



***DWSRF Project No. 19610  
Request for Proposal  
for  
Professional Services for  
Lead Service Line Inventory***



**1.0 INTRODUCTION**

- 1.1 The Mohawk Valley Water Authority (MVWA) is requesting proposals from consulting firms with demonstrated experience in predictive modeling through GIS and the preparation of water service line inventories. This RFP is for consulting services identified under the Scope of Services.
- 1.2 Response to this RFP shall be submitted by electronic format to [jmurray@mvwa.us](mailto:jmurray@mvwa.us) or by mail to One Kennedy Plaza, 3<sup>rd</sup> Floor, Utica NY 13502, Attn: Jolie Murray Re: Professional Services Proposal - Lead Service Line Inventory by 11:00 A.M. local time on June 25, 2024.
- 1.3 Questions regarding this RFP should be directed to Dan Faldzinski, Principal Engineer via email ([dfaldzinski@mvwa.us](mailto:dfaldzinski@mvwa.us)). Questions and responses that affect the scope of services will be in writing and distributed to all recipients.

**2.0 PROJECT DESCRIPTION**

General – The new Lead and Copper Rule Revisions (LCRR) under the Environmental Protection Agency (EPA) requires community, non-transient, and non-community water systems to develop and submit, to the New York State Department of Health (DOH), an inventory of the MVWA’s drinking water distribution system service line material by **October 16, 2024**. The purpose of the inventory is identifying the location, material, and other pertinent information of the service lines. This will ultimately help the MVWA create a replacement program, if necessary, for lead service lines and galvanized service lines downstream from a lead pipe (galvanized requiring replacement). This inventory must include information on the water system side of the curb-stop and the customers side of the curb-stop. If replacement is required, both the water system and the customers side of the service line must be replaced. The intent of this project is to support development of a LSLI through “**predictive modeling**” as well as other tools, as appropriate. Additional work to include preparation of a LSL replacement plan and prepare a plan on how the MVWA will continue to identify the "unknown" service line material.

The lead service line inventory must be made available to the public. The MVWA intends to develop an online portal for customers to provide us with service line material information. We also intend to develop an interactive map so customers can view their service line

material as it becomes available. As of now the MVWA is creating space to store the new service line information in our GIS system, in addition to the information we have already. An internal MVWA team consisting of water quality, distribution system, data management, utility planning and GIS staff has been formed to oversee the project.

### 3.0 SCOPE OF SERVICES

The MVWA is looking for a consultant or consultant team with experience in developing lead service line inventories. The required scope of services includes the following:

Preparation of a Work Plan to provide implementation assistance for the MVWA's community water system Lead Service Line Inventory (LSLI). The Work Plan must be in compliance with the EPA guidance on completing the LSLI as part of the new LCRR and will clearly document tasks assigned to the successful bidder and those to be completed by the MVWA. Items to be included and or considered within the Work Plan include, but are not limited to the following:

- Designation of an internal staff team, formed to oversee the project.
- The LSLI is intended to identify the location and material of all water service lines present in our water system. MVWA's current inventory of service lines resides within our work order system known as Internet Commerce Exchange (ICE), which is the interface to our Unisys database. Data from this inventory will be provided to the successful bidder.
- The successful bidder will be required to build a new inventory based on MVWA ICE data and reporting from MVWA's field investigation efforts. In addition, the successful bidder will be required to provide mapping of the inventory and integrate data into MVWA's GIS system.
- The successful bidder shall develop a comprehensive field data tracking system to assist with data collection and integration of data into MVWA's GIS system, that meets the data quality requirements to support predictive modeling.
- The LSLI shall document both the service line material on MVWA side ownership and customer side ownership.
- The LSLI will be developed using, but not limited to, the resources and methods identified by the LCRR. Refer to the New York State Department of Health Service Line Inventory Guidance, attached.
- The use of predictive modeling is required and to be utilized to prepare a list of service locations to be field verified.

- A verification process must be developed for confirming model outcomes according to the LCRR.
- Assistance migrating service line data from ICE work order system to GIS.
- Development of a plan for continuing to identify unknown service line materials.
- Development of a lead and/or galvanized service replacement plan.
- Preparation of data files to submit to DOH in compliance with LCRR requirements. The use of the DOH's template will be required for submission of the inventory.

## **4.0 QUALIFICATIONS AND SELECTION PROCESS**

4.1 Qualifications will include a brief description of the Proposer's and any subconsultant's qualifications and previous experience with similar or related projects. The Proposer should have knowledge of the lead service line inventory (LSLI) required by Environmental Protection Agency's (EPA) new Lead and Copper Rule Revisions. Specifically discuss the following:

- Identify only projects involving the key team players or subconsultants proposed for this project.
- For each project listed, identify the key team member or subconsultant's role.
- Describe the characteristics that separates you from your competitors.
- Indicate your readiness and availability to complete work.
- List relevant projects in date order with newest projects listed first and include the following:
  - Brief project description;
  - Contact name, phone, and email address of that customer's representative; and
  - Discuss the methods, approach, and controls used on the project in order to complete it in an effective, timely, economical, and professional manner.

4.2 Submissions will be evaluated and ranked based on the following criteria:

- The MVWA's selection process will focus on the qualifications, experience and capabilities of proposed project team members and price. The MVWA will expect consultant teams demonstrate a clear and thorough understanding of the work to be undertaken, and the means for completing the work successfully.

## **5.0 TERMS AND CONDITIONS**

5.1 The services in this proposal shall be awarded to the lowest priced, responsible, qualified bidder. The MVWA shall prepare an Agreement for Services for review and execution by the successful bidder. A Standard Form of Agreement is accompanying this RFP.

5.2 The contents of the successful firm's proposal will become part of the Agreement for Services.

5.2.1 The MVWA reserves the right to accept or reject any or all submissions when it is in the best interest of the MVWA to do so.

5.2.1.1 The MVWA is not liable for any costs incurred prior to the issuance of an executed Agreement or a written notice to proceed.

5.3 The successful firm will need to commence work identified under Scope of Services by July 8, 2024 and complete the work, including submission of data to the DOH by no later than October 11, 2024.

## **6.0 COMPENSATION**

6.1 BASE BID: The proposal shall indicate a lump sum fee for the identified Scope of Services. The fee shall include the Consultant's personnel and all direct expenses to complete the work and provide man-hours by technical and administrative employee classification for each task. It is recommended that Consultant provide further breakdown of anticipated man-hours to illustrate the level of effort for subtasks.

6.2 ADDITIONAL SERVICES: The proposal shall indicate an annual lump sum fee (for years 2025 through 2027) for the annual update of the lead service inventory based on additional MVWA field verifications, continued predictive modeling to assist with field verifications and resubmission of data to the DOH.

## **7.0 CONSULTANT LIABILITY INSURANCE**

7.1 The Consultant and all sub consultants are required to carry malpractice liability insurance. A statement of liability insurance limits will be required with the Agreement. This statement must include Liability Insurance Coverage of at least Two Million (\$2,000,000) dollars for the consultant.

## **8.0 SUBMISSION REQUIREMENTS**

8.1 General - The proposal shall follow the format outlined in this section. The number of single sided pages indicated is only a guideline with a goal of conciseness. Please do not submit irrelevant data or information. It is permissible to provide links to firm website where additional relevant information may be reviewed.

8.1.1 Contact Information - Provide the complete name, e-mail, address, and telephone numbers of the individual who is proposed to be the Consultant's project manager and primary communications contact for this project. Also provide firm name, address, e-mail, and phone numbers for each of the sub-consultants, if any. One (1) page.

8.1.2 Firm Experience - Please indicate your firm's and all sub-consultant's prior experience in working with similar scope & similarly-sized projects, including past project dollar values. Max (4) pages. Past Project information shall include corresponding

reference(s).

- 8.1.3 Personnel Qualifications & Experience - Please provide a one (1) page summary of each team member; names, roles and responsibilities, years of experience and listing of relevant project experience.

8.1.3.1 MWBE Participation of 30% is required (15% MBE, 15% WBE). See Appendix A.

8.1.3.2 SDVOB Participation of 6% is required. See Appendix A.

- 8.1.4 Technical Understanding & Approach - Provide your understanding of the project scope and your firm's approach to accomplishing the work. It is permissible to reference the RFP Tasks and add specific information on how your firm will approach the work. Please clearly indicate how your firm's approach is a benefit to the MVWA in terms of project performance, costs, schedule, and any other related factors. Max (4) pages.

8.1.4.1 Time Schedule - Please provide a proposed schedule indicating the date your firm is available to start the required work and potential dates for completion of each of the tasks described. Suggested (2) pages.

- 8.1.5 Compensation - Provide the fee proposal and task man-hour breakdown as required under Section 6. "Compensation".

8.2 Liability Insurance - Copies are not required at the time of Proposal submission.

8.3 Agreement – Not required at time of Proposal submission.

# APPENDIX A

## STANDARD FORM OF AGREEMENT

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## **AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between \_\_\_\_\_ (“Owner”) and \_\_\_\_\_ (“Engineer”).

Engineer's services under this Agreement are generally identified as follows:

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1. any development that affects the scope or time of performance of Engineer's services;
2. the presence at the Site of any Constituent of Concern; or
3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

## **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

### **3.01 Commencement**

- A. Engineer is authorized to begin rendering services as of the Effective Date.

### **3.02 Time for Completion**

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

## **ARTICLE 4 – INVOICES AND PAYMENTS**

### **4.01 Invoices**

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

### **4.02 Payments**

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
  2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

## ARTICLE 5 – OPINIONS OF COST

### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

### 5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

### 5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
  - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
    - a. changes after the Effective Date to Laws and Regulations;
    - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
    - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make

resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals,

revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

#### 6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.



- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

#### 6.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such



additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.06 *Suspension and Termination*

##### A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

##### B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
  - a. by either party upon 30 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.
  - b. by Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
  2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

#### 6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

#### 6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

#### 6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are

or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

## 6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

## 6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

# ARTICLE 7 – DEFINITIONS

## 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
  - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
  - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of



Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.

25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.



35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
  36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
  37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
- B. *Day*:
1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit – Not Used.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.

- K. Exhibit K, Amendment to Owner-Engineer Agreement.
- L. Exhibit L, Mandatory State Financial Assistance Terms and Conditions for Contracts Funded with New York State Financial Assistance Only

#### 8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

#### 8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

#### 8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.**

Owner:  
Mohawk Valley Water Authority

Engineer:

By: \_\_\_\_\_

Print Name: Patrick J. Becher

Title: Executive Director

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

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Engineer License or Firm's Certificate No. (if required):  
\_\_\_\_\_

State of: New York

Address for Owner's receipt of notices:  
1 Kennedy Plaza, Third Floor  
Utica NY 13502

Address for Engineer's receipt of notices:  
\_\_\_\_\_  
\_\_\_\_\_

Designated Representative (Paragraph 8.03.A):  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone Number: 315-792-0336  
E-Mail Address: \_\_\_\_\_

Designated Representative (Paragraph 8.03.A):  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

This is **EXHIBIT A**, referred to in and part of the  
**Agreement between Owner and Engineer for  
Professional Services** dated

### **Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide services as stated in Engineer's Proposal which is Exhibit A (attached).

