

S.C. DIVISION OF REAL PROPERTY ACQUISITION & MGMT.
RFQ FOR ENVIRONMENTAL SITE ASSESSMENTS
Law No. 25-ED-008
Advertisement Date: November 17, 2022

**Request for Qualifications (RFQ)
to provide Environmental Site Assessments
for the Suffolk County Division of Real Property Acquisition and Management**

**Technical Questions Due: November 25, 2022
To be emailed or faxed to the Suffolk County Department of Real Property Acquisition and
Management**

**Responses to RFQ must be submitted no later than 3:30 p.m. on December 8, 2022.
Responses must be returned to the Suffolk County Division of Real Property Acquisition and
Management**

Number of Copies of Response to be submitted: One Original plus three (3) copies

**County of Suffolk
Suffolk County Division of Real Property Acquisition and Management
H. Lee Dennison Building
100 Veterans Highway, 2nd Floor
Hauppauge, N.Y. 11788**

For additional information, call:

**Name Michael Brown
Direct Tel: (631) 853-5947
Fax: (631) 853-5905
Email: Michael.Brown@suffolkcountyny.gov**

All packages containing Responses must clearly state the RFQ No. (located on upper right hand corner of this page) on each outer mailing envelope or packing box.

The Original Response and also each required copy must be clearly marked with the RFQ number on the outer binder or cover page. The Original Response must be labeled "ORIGINAL" and must contain the original, ink-signed required County forms and transmittal letter, in addition to your Response.

All extra sets must be photocopies of the ENTIRE original Response submitted, including the transmittal letter and all required County forms. Each member of the Evaluation Committee is provided with one of the sets you send to us, so make sure each set is complete.

Do NOT return this RFQ document, the sample Model Agreement or the Legal Appendices packet; keep them for your reference.

LATE RESPONSES WILL BE REJECTED

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Section I
Administrative Information

1. Purpose of RFQ

The County of Suffolk (“**County**”), on behalf of its duly constituted Department of Economic Development and Planning, Division of Real Property Acquisition and Management (“**Department**”), invites responses (“**Response(s)**”) from qualified environmental site assessment companies to provide consulting services (“**Services**”), as described in Section III, entitled “Technical Services Requirements.”

The term Contractor (“**Contractor**”) shall mean the successful Responder who may be awarded a contract pursuant to this RFQ.

2. Coordinating Departments

a. Prior to Award of Contract

The Department contact listed on the first page of this RFQ will coordinate the issuance of the RFQ.

b. After Award of Contract

The Suffolk County Attorney’s Office sets contract requirements for the agreement between the Department and the Contractor.

c. After Execution of Contract

The Department is responsible for the administration of the Contractor’s contract.

- i. If approved by the Department, the County will execute an agreement with the Contractor, based on the Model Agreement included in this RFQ.
- ii. The Response submitted by the Contractor to this RFQ will become the basis for the Agreement. Please note that the Contractor must address, as applicable, all items listed in:
 - Section II, entitled “Responder Profile”; and
 - Section III, entitled “Technical Services Requirements”.

3. Background Information

- a. Suffolk County, with a population of 1.5 million, is Long Island’s eastern-most county, and covers an area approximately 900 square miles, from 20 miles at its widest part to a length of approximately 86 miles.
- b. The County of Suffolk is a municipal corporation of the State of New York with an annual operating budget of approximately \$2.6 billion. The County employs approximately 12,000 employees, with main offices located in Hauppauge, Yaphank, Riverhead, and several smaller locations.

4. Evaluation Committee and Award of Contract

The RFQ Evaluation Committee will include representatives of the Department. The Suffolk County Department of Law acts as counsel to the Evaluation Committee, but does not vote in the selection process. The award of any contract will be made in the best interest of the County.

5. Questions and Comments

a. Administrative Questions

Administrative questions (e.g., procedural questions on how to respond to this RFQ) may be submitted by telephone or email to the Department staff member listed on page one of this RFQ.

b. Technical Questions

Technical questions (questions which are specific to the service requested in this RFQ) must be submitted in writing (email is acceptable) on or before the date set forth on page one of this RFQ to the attention of the Department staff member listed on page one of this RFQ. Responses to such technical questions will be developed by the requesting Department and issued by the Department in the form of an Addendum to this RFQ.

c. No questions or comments should be directed to any County employee or its contractors or any firm currently in contract with the County regarding this RFQ during the RFQ process, except as set forth in sub-paragraphs 5.a and 5.b above or as may be requested or permitted by the Suffolk County Department of Law. Failure to comply may result in immediate disqualification.

6. Due Date for Responses

a. Responses must be submitted to the attention of the Department staff person set forth on page one of this RFQ, by 3:30 p.m. on the date set forth on page one of this RFQ. Responses must be postmarked by the time and date set forth on page one of this RFQ.

b. In the interest of fairness to all participants, no extensions or exceptions will be permitted, unless issued as an Addendum to this RFQ and applicable to all Responders, except that the Department, in its sole discretion, may thereafter solicit and accept responses from additional professionals as needed.

7. Number of Copies of Response

One original plus three (3) copies of the Responses to Sections II and III are required to be sent to the Department. Do not submit Responses that are permanently bound.

8. RFQ Policies and Procedures

a. It is the County's intent to select the Responder(s) that provides the best solution for the Department's needs.

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- b. Any contract awarded pursuant to this RFQ will be in the format set forth in Section V, "Model Agreement," but will be subject to final contract negotiations.
- c. The County reserves the right to amend this RFQ. The County reserves the right to reject any or all of the Responses, or any part thereof, submitted in response to this RFQ, and reserves the right to waive formalities, if such action is deemed to be in the best interest of the County. The County reserves the right to request additional information from any Responder. The County reserves the right to award negotiated contracts to one or more Responders.
- d. This RFQ is not intended and shall not be construed to commit the County to pay any costs incurred in connection with any Response or to procure or contract for any services.
- e. The decision to award a contract shall be based on the ability of the Responder to provide quality products and services and to comply with all applicable laws, rules and regulations, including without limitation the local preference and other Suffolk County local laws set forth in the Section entitled "Legal Appendices/County Forms."
- f. The award of any contract will be made as judged to be in the best interest of the County.
- g. Each Response will be examined to determine whether it is responsive to the requirements of this RFQ. Responses will be evaluated in accordance with established criteria relating to quality, quantity, and performance as set forth in paragraphs 11 and 12 of this section.
- h. While the County is under no obligation to contact Responders for clarifications, it reserves the right to do so. Depending on the number and quality of the Responses submitted, the County, at the sole discretion of the Evaluation Committee, may elect to interview some or all of the Responders during the selection process and to request presentations.
- i. In order for the County to conduct a uniform review process of all Responses, Responses must be submitted in the format set forth in this Section I, paragraph 10 entitled "Response Format". Failure to follow this format may be cause for rejection of a Response.
- j. The County reserves the right to award a contract to one or more responsive and responsible Responders, and to select among multiple contracts at the time of purchase based upon the most practical and economical alternative and the best interests of the County.

9. Copies of RFQ Posted on Department Website

Copies of this RFQ are available online at the Department's website:
<http://www.suffolkcountyny.gov/Departments/EconomicDevelopmentandPlanning/RealPropertyAcquisitionandManagement/RequestforQualifications.aspx>

10. Response Format

Responses must include the following:

a. Transmittal Letter (one original plus number of copies listed on cover page)

A transmittal letter is a letter on the Responder's stationery. A corporate officer or an authorized agent of the Contractor must sign the transmittal letter. The transmittal letter should state the

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contact person who will be responsible for answering any questions that the Evaluation Committee may have. Include the telephone number and fax number for such contact person.

b. Contractor's/Vendor's Public Disclosure Statement - SCEX 22 Form (3 pages)

Included in the Appendix, "Suffolk County RFQ Compliance Forms." A corporate officer or an authorized agent of the Responder must sign one (1) original form and have it notarized.

c. Disqualification of Non-Responsible Bidders – LL52-2012 Form (2 pages)

Signed by a corporate officer or an authorized agent of the Responder. The Disqualification of Non-Responsible Bidders form is included in the Appendix, "Suffolk County RFQ Compliance Forms". See form for instructions.

d. Non-Collusive Response/Proposal Certification – FTS Form (1 page)

Included in the Appendix, "Suffolk County RFQ Compliance Forms". See form for instructions.

