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*Agenda*  
**ORGANIZATIONAL MEETING**  
**January 17, 2024 at 8:00 a.m.**  
**Watershed Education Center (Vitale Park)**  
**Lakeville, NY 14480**  
All attachments and reports may be found at  
[www.lcwsa.us](http://www.lcwsa.us)

**1. Call to Order**

**2. Approval of Agenda**

**3. Organizational Item**

- a. Appointment of Temporary Chair
- b. Appointment of Officers
  - o Chairman
  - o Vice Chairman
  - o Treasurer
  - o Secretary

**4. New Business**

Resolution No.: 2024-01

RESOLUTION REVIEWING AND ADOPTING VARIOUS LIVINGSTON  
COUNTY WATER AND SEWER AUTHORITY POLICIES

**5. Committee Assignment**

- a. Governance Committee
- b. Audit & Finance Committee

**6. Adjournment**

## PURPOSE

These policies are based on the requirements of New York State Public Officers Law Section 74 and shall serve as a guide for official conduct and are intended to enhance the ethical and professional performance of the Authority's directors and employees and to preserve public confidence in the Authority's mission.

## SCOPE

This Code of Ethics shall apply to all directors, officers and employees of the Livingston County Water and Sewer Authority ("Authority").

## POLICY

### I. Responsibility of Directors and Employees

1. Directors and employees shall perform their duties with transparency, without favor and refrain from engaging in outside matters of financial or personal interest, including other employment, that could impair independence of judgment, or prevent the proper exercise of one's official duties.
2. Directors and employees shall not accept employment or engage in any business or professional activity which will require him or her to disclose confidential information which he or she has gained by reason of his or her official position with the Authority.
3. Directors and employees shall not directly or indirectly, make, advise, or assist any person to make any financial investment based upon information available through the director's or employee's official position that could create any conflict between their public duties and interests and their private interests.
4. Directors and employees shall not make personnel investments in enterprises which he or she has reason to believe may be directly involved in decisions to be made by him or her with regard to the Authority or which will otherwise create substantial conflict between his or her duty in the public interest and his or her private interest.
5. Directors and employees shall not accept or receive any gift or gratuities where the circumstances would permit the inference that: (a) the gift is intended to influence the individual in the performance of official business or (b) the gift constitutes a tip, reward, or sign of appreciation for any official act by the individual. This prohibition extends to any form of financial payments, services, loans, travel reimbursement, entertainment, hospitality, thing or promise from any entity doing business with or before the Authority.
6. Directors and employees shall not use or attempt to use their official position with the Authority to secure unwarranted privileges for themselves, members of their family or others, including employment with the Authority or contracts for materials or services with the Authority.
7. Directors and employees shall not disclose confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests.
8. Directors and employees must conduct themselves at all times in a manner that avoids any appearance that they can be improperly or unduly influenced, or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person, or that they are acting in violation of their public trust.
9. Directors and employees shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.

10. Directors and employees may not engage in any official transaction with an outside entity in which they have a direct or indirect interest, financial or otherwise, that may substantially conflict with the proper discharge of their official duties.
11. Directors and employees shall manage all matters within the scope of the Authority's mission independent of any other affiliations or employment. Directors, including ex-officio board members, and employees employed by more than one government shall strive to fulfill their professional responsibility to the Authority without bias and shall support the Authority's mission to the fullest.
12. Directors and employees shall not use Authority property, including equipment, telephones, vehicles, computers, or other resources, or disclose information acquired in the course of their official duties in a manner inconsistent with State or local law or policy and the Authority's mission and goals.

## II. Implementation of Code of Ethics

This Code of Ethics shall be provided to all directors and employees upon commencement of employment or appointment and shall be reviewed annually by the Authority Board. The Board may designate an Ethics Officer, or the Authority Attorney shall act as the Ethics Officer until one may be designated by the Board, who shall report to the Board and shall have the following duties:

- Counsel in confidence Authority directors and employees who seek advice about ethical behavior.
- Receive and investigate complaints about possible ethics violations.
- Dismiss complaints found to be without substance.
- Prepare an investigative report of their findings for action by the Executive Director or the board.
- Record the receipt of gifts or gratuities of any kind received by a director or employee, who shall notify the Ethics Officer within 48 hours of receipt of such gifts and gratuities.

## III. Violations and Penalties

In addition to any penalty contained in any other provision of law, an Authority director or employee who knowingly and intentionally violates any of the provisions of this code may be fined, suspended or removed in the manner provided for in law, rules or regulations.

## IV. Reporting Unethical Behavior

Employees and directors are required to report possible unethical behavior by a director or employee of the Authority to the Ethics Officer. Employees and directors may file ethics complaints anonymously and are protected from retaliation by the policies adopted by the Authority.

## PURPOSE

The primary objectives of the local government's investment activities are, *in* priority order, to conform with all applicable federal, state and other legal requirements (legal); to adequately safeguard principal (safety); to provide sufficient liquidity to meet all operating requirements (liquidity); and to obtain a reasonable rate of return (yield).

## SCOPE

This investment policy applies to all monies and other financial resources available for investment on its own behalf or on behalf of any other entity or individual.

## POLICY

### I. Delegation of Authority

The governing board's responsibility for administration of the investment program is delegated to the Treasurer who shall establish written procedures for the operation of the investment program consistent with these investment guidelines. Such procedures shall include an adequate internal control structure to provide a satisfactory level of accountability based on a data base or records incorporating description and amounts of investments, transaction dates, and other relevant information and regulate the activities of subordinate employees.

### II. Prudence

All participants in the investment process shall seek to act responsibly as custodians of the public trust and shall avoid any transaction that might impair public confidence in the Livingston County Water and Sewer Authority to govern effectively.

Investments shall be made with judgment and care, under circumstances then prevailing~ which persons of prudence discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of the principal as well as the probable income to be derived.

All participants involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions.

### III. Diversification

It is the policy of the Livingston County Water and Sewer Authority to diversify its deposits and investments by financial institution, by investment instrument, and by security scheduling.

### IV. Internal Controls

The Treasurer is responsible for establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that deposits and investments are safeguarded against loss from unauthorized use or disposition, that transactions are executed in accordance with management's authorization and recorded properly and are managed in compliance with applicable laws and regulations.

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## V. Designation of Depositaries

The banks and trust companies authorized for the deposit of monies to the maximum amounts are selected annually at the annual meeting of the Livingston County Water & Sewer Authority.

## VI. Collateralizing of Deposits

In accordance with the provisions of General Municipal Law #10, all deposits of the Livingston County Water and Sewer Authority, including certificates of deposit and special time deposits, in excess of the amount insured under the provisions of the Federal Deposit Insurance Act shall be secured:

- By a pledge of “eligible securities” with an aggregate “market value” as provided by GMI #10, equal to the aggregate amount of deposits from the categories designated in Appendix A to the policy.
- By an eligible “irrevocable letter of credit” issued by a qualified bank other than the bank with the deposits in favor of the government for a term not to exceed 90 days with an aggregate value equal to 140% of the aggregate amount of deposits and the agreed upon interest, if any. A qualified bank is one whose commercial paper and other unsecured short-term debt obligations are rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization or by a bank that is in compliance with applicable federal minimum risk-based capital requirements.
- By an eligible surety bond payable to the government for an amount at least equal to 100% of the aggregate amount of deposits and the agreed upon interest, if any, executed by an insurance company authorized to do business in New York State, whose claims paying ability is rated in the highest rating category by at least *two* nationally recognized statistical rating organizations.

## VII. Safekeeping and Collateralization

Eligible securities used for collateralizing deposits shall be held by the bank or trust company subject to security and custodial agreements.

The security agreement shall provide that eligible securities are being pledged to secure local government deposits together with agreed upon interest, if any, and any costs or expenses arising out of the collection of such deposits upon default. It shall also provide the conditions under which the securities may be sold, presented for payment, substituted or released and the events which will enable the local government to exercise its rights in the name of the local government, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the Treasurer or its custodial bank.

The custodial agreement shall provide that securities held by the bank or trust company, or agent of the custodian for, the local government, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be comingled with or become part of the backing for any other deposit or other liabilities. The agreement should also describe that the custodian shall confirm the receipt, substitution or release of the securities. The agreement shall provide for the frequency of revaluation of eligible securities and for the substitution of securities when a change in the rating of a security may cause ineligibility. Such agreement shall include all provisions necessary to provide the local government a perfected interest in the securities.

