attach thereto, a statement substantially in the form herein provided, in accordance with New York State Finance Law § 139-1.

16. Performance Bond: The bidder must be capable of obtaining a performance bond in the amount sufficient to cover the cost of the entire project.

17. Assurances: Each bidder submitting a bid shall execute and attach thereto, assurances substantially in the form herein provided, that the bidder shall adhere to an EEO policy and that it agrees not to commit unlawful discrimination.

18. Procurement: The Town is exempt from New York State sales and use. Said taxes should not be included in the bid price.

TENTATIVE SCHEDULE

Activity	Estimated Date
1. Advertise RFP	October 18, 2024
2. Pre-Bid Conference	October, 25, 2024
3. Deadline for receipt of bids	November 22, 2024
4. Recommendation to Town Board	December 3, 2024
5. Town Board takes formal award/rejection action	December 10, 2024
6. Notice of award sent to successful bidder	December 17, 2024
7. Agreement executed	December 27, 2024
8. Issue Notice to Proceed	January 3, 2025

QUALIFICATIONS OF BIDDER

REFERENCES

Provide references for three similar assignments within the past five (5) years:

Business:

Address:

Telephone Number:

Contact Person:

Scope of Work and Dates of Service:

Business:

Address:

Telephone Number:

Contact Person:

Scope of Work and Dates of Service:

Business:

Address:

Telephone Number:

Contact Person:

Scope of Work and Dates of Service:

Provide any relevant certifications you possess:

ASSURANCES

Equal Employment Opportunity (EEO)

The contractor shall adhere to an EEO policy that does not discriminate with regard to race, color, religion, national origin, sex, sexual orientation, sexual preference, transgender status, disability or age.

The contractor will ensure equal employment opportunity applies to all terms and conditions of employment, personnel actions, and contractor-sponsored programs. Every effort shall be made to ensure that employment decisions, programs and personnel actions are non-discriminatory and that these decisions are administered on the basis of an evaluation of an employee's eligibility, performance, ability, skill and experience.

a. Does the contractor have an EEO policy in place?

Yes

No

b. If the answer to a. above is no, will the contractor have such a policy in place for this project?

Yes

No

Statement of Assurance. The contractor assures the Town that it is in compliance with Title VI & VII of the 1964 Civil Rights Act, as amended, in that it does not on the grounds of race, color, national origin, sex, age, handicap, or veteran status, discriminate in any form or manner against employees or employers or applicants for employment and is in full compliance with the Americans with Disabilities Act.

Contractor Name: _____

Authorized Person: _____ Signature: _____
(Print/Type)

Title: _____ Date: _____

Address: _____

Telephone: _____ Email: _____

AFFIDAVIT

This bid is submitted to the Town of Germantown by the undersigned, who is an authorized officer of the contractor, and said contractor is licensed to do business in the State of New York. Further, the undersigned is authorized to make these assurances and certifies their validity. The contractor recognizes that all assurances and representations herein are binding on the contractor and failure to adhere to any of these commitments, in the Town's option, may result in a revocation of the contract.

Consent is hereby given to the Town to contact any person or organization in order to make inquiries into qualifications of the contractor.

The contractor understands that, at such time as the Town decides to review this bid, additional information may be requested. Failure to supply any requested for information within a reasonable time may result in the rejection of the contractor's bid with no re-submittal rights.

The contractor understands that the Town, after considering the contractor's qualifications, as well as what, in the Town's judgment may best serve the public interest of its citizens and employees, may grant a contract.

The contractor understands that this bid is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a bid for the same, and is in all respects fair and without collusion or fraud. It understands that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

Contractor Name: _____

Authorized Person: _____ Signature: _____
(Print/Type)

Title: _____ Date: _____

Address: _____

Telephone: _____ Email: _____

Contractor's Federal EIN: _____

Contractor Name: _____

Authorized Person: _____ Signature: _____
(Print/Type)

Title: _____ Date: _____

Subscribed and sworn before me this _____ day of _____, 20____.

Notary Public
My commission expires: _____
[affix stamp]

BID SHEET

The prices stated in this bid are guaranteed for forty-five (45) days from the opening of the bids, and if awarded, contractor agrees to furnish materials, labor, equipment and services and complete the work in accordance with the IFB documents at said prices.