e. Living Wage Forms – LW-1 and/or LW-38 Forms

Included in the Appendix, "Suffolk County RFQ Compliance Forms". See form for instructions. The Labor Department's Living Wage Unit may be reached at (631) 853-3808 for specific questions.

f. Lawful Hiring Forms – LHE-1 & LHE-2 Forms

Included in the Appendix, "Suffolk County RFQ Compliance Forms". See forms for instructions. The Labor Department's Lawful Hiring of Employees Unit may be reached at (631) 853-3808 for specific questions.

g. Union Organizing Certification/Declaration – DOL-LO1 Form (2 pages)

Included in the Appendix, "Suffolk County RFQ Compliance Forms". See form for instructions.

h. Local Preference Law

Local Preference Law – Section A4-13 of the Suffolk County Administrative Code establishes a preference program for Suffolk County consulting contracts. This preference program requires all contracts for professional consulting services (engineering, architectural, planning, legal, accounting, etc.) to be awarded to firms located and doing business within Suffolk or Nassau County, except where no local consultant has the necessary expertise or credentials to provide the needed service, or where a local consultant's response to a Request for Qualifications (RFQ) exceeds the otherwise lowest response by more than 10%. The local law contains specific definitions and language relative to application of this law which interested parties should review. The Laws of Suffolk County are available free of charge at <http://legis.suffolkcountyny.gov/> under the "Search the Laws of Suffolk County" tab. Contractors who believe they qualify for preferential treatment under the Local Preference Law must attach a separate statement to their response, which supports and documents their request for such preferential treatment.

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i. **Responder's Profile/Response to Questions set forth in the RFQ Section II entitled "Responder Profile"**

This section will be used in the County's evaluation of the Responder's general qualifications.

j. **Responder's Proposed Technical Services/Response to items set forth in the RFQ Section entitled "Technical Services Requirements"**

This section will be used in the County's evaluation of the Responder's proposed technical services.

k. **List (if applicable) of Subcontractors**

Identify all sub-contractors the Contractor plans to use and the function for which such sub-contractors will be responsible. Provide qualifications, including prior relevant experience, for sub-contractors anticipated to be used. Failure to include this information in the response may be grounds for disqualification.

Subcontractors must complete all County forms listed above.

Subcontractors must respond to all questions set forth in the RFQ Section entitled "Responder Profile." This includes financial statements.

Subcontractors must respond to all requirements, to the extent such requirements are applicable to the services they will be providing, set forth in the RFQ Section entitled "Technical Services Requirements."

Failure to include all required information in the response may be grounds for disqualification.

l. **Conflict of Interest**

Responders must disclose to the County the existence of any conflicts of interests, whether existing or potential. If none exist, state so. Responses shall disclose:

- i. Any material financial relationships that the Responder or any employee of the Responder has that may create a conflict of interest in acting as a Contractor for Suffolk County.
- ii. Any family relationship that the Responder or any employee of the Responder has with any County employee that may create a conflict of interest or the appearance of a conflict of interest acting as a Contractor for Suffolk County.
- iii. Any other matter that the Responder believes may create a conflict of interest or the appearance of a conflict of interest acting as a Contractor for Suffolk County.

11. **Award Criteria**

- a. **General Qualifications:** **50 points**
Contractor's history, expertise, experience, reliability, financial viability, licensing, and references.
See RFQ Section II, entitled "Responder Profile,"

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for specific requirements.

- | | |
|--|-------------------|
| b. Proposed Technical Services/Products: | 50 points |
| Strategies, methodologies, services offered by Responder. See RFQ Section III, entitled "Technical Services Requirements" for specific requirements. | |
| Total | 100 points |

12. Contract Term and Conditions

- a. Reference is made to the Model Form Agreement for the terms and conditions of the Agreement to be entered into, including indemnification and insurance. The Model Agreement is subject to revision arising out of the terms and conditions imposed by law and/or deemed appropriate by the County Attorney's Office. The Responder should not return the Model Agreement with the Response.
- b. If the Responder has a concern or question related to any of the terms and conditions included in the Model Agreement, the Responder should note such concerns or questions in the Response. The Response must identify any items relating to the Model Agreement that the Responder requests be negotiated.
- c. Contractor responses to this RFQ, as may be subsequently modified in negotiations with the County, may be included as exhibits in any contracts that the County may execute with the Contractor.
- d. The County will execute a contract with principal Contractors only. Any arrangements, including fee arrangements, partnerships or collaborations between the principal Contractor and sub-contractors that provide services as part of the Proposal, must be fully disclosed in the Proposal.
- e. **Selection of Contractors is subject to the approval of the Suffolk County Legislature.** It is anticipated that this RFQ process shall be concluded by November 30, 2022. The anticipated commencement date of Services shall be on or about January 1, 2023.

Commented [MC1]: Please confirm or edit the anticipated completion date as appropriate.

13. Use of County Resources to Interfere with Collective Bargaining Activities
Local Law No. 26-2003

Responders are advised that the efficient, timely, and non-disruptive provision of goods and services is a paramount financial interest of the County and as such the County expects the potential Contractor to protect the County's financial interest by adopting non-confrontational procedures for the orderly resolution of labor disputes, including but not limited to, neutrality agreements, majority authorization card agreements, binding arbitration agreements, fair communication agreements, non-intimidation agreements, and reasonable access agreements.

14. NYS Freedom of Information Law (FOIL)

All Responses for the County's consideration will be held in confidence pending final execution of the contract(s). However, fully executed contracts are subject to the New York State Freedom of Information Law (FOIL), codified at Public Officers' Law Article 6. Therefore, if a Responder believes

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that any information in its Response constitutes a trade secret or is otherwise information which, if disclosed, would cause substantial injury to the competitive position of the Responder's enterprise, and the Responder wishes such information to be withheld if requested pursuant to FOIL, the Responder shall submit with its Response a separate letter addressed to the primary contact referenced in this RFQ, specifically identifying the page number(s), line(s) or other appropriate designation(s) of the Response containing such information, explaining in detail why such information is a trade secret or is other information, which if disclosed would cause substantial injury to the competitive position of the Responder's enterprise, and formally requesting that such information be kept confidential. Failure by a Responder to submit such a letter with its Response will constitute a waiver by the Respondent of any interest in seeking exemption of this information under Article 6 of the Public Officers' Law relating to protection of trade secrets. The proprietary nature of the information designated confidential by the Responder may be subject to disclosure if it is requested and the County deems it subject to disclosure or if ordered by a court of competent jurisdiction. A request that an entire Response be kept confidential may not be considered reasonable since a Response cannot reasonably consists of all data exempt from FOIL.

End of Text for Section I

Section II
Responder Profile

1. General Information

- a. Company name and address.
- b. Year company was founded and a brief history.
- c. Total number of employees in company.
- d. Location(s) from which services will be performed.
- e. Describe the nature of your organization (e.g., business corporation, not-for-profit corporation, proprietorship, etc.).

2. Qualifications and Experience of Personnel

- a. Provide resumes of the project director(s) and other key staff who will be assigned to projects covered by this RFQ. Describe the qualifications and background of your staff, insofar as they relate to such projects.
- b. If you intend to use the services of a subcontractor, please provide all of the above information for such subcontractor. Note that the County must pre-approve the use of any subcontractors.
- c. Describe other projects involving similar technical services. Describe the role and experience of key personnel assigned to other similar projects who will be assigned to this project
- d. It is expected that staff and subcontractors identified under this RFQ will be the staff or subcontractors utilized for any assignments under this RFQ
- e. In addition, Suffolk County may make such investigations as it deems necessary to determine the ability of the Responder to perform the work. The Responder shall furnish to the County, within five (5) business days of a request, all such information and data for this purpose as may be requested. The County reserves the right to reject any Response if the information submitted by, or investigation of, such Responder fails to satisfy the County that such Responder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional Responses will not be accepted.

3. Financial Viability

a. Indebtedness to County, Liens and Litigation

Submit a statement as to indebtedness, if any, to the County; and a listing of all outstanding liens, if any, against the Responder. Submit a summary of litigation, if any, against the Responder and its disposition.

b. Statement Regarding Bankruptcy

Submit a statement disclosing any bankruptcy(ies) filed within the last seven years. The Statement must include the date the bankruptcy was originally filed, the current status, and, if applicable, the date the bankruptcy was discharged.

4. Responder's History

- a. Describe other projects involving similar services. Outline your experience and duration in the provision of such similar services, including clients served and the length of time providing such services.
- b. Responders must demonstrate that they have the necessary expertise to provide the required services. Each Responder should describe in detail the relevant expertise it has in providing the services required.