## VIII. Permitted Investments

As authorized by General Municipal Law #11, the Livingston County Water and Sewer Authority authorizes the Treasurer to invest moneys not required for immediate expenditure for terms not to exceed its projected cash flow needs in the following types of investments:

- Special time deposit accounts
- Certificates of deposit;
- Obligations of the United States of America (includes Treasury Bills);
- Obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America;
- Obligations of the State of New York;
- Obligations issued pursuant to LFL #24.00 or 25.00 (with approval of the State Comptroller) by any municipality, school district or district corporation other than the Livingston County Water and Sewer Authority;
- Obligations of public authorities, public housing authorities, urban renewal agencies and industrial development agencies where the general State statutes governing such entities or whose specific enabling legislation authorizes such investments.

All investment obligations shall be payable or redeemable at the option of the Livingston County Water and Authority within such times as the proceeds will be needed to meet expenditures for purpose for which the moneys were provided.

## IX. Authorized Financial Institutions and Dealers

The Livingston County Water & Sewer Authority shall maintain a list of financial institutions and dealers approved for investment purposes. The Treasurer is responsible for evaluating the financial position and maintaining a listing of proposed depositories, trading partners and custodians.

## X. Purchase of Investments

The Treasurer is authorized to contract for the purchase of investments:

- Directly, including through a repurchase agreement, from an authorized trading partner.
- By participation in a cooperative investment program with another authorized governmental entity pursuant to Article 5G of the General Municipal Law where such program meets all requirements set forth in the Office of the State Comptroller Opinion No. 8 8-46, and the specific program has been authorized by the governing board.
- By utilizing an ongoing investment program with an authorized trading partner pursuant to a contract authorized by the governing board.

All purchased obligations, unless registered or inscribed in the name of the local government, shall be purchased through, delivered to and held in the custody of a bank or trust company. Such obligations shall be purchased, sold or presented for redemption or payment by such bank or trust company only in accordance with prior written authorization from the officer authorized to make the investment. All such transactions shall be confirmed in writing to the Treasurer by the bank or trust company. Any obligation held in the custody of a bank or trust company shall be held pursuant to a written custodial agreement as described in General Municipal Law. #10. The custodial agreement shall provide that securities held by the bank or trust company, as agent of and custodian for, the local government, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be comingled with or become part of the backing for any other deposit or other liabilities. The agreement shall describe how the custodian shall confirm the receipt and release of the securities. Such agreement shall include all provisions necessary to provide the local government a perfected interest in the securities.

## **XI. Operating Procedures**

The Treasurer is responsible for the investment of Livingston County Water and Sewer Authority funds. In the absence of the Treasurer, the Chairman or Vice Chairman is authorized to invest the funds. Investments will be based upon projections of the Livingston County Water and Sewer Authority's cash flow needs, so that investments shall mature at such time when funds are estimated to be needed for the orderly payment of Livingston County Water and Sewer Authority obligations.

Investments will generally be made based upon competitive bids solicited by telephone by the Treasurer and shall be awarded to the highest bidder who has and is willing and able to pledge sufficient and acceptable collateral.

Funds will only be transferred between institutions in the name of the Livingston County Water and Sewer Authority by using the Federal Reserve Wire Transfer (FedWire) system, or by Treasurer designee. Funds may be transferred within the same institution only between Livingston County Water and Sewer Authority accounts and by authorized staff.

The Treasurer will maintain an investment log detailing the specific information relative to each investment. All investment transactions will be promptly entered into the Livingston County Water and Sewer Authority accounting system. Comparisons of the existing investments to those recorded in the accounting system will be performed routinely.

## **XII. Internal Controls**

Independent Certified Public Accountants shall, in conjunction with the annual audit, at least annually review the Investment Policies and Procedures of the Livingston County Water and Sewer Authority to be certain they are in conformance with all applicable laws, and regulations.

## **XIII. Repurchase Agreements – Underlying Security**

Securities purchased under Repurchase Agreements (Repos) shall be limited to obligations of the United States of America, or obligations whose principal and interest are guaranteed, or insured by the United States of America. The term of Repos shall generally not exceed 180 days. Each Repo shall be specifically identified, segregated from the assets of the seller and delivered for safekeeping into an account designated and controlled by the Livingston County Water and Sewer Authority. Each seller shall enter into a master repurchase agreement with the Livingston County Water and Sewer Authority which shall specify the rights and obligations of the Livingston County Water and Sewer Authority and the seller in all Repo transactions.

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#### XIV. Repurchase Agreements

Repurchase agreements are authorized subject to the following restrictions:

- All repurchase agreements must be entered into subject to a Master Repurchase Agreement.
- Trading partners are limited to banks or trust companies authorized to do business in New York State and primary reporting dealers.
- Obligations shall be limited to obligations of the United States of America and obligations guaranteed by agencies of the United States of America
- No substitution of securities will be allowed.
- The custodian shall be a party other than the trading partner.





## Purchasing, Disposition Policy, and Capital Projects

*F20-000*

Review	Additions	Deletions	Amended
4/27/2011	None	None	None
5/23/2012	None	None	None
8/28/2013	None	None	None
4/23/2014	Section 6 Credit Card Use Exhibits G, H, I	Section 16 Vendor Protests Section 18 Petty Cash	Section 19 Internet Purchasing
10/28/2015			Section 4 Policy Limits Section 6 Credit card use Section 7 Purchase Requisition Section 12 Exceptions to using a purchase requisition Section 13 Conflict of Interest Section 16 Article 15-A Section 20 Sole Source Section 21 Standardization
6/28/2017	Section 6 "Piggybacking" Sections 7 Best Value		
12/21/2018	None	None	None

**LIVINGSTON COUNTY WATER & SEWER AUTHORITY  
PURCHASING, DISPOSITION POLICY, AND CAPITAL PROJECTS**

- Section 1: Construction and purchase contracts
- Section 2: Ethics of Purchasing
- Section 3: Definitions
- Section 4: Purchasing Policy Limits and Guidelines
- Section 5: Purchasing Policy and Control
- Section 6: “Piggybacking” Exception to Competitive Bidding
- Section 7: Award on the Basis of Best Value
- Section 8: Credit Card Use
- Section 9: Purchase Requisition
- Section 10: Receipt of Goods
- Section 11: Payment of Invoices
- Section 12: Professional Services
- Section 13: Insurance
- Section 14: Exceptions to Purchasing Policy
- Section 15: Conflict of Interest
- Section 16: Competitive Bidding
- Section 17: Request for Proposal and Request for Quotes
- Section 18: Participation by Minority group members and women with respect to Contracts
- Section 19: Compliance with NYS Finance Law – Section 139-j and 139-k
- Section 20: Internet Purchasing
- Section 21: Sole Source
- Section 22: Standardization
- Section 23: Second Hand Equipment
- Section 24: Disposition of Surplus Items
- Section 25: Disposal of Property of Authority
- Section 26: Use of Authority Employees and/or Equipment for a Capital Project
- Section 27: Capital Improvement/Repair Allowance
- Section 28: Unexpended Balances of Capital Projects
- Section 29: Sale of Scrap
  
- Exhibit A: Standard Contract Appendixes
- Exhibit B: Forms for compliance with 139-j and 139-k
- Exhibit C: Workplace Violence Statement
- Exhibit D: M/WBE Standard Contract Language
- Exhibit E: RFQ Standard Agreement
- Exhibit F: RFQ Form Letters
- Exhibit G: Purchasing Card Request
- Exhibit H: LCWSA Purchasing Card – Acknowledgement of Card Receipt/Cardholder Agreement
- Exhibit I: Lost/Stolen Credit Card Notification Form

## **Section 1: Construction and purchase contracts**

The Authority shall let contracts for construction or purchase of supplies, materials, or equipment pursuant to section one hundred one and one hundred three of the general municipal law and shall be let in accordance with the provisions of state law pertaining to prevailing wages, labor standards, and working hours. Nothing in this section shall be construed to limit the power of the Authority to do any construction directly by the officers, agents and employees of the Authority.