Size of Roof Mounted Solar Array: _____ kW

Base Bid (before incentives): _____

Less Amount of Direct Incentives/Rebates to Contractor: _____

Final Amount of Bid: _____

Amount per kW (calculated as Final Amount of Bid / kW): _____

List Materials and Equipment to be furnished, including size of array:

Exceptions or deviations: _____

The undersigned hereby acknowledges having received the full IFB package, including the Specifications, Instructions, model contract, and addenda nos. _____, if applicable.

The bidder, in submitting this bid, affirms to have read and hereby agrees to comply with all bid requirements, including the Specifications and Instructions.

Contractor Name: _____

Authorized Person: _____ Signature: _____

(Print/Type)

Title: _____ Date: _____

Address: _____

Telephone: _____ Email: _____

MODEL CONTRACT

This Agreement (this "Agreement") is made and entered into as of _____, 2024 by and between the Town of Germantown, Columbia County, New York, a municipal corporation of the State of New York, with an address at 50 Palatine Park Road, Germantown, New York, 12526 (the "Town") and _____ a _____, authorized and existing under the laws of the State of New York, having its principal place of business at _____ (the "Contractor").

WHEREAS, the Town was awarded a \$40,000 grant by NYSERDA under its Clean Energy Communities program to be used for installation of a minimum 20.25 kW rooftop solar array on the Town's salt shed located at 65 Palatine Park Road, Town of Germantown, Columbia County, NY; and

WHEREAS, the Town Board sought sealed bids for the project; and

WHEREAS, the Town Board of the Town, at a regular/special meeting held by it on the __ day of _____, 2024 adopted a resolution which authorized and empowered the Supervisor of the Town to execute, acknowledge and deliver this Agreement, which engages the Contractor to perform the work as specified in the Invitation for Bids ("IFB").

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

ARTICLE 1 – SCOPE OF WORK

The Contractor agrees to provide all labor, supervision, materials, supplies, equipment, insurance, vehicles, bonds, permits, and administration necessary to complete work detailed in the Specifications in the IFB, attached hereto and made a part hereof.

ARTICLE 2 – PRICE

The Town shall pay the Contractor for performance of the work \$_____, payable at completion of the project. The Contractor shall submit a detailed bill to the Town for audit and approval. Please note bills are approved at the Town Board's monthly meetings.

ARTICLE 3 - TERM

The length of this Agreement shall be approximately six (6) months, commencing January 3, 2025 and terminating July 3, 2025, when work is to be completed.

The Contractor agrees to begin work no later than ten (10) days after receipt of the Notice to Proceed, unless otherwise provided, and to execute the work in such a manner and with sufficient materials, equipment and labor as will insure its completion within the time limit

specified in the bid, it being understood and agreed that time is of the essence and completion within the time limit is an essential part of this Agreement.

The Contractor is permitted to work during the hours of 7 a.m. to 3:30 p.m., Monday through Friday, or during such times as approved by the Town Highway Superintendent.

ARTICLE 4 – CHANGE ORDERS

Any change orders must be approved by the Town Board.

ARTICLE 5 - REPRESENTATIONS, OBLIGATIONS AND WARRANTIES:

A. The Contractor's representations, obligations and warranties:

1. The Contractor shall comply with all applicable federal, state, and local laws, rules and regulations of all authorities having jurisdiction over the project.

2. The Contractor shall ensure that all contractors, subcontractors and individuals are paid in accordance with New York State's Prevailing Wage requirements, as applicable. The Contractor shall indemnify the Town for any and all violations of the prevailing wage laws and any rules and regulations now and hereafter issued pursuant to said laws.

3. The Contractor guarantees that all materials, equipment and workmanship furnished by it (and any subcontractors) in the performance of the work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted scientific standards and engineering practices.

4. The Contractor further guarantees against defects in workmanship and materials for a period of five (5) years from the date of completion of the work. If the Town provides notice of any defects arising during the five (5) year period, Contractor shall promptly correct such defect at no cost to the Town.

5. The Contractor warrants and guarantees that there is and shall be no actual or potential conflict of interest that could prevent Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement and Contractor shall execute all forms required by NYSERDA. Contractor shall notify the Town and NYSERDA immediately of any actual or potential conflicts of interest.