## **Owner's Responsibilities**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Property descriptions.

2. Zoning, deed, and other land use restrictions.
  3. Utility and topographic mapping and surveys.
  4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

This is **EXHIBIT C**, consisting of 1 page, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-1: Basic Services – Lump Sum**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

**C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment**

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
  - 1. A Lump Sum amount of \_\_\_\_\_ based on the following estimated distribution of compensation:
    - 2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
    - 3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
    - 4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses: None.
    - 5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.
- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 18 months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.

- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.



This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 11, 2022.



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**NOTICE OF ACCEPTABILITY OF WORK**

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**PROJECT:**

**OWNER:**

**CONTRACTOR:**

**OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:**

**EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:**

**ENGINEER:**

**NOTICE DATE:**

---

**To:** \_\_\_\_\_  
Owner

**And To:** \_\_\_\_\_  
Contractor

**From:** \_\_\_\_\_  
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, and the following terms and conditions of this Notice:

## CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: \_\_\_\_\_

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

Dated: \_\_\_\_\_

## Insurance

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Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

### G6.05 Insurance

- A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- |   |             |
|---|-------------|
| a. Workers' Compensation:   | Statutory   |
| b. Employer's Liability:  |             |
| 1) Bodily Injury, Each Accident:  | \$1,000,000 |
| 2) Bodily Injury by Disease, Each Employee:   | \$1,000,000 |
| 3) Bodily Injury/Disease, Aggregate:  | \$1,000,000 |
| c. General Liability:   |             |
| 1) Each Occurrence (Bodily Injury and Property Damage):                               | \$1,000,000 |
| 2) General Aggregate:   | \$2,000,000 |
| d. Excess or Umbrella Liability:  |             |
| 1) Per Occurrence:  | \$5,000,000 |
| 2) General Aggregate:   | \$5,000,000 |
| e. Automobile Liability -- Combined Single Limit (Bodily Injury and Property Damage): | \$1,000,000 |
| f. Professional Liability:  |             |
| 1) Each Claim Made  | \$5,000,000 |
| 2) Annual Aggregate   | \$5,000,000 |
| g. Other (specify):   | N/A         |

2. By Owner:

- |  |           |
|--|-----------|
| a. Workers' Compensation:                  | Statutory |
| b. Employer's Liability:                   |           |
| 1) Bodily Injury, Each Accident            | N/A       |
| 2) Bodily Injury by Disease, Each Employee | N/A       |
| 3) Bodily Injury/Disease, Aggregate        | N/A       |

- c. General Liability:
  - 1) General Aggregate: N/A
  - 2) Each Occurrence (Bodily Injury and Property Damage): N/A
- d. Excess Umbrella Liability:
  - 1) Per Occurrence: N/A
  - 2) General Aggregate: N/A
- e. Automobile Liability – Combined Single Limit  
(Bodily Injury and Property Damage): N/A
- f. Other (specify): N/A

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:
  - a. \_\_\_\_\_  
Engineer
  - b. \_\_\_\_\_  
Engineer's Consultant
  - c. \_\_\_\_\_  
Engineer's Consultant
  - d. \_\_\_\_\_  
[other]
2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated

## **Dispute Resolution**

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Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

### **H6.08 *Dispute Resolution***

- A. *Mediation:* Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a mutually agreeable mediator. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

## **Limitations of Liability**

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Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement.
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

- A. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT J**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated

### **Special Provisions**

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Paragraph(s) \_\_\_\_\_ of the Agreement is/are amended to include the following agreement(s) of the parties: None.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
**Amendment No. \_\_\_\_\_**

The Effective Date of this Amendment is: \_\_\_\_\_.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- \_\_\_\_\_ Additional Services to be performed by Engineer
- \_\_\_\_\_ Modifications to services of Engineer
- \_\_\_\_\_ Modifications to responsibilities of Owner
- \_\_\_\_\_ Modifications of payment to Engineer
- \_\_\_\_\_ Modifications to time(s) for rendering services
- \_\_\_\_\_ Modifications to other terms and conditions of the Agreement

Description of Modifications:

***Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.***

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): \_\_\_\_\_



The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

\_\_\_\_\_  
By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_  
  
Title: \_\_\_\_\_  
  
Date Signed: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_  
  
Title: \_\_\_\_\_  
  
Date Signed: \_\_\_\_\_



**Environmental  
Facilities Corporation**

KATHY HOCHUL  
Governor

# **Mandatory State Financial Assistance Terms and Conditions**

**for Contracts Funded with New York State Financial  
Assistance Only**

Effective

New York State Environmental Facilities Corporation  
625 Broadway, Albany, NY 12207-2997  
P: (518) 402-6924 F: (518) 402-7456  
[www.efc.ny.gov](http://www.efc.ny.gov)

# REQUIRED CONTRACT LANGUAGE

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## Recipient to Identify Contract Type:

☐ Construction

☒ Non-Construction

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## COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

**"Contract"** means an agreement between a Recipient and a Contractor.

**"Contractor"** means all bidders, prime contractors, Service Providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

**"Service 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.

**"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.

**"Recipient"** means the party, other than EFC, to a financial assistance 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.

**"State"** means the State of New York.

# **SECTION 1 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

For purposes of this section:

**“Non-Construction”** shall mean Contracts for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing.

The Minority- and Women- Owned Business Enterprises (“MWBE”) and Equal Employment Opportunities requirements of this section apply to the Contracts or Subcontracts meeting the thresholds under New York State Executive Law Article 15-A as follows:

- (a) Non-Construction Contracts greater than \$25,000;
- (b) Non-Construction 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.

## **I. General Provisions**

- A. Contractors and Subcontractors are required to comply with New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.
- B. 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(F) of this section, or enforcement proceedings as allowed by the Contract.
- C. If any terms or provisions herein conflict with Executive Law Article 15-A or the MWBE Regulations, such law and regulations shall supersede these requirements.
- D. Upon request from the Recipient’s Minority Business Officer (“MBO”) and/or EFC, Contractor will provide complete responses to inquiries and all MWBE and EEO records available within a reasonable time. For purposes of this section, MBO means the duly authorized representative of the State financial assistance Recipient for MWBE and EEO purposes.

## **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. Contractor represents that it has submitted an EEO policy statement to Recipient prior to the execution of this Contract.
- C. Contractor represents that it’s EEO policy statement includes the following language:
  - 1. The contractor will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Contracts relating to State financial assistance projects.

2. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract relating to this State financial assistance project, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  3. 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.
- D. The Contractor will include the provisions of Subdivisions II(A), II(C), and II(E) 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.
- E. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), 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.
- F. Required EEO Forms
1. EEO Staffing Plan  
*Non-Construction Contracts and Subcontracts only*  
 To ensure compliance with this section, the Contractor represents that it has submitted prior to execution of this Contract an EEO Staffing Plan to the Recipient's MBO to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
  2. EEO Workforce Employment Utilization Report ("Workforce Report")
    - a. The Contractor shall submit a Workforce Report, and shall require each of its Subcontractors to submit a Workforce Report to the Recipient, in such format as shall be required by EFC during the term of the Contract. For construction Contracts, Workforce Reports must be submitted on a monthly basis; for non-construction Contracts, Workforce Reports must be submitted on a quarterly basis.
    - b. Separate forms shall be completed by Contractor and any Subcontractor.
    - c. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

### III. Business Participation Opportunities for MWBEs

#### A. Contract Goals

1. For purposes of this Contract, EFC establishes the following goals for New York State certified MWBE participation ("MWBE Combined Goals") based on the current availability of qualified MBEs and WBEs.

Program	MWBE Combined Goal*
NYS financial assistance only	30%
Engineering Planning Grant	30%

\*May be any combination of MBE and/or WBE participation

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 the following internet address: <https://ny.newnycontracts.com>.
3. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is 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 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 an MWBE Utilization Plan to the Recipient prior to the execution 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. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient's MBO. Contractor shall indicate the changes to the MBO in the next Monthly MWBE-SDVOB Contractor Compliance Report after the changes occurred. 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-SDVOB 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. Requests 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 Recipient documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Recipient 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 Recipient, 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 regards 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-SDVOB Report")  
The Contractor agrees to submit a report to the Recipient 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-SDVOB 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-SDVOB Report must reflect all Utilization Plan revisions and change orders.
- E. Liquidated Damages - MWBE Participation  
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.

Liquidated damages shall be calculated as an amount not to exceed the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the approved MWBE participation goals; and,
2. All sums actually paid to MWBEs for work performed or materials supplied under this Contract.

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.

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 2 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

For purposes of this section:

**"Non-Construction"** shall mean Contracts for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing.

The requirements of this section apply to Contracts or Subcontracts meeting the thresholds under New York State Executive Law, Article 17-B as follows:

- (a) Non-Construction Contracts greater than \$25,000;
- (b) Non-Construction 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.

## **I. General Provisions**

Contractors and Subcontractors are required to comply with New York State Executive Law Article 17-B and 9 NYCRR Part 252 for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation or real property and improvements thereon.

## **II. Contract Goals**

- A. EFC hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>.
- B. Pursuant to 9 NYCRR § 252.2(n), Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

## **III. SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Contractor represents and warrants that it has submitted a completed SDVOB Utilization Plan to Recipient prior to the execution of this Contract.
- B. Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goal set forth above.
- C. Contractor further agrees that a failure to use SDVOBs as agreed in the 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 of Contractor non-responsibility.
- D. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient's MBO. Contractor shall indicate the changes to the MBO in the next Monthly MWBE-SDVOB Contractor Compliance Report after the changes occurred. At EFC's discretion, an updated SDVOB 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 revised Utilization Plan.
- E. The Contractor shall submit copies of all fully executed subcontracts, agreements, and purchase orders that are referred to in the SDVOB Utilization Plan to the MBO within 30 days of their execution.

## **IV. Request for Waiver**

- A. If Contractor, after making good faith efforts, is unable to comply with the SDVOB Contract goal, Contractor may submit a request for a partial or total waiver to the Recipient, documenting good faith efforts by Contractor to meet such goal. If the documentation included with the waiver request is complete, the Recipient 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.
- B. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the Recipient, but must be made no later than prior to the submission of a request for final payment on the Contract.  
If the Recipient, upon review of the SDVOB Utilization Plan and Monthly SDVOB Contractor Compliance Report determines that Contractor is failing or refusing to comply with the SDVOB Contract goal and no waiver has been issued in regards to such non-compliance, the Recipient may issue a notice of deficiency to Contractor. Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB Contract goals.



