

**ATTACHMENT A-2  
PROGRAM SPECIFIC TERMS AND CONDITIONS**

**Standard Clauses for All New York State  
Department of Environmental Conservation Contracts**

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

**A) PROGRAM SPECIFIC TERMS AND CONDITIONS**

**I. Notices:**

The Department's authorized representative for the implementation of this Contract and for approval, direction and receipt of all Project reports called for in this Contract is listed below. Whenever it is provided in this Contract that notice must be given or other communications sent to the Department, the notices or communications must be in writing and delivered or sent to the Department's authorized representative at:

Address:

New York State Department of Environmental Conservation  
Office of Climate Change  
625 Broadway – 9th Floor  
Albany, New York, 12233-1030  
Tel. No.: (518) 402-8448

A copy of all legal notices shall be sent to:

General Counsel  
New York State Department of Environmental Conservation  
625 Broadway - 14<sup>th</sup> Floor  
Albany, New York 12233-1500

The Contractor's authorized representative for the implementation of this Contract is the person authorized in the Resolution of Support for the contract. Notices or communications regarding this Contract should be in writing and delivered or sent to the Contractor's authorized representative at the address identified on the Face Page, with copies sent to the Contractor's contract administrator as identified in the contract application.

Notices delivered or sent shall be deemed for all purposes as notice to all persons who are Parties to this Contract as Department or Contractor.

**II. Project Insurance Considerations**

The Contractor agrees to procure and maintain at its own expense and without expense to the Department until final acceptance by the Department of the services covered by this Contract, insurance of the kinds and amounts as determined by the Department and based upon the project work plan. The insurance policies should be provided by insurance companies licensed to do business in the State of New York. Any delay or time lost as a result of the Contractor not having insurance required by the Contract shall not give rise to a delay claim or any other claim against the Department.

Upon execution of this Contract, the Contractor shall furnish to the Department a certificate or certificates, satisfactory to the Department, showing that it has complied with this Article. The insurance documentation shall provide that:

- Liability and protective liability insurance policies shall provide primary and non-contributory coverage to the NYS Department of Environmental Conservation for any claims arising from the Contractor’s Work under this contract, or as a result of Contractor’s activities.
- The State of New York, NYS Department of Environmental Conservation, its officers, agents and employees, Division of Materials Management, shall be listed as Certificate Holder on all liability insurance certificate(s), as additional insureds on endorsements(s) and on additional supporting documentation.
- The policies shall include a waiver of subrogation endorsement in favor of the Department as an additional insured. The endorsement shall be on ISO Form Number CG 24 04 or a similar form with same modification to the policy.
- Policies shall not be changed or canceled until thirty (30) days prior written notice has been given to the Department; as evidenced by an endorsement or declarations page.
- Insurance documentation shall disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Contract.
- Endorsements in writing must be added to and made part of the insurance contract for the purpose of changing the original terms to reflect the revisions and additions as described. A copy of these endorsements must be provided to the Department within a reasonable amount of time.
- Applicable insurance policy number(s) reference on the ACORD form must be referenced in the supporting documentation requested by the Department and supplied by the insurance company (e.g. endorsement page, declarations page, etc.).
- This Contract shall be void and of no effect unless the Contractor procures the required insurance policies and maintains them until completion of the work or acceptance by the Department, whichever event is later.

The kinds and amounts of insurance required are as follows:

- Workers’ Compensation coverage must be provided for work to be performed in New York State. The Contractor shall provide and maintain full New York State coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Workers’ Compensation Law.

Evidence of Workers’ Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers’ Compensation Board:

<u>FORM #</u>	<u>FORM TITLE</u>
C-105.2	Certificate of Workers’ Compensation Insurance
U-26.3	State Insurance Fund Version of the C-105.2 form
SI-12/ GSI-105.2	Certificate of Workers’ Compensation Self-Insurance
CE-200	Certificate of Attestation of Exemption – (no employees)

- Disability Benefits coverage must be provided for work to be performed in New York State. The Contractor shall provide and maintain coverage during the life of the contract for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law. Any waiver of this requirement must be approved by the Department of Environmental Conservation and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the

Chairman of the New York State Workers' Compensation Board:

<b><u>FORM #</u></b>	<b><u>FORM TITLE</u></b>
DB-120.1	Certificate of Disability Benefit Insurance
DB-155	Certificate of Disability Benefit Self-Insurance
CE-200	Certificate of Attestation of Exemption – (no employees)

An ACORD form is **NOT** an acceptable proof of Workers' Compensation coverage. **ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME** The State of New York and The New York State Department of Environmental Conservation, Office of Climate Change, 625 Broadway, Albany, NY 12233-1030, as the Entity Requesting Proof of Coverage.