B. Each party, for the benefit of the other party, represents and warrants that:

1. It has full power and authority to perform and observe its covenants contained in this Agreement, has taken all action necessary for the execution, delivery, and performance of this Agreement and to carry out and consummate all transactions contemplated hereby, and this Agreement has been duly authorized, executed, and delivered by said party, and constitutes the

legal, valid, and binding obligation of the party, enforceable against it in accordance with its terms;

2. The authorization, execution, delivery, and performance of this Agreement, the compliance with the terms and conditions hereof and the consummation of the transactions herein contemplated on part of said party do not and will not (i) violate any laws or any regulation, order, injunction, or decree of any court, governmental body, agency or other instrumentality or (ii) result in a breach of any of the terms and conditions, or constitute a default under, or result in the creation or imposition of any mortgage, lien, charge, or encumbrance of any nature whatsoever upon any of the properties of assets of the Town pursuant to the terms of any agreement or other instrument to which the Town is a party or by which the Town or any of its properties is bound; and

3. There is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, public board or body pending or threatened in writing against or affecting the party, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or that in any way would adversely affect the validity of enforceability of this Agreement.

ARTICLE 6 – DEFAULT AND TERMINATION

A. In the event the Contractor is not performing in accordance with the terms set forth herein, the Town may issue a stop work order requiring an immediate cessation of all work except that work necessary to secure project protection and safety. If the Contractor fails to remediate its breach within forty-eight (48) hours, the Town may terminate this Agreement. In the event of a termination, the Town shall pay Contractor for the services performed and materials supplied as of the effective date of the termination, less any sums attributable, directly or indirectly, to Contractor's breach. Termination of the contract shall not relieve the Contractor or its surety of the responsibility of replacing defective work or materials.

B. The provisions of this section shall be in addition to and not in derogation of any other rights or remedies of the parties whether at law or in equity.

C. Should NYSERDA terminate, suspend, or stop work at any time pursuant to the CEC Agreement, the Town can likewise terminate, suspend, or stop work under this Agreement upon advance written notice to Contractor.

ARTICLE 7 – LIQUIDATED DAMAGES

The Town and the Contractor recognize that time is of the essence of this Agreement and the Town may suffer financial loss if the work is not completed within the times specified herein. The liquidated damages establishes the cost of delay to account for administration, engineering, inspection, and supervision during periods of extended and delayed performance, and are understood to be a fair and reasonable estimate of the costs that will be borne by the Town

during extended and delayed performance by the Contractor. Accordingly, the Town and the Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay the Town Five Hundred Dollars (\$500.00) for each day that expires after the completion date. The Town will deduct these liquidated damages from any monies due or to become due to the Contractor from the Town.

ARTICLE 8 – INDEMNIFICATION AND INSURANCE

A. The Contractor shall indemnify and hold harmless the Town against all liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceeds or suits, including reasonable attorney’s fees and costs, imposed or asserted against or incurred by the Town arising out of or resulting from (a) a breach of any of the representations, warranties, or covenants contained in this Agreement; or (b) the negligence or willful misconduct of the Contractor, its officials, agents, employees and/or contractors arising out of the performance of this Agreement.

Contractor shall, at its own expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly qualified in the State of New York:

1. Commercial General Liability Coverage. A policy to provide coverage against claims of personal injury and property damage, including broad form contractual liability coverage and shall have a \$1,000,000 limit for personal injury and property damage per occurrence and \$1,000,000 in the aggregate.

2. Comprehensive Automobile Liability Coverage. A policy to provide coverage against claims of personal injury or property damage covering all owned, leased, non-owned and hired vehicles used in the performance of work under this Agreement with a minimum limit per occurrence of \$1,000,000 for personal injury and property damage.

3. Workers Compensation Insurance. A policy to provide coverage as required by state law.

4. Umbrella Liability Coverage. A policy to provide coverage excess of General Liability and Automobile Liability in the amount of \$2,000,000. The Contractor may satisfy this requirement by providing additional limits under the primary policies.

B. Insurance Certification. All policies of liability insurance required to be maintained by the Contractor shall be issued by insurers with an A.M. Best rating of not less than “A-: VII.” The Contractor shall provide or cause to be provided a certificate of insurance from an authorized insurance agent certifying that such coverage is in effect prior to the commencement of the term. The Town and its officers and employees, and NYSERDA and the State of New York must be named as additional insureds under the policies.

ARTICLE 9 – PERFORMANCE BOND

The Contractor shall deliver a performance bond satisfactory to the Town, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the Town, in an amount equal to 100% of the total price of the project.