5. References

- a. Provide three client references for which you have provided services (current governmental or quasi-governmental agencies preferred). Provide name of the organization, services, contact name and telephone number.
- b. Provide a list of all contracts with the County of Suffolk within the last five years (regardless of type of service), the time period for those services and your primary County contact.

6. Conflicts of Interest and/or Potential Conflicts of Interest

a. Relationships with Third Parties

All Contractors with the County of Suffolk are charged with the continuing duty to disclose to the County the existence of any interests it may have, contractual or otherwise, ongoing or previous, with any companies or individuals with whom the County of Suffolk does business with respect to the services required by this RFQ. This duty continues for so long as the Contractor is retained on behalf of the County or its employees. Responses shall disclose any material financial relationship that the Responder or any employee of the Responder has that may create a conflict of interest in acting as a Contractor for Suffolk County.

b. Relationships with County Departments/Agencies/Employees

All Contractors with the County of Suffolk are charged with the continuing duty to disclose to the County the existence of any interests it may have, contractual or otherwise, ongoing or previous, with any County department, agency or employee. This duty continues for so long as the Contractor is retained on behalf of the County or its employees. Responses shall disclose any family relationship that the Responder or any employee of the Responder has with any County employee that may create a conflict of interest acting as a Contractor for Suffolk County.

End of Text for Section II

Section III
Technical Services Requirements

1. Background Information and Overview

The Department, in cooperation with other County departments, is responsible for the acquisition, disposition and management of real property. The Department also cooperates with other County departments in the management of County real property. In order to carry out these activities, the Department requires independent Environmental Site Assessments of the property to be acquired, disposed of and/or managed.

2. Services Covered by this RFQ

- a. The Contractor must develop and prepare an Environmental Site Assessment report in accordance with industry standards.
- b. The Contractor shall provide environmental site assessment services, including both Phase I and Phase II environmental site assessment reports, which shall be in adherence with ASTM standards and County requirements, and other associated professional services pertaining to acquisition, disposition and/or management of real property as deemed necessary by the County for various County projects.
- c. The County will issue a Request for Fee Proposal and the Contractor shall submit a fee proposal in writing, and, if the Contractor's fee proposal is agreeable to the County, the Contractor will be authorized to proceed on any assignment in writing (Authorization Letter), signed by the applicable County department and, when applicable, by the Budget Director of the County.
- d. The Contractor shall complete the services described in the Department's Authorization Letter within sixty (60) calendar days after receipt of the Authorization Letter, unless a different period is specified in the Authorization Letter.
- e. The Contractor shall be responsible for contacting the property owner or claimant, in writing, and requesting an appointment to inspect the subject property.

3. Reports

- a. The duties of the Contractor shall include, but not be limited to, conducting environmental assessments and/or audits for the purpose of furnishing environmental audit(s) and/or report(s) for use by the County in connection with the acquisition, disposition and/or management of real property, and to furnish expert witness testimony, if required. Following an environmental site assessment, the Contractor shall prepare report (s) ("the Environmental Site Assessment Report") for the County, as required. For a more detailed description of reporting requirements Contractor is referred to the Model Agreement annexed hereto in Section V of this RFQ.
- b. All environmental site assessment services and reports must be in conformance with current ASTM standards for Phase I and Phase II environmental site assessments. The Contractor is solely responsible for obtaining knowledge of current ASTM standards.

1.

4. Phase I and II ESA Criteria and Audit/Report Requirements

A. The Phase I Environmental Site Assessment Criteria and Audit/Report Requirements are based on the ASTM E1527-00 Phase 1 environmental site assessment process. The Phase I Environmental Site Assessment Report shall include, but not be limited to, the following:

- I. Cover Page
- II. Table of Contents
- III. Executive Summary
- IV. Site Analysis
 - a. Geology of the Site
 - b. Hydrology of the Site
 - c. Site and Area History
 - d. Site Inspection (Exterior and Interior)
- V. Description of Surrounding Land Use
- VI. Database Review
- VII. Non-Scope Considerations
- VIII. Summary and Conclusion

If a Phase II is recommended, Contractor will be required to provide a brief description of what was found and reasons for additional work, accompanied by drawings and photos.

B. The Phase II Environmental Site Assessment Criteria and Audit/Report Requirements are based on ASTM E1903-00 Phase II environmental site assessment procedures. The Phase II Environmental Site Assessment Report shall include, but not be limited to, the following:

- I. Cover Page
- II. Table of Contents
- III. Executive Summary
- IV. Scope of Work
- V. Site Analysis (Including Site Inspection)
- VI. Signature Page
- VII. Summary and Conclusion

5. Minimum Qualifications

Qualifications shall include, at a minimum, but are not limited to, licensing by the State of New York to perform the Services described herein.

6. Contract Term

The Department is seeking to enter into contracts with awarded Responders for a period of three (3) years.

End of Text for Section III

**Section IV
Compensation**

1. The County's intent is to pay the Contractor as follows:
 - a. **Request for Fee Proposal**

At such time as the Department may require a particular Environmental Site Assessment, the Department shall issue to Contractors selected pursuant to this RFQ a "Request for Fee Proposal" setting forth the specific requirements for the Environmental Site Assessment. Contractors may submit a Fee Proposal for the described Environmental Site Assessment by the date provided in the Request for Fee Proposal. The Department will evaluate responsive Contractor Fee Proposals and select the most economical and practical alternative.
 - b. **Letter of Authorization**

If a Contractor Fee Proposal is accepted by the Department, the Contractor shall be authorized to proceed on the Environmental Site Assessment report by a Letter of Authorization signed by the Department and such other County signatures as may be necessary. For any particular Environmental Site Assessment, the Contractor agrees that it shall be entitled to no more than the fees set forth in its Contractor Fee Proposal as approved by the Department and that such fees are inclusive of the completion of all work, labor, and services contemplated for such Environmental Site Assessment report.
2. The County reserves the right to change this payment structure, as may be appropriate. Prior to any contract processing, Responders shall be notified of any changes and will have the option to not accept proposed changes. If Responders do not accept proposed changes to payment terms, any further contract processing shall be terminated.
3. The County reserves the right to select among multiple contracts at the time of purchase based upon the most practical and economical Request for Fee Proposal and the best interests of the County. The award of a contract pursuant to this RFQ shall not be construed to commit the County to procure any services.

End of Text for Section IV

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**Section V
Model Agreement**

Environmental Site Assessment Services Contract

This Contract (“the Contract”) is between the **County of Suffolk (“the County”)**, a municipal corporation of the State of New York, acting through its duly constituted **Department of Economic Development and Planning, Division of Real Property Acquisition and Management (“the Department”)** located at H. Lee Dennison Building, 2nd Floor, 100 Veterans Memorial Highway, P.O. Box 6100, Hauppauge, New York 11788-0099; and (“the Contractor”), having an address at

The parties hereto desire to contract for the provision of Environmental Site Assessment services related to acquisition, disposition and/or management of real property (“**Services**”) as set forth in **Article I, entitled “Description of Services”**.

Term of the Contract: Shall be from January 1, 2023, through December 31, 2025.

Total Cost of the Contract: Shall be on a fee-for service basis as set forth in Article II, not to exceed \$15,000 for any Phase I Environmental Site Assessment or \$25,000 for any Phase II Environmental Site Assessment.

Terms and Conditions: Shall be as set forth in Articles I, IA and II and Exhibits 1 and 2, attached hereto and made a part hereof.

In Witness Whereof, the parties hereto have executed the Contract as of the latest date written below.