## **V. Monthly SDVOB Contractor Compliance Report (“Monthly MWBE-SDVOB Report”)**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report monthly SDVOB contractor compliance to the Recipient during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. The Contractor agrees to submit a report on to the Recipient by the third business day following the end of each month over the term of this Contract. The Monthly MWBE-SDVOB Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check). The final Monthly MWBE-SDVOB Report must reflect all Utilization Plan revisions and change orders.

## **VI. Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

## **SECTION 3 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT**

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

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.

## APPENDIX B

# NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION (EFC) – ARCHITECTURAL/ENGINEERING SERVICES PROCUREMENT FOR EFC FUNDED PROJECTS



**Department  
of Health**

**Environmental  
Facilities Corporation**

# **ARCHITECTURAL/ENGINEERING SERVICES PROCUREMENT FOR ENVIRONMENTAL FACILITIES CORPORATION FUNDED PROJECTS**

**Effective April 1, 2023**

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

# ARCHITECTURAL/ENGINEERING SERVICES PROCUREMENT FOR EFC FUNDED PROJECTS

Municipalities requesting financing for architectural/engineering (“A/E”) services must procure A/E services in accordance with certain qualifications-based requirements. This guidance document describes the types of services that are considered A/E services and how these A/E services must be procured.

**Please Note:** This guidance document applies to all projects financed by the Environmental Facilities Corporation (“EFC”) whose A/E services are procured *after* 10/1/2022.<sup>1</sup>

If a municipality is seeking project financing for A/E services that were not procured pursuant to this guidance document, EFC will only finance such A/E services if:

1. The procurement occurred *before* 10/1/2022;
2. A financing application is submitted for the project prior to June 16, 2023; and
3. A project finance agreement is entered into for the financing of such project prior to October 1, 2024.

## ***What types of services are covered A/E services?***

Contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or A/E services as defined in 40 U.S.C. 1102(2)(A-C):

*(A) professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;*

*(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and*

*(C) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.*

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<sup>1</sup> A municipality that entered into a project finance agreement with EFC before October 1, 2022 should reach out to EFC to discuss any new procurement of A/E services.

### ***How must A/E services be procured?***

Municipalities must procure A/E services pursuant to the provisions of 40 U.S.C. 1101 *et seq.* In general, these require:

- (i) Public announcement of the solicitation (e.g., a Request for Qualifications);
- (ii) Evaluation and ranking of the submitted qualifications statements based on established, publicly available criteria (e.g., identified in the solicitation). Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required);
- (iii) Discussion with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services;
- (iv) Selection of at least three firms considered to be the most highly qualified to provide the required services; and
- (v) Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered. In the event that a contract cannot be negotiated with the most highly qualified firm, negotiation continues in order of qualification.

### ***How does the municipality show compliance with the federal A/E procurement requirements?***

Municipalities will be required to execute an Environmental Facilities Corporation Certification for Architectural/Engineering Services Procurement for Federally Funded Projects in the form attached to this guidance. The Certification must be signed by an authorized representative of the municipality. It cannot be signed by a hired contractor or consultant.

### ***What A/E documentation does a municipality need to keep?***

The Certification for Architectural/Engineering Services Procurement for Federally Funded Projects and documentation evidencing completion of the procurement steps outlined above are required to be kept on file by the municipality and be made available for inspection upon EFC's request. These documents must be kept for the term of the EFC financing plus 6 years consistent with the other records required to be kept pursuant to the Project Financing Agreement for the project.

### ***Are contract amendments subject to federal A/E procurement requirements?***

Significant contractual amendments are subject to this requirement. Significant contractual amendments are amendments to existing contracts that have a value greater than \$100,000 AND introduce a new scope of work or task.



**Environmental Facilities Corporation Certification for Architectural/Engineering  
Services Procurement for Federally Funded Projects**

Municipality:

EFC Project Number:

Contract ID	Contractor Name	Execution Date

I, \_\_\_\_\_, am an Authorized Representative of the Municipality.

I hereby certify that the Municipality has procured the Architectural and Engineering Services (as that term is defined in 40 U.S.C. 1102) for the contract(s) listed above in accordance with 40 U.S.C. 1101 *et seq.*, as outlined below.

- (i) Public announcement of the solicitation (e.g., a Request for Qualifications);
- (ii) Evaluation and ranking of the submitted qualifications statements was based on established, publicly available criteria (e.g., identified in the solicitation). Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required);
- (iii) Discussion with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services;
- (iv) Selection of at least three firms considered to be the most highly qualified to provide the services required; and
- (v) Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered. In the event that a contract could not be negotiated with the most highly qualified firm, negotiation continued in order of qualification.

\_\_\_\_\_  
Authorized Representative

Title:

Date:

## APPENDIX C

# NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION (EFC) – NEW YORK STATE REVOLVING FUND – EQUIVALENCY GUIDANCE PACKET



**Environmental  
Facilities Corporation**

**Department  
of Health**

# **New York State Revolving Fund Equivalency Guidance Packet**

**Effective June 1, 2023**

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



# EQUIVALENCY GUIDANCE PACKET FOR STATE REVOLVING FUND (“SRF”) RECIPIENTS

## NEW YORK CLEAN WATER and DRINKING WATER STATE REVOLVING FUNDS AND OVERFLOW and STORMWATER GRANTS

Administered by the New York State Environmental Facilities Corporation

Certain SRF recipients are selected by the Environmental Facilities Corporation (“EFC”) to comply with federal review standards. Such projects are classified in the SRF programs as “equivalency” projects. Sponsors of equivalency projects will be informed that their project is an equivalency project and are, therefore, required to demonstrate compliance with various federal laws, regulations, and executive orders relating to architectural and engineering (“A/E” procurement), surveillance services and equipment procurement, federal cross-cutting authorities, National Environmental Protection Act (“NEPA”) environmental review, disadvantaged business enterprises, and the Single Audit Act, as applicable. EFC has prepared this guidance and the attached forms and certifications to assist project sponsors in meeting the “equivalency” requirements.

Check EFC’s website ([www.efc.ny.gov](http://www.efc.ny.gov)) for updates.

***All certifications and fillable forms in this guidance should be submitted to the EFC or Department of Health (“DOH”) Engineer assigned to the project for review.***

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# ARCHITECTURAL/ENGINEERING SERVICES PROCUREMENT FOR SRF FUNDED PROJECTS

**\*\*Applies to CWSRF and DWSRF\*\***

Municipalities requesting financing for A/E services must procure A/E services in accordance with certain qualifications-based requirements. This guidance document describes the types of services that are considered A/E services and how these A/E services must be procured.

**Please Note:** This guidance document applies to **all projects** financed by the Environmental Facilities Corporation (“EFC”) whose A/E services are procured *after* 10/1/2022.<sup>1</sup>

If a municipality is seeking project financing for A/E services that were not procured pursuant to this guidance document, EFC will only finance such A/E services if:

1. The procurement occurred *before* 10/1/2022;
2. A financing application is submitted for the project prior to June 16, 2023; and
3. A project finance agreement is entered into for the financing of such project prior to October 1, 2024.

## ***What types of services are covered A/E services?***

Contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or A/E services as defined in 40 U.S.C. 1102(2)(A-C):

*(A) professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;*

*(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and*

*(C) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.*

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<sup>1</sup> A municipality that entered into a project finance agreement with EFC before October 1, 2022, should reach out to EFC to discuss any new procurement of A/E services.

### ***How must A/E services be procured?***

Municipalities must procure A/E services pursuant to the provisions of 40 U.S.C. 1101 *et seq.* In general, these require:

- (i) Public announcement of the solicitation (e.g., a Request for Qualifications);
- (ii) Evaluation and ranking of the submitted qualifications statements based on established, publicly available criteria (e.g., identified in the solicitation). Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required);
- (iii) Discussion with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services;
- (iv) Selection of at least three firms considered to be the most highly qualified to provide the required services; and
- (v) Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered. In the event that a contract cannot be negotiated with the most highly qualified firm, negotiation continues in order of qualification.

### ***How does the municipality show compliance with the federal A/E procurement requirements?***

Municipalities will be required to execute an EFC Certification for Architectural/Engineering Services Procurement for Federally Funded Projects in the form attached to this guidance ("Certification"). The Certification must be signed by an authorized representative of the municipality. It cannot be signed by a hired contractor or consultant.

### ***What if the municipality does not generate interest from at least three firms?***

A procurement of A/E services shall be considered in compliance even when the municipality does not generate three responses so long as the municipality made a good faith effort to publicly advertise and directly solicit participation.

### ***What A/E documentation does a municipality need to keep?***

The Certification and documentation evidencing completion of the procurement steps outlined above are required to be kept on file by the municipality and be made available for inspection upon EFC's request. These documents must be kept for the term of the EFC financing plus 6 years.

### ***Are contract amendments subject to federal A/E procurement requirements?***

Significant contractual amendments are subject to this requirement. Significant contractual amendments are amendments to existing contracts that have a value greater than \$100,000 AND introduce a new scope of work or task.



**Environmental Facilities Corporation Certification for Architectural/Engineering  
Services Procurement for Federally Funded Projects**

Municipality:

EFC Project Number:

Contract ID	Contractor Name	Execution Date

I, \_\_\_\_\_, am an Authorized Representative of the Municipality.

I hereby certify that the Municipality has procured the Architectural and Engineering Services (as that term is defined in 40 U.S.C. 1102) for the contract(s) listed above in accordance with 40 U.S.C. 1101 *et seq.*, as outlined below.

- (i) Public announcement of the solicitation (e.g., a Request for Qualifications);
- (ii) Evaluation and ranking of the submitted qualifications statements was based on established, publicly available criteria (e.g., identified in the solicitation). Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required);
- (iii) Discussion with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services;
- (iv) Selection of at least three firms considered to be the most highly qualified to provide the services required; and
- (v) Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered. In the event that a contract could not be negotiated with the most highly qualified firm, negotiation continued in order of qualification.

\_\_\_\_\_  
Authorized Representative

Title:

Date:

# NEPA ENVIRONMENTAL AND EPA CROSS CUTTER REVIEW

**\*\*Applies to CWSRF, DWSRF and OSG\*\***

This document supplements the State Environmental Review Process (“SERP”) guidance available in the New York State Revolving Fund Municipal Application Form Instructions and Guidance Appendix C, on the EFC website, available at: <https://efc.ny.gov/state-revolving-fund-application-instructions-pdf> (last visited June 1, 2023).