Additional information can be obtained at the Worker's Compensation website:  
<http://www.wcb.ny.gov/content/main/Employers/Employers.jsp>

Upon review of the scope of work outlined in the Grant Application by the Department, the following types of liability insurance may be required:

- c) Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence, and \$5,000,000 General aggregate. Such insurance shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability assumed in a contract (including tort liability of another assumed in a contract). Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.
- d) Business Automobile Liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any registered motor vehicle including owned, leased, hired and non-owned vehicles. If the Contractor does not own, rent or lease any registered vehicles and will not be using any vehicles on State Land proof of Business Automobile Liability Insurance shall not be required for this Contract. The Contractor shall assume full responsibility and liability that owners and operators of any registered vehicles entering State Land to conduct work under this contract carry the same Business Automobile Liability Insurance of the kinds and amounts listed above. NYS Department of Environmental Conservation reserves the right to request proof of the same.
- e) Environmental Liability with a limit of not less than \$1,000,000 providing primary coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the Department of Environmental Conservation arising from the Contractor's Work.
- f) Professional Liability Insurance includes coverage for its negligent act, error or omission in rendering or failing to render professional services required by this contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants. The Contractor, any subcontractor or supplier retained by the Contractor to work on the contract shall procure and maintain during and for a period of three (3) years after completion of this contract, Professional Liability Insurance in the amount of \$1,000,000. The professional liability insurance may be issued on a claims-made policy form, in which case the Contractor shall purchase at its sole expense, extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

- g) Marine Protection & Indemnity: Anytime the activity involves work on navigable water or the work is connected to water related activities, the Contractor shall procure Marine Protection & Indemnity and Hull and Machinery coverage, if available. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment. The Contractor shall obtain Protective and Indemnity Liability insurance for all marine operations under the contract, with a minimum \$2,000,000 limit.

Should the Contractor engage a subcontractor, the Contractor shall impose the insurance requirements of this document on the subcontractor. Contractor shall determine the required insurance types and limits, commensurate with the work of the Subcontractor. The Contractor will maintain the certificate or certificates and endorsements for all subcontractors hired as part of the Contractor's records.

- h) Local Share Requirements

For all Climate Smart Communities Projects, including adaptation and mitigation implementation projects and Climate Smart Communities certification projects, the Department share will not exceed the amount in the Contract Funding Amount identified on the Face Page, and the Contractor (grantee) must provide the balance of required eligible share with eligible costs not paid with state grant funds nor federal funds. This percentage will be specified in the Attachment B-1 (Expenditure Budget).

- i) Construction

The Contractor (grantee) agrees to proceed expeditiously with the Project and shall complete the Project in accordance with the performance measures set forth in Attachment C (Work Plan) or any amendments to such Work Plan which are approved by the Department in writing.

The Contractor (grantee) agrees that it shall notify the Department in writing thirty (30) calendar days prior to the start of construction or, if the start of construction began on or before the contract execution date, upon approval of the Contract the Contractor (grantee) shall notify the Department in writing within thirty (30) calendar days as to the status of any construction.

The Contractor (grantee) agrees that it shall notify the Department in writing thirty (30) days following initial start-up operation of the Project.

The Contractor (grantee) agrees that it shall cause the Project to be designed and constructed in accordance with the engineering report or facilities plan, and if applicable to the project, the plans and specifications for the Project shall be stamped with the seal of a licensed professional engineer and shall be signed with the personal signature of such engineer in compliance with Education Law §7209(1) and (2), and which have been delivered to and approved by the Department, as well as any amendments thereto.

The Contractor (grantee) agrees that it shall permit the Department to participate in all its meetings and conferences with respect to the Project. Upon request from the Department, the Contractor (grantee) must submit to the Department reports, documents, data, contractual documents, administrative records, and other information pertinent to the Project.