CONTRACTOR NAME

COUNTY OF SUFFOLK

By: _____
Name:
Title :
Fed. Tax ID #:
Date _____

By: _____
Lisa Black
Chief Deputy County Executive
Date: _____

Approved as to Form:
Dennis Cohen
County Attorney

Approved:
Department of Economic Development and Planning,
Division of Real Property Acquisition & Management

By: _____
Michael Camacho
Assistant County Attorney
Date _____

By: _____
Sidney Joyner
Director of Real Estate
Date: _____

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List of Articles & Exhibits

Article I

Description of Services

1. Conflicting Provisions
2. General Services
3. Reports

Article I-A

Phase I and II Environmental Site Assessment Report Requirements

1. Phase I Environmental Site Assessment Criteria and Audit/Report Requirements
2. Phase II Environmental Site Assessment Criteria and Audit/Report Requirements

Article II

Financial Terms and Conditions

1. Conflicting Provisions
2. General Payment Terms
3. Agreement Subject to Appropriation of Funds
4. Accounting Procedures
5. Audit
6. Comptroller's Rules and Regulations for Contractor's Agreements
7. Specific Payment Terms and Conditions

Exhibit 1

County Terms and Conditions

1. Elements of Interpretation
2. Meanings of Terms
3. Contractor Responsibilities
4. Qualifications, Licenses, and Professional Standards
5. Notifications
6. Documentation of Professional Standards
7. Credentialing
8. Engineering Certificate
9. Termination
10. Indemnification and Defense
11. Insurance
12. Independent Contractor
13. Severability
14. Merger; No Oral Changes
15. Set-Off Rights
16. Non-Discrimination in Services and Employment
17. Nonsectarian Declaration
18. Governing Law

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19. No Waiver
20. Conflicts of Interest
21. Cooperation on Claims
22. Confidentiality
23. Assignment and Subcontracting
24. Changes to Contractor
25. No Intended Third Party Beneficiaries
26. Certifications as to Relationships
27. Publications
28. Copyrights and Patents
29. Arrears to County
30. Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction
31. Record Retention
32. Certification Regarding Lobbying
33. Notice

Exhibit 2

Suffolk County Legislative Requirements

1. Contractor's/Vendor's Public Disclosure Statement
2. Living Wage Law
3. Use of County Resources to Interfere with Collective Bargaining Activities
4. Lawful Hiring of Employees Law
5. Gratuities
6. Prohibition Against Contracting with Corporations that Reincorporate Overseas
7. Child Sexual Abuse Reporting Policy
8. Non-Responsible Bidder
9. Use of Funds in Prosecution of Civil Actions Prohibited
10. Youth Sports
11. Work Experience Participation
12. Safeguarding Personal Information or Minors
13. Contract Agency Performance Measures and Reporting Requirements
14. Suffolk County Local Law Website Address
15. Suffolk County Code of Ethics

Article I
Description of Services

Whereas, the County issued a Request for Proposals ("RFQ") on _____, 2022; and

Whereas, the Department, in cooperation with other County departments, is responsible for overseeing the acquisition, disposition and/or management of real property on behalf of the County; and

Whereas, in order to carry out acquisitions pursuant to these programs, the Department requires independent Environmental Site Assessment; and

Whereas, pursuant to Resolution No. _____, the Suffolk County Legislature has approved a list of firms to provide Environmental Site Assessment services to the County; and

Whereas, the Contractor is included in such list; and

Whereas, the County has selected the Contractor to provide the services as set forth herein;

Now therefore, in consideration of the mutual provisions and covenants hereafter set forth, the parties hereto agree as follows:

1. Conflicting Provisions

In the event of any conflict between this **Article I** and any other provision to this Contract, such other provision shall prevail unless it is expressly stated that this **Article I** shall prevail.

2. General Services:

- a. Upon issuance of an Authorization Letter as described in Article I, paragraph 2.c., the Contractor must develop and prepare Environmental Site Assessment reports in accordance with industry standards.
- b. The Contractor shall provide environmental site assessment services including, but not limited to, Phase I and Phase II environmental site assessment reports, which shall adhere to ASTM standards and County requirements, and provide other associated professional services pertaining to acquisition, disposition and/or management of real property as required for various County projects.
- c. This is a general contract for the Term as set forth on the cover page of this Contract to facilitate processing by the Department. The County may enter into preliminary discussions with the Contractor prior to the authorization of a project. Furthermore, the Department will define its specific requirements with regard to any project, citing the applicable funding source, the encumbrance number and any applicable Resolution of the Suffolk County Legislature, by letter requesting a fee proposal from the Contractor (Request for Fee Proposal). The Contractor shall submit its fee proposal in writing, and, if the Contractor's fee proposal is agreeable to the County, the Contractor will be authorized to proceed on any assignment by written authorization (Authorization Letter), signed by the applicable County department and, when applicable, by the Budget Director of the County. The Contractor shall not undertake, and the County shall not be obligated to pay, for any services not so authorized in writing.
- d. The Contractor shall complete the services described in the Department's Authorization Letter within sixty (60) calendar days after receipt, unless a different period is specified in the

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Authorization Letter. Failure to complete the services within the specified time period will subject the Contractor to the assessment of penalties in the amount of ten (10%) percent of the contract price for the first day and five (5%) percent of the contract price each day thereafter that the Contractor fails to complete the Services to the satisfaction of the County. It is understood and agreed between the Contractor and the Department that the time within which an Environmental Site Assessment is to be completed under this Contract is of primary importance. Time is of the Essence in this Contract.

- e. The Contractor shall contact the property owner or claimant in writing and request an appointment to inspect the subject property. The Contractor must keep a record of the notification letter in the Contractor's work file. Furthermore, the date of inspection shall be the date of the report unless stated otherwise in the Department's Request for Fee Proposal. At a mutually agreeable time, the Contractor and the owner or other claimant shall inspect the subject property, and the Contractor's Environmental Site Assessment report shall attest to the fact that the owner or claimant was offered the opportunity to inspect the property with the Contractor and either did so or declined or failed to do so.
- f. The Department may withdraw portions of the property to be assessed at any time, as it deems necessary. In this case, compensation to the Contractor shall be calculated by the amount of research, time and progress the Contractor has already expended in the Environmental Site Assessment provided same is determined to be reasonable by the Department. All claims for said compensation shall be submitted in writing and supported by relevant evidence.
- g. Any records, reports or other documents of the County or any of its departments or agencies or reports or information obtained from any source whatsoever and used by the Contractor pursuant to this Contract, and any reports or other documents created pursuant to this Contract, shall be and remain the property of the County and shall be kept confidential in accordance with this Contract. In particular and without limiting the foregoing, all Environmental Site Assessment reports are hereby made confidential and shall not be used in part or in whole for any purpose other than as contemplated by this Contract. The Contractor, its partners or officers and employees shall not communicate directly or indirectly with an adverse party or its attorney, expert, representative or agent, concerning any acquisition or claim or action by or against the County, in connection with which it has been retained by the County, without the knowledge and consent of the Department. The Contractor, its partners or officers and employees shall not make any statement for publication or for any other purpose with regard to any pending litigation in which it has been retained as an expert witness for the County.
- h. Due to the confidential nature of the transactions that are the subject of this Contract, the Contractor, its partners or officers, shareholders or others interested in Contractor, have a continuing obligation to disclose to the Department, as soon as possible after receipt of the Department's Request for Fee Proposal, the existence of any interests it may have, contractual or otherwise, ongoing or previous, in the property that is the subject of the acquisition for which the Contractor is proposed to be retained. The Contractor shall not obtain any personal advantage in any acquisition for which the Contractor is retained, and shall not directly or indirectly acquire any interest in the subject matter of any acquisition for which the Contractor is, or is proposed to be retained by the Department. This duty continues for so long as the Contractor is retained on behalf of the County.
- i. If another Environmental Site Assessment firm is assigned to assess property for which the Contractor is retained, the Contractor shall not communicate with the other Environmental Site

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Assessment firm, but only with the Department. Any market data or other information of mutual benefit shall be disseminated only by and through the Department.

3. Reports:

- a. The duties of the Contractor shall include, but not be limited to, conducting environmental assessments and/or audits for the purpose of furnishing environmental audit(s) and/or report(s) for use by the County in connection with the acquisition, disposition and/or management of real property, and to furnish expert witness testimony as required by the Department. Following an environmental site assessment, the Contractor shall prepare a report(s) ("the Environmental Site Assessment Report") for the County, which report shall include all of the information described more fully in Article I-A of this Agreement. Environmental Site Assessment Reports are subject to professional review and must be fully detailed, narrative reports with all items and factors clearly set forth, fully substantiated and justified in every respect and in such a manner that there shall be no doubt as to the report's conclusions. All items that the Department determines require further substantiation or justification shall be completed by the Contractor, and all deficiencies must be remedied, whenever and however subsequently discovered, in the form of a supplemental report at the Contractor's sole expense. The delivery of Environmental Site Assessment Report(s) shall not relieve the Contractor of the obligation to correct deficiencies, and the Contractor's services under this Agreement shall be deemed to have been completed only when all written reports required under this Agreement have been accepted by the Department and determined by the Department to be in compliance with the requirements of this Agreement.
- b. ALL ENVIRONMENTAL SITE ASSESSMENT SERVICES AND REPORTS MUST BE IN CONFORMANCE WITH CURRENT ASTM STANDARDS FOR PHASE I AND PHASE II ENVIRONMENTAL SITE ASSESSMENTS. The Contractor is solely responsible for obtaining knowledge of current ASTM standards.
- c. The Contractor shall prepare and furnish three copies of all reports as may be specified in Article I-A. In the event of litigation, six copies shall be furnished for each parcel. Reports shall be in final form and shall conform to any applicable federal or state requirements attached to the Department's Request for Fee Proposal. Litigation reports shall be ready for submission to the court having jurisdiction.