Sponsors of equivalency projects are required to perform the environmental review of their project in conformance with both the SERP guidance and this supplement, which requires a NEPA-like review.

Sponsors of equivalency projects are required to demonstrate compliance with various federal laws, regulations, and executive orders commonly referred to as the federal cross cutters which are presented below, in addition to state environmental review requirements.

The guidance references the specific steps indicated on the checklist below. The checklist and supporting documentation must be submitted to the EFC or DOH Engineer assigned to the project.



**New York State Revolving Fund  
Environmental Review Equivalency Checklist**

Please complete this form and provide all supporting documentation to EFC. Additional cross cutter references are presented below. Please refer to the [SEQR Handbook](https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf) for New York State Environmental Quality Review ("SEQR") Requirements, available at: [https://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/seqrhandbook.pdf](https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf). Please note that EFC requires a SHPO determination for all projects seeking SRF financing.

Municipality:

Project Number: Click or tap here to enter text.

Project Name:

Yes	No	Screening Criteria
<input type="checkbox"/>	<input type="checkbox"/>	1. <b>[CWSRF PROJECTS ONLY]</b> - Project serves a municipality with a population less than 10,000.  <b>DO NOT COMPLETE REMAINDER OF FORM IF YES IS CHECKED</b>
<input type="checkbox"/>	<input type="checkbox"/>	2. <b>[CWSRF PROJECTS ONLY]</b> - Project qualifies as a CWSRF non-point source Section 319 project or Section 320, and is not related to a treatment works project. <sup>2</sup>  <b>DO NOT COMPLETE REMAINDER OF FORM IF YES IS CHECKED</b>
<input type="checkbox"/>	<input type="checkbox"/>	3. Project qualifies for categorical exclusion if State Classification is Type II under section 617.5(c)(1), (c)(2), (c)(6), (c)(9), (c)(11), (c)(13), (c)(24), (c)(27), (c)(29) or (c)(31).  <b>DO NOT COMPLETE REMAINDER OF FORM IF YES IS CHECKED</b> <b>If project qualifies as a SEQR Type II action not listed above, contact EFC.</b>
<input type="checkbox"/>	<input type="checkbox"/>	4. Project qualifies for NEPA exemption under 40 CFR Section 6.210 for Emergency Actions. <input type="checkbox"/> Emergency Resolution, if available.  <b>DO NOT COMPLETE REMAINDER OF FORM IF YES IS CHECKED</b>

<sup>2</sup> References are to the Clean Water Act, as amended (33 U.S.C. §1251 et seq.)

<input type="checkbox"/>	<input type="checkbox"/>	<p>5. Project qualifies for NEPA exemption, non-discretionary action and is being undertaken because of a civil or criminal enforcement proceeding (e.g., consent order).</p> <p style="text-align: center;"><b>DO NOT COMPLETE REMAINDER OF FORM IF YES IS CHECKED</b></p>
<input type="checkbox"/>		<p>6. Complete Full SEQR Environmental Assessment Form ("EAF") &amp; the following crosscutter review checklist.</p> <p><input type="checkbox"/> Completed EAF attached, if prepared.</p> <p><input type="checkbox"/> Copies of responses to substantive public comments attached, if applicable, and inform commenters.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<p>7. Project sponsor issued a Negative Declaration.</p> <p><b>If Yes, publish Negative Declaration in Environmental Notice Bulletin ("ENB").</b></p> <p><input type="checkbox"/> Copy of Negative Declaration and ENB notice attached.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<p>8. Project sponsor issued a Positive Declaration.</p> <p><b>If Yes, a Public Hearing is required.</b></p> <p><input type="checkbox"/> Copy of Positive Declaration attached.</p> <p><input type="checkbox"/> Documentation, including hearing transcript, of the Public Hearing held attached.</p> <p><input type="checkbox"/> Copy of Notice of Hearing published in ENB <b>and</b> local newspaper attached.</p> <p><input type="checkbox"/> Copy of Final Environmental Impact Statement <b>and</b> written findings statement attached.</p>

### Crosscutter Review Checklist

Environmental Cross Cutter	Corresponding SEQR EAF Section	Affirm Review Complete	Additional action required if “yes” response to any corresponding EAF Part 1 and a moderate to large impact is indicated in EAF Part 2	Documentation Attached to Indicate Action Complete
National Historic Preservation Act (“NHPA”)	N/A	<input type="checkbox"/>	Notwithstanding the above instruction you must attach correspondence from the State Historic Preservation Office (“SHPO”) indicating a Section 106 Review has taken place	<input type="checkbox"/> SHPO response letter attached
Archeological and Historic Preservation Act	N/A	<input type="checkbox"/>	When discoveries are made on a project that require the involvement of SHPO during the early planning stages of the project, work with SHPO under procedures of the NHPA	N/A
Protection of Wetlands	Part 1: D.2(b), E.1(B), E.2(h) Part 2: § 3 *Consult USFWS Wetlands Mapper	<input type="checkbox"/>	If within zone on USFWS Wetlands Mapper ( <a href="https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper">https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper</a> ), consult with United States Army Corps of Engineers (“USACE”)	<input type="checkbox"/> Wetlands Map and correspondence with USACE, if applicable
Farmland Protection Policy Act	Part 1: C.2(c), C.3, D.2(c) or (d), E.1(a) or (b), E.3(a) or (b) Part 2: § 8	<input type="checkbox"/>	Contact New York State Department of Agriculture and Markets (“NYSDAM”) & United States Department of Agriculture (“USDA”) National Resources Conservation Service Regional Office	<input type="checkbox"/> NYSDAM & USDA impact determination letters, if applicable
Endangered Species Act	Part 1: E.2(o) Part 2: § 7	<input type="checkbox"/>	Consult with United States Fish and Wildlife Service (“USFWS”) and/or National Marine Fisheries Service (“NMFS”)	<input type="checkbox"/> Correspondence with USFWS or NMFS, if applicable
Clean Air Act	Part 1: D.2(g) Part 2: § 6	<input type="checkbox"/>	No additional action	N/A
Wild and Scenic Rivers Act	Part 1: E.3(h) Part 2: § 9(a) *Consult federal Wild and Scenic River Map	<input type="checkbox"/>	If a federally designated wild and scenic river is identified on the maps <a href="https://www.rivers.gov/">https://www.rivers.gov/</a> , consult with National Park Service (“NPS”)	<input type="checkbox"/> Wild and Scenic River Map and correspondence with NPS, if applicable
Environmental Justice	Part 1: C.2, C.3, D.1(f), D.1(g) Part 2: § 18	<input type="checkbox"/>	No additional action	N/A



<b>Environmental Cross Cutter</b>	<b>Corresponding SEQR EAF Section</b>	<b>Affirm Review Complete</b>	<b>Additional action required if “yes” response to any corresponding EAF Part 1 and a moderate to large impact is indicated in EAF Part 2</b>	<b>Documentation Attached to Indicate Action Complete</b>
Safe Drinking Water Act (Sole Source Aquifer)	Part 1: E.2 (l) Part 2: § 4 *Consult Federal Sole Source Aquifer Map	<input type="checkbox"/>	Check EPA Sole Source Aquifer maps ( <a href="https://www.epa.gov/dwssa">https://www.epa.gov/dwssa</a> ); if within zone, contact EFC for CWSRF projects and DOH for DWSRF projects	<input type="checkbox"/> Sole Source Aquifer Letter from DEC, if applicable
Floodplain Management	Part 1: E.2 (i), (j) or (k) Part 2: § 5	<input type="checkbox"/>	Complete Floodplain Wetlands Assessment (See guidance section)	<input type="checkbox"/> Floodplain Wetlands Assessment, if applicable
Fish and Wildlife Coordination Act	Part 1: D.1(h), D.2(b), E.2(h) Part 2: § 3	<input type="checkbox"/>	If project is subject to federal permit or license, consult with USFWS, unless project is restricted to an impoundment of water less than 10 acres, then no additional action.	<input type="checkbox"/> Correspondence with USFWS, if applicable
Magnuson-Stevens Fishery Conservation and Management Act	Part 1: E.2(q) Part 2: § 7(d)	<input type="checkbox"/>	Contact NMFS for consultation	<input type="checkbox"/> Correspondence with NMFS, if applicable
Coastal Barrier Resources Act	Part 1: B(i), (ii), (iii), D.2(b), E.1(b), E.2(h) Part 2: § 1(g), 3 *Consult Federal Coastal Barrier Resources Map	<input type="checkbox"/>	If within zone on USFWS Coastal Barrier Resources Mapper ( <a href="http://www.fws.gov/cbra/Maps/Mapper.html">http://www.fws.gov/cbra/Maps/Mapper.html</a> ) contact USFWS	<input type="checkbox"/> Coastal Barrier Resources Map and Correspondence with USFWS, if applicable
Coastal Zone Management Act	Part 1: B(i), (ii), (iii) Part 2: § 1(g)	<input type="checkbox"/>	Contact EFC to determine whether consultation with New York State Department of State (“NYSDOS”) is required	<input type="checkbox"/> Correspondence with NYSDOS, if applicable
Migratory Bird Treaty Act	Part 1: E.2 (m), (o) or (p) Part 2: 7 (b), (c), (d) or (g)	<input type="checkbox"/>	Contact US Fish and Wildlife Services (“USFWS”) for consultation	<input type="checkbox"/> Correspondence with USFWS, if applicable

## CERTIFICATION

I hereby certify, under penalty of perjury, on behalf of the entity named above in connection with its application to the New York State Environmental Facilities Corporation that the foregoing information is true and accurate, that I have reviewed and completed the New York State Revolving Fund Environmental Review Equivalency Checklist, and that I have attached the required supporting documentation.

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(Signature of Authorized Representative)

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(Print Name and Title)

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(Date)

## Guidance<sup>3</sup>

**Item 1** – Federal environmental cross-cutting requirements apply to CWSRF recipients with a population greater than 10,000. Notwithstanding anything herein to the contrary, if your project is receiving CWSRF BIL emerging contaminants grant funding, this section is inapplicable and your project will be designated as an equivalency project.

**Item 2** – Federal environmental cross-cutting requirements do not apply to projects categorized as non-point source projects (CWA Section 319) or estuary management program projects (CWA Section 320) unless the project involves a treatment works element. Refer to the current Intended Use Plan or your EFC or DOH Project Engineer for clarification.

**Item 3** – Each project must be classified as a SEQR action by Type. Certain SEQR Type II actions are categorically excluded from NEPA review. If the project is classified as a SEQR Type II action pursuant to 6 NYCRR Part 617 in accordance with the regulatory citations listed in Checklist Item No. 2, do not complete the remainder of the form.