## **Section 2: Ethics of Purchasing**

In order to eliminate any suspicion of wrong doing, unfairness or conflicts of interest prior to any purchase of materials, goods, or supplies, the Authorized Representative shall:

- A) Consider the interest of the Authority in the betterment of its government;
- B) Endeavor to obtain the greatest value for every dollar expended;
- C) Be receptive to advice and suggestions from department heads, insofar as such advice and suggestions are not in conflict with legal or moral restrictions in purchasing procedures;
- D) Strive for knowledge of municipal equipment and supplies in order to recommend items that may either reduce cost or increase efficiency;
- E) Insist on and expect honesty in sales representation whether offered verbally or in writing, through advertising or by providing samples of a product;
- F) Give all responsible bidders equal considerations and the assurance of unbiased judgment in determining whether their product meets specifications;
- G) Discourage the offer of, and decline, any and all gifts which in any way might influence the purchase of equipment and supplies;
- H) Accord a prompt and courteous reception, insofar as conditions permit, to all who call on legitimate business missions, and cooperate with government and trade associations in the promotion and development of sound business methods in purchasing equipment and supplies.

## **Section 3: Definitions.**

- A) "Authority" shall mean Livingston County Water & Sewer Authority
- B) "Authorized Representative" shall mean the Chairman of the Board, Director of Operations, Principal Account Clerk, or Executive Director or individual given responsibility established in this policy.
- C) Emergency Purchase – General Municipal Law Section 103 (4) clearly states, "in case of a public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety or property of the inhabitants require immediate action which can not await competitive bidding, contracts for public work or the purchase of supplies may be let by the appropriate officer, board or agency."
- D) "Board" shall mean the governing body of the Authority.
- E) "Invoice" shall mean a formal billing submitted by a vendor showing the amount due and terms of payment for supplies delivered or services rendered.
- F) "County" shall mean the County of Livingston.
- G) "Professional and Personal Services" shall mean those services which are provided to the Authority which shall be exempt from the competitive bidding procedures as outlined in this policy.

- H) "Public Emergency" shall mean for the procurement of goods or services arising out of an accident or other unforeseen occurrence or condition, whereby circumstances affecting public buildings, public property, or the life, health, safety or property of the inhabitants of the County are involved.
- I) "Purchasing" shall mean the act of obtaining supplies, equipment, or services necessary to carry out a particular function of the Authority.
- J) "Quotation" shall mean an informal notice "usually written" by a vendor setting forth the terms that he/she will furnish supplies and/or service to the Authority.
- K) "Requisition" shall be a written request to the Authorized Representative for one or more items or services necessary.
- L) "Requisitioner" shall mean the person initiating a request for goods or service.
- M) "Specification" shall mean a written description of needed supplies, equipment or services setting forth in a clear concise manner the characteristics of the items and/or services to be purchased, and the circumstances under which the purchase shall be made.
- N) "Vendor" shall mean a supplier of goods or services to the Authority

**Section 4: Purchasing Policy Limits and Guidelines.**

The following guidelines are established for all purchase contracts.

PURCHASE AMOUNT	REQUISITION/PURCHASE ORDER REQUIRED	3 QUOTES NEEDED	TYPE OF QUOTES
\$0.00 - \$100	No	No	N/A
\$101 - 499.99	No	No	N/A
\$500 - \$1500	Yes	Yes – 2 only	Verbal/Written
\$1500 - \$20,000	Yes	Yes - 3	Written
\$20,000 and over	Contract or Purchase Order	No	Sealed bids

In all instances, purchase orders are required to be completed for all purchases in excess of \$500 with the sole exceptions being emergency purchases.

**ALL PUBLIC WORKS**

(Public Works applies to those items or projects involving labor or both materials and labor)

PURCHASE AMOUNT	QUOTES
up to \$5,000	One written quote to be obtained
Over \$5,000 up to \$34,999.99	Three (3) written quotes
\$35,000 and over	Sealed BID

**Professional Services**

0 – 25,000.00	1 written proposals
25,000 and over	RFP

All awards shall be made to the lowest responsible bidder if possible. Circumstances, which will be documented, may dictate purchase from other than low bidder (i.e., delivery requirement, quantity requirement if a pick-up, location of vendor, known past experience of vendor, etc.).

## **Section 5: Purchasing Policy and Control.**

The Authorized Representative shall be responsible for developing and administering the Purchasing program.

- A) The purchasing procedures employed shall comply with all applicable laws and LCWSA regulations, and of the State and County.
- B) Purchasing contracts for materials, equipment and supplies involving an estimated annual expenditure of over \$20,000 and public works contracts involving over \$35,000 shall be awarded only after public advertising soliciting formal bids (Section 103 of the General Municipal Law).
- C) Opportunity shall be provided to all responsible suppliers to do business with the Authority. To this end, the Authorized Representative shall develop and maintain lists of potential bidders for the various types of materials, equipment and supplies. Such lists should be used in the development of a mailing list for distribution of specifications and invitations to bid. Any supplier may be included in the list upon request.
- D) All contracts that require public advertising and competitive bidding shall be awarded as provided by law and rules and regulations of the Board.
- E) Purchase should be made through available State Contracts of the Office of General Services, Division of Purchasing, from a preferred source pursuant to Sections 175(a) and 175(b) of the New York State Finance law or under County contracts pursuant to Section 408-a of the County Law, whenever such purchases are in the best interest of the Authority.
- F) No official or employee shall be interested financially in any contract entered into by the local government as defined in Article 18 of the General Municipal Law. This also precludes acceptance of gratuities, financial or otherwise, by the above persons, from any supplier or materials or services to the Authority.
- G) The Authority will not be deemed responsible for commitments made circumventing these procedures.
- H) The Authority is also authorized to purchase goods under GML §104b, not covered by GML§103 from any source duly quoted/bid by any local/state, county or federal governmental agency where the vendor is willing to supply said goods and/or services to Livingston County Water & Sewer Authority at the exact price quoted and meeting the exact specifications offered in the original solicitation.
- I) Responsibility: The Authorized Representative WILL NOT approve an emergency purchase when the purchase is not justified, where the purchase is being made to circumvent established procedures, or where there is lack of proper planning.

## **Section 6: “Piggybacking” Exception to Competitive Bidding**

Pursuant to GML § 103(16), in lieu of complying with competitive bidding requirements, the Authority may purchase apparatus, materials, equipment or supplies, or contract for services related to the installation, maintenance or repair of apparatus, materials, equipment and supplies through the use of a contract let by the United States of America or an agency thereof, any state, or any other county or political subdivision or district therein (i.e., the Authority may “piggyback” onto a contract let by another governmental entity)<sup>1</sup>.

In order to take advantage of the Piggybacking Exception, the general requirements<sup>2</sup> set forth below must be met:

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<sup>1</sup> This exception is effective until August 1, 2017, unless extended by the state legislature.

<sup>2</sup> See NY State Office of the Comptroller Memorandum “New ‘Piggybacking’ Law – Exception to Competitive Bidding,” November 2012.

- A) The contract must have been made available for use by other governmental entities (typically by inclusion in the contract of a clause extending the terms and conditions of the contract to other governmental entities); and
- B) The contract must have been let in a manner that constitutes competitive bidding consistent with New York law<sup>3</sup>;
- C) The terms of the contract should be carefully reviewed for consistency with New York law and regulations (which may for example prohibit advance payment for goods and services);
- D) The payment to the contract vendor must be subject to standard procedures for claims processing;
- E) A cost-benefit analysis should be used to confirm that “piggybacking” is cost justified in light of all pertinent cost factors including any potential savings on administrative expense;
- F) The Authority must maintain appropriate documentation (including copies of the contract, an analysis showing compliance with the criteria set forth in this Article 13 and a cost saving analysis) to allow a thorough review of any decision to use “piggybacking” by Authority officials, external auditors and regulators; and

## **Section 7. Award On The Basis Of Best Value**

Pursuant to GML §103, purchase contracts may be awarded by the Authority to a responsive and responsible offerer on the basis of “best value” (i.e. a “competitive offering”), instead of to the lowest responsible bidder. This includes contracts for service work, but excludes contracts necessary for the completion of a public works contract covered by the prevailing wage provisions of article 8 of the Labor Law, such as for building construction.