ARTICLE 10 – FORCE MAJEURE

If Contractor’s performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Contractor, then Contractor shall be entitled to an equitable adjustment in the contract times. Contractor’s entitlement to an adjustment of the contract times is conditioned on such adjustment being essential to Contractor’s ability to complete the work within the contract times. Such an adjustment shall be Contractor’s sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in contract times under this paragraph include but are not limited to the following:

- 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
- 2. abnormal weather conditions; and
- 3. acts of war or terrorism.

Contractor shall not be entitled to an adjustment in the contract price or contract times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of the Contractor.

ARTICLE 11 – NOTICES

All notices shall be in writing and shall be delivered in person or transmitted by certified mail, return receipt requested, or national courier service providing proof of receipt to the parties listed below. Notices shall be effective upon receipt.

To the Contractor:

To the Town:
Town of Germantown
50 Palatine Park Road
Germantown, New York 12526
ATTN: Town Supervisor

ARTICLE 10 - MERGER AND MODIFICATION

A. This Agreement, including the Appendices, IFB, including the Specifications and Instructions to Bidders, Contractor’s proposal, and Clean Energy Communities (CEC) Program Contract #400108 (“CEC Agreement”) attached hereto, contains the entire agreement between the parties. Neither party to this Agreement is relying upon any representation of the other not specifically set forth herein. In the event of any conflict or inconsistency between this

Agreement and the CEC Agreement, the terms and conditions of the CEC Agreement shall control as between the parties.

B. This Agreement may not be modified, amended, changed or altered in any way except by an agreement, in writing, executed by the parties.

ARTICLE 11 - ASSIGNMENT

This Agreement shall be binding upon the parties hereto and their respective successors and assigns provided that this Agreement may not be assigned by either party except upon the express written consent of the other.

Contractor may not subcontract work under this Agreement to a third party without the written consent of the Town. The Town shall have the right to withhold consent if it has reasonable grounds to believe that the assignee or subcontractor will not be able to fulfill the scope of work requirements.

ARTICLE 12 – INDEPENDENT CONTRACTOR

It is expressly understood that the Contractor is an independent contractor and that there is no employee-employer relationship between the Town and the Contractor. The performance of the work described herein shall not be construed as creating a partnership, agency relationship, or any joint employment relationship between the Town and the Contractor, and the Town is not liable for any obligations incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE 13 - GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by the laws of the State of New York. Any disputes arising out of or relating to this Agreement will be resolved in the Columbia County Supreme Court.

ARTICLE 14 – SEVERABILITY

If any provision of this Agreement shall be determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, provided the consideration for the Agreement can be reasonably determined. In such event, the parties shall make good faith efforts to modify this Agreement to implement the intent of the parties embodied in this Agreement. Any resulting modification and the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 15 – WAIVER

The failure of either party to enforce any of the terms of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or any other provision

herein.

ARTICLE 16 – ATTORNEYS’ FEES

If either party retains the services of an attorney to enforce the provisions of this Agreement, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorneys’ fees.

ARTICLE 17 – EXHIBITS:

The following Exhibits and Appendices are attached to this Agreement and made a part hereof:
Appendix A: Standard Contract Clauses
Appendix B: Prevailing Wage Schedule
IFB
Contractor’s Proposal
Clean Energy Communities (CEC) Program Contract #400108

ARTICLE 18 – NYSERDA APPROVAL

It is expressly understood that this Agreement is contingent on approval from NYSERDA. In the event that NYSERDA does not approve this Agreement, it is null and void and neither party shall have any rights or claims against the other.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal on the day first above written.

TOWN OF GERMANTOWN

By: _____
David Helsley, SUPERVISOR

(INSERT CONTRACTOR’S NAME)

By: _____
(TITLE)

APPENDIX A

STANDARD CONTRACT CLAUSES

[insert]

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

4. WORKERS’ COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

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

24. PROCUREMENT LOBBYING. To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

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

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

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

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

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

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

APPENDIX B

Prevailing Wage Schedule

The following are the rates of wages and supplements determined by the Industrial Commissioner of the State of New York as prevailing in the locality of the site at which the work will be performed:

Wage Schedules can be accessed online using PRC # 2024013101 at
<https://apps.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1578217>

If the Contractor is unable to access the prevailing wage schedule for the PRC# listed above, please contact the Town for a copy of the wage rate schedule.