The Contractor (grantee) agrees to permit representatives of the Department to have unrestricted access to the Project at all reasonable times, and all sub-contracts of the Contractor (grantee) for construction or operation of all or a portion of the Project shall contain provisions that permit such access to the Project or work relating to the Project, wherever it is in preparation or progress, and that contractors or subcontractors shall provide proper facilities for such access and inspection and shall permit extracts and copies of Project records to be made by the representatives of the Department.

- j) Engineering Certification/As-built Plans

Within sixty (60) calendar days after the end of the Contract Term, or upon final completion of the Project, the Contractor (grantee) agrees that it will deliver the following to the Department:

- A certification stating that all portions of the Project funded by this award have been completed in

accordance with this Contract, and constructed per the approved plans and specifications, and any approved amendments thereto.

- The certified “as built” plans and specifications for the Project. Any work not in accordance with the approved plans and specifications shall be remedied, unless such non-compliance is agreed to be waived by the Department.

- The Contractor shall retain all as-built plans and specifications for the Project for the useful life of the Project.

k) Useful Life of Project

The Contractor (grantee) agrees that it is fully responsible for ensuring the proper and efficient monitoring, operation, and maintenance of the Project satisfactory to the Department, including, but not limited, to retaining a sufficient number of qualified staff and ensuring performance of required tests and requirements. Excluding real property acquired in perpetuity under 54-1523(1)(i), after completion of the Project the Contractor (grantee) shall, for a for a minimum period of ten (10) years (the useful life of the Project as provided in 6 NYCRR 492-3.3[e]) operate the Project or otherwise cause the Project to be operated properly in a sound and economical manner and shall maintain, preserve, and keep the Project, or cause the Project to be maintained, preserved and kept in good repair, working order, and condition and shall make, or cause to be made, all necessary and proper repairs, replacements, and renewals from time to time, so that at all times the Project may be operated properly in a manner consistent with the Project performance standards contained in the engineering report or facilities plan for the Project, with this Contract and with the requirements of any related permit or other governmental approval of the Project.

l) Eligible Costs

The contract start date for all contracts awarded through this request for application will be March 15, 2025. Only those eligible project related costs incurred between March 15, 2025, and March 14, 2030, will be eligible for reimbursement of grant funding. Payments will not be approved or processed by the Department until a MCG is fully approved by the Department and, as applicable, the Attorney General and the State Comptroller, and work has been completed under the State contract. Advance payments are not authorized as part of the Climate Smart Communities Program.

m) Climate Smart Communities Program Requirements

- i. The grant recipient shall provide estimates of the project’s GHG emissions reductions, risk reduction, or other appropriate metrics, as approved by the program manager, through the end of the contract term, in the quarterly report, and/or final project report as applicable.

- ii. For certification actions funded in the Climate Smart Communities Certification Project category, the grant recipient shall include in the work plan all deliverables required for each action as described in the Climate Smart Communities Certification Portal Actions Page at <https://www.ClimateSmart.ny.gov> under subheadings “E. How to Obtain Points for this Action” and “F. What to Submit” and provide these items as deliverables under the MCG. Work plans for certification actions funded in the Climate Smart Communities Certification Project category must include a submittal of documentation required for certification approval through the Climate Smart Communities Certification Portal at <https://www.ClimateSmart.ny.gov>.

- iii. If the grant recipient develops, improves, restores, or rehabilitates real property that is not owned by the municipality, the municipality must obtain, from the landowner of the real property, a climate change mitigation easement (CCME) or a DEC approved agreement from a government entity not legally authorized to enter into a CCME for infrastructure and improvements on real property not owned by the grantee. This requirement applies to any real property, including improvements and easements, not owned by the applicant municipality. Climate Change Mitigation Easements shall be enforced as conservation easements are enforced in ECL section 49-0305.