“Best value” is defined for this purpose as a basis for awarding contracts “to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers.” In assessing best value, non-price factors can be considered by the Authority when awarding the purchase contract. Non-price factors can include, but are not limited to, reliability of a product, efficiency of operation, difficulty/ease of maintenance, useful lifespan, ability to meet needs regarding timeliness of performance, and experience of a service provider with similar contracts. The basis for a best value award by the Authority, however, shall reflect, whenever possible, objective and quantifiable analysis. For purposes of best value, a responsive offeror is an offeror meeting the minimum specifications. In assessing whether an offeror is responsible, the Authority should consider an offeror’s capacity and financial ability to complete the contract, accountability, past performance, reliability and integrity.

In order to make an award on the basis of “best value,” the Authority must be prepared to show that: (1) the offeror is responsive and responsible; and (2) the Authority applied objective and quantifiable standards, whenever possible, to determine that the offer optimizes quality, cost and efficiency. The Authority shall have a written justification if it bases a best value award on criteria that are not objective and quantifiable. The best value specification shall describe the general manner in which the evaluation and award of offers will be conducted by the Authority and, as appropriate, identify the relative importance or weighting of price and non-price factors. In evaluating and determining to accept a higher priced offer, the Authority shall use a

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<sup>3</sup> Note, that the NY Comptroller has opined that this requirement does not mean that the contract be let precisely according to NY GML§ 103, rather, the contract must be let in “harmony or general agreement with” competitive bidding principles. NY State Office of the Comptroller Memorandum “New ‘Piggybacking’ Law – Exception to Competitive Bidding,” November 2012.

cost-benefit analysis to show quantifiable value or savings from non-price factors that offset the price differential of the lower price offers, and maintain documentation of this analysis as part of the Procurement Record.

## **Section 8. Credit Card Use**

LCWSA Credit Card (the Card) use is a simplified and cost-effective method of purchasing and remitting payment for approved expenditures and replaces all other charge cards. The Card is **NOT** intended to avoid or bypass appropriate purchasing procedures, but is to be used in accordance with all the Purchasing Policy guidelines.

The Executive Director shall be the credit card program manager.

### **Providing an LCWSA Credit Card to employees**

\* The Director issues an LCWSA Credit Card to each employee dependent upon each employee's job requirements. Individual authorizations for dollar limits and types of transactions will vary and are also determined by the Director. Card usage will be audited and restricted and/or rescinded at any time.

\* In order to obtain a Card, the Director must request the Card on behalf of the employee. The request must be in writing using the "Purchasing Card Request" (Exhibit G) form (located in the forms file) and **must be signed by the Employee and the Director**. Upon receipt: a JP Morgan Chase LCWSA Credit Card application will be completed on-line by the Director along with the prospective cardholder. When the Director receives the employee's card, the employee will be scheduled to receive Credit Card Use Policy training.

\* The Executive Director will provide the training required prior to card issuance to an employee, culminating in the employee's signature of the **LCWSA Purchasing Card-Acknowledgement of Card Receipt And Cardholder Agreement** form (Exhibit H). After training, and immediately upon receipt of the card, the cardholder is required to activate and sign the card.

Each employee is the only person authorized to use their card and is responsible to use the card **ONLY** for **authorized** LCWSA purchases.

### **Cardholder Responsibilities**

The LCWSA Credit Card is intended for purchases such as services, supplies, material, and lodging and conference registration. It will be used in conformity with current purchasing guidelines.

**Failure to use the credit card in accordance with LCWSA policies may result in revocation of the credit card and may involve appropriate disciplinary action up to and including termination and prosecution.**

\* The cardholder is responsible for the card's safekeeping. The card may not be transferred to, assigned to, or used by anyone other than the designated cardholder.

\* **ONLY AUTHORIZED PURCHASES FOR LCWSA ARE ALLOWABLE. Use of the Card for personal purchases is not permitted at any time.**

\* Misuse of the Card will result in revocation of the Card and disciplinary action, if necessary. Violations

include:

- Purchasing items for personal use.
  - Allowing someone else to use your card.
  - Failure to submit related receipts for submission to cardholder's supervisor for approval as scheduled.
  - Failure to report a lost or stolen credit card to the appropriate person immediately upon discovery & completing the "Lost/Stolen Card Notification Form"(Exhibit I).
  - Failure to return the destroyed (cut-up) credit card when terminated, or upon request.
- \* The Card may be used in person, via telephone, mail, Internet or fax.
- \* Cardholders are responsible for informing vendors that LCWSA is exempt from sales tax. The word's "tax-exempt" are printed on each employee's card. If a vendor will not process a transaction as tax exempt, the transaction will not be completed. This includes on-line transactions.
- \* Refunds and exchanges must be credited directly back to the Card account. **Under no circumstances shall cash be received for refunds/exchanges.** Documentation for refunds & exchanges are required to be included in the scheduled Credit Card Transaction Report.
- \* If the purchase is for a service, the necessary insurance information must be on file with the office before the transaction can be processed. Purchases of products only do not require insurance.
- \* If the purchase is software or computer related, approval must first be obtained from the Information Technology Services Department.
- \* Cardholders are responsible to provide receipts for purchase to Principal Account Clerk **Cardholders are responsible for the monetary value of any missing receipts.** However, if cardholder provides documentation giving reason for a missing receipt, then signs & dates it, it may be considered sufficient. The Director will discern sufficiency of this documentation.
- \* A **Monthly Statement** providing a transaction report is provided on-line for each account. Office staff will reconcile receipts to the transaction reports and pay the Card account , prior to the due date with management oversight.
- \* When the current card has expired or when a new card is issued to the cardholder, it is the cardholder's responsibility to destroy the card (cut it in pieces) and discard.
- \* Chase or LCWSA may, at any time, suspend or cancel the cardholder's privileges for any reason and the cardholder will surrender the destroyed (cut-up) card to the his/her supervisor or the Principal Account Clerk upon request. Failure to surrender the card upon request, or use of the card after its cancellation may be considered fraudulent and further action by LCWSA may take place against the cardholder.
- \* The Card will be treated with the same level of security as cardholders treat their own personal credit cards. Lost or stolen cards must be immediately reported to JP Morgan Chase Bank at **1-800-270-7760** and your supervisor. Also, a "Lost/Stolen Card Notification Form" (Exhibit I) must be completed and given to the Director. The Director must authorize replacement of the Card.
- \* The destroyed (cut-up) Card shall be returned to the Executive Director when employment is terminated for cancellation & destruction.



## **Purchasing Card Controls**

Each Card issued will have certain controls/restrictions placed on them. The types of controls consist of:

### **Card Limits**

\* Each card will have a maximum amount that can be spent per transaction. The Executive Director will set the maximum dollar limit per transaction and it will be determined on a card-by-card basis. The limit will vary depending upon department needs.

### **Section 9: Purchase Requisition.**

- A) Purpose: provides a means of initiating the ordering process for goods and services. Provides a formal record, within the Authority, that such goods and/or services have been requisitioned. Provides the proper authority to procure the item requested.
- B) The item or service may be purchased, upon approval of requisition by the Authorized Representative, and if it is within the budget, without authorization of the Board. If the item exceeds budget restrictions, the Board must approve the purchase.
- C) Use of Blanket Purchase Orders – will be determined for specific purposes by Authorized Representative.

### **Section 10: Receipt of Goods. -Package Delivery Process (also found in procedures file)**

#### **Count**

Compare the packing slip with the items delivered by counting the items and making sure the count is the same for each item as listed on the packing slip. Clearly note any discrepancies stating what the discrepancy is.

#### **Compare**

Compare the packing slip to PO and note if complete or not.

#### **Hazardous Chemicals**

Notify Administrative staff of the product name and MSD Sheet. If a MSD Sheet accompanies the delivery provide this information to staff for inclusion into the MSDS book and update of List for the Hazardous Communication program. If no MSD Sheet accompanies the chemical, contact vendor to either get the sheet off of the Internet or mail one to us.

#### **Date and Sign**

Once you are satisfied that the order has been checked, whether there are discrepancies or not, date and sign and print name on the packing slip in any clear area on the form. Put the dated and signed packing slip in Principal Account Clerk's box with the PO if it is complete. If the PO is not complete, note on the PO what came in and leave until that PO is complete.