**Item 4** – Certain emergency actions are categorically exempt from NEPA review pursuant to 40 CFR Section 6.210. If the project has a resolution declaring an emergency or other approved documentation, please submit along with the form.

**Item 5** – Certain projects subject to consent orders are exempt from NEPA review as non-discretionary actions. If the project is part of a civil or criminal enforcement proceeding, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order per 6 NYCRR Section 617.5(c)(35), do not complete the rest of the form. Please submit a fully executed copy of the consent order with the form.

**Item 6** – After the long form EAF has been completed; complete pages associated with crosscutter review from the attached checklist. A “yes” answer to any of the listed EAF questions requires consultation with other agencies or additional action. Documentation that the required consultations have been performed along with requirements imposed by these agencies have been addressed to the agencies satisfaction must be identified and submitted with the completed certified checklist.

SEQR Positive or Negative Declarations for an equivalency project need to (i) identify the relevant areas of environmental concern; (ii) thoroughly analyze such relevant areas of environmental concern to determine whether the project may have a significant adverse impact on the environment; and (iii) set forth a determination of significance containing a specific reasoned elaboration and providing reference to any supporting documents. SEQR Positive or Negative Declarations must be published in the ENB.

The lead agency must provide a written response to all substantive public comments received by responding to the commenters. Copies of such correspondence must be submitted to EFC or DOH.

**Item 7** – Once the lead agency completes Part 3 of the long form EAF they should prepare and issue a Negative Declaration, which must be published in the ENB and filed in accordance with the SEQR regulations. Proof of publication must be submitted to EFC or DOH with the attached checklist.

**Item 8** – For an equivalency project that receives a Positive Declaration, the project sponsor is required to prepare a Draft Environmental Impact Statement (“DEIS”) and to conduct a public

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<sup>3</sup> Please be reminded that all resources may not be completely up-to-date, and it is the applicant’s responsibility to ensure compliance to federal cross cutter regulations.

hearing on such DEIS prior to completion of the Final Environmental Impact Statement (“FEIS”) and final approval of the project. The lead agency must publish the notice of hearing of the DEIS in accordance with the SEQRA regulations and in the ENB and in a local newspaper of general circulation in the area of potential impacts of the project. Following the comment period, the lead agency may prepare the Final Environmental Impact Statement. The FEIS must consist of:

- the DEIS, including any revisions or supplements to it
- copies or a summary of any substantive comments received
- responses to substantive public comments
- the hearing transcript

This documentation must be submitted to EFC or DOH with the attached checklist. Following the completion of the FEIS, publication of the notice of completion of the FEIS, and distribution of the FEIS to all of the involved agencies, and prior to a final decision regarding the project, the lead agency must issue a written findings statement, in accordance with the requirements of 6 NYCRR 617.11. Submit the notice of completion of the FEIS and the Statement of Findings to EFC or DOH with the attached checklist.

***Environmental Crosscutters:***

1. **National Historic Preservation Act – Public Law No. 89-665 (1966), as amended, 16 U.S.C. Section 470 et. seq.**
  - 36 CFR Part 800. Protection of Historic Properties.
  - Advisory Council on Historic Preservation. Consultation with Indian Tribes in the Section 106 Review Process: A Handbook.
2. **Archeological and Historic Preservation Act – Public Law No. 93-291 (1974)**
3. **Protection of Wetlands – Executive Order No. 11990 (1977), as amended by Executive Order No. 12608 (1997)**
  - 40 CFR Part 6 Appendix A: Statement of Procedures on Floodplain Management and Wetlands Protection.
4. **Flood Plain Management – Executive Order No. 11988 (1977), as amended by Executive Order No. 13690 (2015) (reinstated by Executive Order No. 14030 (2021))**
  - 40 CFR Part 6 Appendix A: Statement of Procedures on Floodplain Management and Wetlands Protection.
  - October 8, 2015: Water Resources Council’s Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input. The Guidelines include a step-by-step decision making process.

***Floodplain Wetland Assessment*** – If the project is located in or will affect a floodplain, a floodplain assessment must be prepared. If there are no practical alternatives to the proposed site, the applicant must document the mitigating measures or design modifications that will be taken to reduce the threats from locating the project in the floodplain. In addition, the applicant must follow the eight-step decision-making process set forth in the October 8, 2015: Water Resources Council’s Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, available at:

5. **Farmland Protection Policy Act – Public Law No. 97-98 (1981); 7 U.S.C. Section 4201 et. seq.**
  - 7 CFR Part 658: Department of Agriculture criteria for identifying and taking account the adverse effects of federal programs on the preservation of farmlands.
  - *EPA Policy to Protect Environmentally Significant Agricultural Lands*, September 8, 1978.
6. **Coastal Zone Management Act – Public Law No. 92-583 (1972) as amended; 16 U.S.C. Section 1451 et. seq.**
  - 15 CFR Part 930 Subpart F: Consistency for Federal Assistance to State and Locals with Approved Coastal Zone Management Plans.
  - 15 CFR Part 923: Coastal Zone Management Plan Regulations.
7. **Coastal Barrier Resources Act – Public Law No. 97- 348 (1982); 16 U.S.C. Section 3501 et. seq.**
  - 48 Fed. Reg. 45664 (1983): DOI, U.S. Fish and Wildlife Service, Coastal Barrier Act Advisory Guidelines.
8. **Wild and Scenic Rivers Act, Public Law No. 90-542 (1968); 16 U.S.C. Section 1271 et. seq.**
  - 36 CFR Part 297 Subpart A: Wild and Scenic Rivers, Water Resources Projects.
  - 47 Fed. Reg. 39457 (1982): Joint DOI National Park Service and Department of Agriculture (“DOA”) Forest Service Final Revised Guidelines for Eligibility Classification and Management of River Areas.
9. **Endangered Species Act - Public Law No. 93-205, as amended; 16 U.S.C. Section 1531 et. seq.**
  - 50 CFR Part 402: Department of Interior and Department of Commerce Procedures for Implementing Section 7 of the Endangered Species Act.
  - Final Endangered Species Act Consultation Handbook for Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act, U.S. Fish & Wildlife Service and National Marine Fisheries Service (March 1998).
10. **Clean Air Act Conformity, Public Law No. 95-95, as amended, 42 U.S.C. Section 7401**
  - General Conformity Guidance: Questions and Answers (July 13, 1994 and October 19, 1994 (which addresses issues with respect to SRF funded projects).
11. **Environmental Justice - Executive Order No. 12898 (1994)**
  - Final Guidance for Incorporating Environmental Justice Concerns in EPA’s NEPA Compliance Analyses (April 1998).
  - EPA Desk Reference to the Toolkit for Assessing Potential Allegations of Environmental Injustice.
12. **Safe Drinking Water Act – Public Law No. 93-53 (1974) as amended, 42 U.S.C. 300f et. seq.**

**13. Magnuson-Stevens Fishery Conservation and Management Act – Essential Fish Habitat Conservation Process - Public Law No. 94-265 (1976), as amended; 16 U.S.C. 1801 et. seq.**

- 50 CFR 600.920 Federal agency consultation with the Secretary.
- “Essential Fish Habitat Consultation Guidance” issued by the Office of Habitat Conservation, National Marine Fisheries Service (April 2004) available at <https://repository.library.noaa.gov/view/noaa/4187> (last visited June 1, 2023).

**14. Fish and Wildlife Coordination Act – 16 U.S.C. Section 661 et. seq.**

- Water Resources Development under the Fish and Wildlife Coordination Act, November 2004, available at <https://www.fws.gov/media/water-resources-development-under-fish-and-wildlife-coordination-act-0> (last visited June 1, 2023).

**15. Migratory Bird Treaty Act of 1918 – 16 U.S.C. Section 703 et. seq., Executive Order No. 13186 (2001)**

- Migratory Bird Treaty Reform Act of 2004 – Public Law No. 108-447, 118 Stat. 2809, 3071-72.

**For additional information on federal crosscutting authorities, please visit:**

<https://www.epa.gov/sites/default/files/2015-08/documents/crosscutterhandbook.pdf> (last visited June 1, 2023).

# DISADVANTAGED BUSINESS ENTERPRISES

**\*\*Applies to CWSRF, DWSRF and OSG\*\***

Sponsors of equivalency projects must comply with the requirements of the Disadvantaged Business Enterprises (“DBE”) program outlined within 40 CFR Part 33. The DBE program generally requires that most recipients of equivalency funding and their prime contractors/consultants must seek out and use DBE-certified firms, when possible, when procuring supplies, equipment, construction and other services on equivalency funded projects. Funding recipients comply with the requirement by, among other things, making the good faith efforts below, following the additional contract administration requirements, submitting certain reports and information, and maintaining certain records. Note that the DBE program requirements and certification process are different compared to the New York State Minority and Women-Owned Business Enterprises program.

Funding recipients receiving funding for an equivalency project will be expected to:

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the USSBA, USDOT, USEPA’s Office of Small and Disadvantaged Business Utilization, and the Minority Business Development Agency of the Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (1) through (5) of this section

Recipients will be expected to certify that they and their contractors are in compliance with these requirements. These conditions are included in the SRF Equivalency Terms and Conditions, which must be included in each funded contract.

# SINGLE AUDIT REPORTING

**\*\*Applies to CWSRF, DWSRF and OSG\*\***

Sponsors of equivalency projects are required to comply with the requirements of the Single Audit Act ("SAA") (31 USC 7501 et seq.), 2 CFR Part 200, subpart F.

Each SRF equivalency project sponsor who expends \$750,000 or more of *any type or combination* of Federal financial assistance within their fiscal year is required to complete and file a Single Audit or a project specific audit within 9 months of the end of the fiscal year the Federal funds were expended. SRF financings for equivalency projects are considered to be Federal financial assistance under the SAA.

The following summarizes some of the key responsibilities for project sponsors with regard to EFC:

1. Maintain an accounting system that is capable of identifying all expenditures of Federal financial assistance, not just from the SRF programs;
2. Determine **annually** whether expenditures of Federal funds exceeded \$750,000 within the fiscal year of the project sponsor. If Federal expenditures exceeded \$750,000, then a Single Audit or program-specific audit should be prepared within 9 months of the end of the fiscal year. The Single Audit or the program-specific audit should address the CWSRF or DWSRF, as appropriate. The CFDA number for the CWSRF is 66.458. The CFDA number for the DWSRF is 66.468. Federal guidance on 2 CFR Part 200, Subpart F3 can be found on the following link: [https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement\\_PDF\\_Rev\\_05.11.22.pdf](https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement_PDF_Rev_05.11.22.pdf)
3. Submit a copy of the Single Audit or program-specific audit to the Federal Audit Clearinghouse when finalized; and
4. Initiate corrective actions for Single Audits or program-specific audits with findings and recommendations that impact the SRF financial assistance. EFC should be informed of such corrective actions, findings and recommendations related to the SRF contained in any Single Audits.