End of Text for Article I

Article I-A
Phase I and II Environmental Site Assessment Report Requirements

1. Phase I Environmental Site Assessment Criteria and Audit/Report Requirements

The Phase I Environmental Site Assessment Criteria and Audit/Report Requirements are based on the ASTM E1527-00 Phase 1 environmental site assessment process. The Phase I Environmental Site Assessment Report shall include the following:

- I. Cover Page (Tax Map Number, Address who report is for)**
The Environmental Site Assessment report shall have a caption showing the name of the owner/claimant, the location of the property, the total area of the property in acres or square feet, the area to be acquired in acres or square feet, the Suffolk County Tax Map designation.
- II. Table of Contents**
All Environmental Site Assessment reports must contain a table of contents, and all pages must be consecutively numbered.
- III. Executive Summary**
- IV. Site Analysis**
Site overview including location, tax parcel number, and general site condition including but not limited to:
 - 1. Geology of the site**
 - a. Geological Characteristics
 - b. Site topography description and Topographic Map with site boundaries
 - c. Site soils description with a Soils Map with site boundaries
 - 2. Hydrology of the Site including:**
 - a. Surface water characteristics
 - b. New York State Department of Environmental Conservation ("NYSDEC") Freshwater Wetlands Map including site boundaries and description of any on the site
 - c. NYSDEC Tidal Wetlands Map including site boundaries and description of any on the site
 - d. Water table Elevation Map
 - e. Depth to groundwater and direction of water flow
 - f. State specific Hydro geologic Zone
 - g. Special Groundwater Protection Areas ("SGPAs")

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- h. Groundwater Classification and quality
- i. Organic and Nitrate Contamination Maps including site location and general description (Long Island Groundwater Study)

3. Site and Area History including:

- a. Historic review of the site
- b. Description of aerial photos from 1950 to present (include copies of aerials in appendix)
- c. Review of the "Inventory of Potential Hazardous Disposal Sites, Suffolk County, New York," prepared by Cornell Laboratory for Environmental Applications of Remote Sensing("CLEARS Study") and all sites within a one (1) mile radius
- d. An Archaeologically Sensitive Map containing boundaries and brief analysis

4. Site Inspection:

A physical inspection of the site with site photographs, a Site Details Map and associated documentation including but not limited to:

- a. A complete description of the undeveloped and developed portions of the site showing conditions and vegetation cover of undeveloped portion of the property.
- b. A complete description of all structures and buildings on the property to include but not limited to:

Exterior:

- (1) Style of structure type (*i.e.*, brick-ranch, wood shingle, saltbox, cape block, commercial building, etc.)
- (2) Roofing (*i.e.*, shingles, wood, slate, clay tile)
- (3) Siding (*i.e.*, vinyl, aluminum, wood, asbestos shingles)

Interior:

Open and inspect all areas accessible by trap door(s) and/or ceiling scuppers. This information must be accompanied by photos and diagrams which indicate the problem areas.

- (1) Basement (*i.e.*, full, partial, crawl space, and slab)
- (2) Water supply (*i.e.*, well, city water)
- (3) Waste (*i.e.*, cesspool, sewer)
- (4) Wall surface/condition (*i.e.*, oil-lead based, latex paint - chipped/holes, wallpaper - peeling, stucco fair poor, tile - good, fair)

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- (5) Flooring (*i.e.*, wood, linoleum, ceramic, and vinyl tile, marble)
- (6) Heating source (*i.e.*, oil, natural gas, bottle/tank, electric)
 - i. Steam or baseboard hot water
 - ii. Pipe wrap if any (*i.e.*, asbestos, fiberglass, foam)
- (7) Other environmental conditions - building toxins
 - i. Indoor radon potential
 - ii. Possible asbestos containing materials
- c. Hazardous Materials, Handling, Storage, and Disposal
 - (1) Underground and Above Ground Storage Tanks
 - (2) Polychlorinated Biphenyls ("PCBs")
- d. Surface staining and manmade alterations (ditches, mounding, etc.) on the site described and shown on the Site Details Map.
- e. Debris and Dumping - Specific description pinpointing the areas of dumping on the Site Details Map.
- f. An evaluation of all information obtained during the site inspection with documentation, interviews (with whom and their relationship to property) and conclusions.

V. Description of Surrounding Land Use

Describe areas to the North, South, East, and West of the site being assessed including:

- 1. Types of land use and all types of structures and their use, if any.
- 2. Contamination: a review of all toxic and hazardous waste sites, including printouts and maps of known sites within one mile of site.

VI. Database Review:

A review of all toxic and hazardous waste: include printouts and maps of all Database Reviews.

- 1. ***New York Inactive Hazardous Waste Disposal Site Registry***: A state listing of sites that can pose environmental or public health hazards requiring investigation or clean up. (*Within a One-Mile Radius*)
- 2. ***CERCLIS*** ("*Comprehensive Environmental Response, Compensation and Liability Information System*"): a federal listing of sites that may pose environmental or public health hazards requiring investigation or clean up. (*Within a One-Mile Radius*)

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3. **National Priority List for Federal Superfund Cleanup:** A listing of sites known to pose environmental or health hazards that are being investigated or cleaned under the Federal Superfund program. (*Within a One-Mile Radius*)
4. **New York Hazardous Substance Disposal Site Draft Study:** A state listing of sites contaminated with toxic substances that may pose environmental or public health hazards.

These sites are not eligible for state clean up funding programs. (*Within a One-Mile Radius*)

5. **New York Solid Waste Facilities Registry, including New York City 1934 Sites:** Active and inactive landfills, incinerators, transfer stations or other solid waste management facilities. (*Within a One-Mile Radius*)
6. **New York State Major Oil Storage Facilities:** Sites with more than a 400,000 gallon capacity for storing petroleum products. (*Within a One-Mile Radius*)
7. **New York and Federal Hazardous Waste Treatment, Storage or Disposal Facilities:** Sites reported by the New York State manifest system and the United States Environmental Protection Agency ("USEPA") Resource Conservation and Recovery Act Information System ("RCRIS"). Also, includes the following databases:
 - a. **RCRA violations:** Waste facilities with violations reported by the USEPA pursuant to the Resource Conservation and Recovery Act. (*Within One-Mile Radius*)
 - b. **RCRIS corrective action activity (CORRACTS):** Waste facilities with RCRIS corrective action activity reported by the USEPA. (*Within a One-Mile Radius*)
8. **Toxic Spills:** Active stationary source spills reported to State environmental authorities, including remediate leaking underground storage tanks. (*Within a Half-Mile Radius*)
9. **Toxic Spills:** Closed stationary and non-stationary source spills reported to State environmental authorities, including remediate leaking underground storage tanks. (*Within a Half-Mile Radius*)
10. **New York and Local Petroleum Bulk Storage Facilities:** Sites with more than a 1,100 gallon capacity for storing petroleum products. (*Within a Quarter-Mile Radius*)
11. **New York and Federal Hazardous Waste Generators and Transporters:** Sites reported by the N.Y.S. manifest system and the USEPA's Resource Conservation and Recovery Act Information System ("RCRA"). (*Within a Quarter-Mile Radius*)

Also, includes the following database:

- a. **RCRA violations:** Waste facilities with violations reported by the USEPA pursuant to the Resource Conservation and Recovery Act. (*Within a Quarter-Mile Radius*)
- b. **RCRIS corrective action activity ("CORRACTS"):** Waste facilities with RCRIS corrective action activity reported by the USEPA. (*Within a Quarter-Mile Radius*)