#### **Put Item away**

If there aren't any discrepancies, put item away where it belongs. Do NOT make up a spot for items. If you do not know where the item belongs, ask your supervisor.

If there was a discrepancy in the PO or in the packing list comparison, advise your supervisor immediately.

## **Section 11: Payment of Invoices**

All monthly invoices of goods and services, except utilities, commodity, credit card, and debt related invoices, shall be itemized on a Billing Summary and presented to the Board for authorization of payment. Upon approval of the Board, the invoices shall be paid. The following Officers of the Authority are authorized to sign checks: the Chairman, the Treasurer, Secretary, and Deputy Treasurer.

Utility, commodity, credit card, and debt related invoices, shall be paid by designated due dates in a manner determined by the Director (ie. Wire, ACH, check). A Billing Summary of these purchases will be presented to the Board at the next regular Board meeting for approval.

## **Section 12: Professional Services**

Professional services include, but are not limited to, Physicians, Psychiatrists, Psychologists, Pharmacists, Engineers, Accounting firms, Attorneys, and individuals who supply a service that requires specific training to perform a task that is unique and not readily available from most sources. Requests for Proposals (RFPs) (see section 15) will be used on **contracts that are expected to exceed \$25,000.00 in one fiscal year**. Requests will be solicited from a minimum of three vendors, if available. If this method is not practicable, the Authority will enter into an agreement for professional services to be negotiated between the vendor and the Authority.

## **Section 13: Insurance**

The Authority is a member of the New York Municipal Insurance Reciprocal (NYMIR), a not-for-profit insurance company. It is the Authority's intent to purchase insurance coverage from NYMIR. If NYMIR cannot provide the coverage required by the Authority, the Authority will go through "our agent". The RFP process is used to choose the LCWSA insurance agent. The Agent will investigate agreements for insurance coverage. If competition is available in the market, RFP's will be requested, evaluated and award made. If no competition is available, a contract will be negotiated between the Authority and the respective carrier.

## **Section 14: Exceptions to using a purchase requisition**

The following purchases should be made without purchase requisition:

- A) Contracts for professional services which are exempt under the General Municipal Law, Section 103;
- B) Utility bills;
- C) Service contracts for a fixed monthly or annual rental;
- D) Interdepartmental charges: the interdepartmental charge back serves as the means by which the County departments are able to charge other County departments for services rendered and/or goods or supplies;
- E) Medical examinations;
- F) Legal Notices – a proof of publication should be attached to the invoice when submitted for payment;
- G) Postage meter and stamp costs;
- H) Mileage, travel, and conference reimbursement; subscriptions;
- I) All other expenses as determined by the Authorized Representative on an individual basis.

## Section 15: Rules with respect to conflict of interest

No Authority officer or employee will have an interest in any contract with the Authority of which he/she is an officer or employee, when such employee has the power or duty to:

- A) Negotiate, prepare, authorize or approve a contract or authorize or approve its payment;
- B) Audit bills or claims;
- C) Appoint an officer or employee who has any of the powers or duties set forth above. “Contract” in this context refers to any claim, demand against or agreement with the Authority, either express or implied.

Any Authority officer or employee who has, will have, or acquires an interest in, any actual or proposed contract with the Authority of which he/she is an officer or employee, shall publicly disclose the nature and extent of such interest in writing to the Authority Chairman as soon as he/she has knowledge of an actual or prospective interest. This written disclosure will be kept on file.

If any officer or employee had reason to believe that he may have a conflict of interest, the office of the LCWSA Attorney should be contacted immediately.

## Section 16: Competitive Bidding

General Municipal Law, Section 103 requires purchase **contracts exceeding \$20,000.00 and public works contracts exceeding \$35,000.00** be awarded to the lowest responsible bidder after public advertising requesting submission of sealed bids.

In determining the necessity for competitive bidding, an aggregate cost of an item or commodity estimated to be purchased in a fiscal year is considered. The exception being where state contracts are utilized.

If any purchases or projects are under bidding limits, but suspected to exceed the \$20,000 limit, discretion shall be used and the bidding procedure will take effect.

The term “Public Works Contract” applies to those items or projects involving labor or both materials and labor. Under Article 8 of the New York State Labor Law, Prevailing Wage Rates apply when a laborer, workman or mechanic is employed. There is no minimum dollar amount. Purchasing will apply for the required Prevailing Wage Rate Schedule.

Requests for bid preparation should be made directly to the Authorized Rep. At least three (3) weeks notice will be given to allow for the preparation of the bid package and legal advertising. The following information is required from the requisition department:

- a. Description of item or items to be bid;
- b. What is to be included in the specifications (a sample or previously used specifications are to be included whenever available);
- c. Date when requesting department requires the delivery of goods and/or services being bid;
- d. List of suggested vendors when available;
- e. The adopted budget amount for the goods or services.
- f. Standard contract requirements – see Exhibit A

The Authorized Representative will prepare the bid package, advertise, and after review of the bids received, will make award recommendation to the Board. Complete bidding records will be filed in the Office of the Authorized Representative. The advertisement for bids shall contain a statement of time and place where all

bids will be publicly opened and read. The Authorized Representative and/or another designated individual will open bids at the time and place stipulated in the Public Notice.

A reasonable period should elapse between the public opening and announcement of the successful bidder to permit careful examination of the bids. (The law provides a sixty (60) day period)

The Authorized Representative will be responsible for notifying the vendor awarded and the vendors not awarded the contract upon adoption of a Board Resolution.

## **Section 17: Request for Proposals and Requests for Quotes**

Request for Proposal (RFP) is a competitive sealed bid method of procurement for professional services that cannot be defined to the extent that material can be, but rather is the equivalent of “competitive negotiations”. Emphasis should be on accurately evaluating the capability of interested firms.

The RFP method involves the development and issuance of a Request for Competitive Sealed Proposals by the Authority; receipt and registration of proposals; evaluation of the proposals; discussions with final bidders; award of the contract. The contract is awarded to the responsible bidder whose proposal is the most advantageous to the Authority, taking into consideration price and qualitative evaluation factors set forth in the RFP.

The RFP differs from the competitive sealed bidding method in at least two aspects. First, the Authority holds discussions, and bargains with the bidders whose proposals are acceptable or potentially acceptable. Second, unlike the competitive sealed bid method that compares the prices of responsive bidders to determine award, the competitive sealed bid proposal method evaluates proposal against proposal on a cost and qualitative basis to determine award.

Request for Proposal for Independent Auditor Services - The RFP for Independent Auditor Services will request prices for a period of no more than 5 consecutive years

**Requests for Written Quotes (RFQ)** – Following outlines provide points that may be contained in the RFQ documents. The lowest cost/responsible vendor should be selected for the job.

### RFQ contents

- a. Introduction –
  - i. State the purpose of the RFQ
- b. Vendor Requirements and Qualifications
  - i. Rules to follow- OSHA
  - ii. Minimum experience - years
  - iii. Minimum qualifications – licensing etc.
  - iv. Codes to follow - building etc.
- c. Scope of Work
  - i. Describe the work
  - ii. Attach any forms need to be completed.
  - iii. Will you have a show and tell?
- d. Payment
  - i. Any deliverables needed
  - ii. Schedule of payment
  - iii. Needed paper work
- e. Additional Requirements
  - i. Standard contract Appendixes – ABC (Exhibit A)

- ii. Forms for compliance with 149-j and K - Anti lobby law (Exhibit B)
- iii. Work place violence statement (Exhibit C)
- f. Proposal form
  - i. This is a form for the Vendor to fill out with costs etc. This enables you to get like quotes.
- g. Where and when quotes will be received.

Contractor is selected based on lowest responsible quote. If funds are within budget Form letter in Exhibit E (Congratulations letter) is sent with attachments to Contractor. If funds are not within budget, then approval must go to the Board. An agreement, Exhibit F, and insurance will need to be executed before the beginning of work. The Authorized representative is authorized to sign such agreement. Once Agreement is in place, Form Letter (Thank you but not selected) in Exhibit E is sent to other contractors providing quotes.

Every attempt will be made to ensure bid specifications, terms and conditions are thorough and correct, with all appropriate steps followed when determining award of a bid package.