- iv. If the grant recipient acquires, develops, improves, restores, or rehabilitates real property with funding from the Climate Smart Communities Grant Program pursuant to ECL Section 54-1523(1)(i), the property shall not be sold or disposed of or used for other than climate change mitigation or adaptation purposes without the express authority of an act of the New York State Legislature, which shall provide for the substitution of other lands of equal environmental and fair market value, and reasonably equivalent GHG mitigation or climate adaptation benefits to the residents of New York, and be located within New York State, as closely as practicable to those to be discontinued, sold, or disposed of, and such other requirements as shall be approved by the commissioner. Land acquired under this program must have the “Notice of Grant” language required for fee simple acquisition recorded against the subject property and submit a certified copy provided to the DEC.
  - v. Real property (land) which has been acquired prior to this contract, of which value is acting partly or fully as local match must have the “Notice of Grant” language as match recorded against the subject property and submit a certified copy provided to the DEC.
  - vi. Construction projects require the installation of an Environmental Protection Fund funding acknowledgement sign. An approved sign design will be provided to the grantee upon full execution of the contract. The signage must remain in place for the expected useful life of the project.
  - vii. Per 6 NYCRR Part 492, Climate Smart Communities Projects, a retainage of 5% will be withheld from each reimbursement request. The retainage is held in case a project is not completed or all required match is not provided by the grantee. All accumulated retainages will be added to the final payment request upon project completion, match fulfillment, and submission of all deliverables.
  - viii. The following statement acknowledging DEC funding for the project must be included in any press releases or other public announcement, including newspaper articles and web posting, as well as all documents, brochures, reports, signage, maps, and exhibits: “This project has been funded in part by The Climate Smart Community Grant Program, Title 15 of the Environmental Protection Fund through the NYS Department of Environmental Conservation.” If a ribbon-cutting or other promotional event is planned for the project, the event must be coordinated with the DEC Press Office.
  - ix. For projects that involve more than one municipality or non-municipal partner, formal, finalized agreements, (such as memoranda of understanding [MOU]) executed by all parties substantiating the collaboration and detailing the responsibilities and role of each party to the agreement must be provided to the DEC and include the name, headquarters address, and contact information of all partners and lead municipality; and must be signed and dated by the CEO or duly authorized representative of each party to the agreement. Awards involving a partnership agreement will not be moved to contract execution until the formal agreement is officially executed and a copy received by the DEC.
- n) Ownership  
Pursuant to ECL 54-1515, all infrastructure funded through the CSC program must be owned by the grantee and cannot be transferred to another entity for the duration of the infrastructure’s useful life. Through a Climate Change Mitigation Easement, the infrastructure may be placed on property not owned by the municipality.
  - o) Job Creation  
Grantees will report on jobs created as a result of the funded project in the quarterly report.
  - p) Reclaim of Funds  
The Department reserves the right to reclaim funds paid to a grantee if false statements regarding eligibility

of the project or any if its components are discovered after award or payment has been made.

q) State Assistance Payments

After approval of the Climate Smart Community grant or rebate application, the commissioner may, in the name of the State, enter contracts with municipalities to provide state assistance payments toward the cost of Climate Smart Community Projects. Contracts shall include the following provisions:

- An estimate of the costs of the project, as determined by the commissioner.
- An agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality during the progress of project development or following completion of the project as may be agreed upon by the parties, in an amount not to exceed the amounts established elsewhere in this title.
  - An agreement by the municipality
    - to proceed expeditiously with and complete the project as approved by the commissioner;
    - to undertake and maintain the climate smart community project in accordance with applicable law and rules and regulations;
    - to provide for the payment of the municipality's share of the cost of the project;
    - to assume the full cost of any additional elements or continued operation of the project;
    - to repay within one year of notification by the commissioner, any state assistance payments made toward the cost of the project or an equitable portion of such monies declared appropriate by the commissioner, if the municipality fails to complete the project as approved. (No repayment, however, shall be required where the commissioner determines that such failure, disposition, or change of use was immediately necessary to protect public health and safety.); and
    - to apply for and make reasonable efforts to secure federal assistance for the project.

In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state, if any, received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for recalculation of the state payment as required herein.

The commissioner shall impose such contractual requirements and conditions upon any municipality that receives state assistance payments pursuant to this program as may be necessary and appropriate to ensure that a public benefit shall accrue from the use of public funds by such municipality. Such conditions shall include limitations on the right of the municipality to demolish or convey such property; provisions for public access or use where appropriate; a requirement that all plans for restoration, rehabilitation, improvement, demolition or other physical change must be subject to the commissioner's approval; and such other conditions that shall assure the preservation and protection of the project.