Recipients will be expected to certify that they and their contractors are in compliance with this requirement.



# **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

**\*\*Applies to CWSRF, DWSRF and OSG\*\***

Contractors must be in compliance with 2 CFR 200.216, which prohibits the use of loan or grant funds to procure or use certain telecommunication and video surveillance services or equipment either:

1. produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, or any subsidiary or affiliate of such entities; or
2. provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by the government of a covered foreign country.

Entities on the excluded parties list can be found in the System for Award Management ([www.sam.gov](http://www.sam.gov)). This prohibition cannot be waived. See Public Law 115-232, section 889 for additional information.

Recipients will be expected to certify that they and their contractors are in compliance with this requirement. These conditions are included in the SRF Equivalency Terms and Conditions, which must be included in each funded contract.

# **BUILD AMERICA, BUY AMERICA (“BABA”) ACT AND AMERICAN IRON AND STEEL (“AIS”) REQUIREMENTS**

**\*\*Applies to CWSRF, DWSRF and OSG\*\***

The BABA Act was signed into law in 2021 creating a requirement that expands upon and is broader in scope than the AIS requirement. BABA applies to iron, steel, manufactured products, and construction materials on all DWSRF and CWSRF equivalency projects, whereas the AIS requirement applies to only iron and steel products on DWSRF projects and CWSRF treatment works projects when BABA is inapplicable. BABA and AIS will not apply to individual projects at the same time. Accordingly, all DWSRF or CWSRF equivalency Contracts and Subcontracts are subject to the BABA requirement, unless an EPA waiver applies or can be obtained. If a BABA EPA waiver applies or is obtained, then the AIS requirement applies, unless an AIS EPA waiver is separately obtained.

## **I. BABA Requirements**

If a Recipient uses CWSRF or DWSRF financial assistance to fund all or a part of the construction, alteration, maintenance or repair a public water system or treatment works, then all the iron, steel, manufactured products, and construction materials used in the project must be produced in the United States.

Please consult Subsection II below for AIS requirements associated with iron and steel products.

Manufactured products must be manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States must be greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. The federal Office of Management and Budget (OMB) is developing additional guidance regarding compliance and documentation of component costs.

Construction materials must have all manufacturing processes for the construction material occur in the United States. Some examples of construction materials are non-ferrous metals, plastic and polymer-based products (including PVC, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber and drywall. The federal OMB is developing additional guidance regarding compliance and construction materials.

The EPA may waive the BABA requirement for a project if:

1. applying the requirement would be inconsistent with the public interest;
2. types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25

percent.

## **II. AIS Requirements**

If a Recipient uses CWSRF or DWSRF financial assistance to fund all or a part of the construction, alteration, maintenance or repair a public water system or treatment works, the Recipient must use iron and steel products that are produced in the United States for the entire project.

The term “iron and steel products” means the following permanently installed products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, or construction materials. For one of the listed products to be considered subject to the AIS requirement, it must be made of greater than 50% iron and steel, measured by material cost (with the exception of reinforced precast concrete products).

The term “produced in the United States” means that all manufacturing processes of the iron or steel, including application of coatings, take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement and the material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

The EPA may waive the AIS requirement for a treatment works project if:

1. applying the requirement would be inconsistent with the public interest;
2. iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Recipients will be expected to certify that they and their contractors are in compliance with this requirement. These conditions are included in the SRF Equivalency Terms and Conditions, which must be included in each funded contract.

## APPENDIX D

### NYSDOH SERVICE LINE INVENTORY GUIDANCE – LEAD AND COPPER RULE REVISIONS

## Service Line Inventory Guidance

On December 16, 2021, the federal Lead and Copper Rule Revisions (LCRR) went into effect. The revised rule requires every federally defined community and non-transient, non-community water system to develop a service line inventory (also called a lead service line inventory (LSLI)). This guidance document explains service line requirements.

### DEFINITIONS

**Community Water System (CWS, federally defined)** – A public water system (PWS) that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

**Customer** – A homeowner, building owner, or non-owner resident served by a water system who may or may not be responsible for paying water bills.

**Galvanized Service Line (GSL)** – Iron or steel piping that has been dipped in zinc to prevent corrosion and rusting.

**Galvanized Service Line Requiring Replacement (GSLRR)** – A GSL that was or currently is downstream of an LSL or SL of unknown material. If a water system can't demonstrate that the GSL was never downstream of an LSL, it must presume there was an upstream LSL.

**Gooseneck, Pigtail, or Connector (collectively gooseneck)** – A short section of piping, typically not exceeding two feet, which can be bent and used for connections between rigid service piping. A lead gooseneck is not considered part of the LSL but must be replaced when encountered.



Lead Gooseneck: Source EPA

If any portion of an  
SL is made of lead,  
the SL is the LSL



**Lead Service Line (LSL)** – Any portion of pipe that is made of lead which connects the water main to the building inlet. An LSL may be owned by the water system, owned by the property owner, or both. If the only lead piping serving the home is a lead gooseneck, and it is not a galvanized service line that is considered an LSL, the SL is not an LSL.

**Lead Status Unknown Service Line (unknown SL)** – An SL where its material is not known to be lead, galvanized requiring replacement, or a non-lead service line, such as where there is no documented evidence supporting material classification. The water system may classify the line as “Unknown” as an alternative to classifying it as “Lead Status Unknown,” however, all requirements that apply to “Lead Status Unknown” service lines must also apply to those classified as “Unknown.” Water systems may elect to provide more information regarding their unknown lines as long as the inventory clearly distinguishes unknown service lines from those where the material has been verified through records or inspection.

**Non-Lead Service Line (non-LSL)** – An SL that is determined through an evidence-based record, method, or technique not to be lead or not to be galvanized requiring replacement.

**Nontransient Noncommunity Water System (NTNCWS)** – A PWS that is not a CWS but is a subset of a noncommunity water system that regularly serves at least 25 of the same people, four hours or more per day, for four or more days per week, for 26 or more weeks per year.

## THE BASICS

- The Lead and Copper Rule Revisions (LCRR) apply to all federally defined CWSs and NTNCWSs (“water systems,” or “systems”).
- By October 16, 2024, every water system, **with no exception**, must develop an initial service line material inventory that includes all SLs regardless of ownership and submit the inventory to its local health department (LHD).



- An inventory must be publicly accessible.
- Water systems serving more than 50,000 people must provide their inventory online.
- Water systems with any LSL, GSLRR, or unknown SL must provide notification to people served by these lines within 30 days after completing the initial inventory.
- Systems must update their inventory annually or triennially depending on their monitoring frequency.

### DO

- Start planning for a service line inventory as early as feasible.
- Record search is the best first step for most PWSs. Start gathering available records for your inventory.
- Find methods for identifying SL materials that are technically and financially available to your PWS.
- Try to digitize all historical records used for identifying service line materials.
- SL material identification must be evidence-based.
- Document every historical record, study result, report, and any information used for SL materials. You should be ready to submit them to the State, an LHD, or EPA when requested.
- Reach out to customers for their cooperation in identifying the customer-owned section of SL material.
- Document all records, e.g., LSL replacements and maintenance and repair of water main or service lines. For most PWSs, the inventory is a living document that needs updating when new information becomes available.

### DON'T

- Don't wait until the last few months before 10/16/24.
- Don't assume materials of unknown SLs.
- Don't assume all historical records are accurate.
- Don't assume every method for identifying SL materials is suitable for every PWS.
- Don't assume there is no LSL or GSLRR in your system before evaluation.
- Don't assume the initial inventory is final. The inventory won't be final until there is no LSL, GSLRR or unknown SL.

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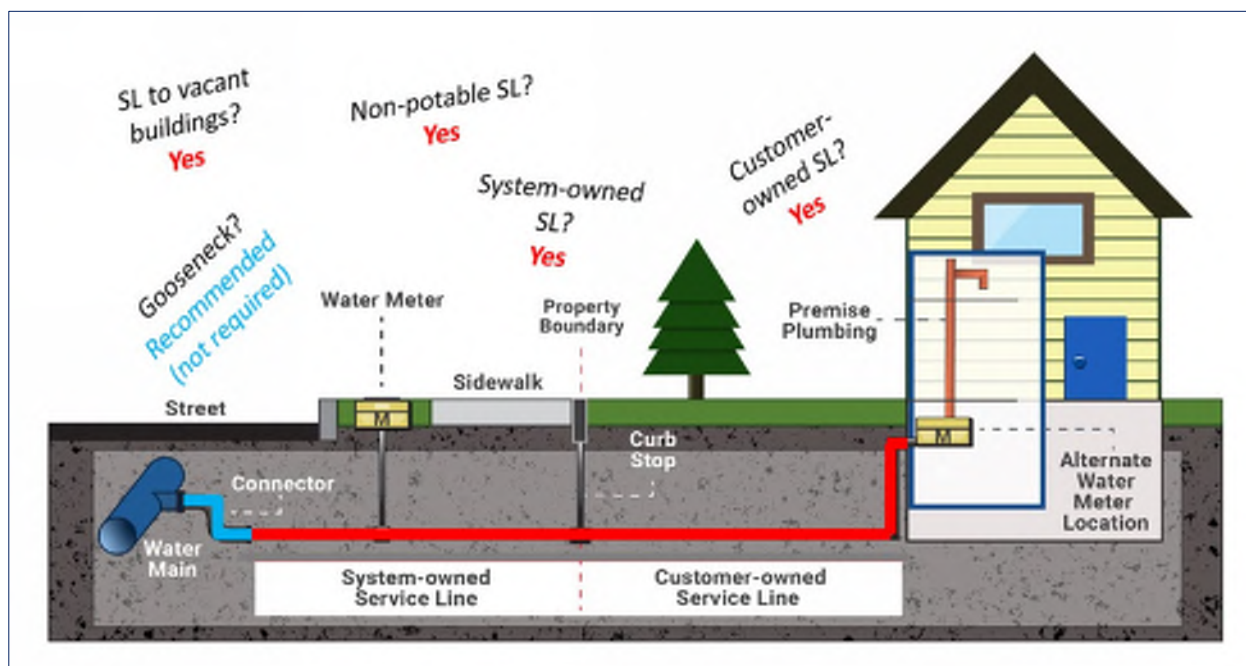
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## LEAD SERVICE LINE INVENTORY Q & A

### 1. What system needs to develop a service line inventory?

If your PWS is a federally defined CWS or an NTNCWS, you must develop an initial inventory to identify SL materials and submit it to your LHD by October 16, 2024. The inventory must include all SLs connected to the distribution system regardless of ownership, which means that you need to include both system-owned and customer-owned SLs in your inventory where SL ownership is shared. Figure 1 shows an example of an SL in which ownership is shared between a water system and a customer.