**Section 18: Article 15-A of the Executive Law. Participation by minority group members/and women with respect to contracts**

**Goal Plan**

The Governor's statewide goal is 30%. Achieving this goal in rural upstate New York will be very difficult due to the lack of Certified Minority and Women Owned Businesses in the professions that we are procuring. Very few of our agency procurements actually meet the boundaries of the goal requirements of \$25,000 for goods and services and \$100,000 for construction.

The LCWSA designates the Executive Director to oversee the agency's M/WBE program and the Principal Account Clerk to monitor and report for the program.

Contracting or Procurement Units Responsibility - All contracts for construction over \$100,000 and large procurements over \$25,000 are developed by the Engineering Firm selected for the project. The Project Engineers will be made aware of the requirements and the language needed for the project.

Contract Compliance – Contract documents will require due diligence compliance to attain the goals. In the pre-construction meeting, the contractor will be reminded of the need for reports and back up information. If the contractor does not comply with the MWBE requirements, payment may be withheld.

Standardized Forms – Are found in Exhibit D.

**Section 19: Compliance with NYS Finance Law – Section 139-j and 139-k**  
Finance Law Sections 139-j and 139-k effective January 1, 2006 (Lobbying Law”).

Pursuant to the Lobbying Law, all “contacts” (defined as oral, written or electronic communications with the Authority intended to influence a procurement) during procurement must be made with the designated Point of Contact only. Exceptions to this rule include written questions during the bid process, communications with regard to protests, contract negotiations and RFP conference participants. Nothing in the Lobbying Law inhibits any rights to make an appeal, protest or complaint under existing administrative or judicial procedures.

Violations of the policy regarding permissible contacts must be reported to the appropriate Authority officer and investigated accordingly. First violation may result in a determination of non-responsibility and ineligibility for award to the violator and its subsidiaries, affiliates and related entities. The penalty for a second violation within four (4) years is ineligibility for bidding/proposing on a procurement and/or ineligibility from being awarded any contract for a period of four (4) years. The Authority will notify the New York State Office of General Services (“OGS) of any determinations on non-responsibility or debarments due to violations of the Lobbying Law. Violations found to be “knowing and willful” must be reported to the Authority Chairman and OGS.

Moreover, the statutes require the Authority to obtain certain affirmation and certifications from bidders and proposers. Exhibit B contains the forms to comply, with additional information and instructions.

### **Section 20: Internet Purchasing.**

Internet purchases will be considered on a case-by-case basis. If an item is found to be the lowest acceptable item available from a vendor that will only accept purchases made online, the Authorized representative must approve prior to making the purchase. Applicable rules still need to be followed in regards to issuance of a PO. The LCWSA credit card will be used for online purchases.

### **Section 21: Sole Source.**

Competitive Bidding is not required under section 103 of the General Municipal law in those limited situations when there is only one possible source from which to procure goods and services required in the public interest such as in the case of certain patented goods or services.

A sole source can be a manufacturer, software developer or service provider that sells direct and there are no other sources offering an “or equal.”

A single source could be a distributor/wholesaler/retailer that has a contractual agreement for a specific territory to the exclusion of others. Should you have a situation involving a single source supplier, a letter on the manufacturer’s letterhead must be on file with Purchasing confirming the single source authorized vendor.

In making these determinations, the political subdivision should document, among other things, the unique benefits of the item as compared to other items available in the marketplace. In addition, the political subdivision should document that, as a matter of fact, there is no possibility of competition for the procurement of the goods. The department must request approval for the sole source determination from Purchasing.

- 1. MDS - Radios**
- 2. HD Supply- Water meters**

### **Section 22: Standardization.**

Section 103 of the General Municipal Law makes it possible for the Authority to standardize on a particular type of material or equipment. The standardization resolution must be approved by at least two-thirds of all Board members, and must state that for reasons of efficiency or economy, there is a need for standardization. The resolution will contain a full explanation supporting such action.

The adoption of such a resolution does not eliminate the necessity for conformance to the competitive bidding requirements.

Standardization, as the word implies, restricts a purchase to a specific model or type of equipment or supply, but does not limit the vendors it can be purchased from.

The following equipment has been standardized:

1. Omron Controllers – for water system;
2. MDS inet-II 900;
3. Sensus meters.

### **Section 23: Second Hand Equipment.**

There is a statutory exception to competitive bidding requirements that permits the purchase of surplus and second-hand supplies, materials or equipment without competitive bidding from Federal or State government or from any other political subdivision or public benefit corporation within the State. However, purchases of used items from any other source (e.g. private sources like auctions or going-out-of-business sales) are not exempt from bidding requirements.

### **Section 24: Disposition of Surplus items policy.**

The disposal of obsolete and/or surplus items such as motor vehicles, office equipment and furniture no longer used by the Authority will be handled in the following manner:

- A) Items to be declared surplus by motion or resolution of the Board are items that had a purchase value of **\$500 or more** and a useful life of more than one year. Items considered to have no useful remaining life or a value of **under \$500** are to be submitted to the Executive Director for review. The Director will determine proper disposal of these items.
- B) A list of the surplus items will be presented by the department head to the Principal Account Clerk.
- C) The Principal Account Clerk will prepare a resolution or motion for the Board to declare the goods surplus and authorize disposal. The Board on a case by case basis will determine disposal methods that may include the following:
  - a. Offered for sale to other municipalities.
  - b. Advertised in designated newspapers in the form of a legal notice listing the items for sale. Sealed bids will then be received.
  - c. Sold through a public auction.
  - d. Destroyed and disposed of with the normal refuse.
  - e. Recycled and exchanged in the Matex Program.

A log of all surplus items and the method of disposal will be kept by the Principal Account Clerk.

### **Section 25: Disposal of Property of the Authority.**

#### **1. Disposal Requirements (PAL § 2897)**

- (a) The contracting officer must have supervision and direction over the disposition of property.
- (b) The custody and control of the property, pending its disposition, and the disposal of such property must be performed by the authority in possession thereof.

(c) A deed, bill of sale, lease, or other instrument executed by or on behalf of any public authority, purporting to transfer title or any other interest in the property under the provisions of the Act shall be conclusive evidence of compliance with the provisions of the Act insofar as it concerns title or other interest of any *bona fide* grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of a lack of such compliance prior to closing.

The Authority must not transfer property for less than fair market value (with exceptions as are set forth in 4(e) and (f), below) and if such property is not subject to fair market pricing due to its unique nature, an appraisal of the value of such property must be made by an independent appraiser and included in the record of the transaction.

## 2. Procedures for Disposal

(a) All disposals or contracts for disposal of property must be made after publicly advertising for bids (with exceptions as discussed, below).

(b) The advertisement for bids must be made at such time prior to the disposal or contract through such methods and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property.

(c) All bids would have to be publicly disclosed at the time and place stated in the advertisement.

(d) The award of bids shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be "most advantageous to the Authority". Price and other factors may be considered, and all bids may be rejected when it is in the public interest to do so.

(e) Exceptions to publicly advertising: The disposal and contracts for disposal of property may be negotiated or made by public auction subject to obtaining such competition as is feasible under the circumstances if:

- (1) the personal property involved is of a nature and quantity which, if disposed of using public bidding advertisement and disclosure, would adversely affect the State or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;
- (2) the fair market value of the property does not exceed \$15,000;
- (3) bid prices after advertising are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;
- (4) the disposal will be to the State or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or
- (5) such action is otherwise authorized by law.

(f) Exception to publicly advertising and obtaining fair market value: The disposal is for an amount less than the estimated fair market value of the property, the terms of such disposal are obtained by public auction or negotiation, disposal of the property is intended to further the public health, safety or welfare or an economic development interest of the State or a political subdivision (to include but not be limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or



retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits), the purpose and the terms of such disposal are documented and approved by the board of the public authority;

(g) Ninety-day notice of a negotiated disposal. An explanatory statement would have to be prepared and transmitted to the comptroller, the director of the budget, the commissioner of general services, and the legislature at least 90 days in advance of such disposal in instances of disposal by negotiation where:

- (1) any personal property has an estimated fair market value in excess of \$15,000;
- (2) any real property that has an estimated fair market value in excess of \$100,000, except in instances where real property is disposed of by lease or exchange unless such lease or exchange includes:
  - (i) any real property disposed of by lease for a term of five years or less, if the estimated fair annual rent is in excess of \$100,000 for any of such years;
  - (ii) any real property disposed of by lease for a term of more than five years, if the total estimated rent over the term of the lease is in excess of \$100,000; or
  - (iii) any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.
  - (iv) A copy of the statement must be preserved in the files of the authority making the disposal.