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12. **New York Chemical Bulk Storage Facilities:** Sites storing hazardous substance listed in 6 NYCRR Part 597 in aboveground tanks with capacities of 185 gallons or more and/or underground tanks of any size. (*Within a Quarter-Mile Radius*)
13. **New York Toxic Release Inventory Facilities:** Discharges of selected toxic chemicals to air, land, water or treatment facilities. (*Within a Quarter-Mile Radius*)
14. **Federal Permit Compliance System Toxic Wastewater Discharges:** Permitted toxic wastewater discharges. (*Within a Quarter-Mile Radius*)
15. **Air Discharges:** Air pollution point sources monitored by United States Environmental Protection Agency and/or state and local air regulatory agencies. (*Within a Quarter-Mile Radius*)
16. **Federal Civil Enforcement Docket:** Civil judiciary cases filed on behalf of the U.S. Environmental Protection Agency by the Department of Justice. (*Within a Quarter-Mile Radius*)
17. **ERNS: Federal Emergency Response Notification System Spills:** A listing of federally reported spills. (*Subject Property Only*)
18. **Sanborn Fire Insurance Maps and Atlas Maps:** When using Sanborn maps, review the map index sheet to determine the reference year of the map. Sanborn maps will often contain information about businesses that no longer exist and thus provide an understanding of prior uses, (*i.e.*, a gas station previously existed at a site and is no longer there, Underground Storage Tanks may be shown on the Sanborn Map; or, if a Sanborn map indicates that a foundry formerly existed on the target property, this would suggest the possible presence of heavy metal contamination).

VII. Non-Scope Considerations

Non-scope considerations shall be included in the standard to help assess business environmental risk. ASTM-E1527-00 expands the previous list of non-scope considerations to include all the following:

1. asbestos-containing material;
2. radon;
3. lead-based paint;
4. indoor air quality;
5. lead in drinking water;
6. wetlands;
7. regulatory compliance;
8. cultural and historic resources;
9. industrial hygiene;
10. health and safety;
11. ecological resources;
12. endangered species; and
13. high voltage power lines.

VIII. Summary and Conclusions

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Properties involving vacant land must include a brief description of the parcel and if any trash and/or debris is found, an explanation of what was found, accompanied by drawing indicating where it was found.

1. Must include photos of trash and debris.
2. Must include reasons for a Phase II investigation.

EXAMPLE: Areas of the site requiring additional investigation—either because hazardous substance impact has been confirmed or is suspected, or because the Phase I ESA provides inconclusive results—can be further evaluated through a site-specific Phase II assessment. The Phase II assessment is the intrusive study, which further evaluates the range of potential liabilities associated with the site. Such information may help parties decide whether to continue in the property transfer negotiation process: an important consideration in the Phase I/Phase II process is how to address legally reportable conditions discovered during the ESA process (i.e., to whom and by whom reports should be made, and what follow-up actions are necessary, etc.). Although the law is typically quite clear that the property owner has ultimate responsibility for reporting the existence, investigation, and remediation of known impacts, the buyer and seller may reach a separate agreement as to how these issues will be handled before commencing the ESA. Examples of sites that would typically require further assessment (Phase II) are those with an uncertain or unresolved underground tank use history, discolored soils, or contaminated structures through which contamination from aboveground hazardous substance use could migrate to the site's shallow soils, subsurface soils, or ground water. Sites with a reported history of hazardous substance use may need to be further evaluated to help rule out the possibility of environmental impact: this is also known as a baseline conditions assessment.

3. If a Phase II is recommended, a brief description of what was found and reasons for additional work, to be accompanied by drawings, and photos.

2. Phase II Environmental Site Assessment Criteria and Audit/Report Requirements

The requirements for the Phase II Environmental Site Assessment Criteria and Audit/Report Requirements are based on ASTM E1903-00 Phase II environmental site assessment procedures. The Phase II Environmental Site Assessment Report shall include the following:

- I. Cover Page (Tax Map Number, Address who report is for)**
- II. Table of Contents**
- III. Executive Summary**
- IV. Scope of Work**

The environmental professional should develop a description of the work to be performed to establish the methods and work tasks that achieve the user's Phase II objectives. This work must be done in conformance with all the current ASTM standards and or updates. The description should provide the rationale for planned sampling locations and testing parameters along with identification of selected methodologies and appropriate Quality Assurance/Quality Control

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measures. The description may provide for minor field modifications where appropriate. The description should be organized so as to facilitate the orderly, objective-focused implementation of the plan in the field. A formal written description will be required of the proposal and the scope of work. Likewise, the sampling, health and safety and chemical testing programs need to be a formal, stand-alone document(s).

V. Site Analysis

An additional site overview of location(s) of problems noted in Phase I inspection which should include, but not be limited to:

Site Inspection:

A physical inspection of the site with site photographs, a Site Details Map and associated documentation including:

1. A complete description of and the extent of the noted Phase I problems.
2. A complete description of all structures and buildings on the property to include the location of any and all above and below ground oil storage tank(s), if any, the location of any and all cesspools and/ or sewer lines, the location of any natural gas lines, the location of any above or below ground utility lines (electric, cable, phone), and the location of any and all water supply (well, city water).
3. In the course of the site inspection of the building(s) and other structures if additional asbestos is found, it must be noted and highlighted in the report to the County, and reasons for removal or encapsulation must be included as well as an approximate cost for either.
4. Debris and Dumping - Specific description of what materials and the extent of possible contamination pinpointing the areas of dumping on the Site Details Map.
5. An evaluation of all information obtained during the site inspection with documentation, a list of all people interviewed. Chain of custody—(a written or printed form which is used to document where sample was taken, condition of sample and who has responsibility. This custody must include the time from sample container acquisition through transportation, and laboratory analysis) must accompany noted problem areas.
6. A written estimate for the removal of any and all structures, utilities, water service and removal of sewers and/or cesspool(s) along with all the proper documentation. The proper removal and disposal of any and all oil tanks, along with the proper documentation as to its proper removal and disposal in accordance with all federal state and local laws and regulations. The removal and proper disposal of asbestos must be done by a licensed and properly insured company (whose personnel are fully trained and licensed to do this type of work). This work must be done in accordance with all federal, state and local laws and regulations. A copy of all paper work documenting the proper removal and disposal of all construction debris, oil tanks and asbestos and any and all other environmentally hazardous material.

VI. Signature Page

The environmental professional(s) responsible for the Phase II Environmental Site Assessment should sign the report, along with typed names and titles at the end of the main text of the report.

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Where required by the local jurisdiction, professional seals, license type and license number, as applicable, should be affixed.

VII. Summary and Conclusions

1. On vacant land, investigation survey must include a brief description of parcel and if any trash and or debris was found an explanation of what was found accompanied by drawing indicating where on parcel and photos of trash and or debris.
2. The report MUST include reasons for or against a complete removal of trash and or debris, and a cost for the removal of the trash and debris that was found on vacant land.

End of Text for Article I-A

Article II
Financial Terms and Conditions

1. Conflicting Provisions

In the event of any conflict between any provision in this Article II and an exhibit to this Contract, the exhibit shall prevail unless it is expressly stated in the conflicting provision in this Article II that it shall prevail over the exhibit.

2. General Payment Terms

a. Presentation of Suffolk County Payment Voucher

In order for payment to be made by the County to the contractor for the Services, the Contractor shall prepare and present a Suffolk County Payment Voucher ("Voucher"), which shall be documented by sufficient, competent and evidential matter. Each Voucher submitted for payment is subject to Audit at any time during the Term or any extension thereof. This provision shall survive expiration or termination of this Contract for a period of not less than seven (7) years, and access to records shall be as set forth in paragraph 31 of Exhibit 1, and paragraph 4(b) of Article II.

b. Voucher Documentation

The Suffolk County Payment Voucher shall list all information regarding the Services and other items for which expenditures have been or will be made in accordance with the Contract. Either upon execution of the Contract (for the Services already rendered and expenditures already made), or not more than thirty (30) days after the expenditures were made, and in no event after the 31st day of January following the end of each year of the Contract, the Contractor shall furnish the County with detailed documentation in support of the payment for the Services or expenditures under the Contract, e.g., dates of the Service, worksite locations, activities, hours worked, and pay rates for all Services. The Suffolk County Payment Voucher shall include time records, certified by the Contractor as true and accurate, of all personnel for whom expenditures are claimed during the period. All Suffolk County Payment Vouchers must bear a signature as that term is defined pursuant to New York State General Construction Law §46 by duly authorized persons. Disbursements made by the Contractor in accordance with the Contract and submitted for reimbursement must be documented and must comply with accounting procedures as set forth by the Suffolk County Department of Audit and Control.

c. Payment by County

Payment by the County shall be made within thirty (30) days after approval of the Voucher by the Comptroller. The Contractor agrees that it shall be entitled to no more than the fees set forth in this Article II and as set forth in the Authorization Letter for the completion of all work, labor and services contemplated in this Contract.

d. Final Voucher

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The acceptance by the Contractor of payment of all billings made on the final approved Suffolk County Payment Voucher shall operate as and shall be a release of the County from all claims by the Contractor through the date of the Voucher.