**Figure 1 Example of Service Line Ownership Distinction between the Water System and Customer**  
The waterlines highlighted in red are required to be included in a service line inventory. Redrawn and modified from [Guidance for Developing and Maintaining a Service Line Inventory, EPA, August 2022](#)

### 2. Our system does not have any LSL, GSLRR, or unknown SL. Do we still need to prepare the inventory?

Yes, every CWS and NTNCWS, including systems with only non-LSLs, must prepare an initial inventory and submit it to its LHD by October 16, 2024. However, you are not required to provide inventory updates to the LHD or the public unless you find an LSL, GSLRR, or unknown SL in the future.

### 3. Do we need to include SLs connected to vacant or abandoned buildings?

Yes. You must inventory every SL in your system including SLs connected to buildings even if they are unoccupied and water service is turned off.

**4. We have non-potable service lines. Do we need to include those non-potable SLs in the inventory?**

Yes, you must include all SLs in the inventory, regardless of the actual or intended use. These include SLs with non-potable applications such as fire suppression or those designated for an emergency.

**5. Do we need to inventory private SLs inside a property owned by a business or other entities such as an office building complex, shopping center, university, prison, mobile home park, and apartment connected to our system?**

Illustration: M. Kim, BWSP



Yes, the service lines connected to a privately-owned distribution system after a master meter must be included in the inventory. You may prioritize inventorying service lines connected to water mains owned by your system while coordinating with the owners of those private properties to identify their service line materials.

**6. Many NTNCWSs and small CWSs do not have clear SLs. Small schools, apartments, and business offices are examples of these systems. Do they need to prepare the inventory? If so, what portion of pipes need to be included in the inventory?**

Yes, systems that do not have an extensive distribution system, such as those with a direct connection from a well to a single building must report the material from the well to the building inlet for their inventory.

NTNC & Small CWS without clear SLs

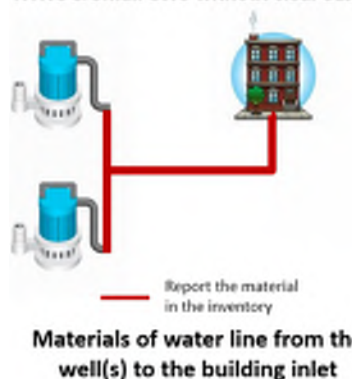
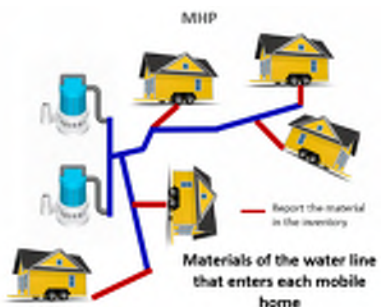


Illustration: M. Kim, BWSP

Illustration: M. Kim, BWSP



**7. In general, a mobile home park (MHP) with its own well(s) does not have typical distribution systems or SLs. What portion of lines needs to be included in the inventory?**

These systems should inventory the water line material that enters each building.

**8. Is an SL connected to a lead gooseneck, pigtail, or connector (collectively gooseneck) an LSL?**

No. A lead gooseneck is not considered to be a part of the LSL at this time. This may change in future revisions.

## 9. Is a galvanized service line downstream of a lead gooseneck a GSLRR?

No. If the only lead piping serving the home is a gooseneck, and there was never any other lead line or unknown SL upstream of the galvanized service line, it is not a GSLRR.



## 10. When is a galvanized service line considered a GSLRR?

A galvanized SL that was or currently is downstream of an LSL or SL of unknown material is a GSLRR by the definition. If a water system can't demonstrate that the GSL was never downstream of an LSL, it must presume there was an upstream LSL. Figure 2 shows examples where a galvanized service line is a GSLRR.

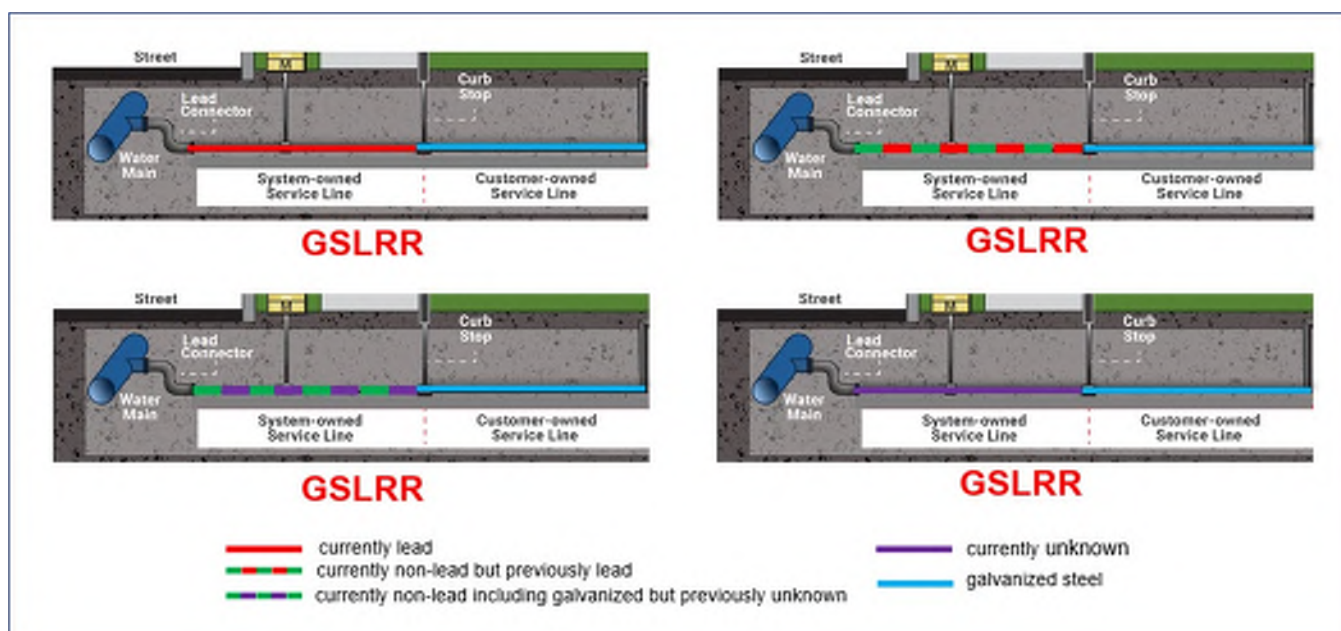


Figure 2 Examples of Galvanized Service Line Requiring Replacement.

## 11. Do we need to include goosenecks in the inventory?

The State recommends but doesn't require including goosenecks in the inventory.

## 12. What information do we need to include in the inventory?

- The following information is required In NYSDOH LSLI Template:
  - A street address associated with each LSL and GSLRR – A block, intersection, or landmark is acceptable if a local code doesn't allow using an exact address. An address or other locational identifier for an unknown SL is strongly recommended but not required.
  - Whether an SL owned by a water system is or ever was made of lead.

- iii. Identify a material of each SL owned by a water system and a customer among one of the following:
  - Lead including lead-lined galvanized.
  - Copper.
  - Galvanized.
  - Plastic.
  - Known Other.
  - Unknown but could be lead.
  - Unknown but unlikely lead.
  - Unknown.
- iv. A method used to verify the material of each SL owned by a water system and a customer.

**All columns with headings in blue are required entries.**  
Columns with headings in grey are recommended but not required.

**Do not type or paste in column Q, "SL Category." The template will automatically determine SL types based on the information entered.**

**Figure 3-A Example of Filling Out the NYSDOH LSLI Template**

- b) Based on the information you entered, each SL will be automatically categorized as one of the following in the NYSDOH LSLI Template:
  - Lead service line (LSL).
  - Galvanized service line requiring replacement (GSLRR).
  - Lead status unknown service line (unknown SL).
  - Non-lead service line (non-LSL)
- c) Although not required, NYS recommends tracking the following information in the LSLI Template:
  - Whether lead gooseneck, pigtail, or connector is currently present.
  - Installation date for public- and customer-side SLs.
  - Size of the public- and customer-side SLs.
  - Whether lead solder, point-of-use, or point-of-entry point treatment is present.



**Summary of Lead Service Line Inventory**

**I. System Information**  
Water System Name: \_\_\_\_\_  
PWS ID Number: \_\_\_\_\_

**II. Contact Information for Owner (I Licensed Operator of Record) Completing the Form**  
Contact Name: \_\_\_\_\_  
Contact Phone Number: \_\_\_\_\_  
Contact Email Address: \_\_\_\_\_

**III. Summary of Inventory**  
Total Number of Service Lines in the Distribution System: \_\_\_\_\_  
Total Number of Lead Service Lines: \_\_\_\_\_  
Total Number of GSI SL: \_\_\_\_\_  
Total Number of Non-LSL: \_\_\_\_\_  
Total Number of Unknown Service Lines: \_\_\_\_\_

**IV. Inventory Accessibility**  
The inventory must be available to public:  
If 10,000 customers or greater: Posting the inventory online under system's website: \_\_\_\_\_  
If under 10,000 customers: Explain how to access the inventory: \_\_\_\_\_

**V. Certification**  
By submitting this form, I have verified and certify the information stated in this form is true and accurate to the best of my knowledge and belief.  
Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Fill out sections boxed in red, I, II, IV & V.**

**Do not fill out Section III. It'll be automatically filled based on information provided in the LSL template workbook.**

**Important**  
**Name your inventory as**  
**LSLI\_NYPWSID#**

**For example:**  
**LSLI\_NY1234567**

**Very Important**

**Type the name and title of the person submitting the inventory and the date.**

Figure 3-B Example of Filling Out the NYSDOH LSLI Template

### 13. A customer owns the entire service line in our water system. How should I fill out the NYSDOH inventory template?

Same as with the case where the ownership splits, enter information about the SL section from the main to the curb stop in the “Public Side SL” information columns (from D to I); and about the SL section from the curb stop to the building inlet in the “Customer SL” columns (from J to P). You may enter the ownership information in the “Note” column (column R) in the “Service Line Inventory Template” worksheet; for example, “a customer owns the entire SL.”

- SL from the main to the curb stop – enter SL information in the “Public Side SL” columns (from D to I).
- SL from the curb stop to the building inlet – enter SL information in the “Customer SL” columns (from J to P).
- Leave a note in the “Note” column (column R) or inform your LHD when submitting the inventory.