**Section 26: Use of Authority Employees/or Equipment for Capital Projects.**

When the Authority uses its own employees and equipment for a capital project, the project may be charged for those costs.

**Section 27: Capital Improvements/Repair Allowance.**

To allow for funding of capital improvements/repairs, a current percentage of operating expenses will be added to the annual budget.

**Section 28: Unexpended Balance of Capital project.**

Upon determination that a capital project has been completed, the unexpended balance will be considered unappropriated unless otherwise directed by an authorized representative.

**Section 29: Sale of Scrap – Policies and Procedures**

1. Responsibilities: LCWSA produces scrap metals or other materials through normal operation or dispose of “junked” assets and equipment that contain metal or other materials that possess scrap value and is responsible for disposing of the materials in a manner which is environmentally responsible and in the best financial interests of the Authority. Prior to their disposal, all fixed assets must be declared as surplus items according to the Authority Purchasing Policy.
2. Financial Tracking: The Principal Account Clerk shall track the disposition of scrap materials

and shall maintain accurate records for all transactions including weight slips, invoices and receipts. Authority employees shall not receive cash for any transaction involving the disposal of scrap materials. Scrap processors and vendors shall be required to make payment via check or other electronic transaction directly with the Authority Principal Account Clerk.

3. Storage of Materials: The Authority should deliver scrap materials to processors and vendors as frequently as possible. When the storage or accumulation of scrap materials is required, the Authority shall make every effort to secure and control these items from access by the public or from unauthorized employees.
4. Authorized Employees. These employees shall be briefed on scrap materials policies and procedures. Only Authorized Employees shall deliver scrap materials to processors and other vendors. Employees will be required to show employment identification to scrap processors proving they are dealing scrap on behalf of the Authority. Authorized Employees shall also be required to notify the LCWSA when disposing of scrap materials under personal or private transactions.

## Standard Contract Requirements

### APPENDIX A

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract. The word “Contractor” herein refers to any party to the contract, other than the Livingston County Water & Sewer Authority (herein after “Authority”).

1. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 109 of the **General Municipal Law**, this contract may not be assigned by the contractor or its right, title or interest there in assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the Authority and any attempts to assign the contract without the Authority's written consent are null and void.
2. **WORKER'S COMPENSATION BENEFITS.** In accordance with Section 108 of the **General Municipal Law**, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the **Workers' Compensation Law**.
3. **NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the **Executive Law** (also known as the **Human Rights Law**) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the **Labor Law**, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the **Labor Law**, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
4. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the **Labor Law** or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statute, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
5. **NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with Section 103-d of the **General Municipal Law**, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the Authority a non-collusive bidding certification on

Contractor's behalf.

6. **SET-OFF RIGHTS.** The Authority shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, the Authority's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the Authority with regard to this contract.
7. **RECORD-KEEPING REQUIREMENT.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract for a period of six (6) years following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Authority Treasurer or Authority Executive Director or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to such books, records, documents, accounts and other evidential material during the contract term, extensions thereof and said six (6) year period thereafter for the purposes of inspection, auditing and copying. "Termination of this contract", as used in this clause 10, shall mean the later of completion of the work of the contract or the end date of the term stated in the contract.
8. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.
9. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
10. **NO ARBITRATION AND SERVICE OF PROCESS.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York. All actions shall be venued in Livingston County. Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested.
11. **BUDGETED FUNDS.** This contract is executory only to the extent of funds available and the Authority shall incur no liability beyond the funds appropriated therefore.
12. **APPROVAL OF AUTHORITY BOARD.** This contract is subject to and conditioned upon approval by the Livingston County Water and Sewer Authority Board.
13. **INCORPORATION.** The main contract contains a paragraph incorporating the terms of this appendix by reference and the parties herein have further signed and dated this appendix.

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Livingston Co Water & Sewer Authority

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Contractor  
(Signature of Authorized Official Required)

**Standard Contract Requirements**  
**APPENDIX B**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the Livingston County Water & Sewer Authority (herein after "Authority").

- I. The Authority shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall deliver to the Authority all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to guarantees, warranties, as-build plans and shop drawings. In any of these events, the Authority shall make settlement with the Contractor upon an equitable basis as determined by the Authority which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions, exclusive of the termination date, applicable to postponement, suspension or termination of the contract.
- II. The Contractor agrees that it will indemnify and save harmless the Authority from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of and to the extent of any negligent omission or act of the contractor, its agents, employees, or subcontractors in the performance of this contract. This indemnification shall include all costs and disbursements incurred by the Authority in defending any suit, including attorneys' fees. Furthermore, at the option of the Authority, the Contractor shall provide defense for and defend all claims, demands and causes of action referred to above, and bear all other costs and expenses related thereto. The Contractor shall not be required to indemnify the Authority for any damage or loss arising out of the negligence or willful misconduct of the Authority, its agents or employees.
- III.
  - A. The Contractor warrants that to the best of the contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Authority.
  - B. An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, either result in an unfair competitive advantage to the Contractor or impair the Contractor's objectivity in performing the work for the Authority.
  - C. The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the contractor will make a full disclosure in writing to the Authority. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Authority, to avoid, mitigate, or minimize the actual or potential conflict.
  - D. Remedies - The Authority may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware, or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Authority, the Authority may terminate the contract, or pursue such other remedies as may be permitted by the law or this contract. The terms of Clause I of this Appendix B or other applicable contract provision regarding termination shall apply to termination by the Authority pursuant to this clause.
  - E. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform to the language of this clause.
- IV. All requests for payment by the Contractor must be submitted on forms supplied and approved by the

Authority. Each payment request must contain such items of information and supporting documentation as required by the Authority, and shall be all inclusive for the period of time covered by the payment request.

- V. To the extent that federal funds are provided to the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized.

The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause, including this paragraph.

- VI. The Contractor shall have the status of an independent contractor, and in accordance with such status, agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the Authority by reason of this contract. It further agrees that it will not make against the Authority any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Authority, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.
- VII. In the event of a conflict between the terms between this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B and Appendix A, the terms of Appendix A shall control.
- VIII. The main contract shall contain a paragraph incorporating the terms of this appendix by reference and the parties therein shall further sign and date this appendix.

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Livingston County Water & Sewer Authority

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Contractor  
(Signature of Authorized Official Required)

**STANDARD CONTRACT INSURANCE REQUIREMENTS  
APPENDIX C**

- I. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the contractor/permittee hereby agrees to effectuate the naming of the Livingston County Water & Sewer Authority as an unrestricted additional insured on the contractor's/permittee's insurance policies, with the exception of workers' compensation and professional errors and omissions. **The Contractor/permittee must provide an additional insured endorsement.** A statement on the contractor/permittee's insurance certificate that the Authority is an additional insured is **not** sufficient. The form of the additional insured endorsement must be approved by the Authority attorney.
- II. The policy naming the Authority as an additional insured shall:
- be an insurance policy from an A.M. Best rated "secured" New York State licensed insurer;
  - contain a 30 day notice of cancellation;
  - state that the organization's coverage shall be primary coverage for the Authority, its Board, employees and volunteers. Any insurance or self-insurance as maintained by the Authority shall be in excess of the contractors insurance, and shall not contribute with it.
- III. The contractor/permittee agrees to indemnify the Authority for any applicable deductibles or self insurance reserves.
- IV. Required Insurance:
- **Commercial General Liability Insurance**  
\$1,000,000 per occurrence/ \$2,000,000 aggregate per project.
  - **Automobile Liability**  
\$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.
  - **Workers' Compensation**  
Statutory Workers' Compensation and Employers' Liability Insurance for all employees.
  - **Owners Contractors Protective Insurance (Generally required only for construction contracts. Contact the Authority Attorney for determination of necessity.)**  
\$1,000,000 per occurrence/\$2,000,000 aggregate, with the Authority as the named insured.
  - **Professional Errors and Omissions Insurance (If professional service contract)**  
\$1,000,000 per occurrence/ \$2,000,000 aggregate for the negligent professional acts of the contractor.
- V. The contractor/permittee is to provide the Authority with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. Contractor/permittee shall provide the Authority with a copy of any notice of cancellation or notice of change in the terms of insurance within two (2) days of Contractor/permittee's receipt of such notice from their insurance carrier or agent. Furthermore, Contractor/permittee shall provide the Authority with confirmation from their insurance carrier or agent that insurance as required by this Appendix C is still in full force and effect every three months that this contract is in effect. Such notice shall be mailed to the LCWSA, PO Box 396, Lakeville, NY 14480, and shall include the date and subject matter of the original contract. Contractor/permittee acknowledges that failure to obtain such insurance on behalf of the Authority, or the failure to provide such notices, constitutes a material breach of contract and subjects it to liability for damages, indemnification and

all other legal remedies available to the Authority, including termination of the contract. The failure of the Authority to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by the Authority.