3. Agreement Subject to Appropriation of Funds

- a. The Contract is subject to the amount of funds appropriated each fiscal year and any subsequent modifications thereof by the County Legislature, and no liability shall be incurred by the County beyond the amount of funds appropriated each fiscal year by the County Legislature for the Services.
- b. If the County fails to receive Federal or State funds originally intended to pay for the Services, or to reimburse the County, in whole or in part, for payments made for the Services, the County shall have the sole and exclusive right to:
 - i. determine how to pay for the Services;
 - ii. determine future payments to the Contractor; and
 - iii. determine what amounts, if any, are reimbursable to the County by the Contractor and the terms and conditions under which such reimbursement shall be paid.

4. Accounting Procedures

- a. The Contractor shall maintain accounts, books, records, documents, other evidence, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of the Contract, in accordance with generally accepted accounting principles and with rules, regulations and financial directives, as may be promulgated by the Suffolk County Department of Audit and Control and the Department. The Contractor shall permit inspection and audit of such accounts, books, records, documents and other evidence by the Department and the Suffolk County Comptroller, or their representatives, as often as, in their judgment, such inspection is deemed necessary. Such right of inspection and audit as set forth in subparagraph (b) below shall exist during the Term and for a period of seven (7) years after expiration or termination of the Contract.
- b. The Contractor shall retain all accounts, books, records, and other documents relevant to the Contract for seven (7) years after final payment is made by the County. Federal, State, and/or County auditors and any persons duly authorized by the County shall have full access and the right to examine any of said materials during said period. Such access is granted notwithstanding any exemption from disclosure that may be claimed for those records which are subject to nondisclosure agreements, trade secrets and commercial information or financial information that is privileged or confidential.

5. Audit

- a. All payments made under the Contract are subject to audit by the Comptroller pursuant to Article V of the Suffolk County Charter. The Contractor further agrees that the Comptroller and the Department shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transactions or other records relating to Services under the Contract. If such an audit discloses overpayments by the County to the Contractor, within thirty (30) days after the issuance of an official audit report by the Comptroller or his duly designated representatives, the

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Contractor shall repay the amount of such overpayment by check to the order of the Suffolk County Treasurer or shall submit a proposed plan of repayment to the Comptroller. If there is no response, or if satisfactory repayments are not made, the County may recoup overpayments from any amounts due or becoming due to the Contractor from the County under the Contract or any other Fund Source.

- b. The provisions of this paragraph shall survive the expiration or termination of the Contract for a period of seven (7) years, and access to records shall be as set forth in paragraph 31 of Exhibit 1, and paragraph 4(b) of Article II.

6. Comptroller's Rules and Regulations for Contractor's Agreements

- a. The Contractor shall comply with the "Comptroller's Rules and Regulations for Contractor's Agreements" as promulgated by the Department of Audit and Control of Suffolk County and any amendments thereto during the term of the Contract. The "Comptroller's Rules and Regulations for Contractor's Agreements" may be viewed online at the County's website, SuffolkCountyny.gov; go to "Government," then "Comptroller," then "Consultant's Agreements."
- b. The Contractor agrees to maintain its accounts in the performance of the Contract in accordance with generally accepted accounting principles, and as may otherwise be directed by the Comptroller.
- c. All payments made under the Contract are subject to audit by the Comptroller. If such an audit discloses overpayments by the County to the Contractor, within thirty (30) days after the issuance of an official audit report by the Comptroller, the Contractor shall repay the amount of such overpayment by check to the order of the Suffolk County Treasurer.

7. Specific Payment Terms and Conditions

a. Compensation

i. Request for Fee Proposal

At such time as the Department may require a particular Environmental Site Assessment, the Department shall issue to Contractors selected pursuant to this RFQ a "Request for Fee Proposal" setting forth the specific requirements for the Environmental Site Assessment needed. Contractors may submit a Fee Proposal for the described Environmental Site Assessment by the date provided in the Request for Fee Proposal. The Department will evaluate responsive Contractor Fee Proposals and select the most economical and practical alternative.

ii. Letter of Authorization

If a Contractor Fee Proposal is accepted by the Department, the Contractor shall be authorized to proceed with the Environmental Site Assessment by a Letter of Authorization signed by the Department and such other County signatures as may be necessary. For any particular Environmental Site Assessment, the Contractor agrees that it shall be entitled to no more than the fees set forth in its Contractor Fee Proposal as approved by the Department and that such

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fees are inclusive of the completion of all work, labor, and services contemplated for such Environmental Site Assessment report.

The County reserves the right to select among multiple Contractors at the time of purchase based upon the most practical and economical Request for Fee Proposal and the best interests of the County. The award of a contract shall not be construed to commit the County to procure any services.

The County shall compensate the Contractor for each report a total sum set forth in the Authorization Letter, but not to exceed \$15,000 for any Phase 1 Environmental Site Assessment, or \$25,000 for any Phase II Environmental Site Assessment. The fee shall be suitable and reasonable, shall be negotiated between the parties and shall be based on the type of properties, the degree of complexity and the purpose of the report (e.g., whether for, litigation or for negotiated acquisition), as determined by the applicable County department.

b. Litigation Update

If a case cannot be settled and it is necessary to proceed with court action, at the request of the County, the Contractor shall revise and/or update the original court report and will be entitled to a fee of \$100 per hour, but not in excess of fifty percent (50%) of the fee for the original court report unless the parties enter into a written amendment of this Contract signed by the parties. Additionally, if the County requests the Contractor to analyze and review the Claimant's court report, then the cost of review and analysis shall be set forth in writing and the fee approved on an individual basis by the Department.

c. Court Attendance Per Diem

The stipulated fees above do not include the per diem rate for court attendance, i.e., testimony, attendance at counsel table during trials, and attendance at calendar calls, which rate will be \$400.00 per diem for attendance not in excess of four hours, or \$650.00 per diem for attendance not in excess of six hours, or \$800.00 per diem for attendance more than six hours on any day. Said per diem rates shall not include the time established by the judge or court for lunch, recess periods, or travel time to and from court.

d. Change Orders

The County may, at any time, by written order, make changes within the general scope of this Contract in the services or work to be performed. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any services under this Contract, an equitable adjustment shall be made and this Contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be asserted in writing within ten (10) days from the date of receipt by the Contractor of the notification of change unless the County grants a further period of time before the date of final payment under this Contract. No services for which additional compensation will be charged by the Contractor shall be furnished without written authorization by the County.

e. Disposition of Work Product in Case of Death or Disability

In case of the death or disability of the Contractor or of a principal, partner or key employee whose personal services were a substantial inducement to the County's entering into this Contract (any of whom is called the "Principal") before completion of the Environmental Site Assessment report on any project(s), all data, records and work products pertaining to such project(s) shall be delivered to the Department by the Contractor, its surviving partner(s), the personal representative(s) of the estate of the Principal (within 20 days after appointment), the Principal's committee or conservator or other person(s) having control of such data, records and work products. In the event of failure to make such delivery on demand, the person(s) withholding such data, records and work products shall be liable to the County for any damages that it may sustain by reason thereof. Upon delivery of all such data, records and work products, the voucher and itemized statement required under subparagraph (b) above, together with evidence of appointment or authority if payment is not to be made to Contractor, the County will pay the Contractor or its authorized representative or successor such part of the fee(s) provided in this Article II as fairly reflects, in the sole judgment of the Department, the proportion of work performed to the entire work.

End of Text for Article II

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**Exhibit 1
County Terms and Conditions**

1. Elements of Interpretation

As used throughout the Contract:

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

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

2. Meanings of Terms

As used in the Contract:

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

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

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

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

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

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

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

“**Event of Default**” means

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

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

c. the Contractor’s failure to maintain

insurance required by the Contract with an insurer that has designated the New York Superintendent of Insurance as its lawful agent for service of process; or

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

e. The Contractor’s bankruptcy or insolvency; or

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

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

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

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

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

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

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

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

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

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

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

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

3. Contractor Responsibilities

a. It shall be the duty of the Contractor to discharge, or cause to be discharged, all of its responsibilities, and to administer funds received in the interest of the County in accordance with the provisions of the Contract.

b. The Contractor shall promptly take all action as

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may be necessary to render the Services.

c. The Contractor shall not take any action that is inconsistent with the provisions of the Contract.

d. Services provided under this Contract shall be open to all residents of the County.