	R
Category	Note
	customers own the entire SL

### 14. What method can we use to identify SL material?

You can use the following methods for identifying SL materials:

- utility or public records showing service line materials (refer to Item 15).
- field inspection by PWS staff or a professional plumber.
- excavation such as trenching and hydro-vacuuming (refer to item 20).
- sampling, e.g., sequential sampling, flush sampling, or first draw sampling (refer to item 16).
- statistical analysis/predictive model (refer to Item 17).

- f) customer identification with a scratch and/or magnet test followed by photo or field verification by PWS staff (applicable to customer-owned SL, refer to item 19).
- g) other methods acceptable to your LHD.

## 15. Can we use public and utility records for identifying SL material?

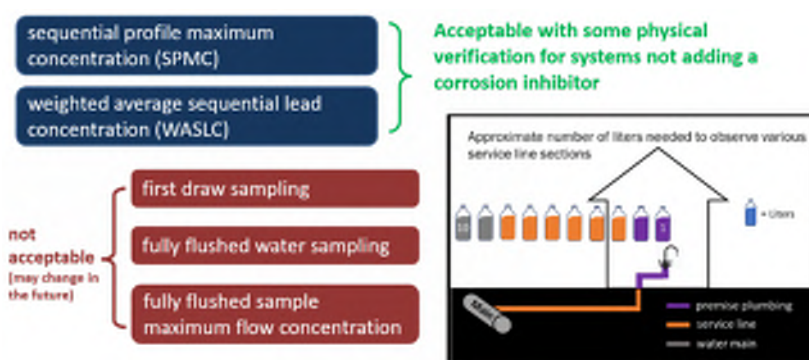
You can use the following information for this purpose. You need to cross-check records with other records, field investigations, previous SL investigations, and customer self-identification of SL materials. If you don't have confidence in the accuracy of records, you need to perform physical confirmation.



- a) All construction and plumbing codes, permits, and existing records or other documentation which indicates the SL materials used to connect to the distribution system.
- b) All water system records, including distribution system maps and drawings, historical records on each service connection, meter installation records, historical capital improvement or master plans, and standard operating procedures.
- c) All inspections and records of the distribution system that indicate the material composition of the service connections that connect to the distribution system.
- d) Any other resource, information, or identification acceptable to your LHD.



## 16. Can we use sampling to identify service line materials?



Sampling methods are not acceptable for systems using a corrosion inhibitor. For systems that do not add a corrosion inhibitor, sequential sampling for SL material identification is acceptable only when it is part of a study approved by an LHD. Up to 20 percent physical verification of SL materials tentatively identified with the sampling

will be required. If the accuracy of the physical verification result is less than 90%, the sampling should not be used without physical confirmation.

## 17. Is a predictive (probability) model or statistical analysis acceptable to become a known service line without physical verification?

A predictive model and statistical analysis are useful tools for budget planning and prioritizing LSL replacements. A model's output typically needs physical verification due to an inherent inaccuracy of any model or statistical analysis. However, on a case-by-case basis, some of the model and statistical analysis results will be accepted without physical verification. You must provide sufficient information to the State and the LHD to evaluate how much physical verification is adequate. Examples of the information include:

- a number of unknown SLs
- a number of known SLs
- completeness of historical SL materials records
- random physical verification process such as the proposed number of SLs that will be physically verified
- confidence interval for the model

Note that a State's initial determination for a required physical verification rate can be revised based on the accuracy of physical confirmation results.

## 18. The Safe Drinking Water Act and New York State banned lead pipes and solders from supplying drinking water in June 1986. Can we categorize SLs installed after June 1986 non-LSLs?

If you have the following records, choose actual SL materials or "known other," if actual SL material is not known, from the dropdown menu in column E (Current Public Side SL Material) and in column J (Customer SL Material).

- written records showing the entire distribution system was constructed after June 1986 or after your municipality banned lead pipes for supplying drinking water ("lead ban"); and
- the entire length of customer-owned SL was built after June 1986 or the lead ban.

	J	K	L	M	N	O	P	Q	R
	Customer SL Material	Customer SL Material Verification Method	Lead Solder Present?	Building Type	POU or POU Treatment Present?	Customer SL Installation or Replacement Date	Customer SL Size	SL Category	Note
5"	Copper	Lead	No	Multi Family	No	1/12/01	1" x SL ≤ 15"	Non-Lead	customers own the entire SL
5"	Copper	Lead	No	Single Family	No	1/12/03	Upto 1"	Non-Lead	customers own the entire SL

Figure 3-C Example of Filling Out the NYSDOH LSLI Template

The NYSDOH LSLI Template will automatically determine and enter qualifying SL as "non-Lead" in column Q ("SL Category"). No further verification is required. If you do not have such records, you need to verify service line material with one or more methods included in Item 14.



### **19. Can we use customers' identification of their SL materials?**

You may use customer surveys or interviews to identify customers' SL materials in combination with verification by qualifying water system staff, e.g., an inspection of photos of customers' SL. If a photo does not clearly indicate an SL material, you need to use other reliable verification methods, e.g., visiting a customer's house. You must provide sufficient information to assist your customers in accurately identifying the SL materials. Online surveys can be a useful tool as customers can upload their photos when taking a survey. The NYS DOH has a video to assist homeowners to identify their SL materials. You can find the video online at NYS DOH and on YouTube:

<https://www.health.ny.gov/environmental/water/drinking/lead/>

<https://www.youtube.com/watch?v=PcO5FCE9Vfw>

### **20. We will identify unknown SLs with potholing (hydro-vacuuming). What is an acceptable potholing practice?**

You need to conduct potholing according to the following:

- unknown utility side - at least 18" from main to curb stop
- unknown private side - at least 18" from the curb stop to the building and, if applicable, visual observation of the SL before the shutoff valve inside the building

The same three-point verification will apply to verification with the camera. Your municipality may require more stringent service line material verification strategies.

### **21. How should we submit the inventory to the LHD?**

We strongly recommend every PWS prepares the inventory using the State's Template and submit it electronically via e-mail as an attachment. If your inventory is too large to send via e-mail, you may submit it by uploading it to PWS' cloud storage services such as OneDrive or Google Drive; and sharing a link with the State and your LHD. If you don't have an appropriate resource to send the large-sized inventory, NYS may be able to arrange it for you.

### **22. Should we have our inventory available to the public?**

You must have your inventory publicly available and include instructions to access the inventory in your Annual Water Quality Report. If your system serves more than 50,000, you must have the inventory available online.



**23. How do we make the inventory available to the public?**

The NYS does not have specific formats for a publicly available inventory. The following are a few examples of available options:

- Interactive web-based map which may have real-time update capability (most powerful tool)
- Static map
- Searchable online database, e.g., the inventory prepared using the NYS DOH template at the water system's website
- Printed maps, tables, or spreadsheets (not recommended unless a system has not more than a few hundred service lines)



Denver's SL Inventory as of 12/15/21.

Source: [Guidance for Developing and Maintaining a Service Line Inventory \(epa.gov\)](https://www.epa.gov/guidance-for-developing-and-maintaining-a-service-line-inventory)

**24. We have only non-LSL in the system. Do we still need to have the inventory available to the public?**

If you have no LSL, GSLRR, or unknown SL on any portion of the SL, either owned by your water system or customers, you may have a written statement declaring that the distribution system has no LSL or GSLRR available instead of having the full inventory available to the public. The written statement must include a general description of all applicable sources used for the inventory. Be reminded that you still need to develop a full initial inventory. The written statement is not a substitute for the initial inventory.

**25. We have LSLs, GSLRRs, or unknown SLs and have made our inventory available to the public. Are there any other public notification requirements specific to the inventory?**

Initially, within 30 days of the completion of the initial LSL inventory, you must provide the following notification to every customer with an LSL, GSLRR, or unknown SL. You must repeat the notification annually until the entire service connection is no longer an LSL, GSLRR, or unknown SL. For new customers, you need to provide the notice at the time-of-service initiation. Refer to Table 1 below for public notification requirements.

**Table 1** Public Notification Requirement to persons served by an LSL, GSLRR, or unknown SL

All persons served by LSL
<ul style="list-style-type: none"> <li>• A statement that the person's SL is lead</li> <li>• An explanation of the health effects of lead that meet the current LCR requirements</li> <li>• Steps the affected persons can take to reduce exposure to lead in drinking water</li> <li>• Information about opportunities to replace LSLs</li> <li>• Any available financing programs</li> </ul>

<ul style="list-style-type: none"> <li>• A statement that the system must replace its portion of LSL if the property owners notify the system that they are replacing their portion of LSL</li> </ul>
<b>All persons served by GSLRR</b>
<ul style="list-style-type: none"> <li>• A statement that the person's SL is galvanized requiring replacement</li> <li>• An explanation of the health effects of lead that meet the current LCR requirements</li> <li>• Steps the affected persons can take to reduce exposure to lead in drinking water</li> <li>• Information about opportunities for SL replacement</li> </ul>
<b>All persons served by unknown SL</b>
<ul style="list-style-type: none"> <li>• A statement that the person's SL is unknown but may be lead</li> <li>• An explanation of the health effects of lead that meet the current LCR requirements</li> <li>• Steps the affected persons can take to reduce exposure to lead in drinking water</li> <li>• Information about opportunities to verify the material of the SL</li> </ul>

## 26. How often do we need to update the inventory?

The service line inventory is a live document that requires continuous updates until there is no LSL, GSLRR, or unknown SL based on all available sources of new information, such as service line replacements, and maintenance and repair records. The LCRR requires the inventory be updated at the following frequencies and submit it to your LHD within 30 days from the end of each monitoring period.

- Annual update if your system's monitoring frequency is semi-annual or annual.
- Triennial update if your system's monitoring frequency is triennial.
- No update if your system has no LSL, GSLRR, or unknown SL. If you find any LSL or GSLRR in the future, you need to notify the LHD within 30 days of identifying the SL and prepare an updated inventory on a schedule established by your LHD.



## 27. Is funding available for preparing the inventory?

The Bipartisan Infrastructure Law, also known as the Infrastructure Investment and Jobs Act or Bipartisan Infrastructure Bill, provides funding for preparing an SL inventory for applicable water systems. Visit the following NYSDOH site for more information:

[https://health.ny.gov/environmental/water/drinking/docs/lead\\_service\\_line\\_project\\_submission\\_guidance.pdf](https://health.ny.gov/environmental/water/drinking/docs/lead_service_line_project_submission_guidance.pdf)

## REFERENCES

40 CFR Part 141 § 141.80 to § 141.93 available at <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-141#subpart-I>

Guidance for Developing and Maintaining a Service Line Inventory, EPA August 2022 available at [https://www.epa.gov/system/files/documents/2022-08/Inventory%20Guidance\\_August%202022\\_508%20compliant.pdf](https://www.epa.gov/system/files/documents/2022-08/Inventory%20Guidance_August%202022_508%20compliant.pdf)