4. Qualifications, Licenses, and Professional Standards

a. The Contractor represents and warrants that it has, and shall continuously possess, during the Term, the required licensing, education, knowledge, experience, and character necessary to qualify it to render the Services.

b. The Contractor shall continuously have during the Term all required authorizations, certificates, certifications, registrations, licenses, permits, and other approvals required by Federal, State, County, or local authorities necessary to qualify it to render the Services.

5. Notifications

a. The Contractor shall immediately notify the County, in writing, of any disciplinary proceedings, commenced or pending, with any authority relating to a license held by any person necessary to qualify him or the Contractor to perform the Services.

b. In the event that a person is no longer licensed to perform the Services, the Contractor must immediately notify the County, but in no event shall such notification be later than five (5) days after a license holder has lost the license required to qualify the license holder or the Contractor to perform the Services.

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

6. Documentation of Professional Standards

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

7. Credentialing

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

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

8. Engineering Certificate

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

9. Termination

a. Thirty Days Termination

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

b. Event of Default; Termination on Notice

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

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

c. Termination Notice

Any notice providing for termination shall be delivered as provided for in paragraph 33 of this

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d. Duties upon Termination

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

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

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

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

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

10. Indemnification and Defense

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

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

c. The Contractor shall defend the County, its agents, servants, officials, and employees in any proceeding or action, including appeals, arising out of, or in connection with, the Contract, and any copyright infringement

proceeding or action. Alternatively, at the County's option, the County may defend any such proceeding or action and require the Contractor to pay reasonable attorneys' fees or salary costs of County employees of the Department of Law for the defense of any such suit.

11. Insurance

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

i.) **Commercial General Liability** insurance, including contractual liability coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and Two Million Dollars (\$2,000,000.00) per occurrence for property damage. The County shall be named an additional insured.

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

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

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

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

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

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

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

f. All evidence of insurance shall provide for the County to be notified in writing thirty (30) days prior to any cancellation, nonrenewal, or material change in the policy to which such evidence relates. It shall be the duty of the Contractor to notify the County immediately of any cancellation, nonrenewal, or material change in any insurance policy.

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

12. Independent Contractor

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

13. Severability

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

14. Merger; No Oral Changes

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

15. Set-Off Rights

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

16. Non-Discrimination in Services and Employment

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

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

ii.) provide the Services to an individual that is different, or provided in a different manner, from those provided to others pursuant to the Contract; or

iii.) subject an individual to segregation or separate treatment in any matter related to the individual's receipt of the Services provided pursuant to the Contract; or

iv.) restrict an individual in any way from any advantage or privilege enjoyed by others receiving the Services provided pursuant to the Contract; or

v.) treat an individual differently from others in determining whether or not the individual satisfies any eligibility or other requirements or conditions which individuals must meet in order to receive the Services provided pursuant to the Contract; or

vi.) discriminate against employees or applicants for employment.

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

i.) the Services to be provided, or

ii.) the class of individuals to whom, or the situations in which, the Services will be provided; or

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iii.) the class of individuals to be afforded an opportunity to receive the Services.

17. Nonsectarian Declaration

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

18. Governing Law

The Contract shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws. Venue shall be designated in the Supreme Court, Suffolk County, the United States District Court for the Eastern District of New York, or, if appropriate, a court of inferior jurisdiction in Suffolk County.

19. No Waiver

It shall not be construed that any failure or forbearance of the County to enforce any provision of the Contract in any particular instance or instances is a waiver of that provision. Such provision shall otherwise remain in full force and effect, notwithstanding any such failure or forbearance.

20. Conflicts of Interest

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

21. Cooperation on Claims

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

22. Confidentiality

Any document of the County, or any document created by

the Contractor and used in rendering the Services, shall remain the property of the County and shall be kept confidential in accordance with applicable laws, rules, and regulations.

23. Assignment and Subcontracting

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

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

24. Changes to Contractor

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

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

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

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

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

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

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

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

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

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

iv.) such information reasonably required by the County, which will enable the County to determine the financial responsibility, character, and reputation of the proposed transferee, nature of the proposed assignee/transferee's business and experience;

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

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

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

e. Notwithstanding the County's consent,

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

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

25. No Intended Third Party Beneficiaries

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

26. Certification as to Relationships

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

27. Publications

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

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

28. Copyrights and Patents

a. Copyrights

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

The County shall be deemed to be the author of all the Work Product. The Contractor acknowledges that all Work Product shall constitute "work made for hire" under the U.S. copyright laws. To the extent that any Work Product does not constitute a "work made for hire," the Contractor hereby assigns to the County all right, title and interest, including the right, title and interest to reproduce, edit, adapt, modify or otherwise use the Work Product, that the

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Contractor may have or may hereafter acquire in the Work Product, including all intellectual property rights therein, in any manner or medium throughout the world in perpetuity without compensation. This includes, but is not limited to, the right to reproduce and distribute the Work Product in electronic or optical media, or in CD-ROM, on-line or similar format.

b. Patents

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

29. Arrears to County

The Contractor warrants that, except as may otherwise be authorized by agreement, it is not in arrears to the County upon any debt, contract, or any other lawful obligation, and is not in default to the County as surety.

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

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

31. Record Retention

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

contract expenditures shall be kept for a period of ten (10) years because the statute of limitations for the New York False Claims Act (New York False Claims Act § 192) is ten (10) years.

32. Certification Regarding Lobbying

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

33. Notice

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

End of Text for Exhibit 1

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**Exhibit 2
Suffolk County Legislative Requirements**

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

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

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

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

Required Form:

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

2. Living Wage Law

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

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

Required Forms:

Suffolk County Living Wage Form DOL-LW-1/38 (Revised 8/2017) entitled "Suffolk County Department of Labor, LICENSING & CONSUMER AFFAIRS –Notice of

Application for County Compensation-LIVING WAGE CERTIFICATION/DECLARATION-SUBJECT TO AUDIT."

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

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

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

4. a. The Contractor shall not use County funds to assist, promote, or deter union organizing.

5. b. No County funds shall be used to reimburse the Contractor for any costs incurred to assist, promote, or deter union organizing.

6. c. No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote, or deter union organizing.

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

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

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

Required Form:

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

4. Lawful Hiring of Employees Law

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

This Contract is subject to the Lawful Hiring of Employees Law of the County of Suffolk. It provides that all covered employers, (as defined), and the owners thereof, as the case may be, that are recipients of compensation from the

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

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

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

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

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

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

law, shall be required to sign such sign-in sheets/register/log books to indicate their presence on the site during such working hours.

Required Forms:

“SUFFOLK COUNTY DEPARTMENT OF LABOR, LICENSING, & CONSUMER AFFAIRS – NOTICE OF APPLICATION TO CERTIFY COMPLIANCE WITH FEDERAL LAW (8 U.S.C. SECTION 1324A) WITH RESPECT TO LAWFUL HIRING OF EMPLOYEES, Suffolk County Code, Chapter 353 (2006)” DOL-LHE 1 / 2 (REVISED 8/2017).

5. Gratuities

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

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

6. Prohibition Against Contracting with Corporations that Reincorporate Overseas

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

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

7. Child Sexual Abuse Reporting Policy

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

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

8. Non Responsible Bidder

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

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

9. Use of Funds in Prosecution of Civil Actions Prohibited

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

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

10. Youth Sports

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

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

11. Work Experience Participation

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

12. Safeguarding Personal Information of Minors

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

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

13. Contract Agency Performance Measures and Reporting Requirements

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

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

14. Suffolk County Local Laws Website Address

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

15. Suffolk County Code of Ethics

As required by Suffolk County Standard Operating Procedure A-06, the following is a link to the Suffolk County Ethics Booklet, which contains the provisions of the Suffolk County Code of Ethics:

<http://www.suffolkcountyny.gov/Portals/0/Boardofethics/C ode%20of%20Ethics%20Booklet%20-%20New%20Revised%20May%202017.pdf>

End of Text for Exhibit 2

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