- VI. If at any time any of the policies required herein shall be or become unsatisfactory to the Authority, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Authority, the contractor shall upon notice to that effect from the Authority, promptly obtain approval and submit a certificate thereof. Upon failure of the contractor to furnish, deliver, and maintain such insurance, the Agreement, at the election of the Authority, may be declared suspended, discontinued or terminated. Failure of the contractor to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the contractor concerning indemnification. All property losses shall be made payable to and adjusted with the Authority.

In the event that claims, for which the Authority may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement, the amount of excess or such claims or any portion thereof, may be withheld from payment due or to become due the contractor until such time as the contractor shall furnish such additional security covering such claims in form satisfactory to the Authority.

The Authority reserves the right to require complete certified copies of all required insurance policies, at any time, which shall be delivered to the Authority within ten days of such request.

**VII. ADDITIONAL INSURED ENDORSEMENT AND CERTIFICATE OF INSURANCE:**

The contractor/permittee shall file with the Authority Executive Director prior to commencing work under this contract, an additional insured endorsement and a Certificate of Insurance, which shall include:

- a. Name and address of insured
- b. Issue date of certificate
- c. Insurance company name
- d. Type of coverage in effect
- e. Policy number
- f. Inception and expiration dates of policies included on certificate
- g. Limits of liability for all policies included on certificate.
- h. Certificate holder shall be Livingston County Water & Sewer Authority, 1997 D'Angelo Drive, PO Box 396, Lakeville, New York 14480.
- i. Description of contract for which insurance is being provided.
- j. Insurance agent's name, address and phone number.

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Contractor  
(Signature of Authorized Official Required)

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Date



## **Exhibit B**

### **DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**

**Instructions:**

New York State Finance Law §139-k(2) obligates the Authority to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9) or New York State Executive Order 127. In accordance with State Finance Law §139-k, an offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by an Governmental Entity due to: (1) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity.

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any offerer that fails to timely disclose accurate or complete information under this section, unless the factual elements of the limited waiver provision can be satisfied on the written record.

THE FORM IS ON THE NEXT PAGE.

**DISCLOSURE OF PRIOR NON-RESPONBILITY DETERMINATIONS**

Name of Bidder/Proposer: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Name and title of person submitting this Form: \_\_\_\_\_

Has any governmental entity\* made a finding of non-responsibility regarding  
The Bidder/Proposer in the previous four years?                      No    Yes

If yes: Was the basis for the finding of the Bidder's/Proposer's non-responsibility due to a violation of State Finance Law §139-j?  
No    Yes

Was the basis for the finding of the Bidder's/Proposer's non-responsibility due to the intentional provision of false or  
incomplete information to a governmental entity?  
No    Yes

*If yes, please provide details regarding the finding of non-responsibility below.*

Governmental Entity: \_\_\_\_\_

Year of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_ (add additional pages as necessary)

Has any governmental entity terminated a procurement contract with the Bidder/ Proposer due to the intentional provision of false  
or incomplete information?  
No    Yes

\*A "government entity" is: (1) any department, board, bureau, commission, division, office, council, committee or officer of New York State, whether permanent or temporary; (2) each house of the New York State Legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (6) a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the Legislative Law; or (7) a subsidiary or affiliate of such a public authority. (SFL §139-j, paragraph 1.a.)

**BIDDER'S/PROPOSER'S AFFIRMATION AND CERTIFICATION**

**By signing below, the Bidder/Proposer:**

- (a) Affirms that the Bidder/Proposer Understands and agrees to comply with the policy regarding permissible contacts in accordance with State Finance Law Sections 139-j and 139-k of New York State.
- (b) Certifies that all information provided to the Authority with respect to State Finance Law §139-j and §139-k is complete, true and accurate.

By: \_\_\_\_\_  
(Signature of Person Certifying)

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

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

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

Bidder/Proposer or  
Contractor/Consultant: \_\_\_\_\_  
(Full Legal Name)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Business  
Telephone Number: \_\_\_\_\_

**THE AUTHORITY'S RIGHT TO TERMINATE**

**The Authority reserves the right to terminate a Contract in the event it is found that the certification filed by the Contractor/Consultant as Bidder/Proposer, in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Contractor/Consultant in accordance with the written notification terms of the Contract.**

**EXHIBIT C**

**WORKPLACE VIOLENCE PREVENTION:  
OUR MUTUAL SAFETY AND PROTECTION**

The LCWSA is concerned with the safety and welfare of all persons working on or visiting LCWSA properties. As an organization that has individuals working on LCWSA property, you share this concern. It is in our mutual interest to work together toward ensuring workplace safety for our employees and other workplace visitors. Toward meeting this goal, we have established the following understandings and expectations:

1. **Workplace violence is a real issue** as evidenced by a study of the National Institute for Occupational Safety and Health (NIOSH) which found that an average of 20 workers are murdered each week in the United States. In addition, an estimated 1 million workers are victims of nonfatal workplace assaults each year.
2. **Sharing important information regarding workplace risks and threats of violence can help ensure the safety of the LCWSA's and your employees and worksite visitors.**
3. **The LCWSA strongly encourages its on-site contractors and tenants to report any concerns they may have about workplace safety at LCWSA work sites. It also encourages the reporting of any workplace violence incidents that occur at a LCWSA work site.** Reports or concerns may be made to Executive Director Cathy VanHorne at 346-3523. Report of workplace violence incidents may be made to Mrs. VanHorne AND to the Livingston County Sheriff's Office at 911.
4. **The LCWSA is committed to notifying its on-site contractors and tenants of situations that may cause concern for the safety of their employees.**
5. **The LCWSA expects that on-site contractors and tenants will comply with LCWSA safety and security protocols in effect on the site.**
  - a. Sign in.

The LCWSA thanks you for your cooperation and assistance toward our goal of achieving a safe workplace for all.

Signature \_\_\_\_\_

**Date** \_\_\_\_\_

## EXHIBIT D

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

#### NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A, LCWSA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of LCWSA contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that LCWSA establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

#### Business Participation Opportunities for MWBEs

For purposes of this solicitation, LCWSA hereby establishes an overall goal of 30% for MWBE participation, XX% for Minority-Owned Business Enterprises ("MBE") participation and XX% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that LCWSA may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

For guidance on how [AGENCY NAME] will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and LCWSA may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract ("Bidder/") agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a MWBE Utilization Plan on Form #\_\_\_\_ with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to LCWSA.
- B. LCWSA will review the submitted MWBE Utilization Plan and advise the Bidder of LCWSA acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the [AGENCY NAME, address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by [AGENCY NAME] to be inadequate, LCWSA shall notify the Bidder and direct the Bidder to submit, within

five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #\_\_\_\_\_. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- D. LCWSA may disqualify a Bidder as being non-responsive under the following circumstances:
- a) If a Bidder fails to submit a MWBE Utilization Plan;
  - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - c) If a Bidder fails to submit a request for waiver; or
  - d) If [AGENCY NAME] determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to LCWSA, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Quarterly MWBE Contractor Compliance & Payment Report on Form #\_\_\_\_ to the LCWSA address, phone and fax information], by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (Form #\_\_\_\_) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the [AGENCY NAME], a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS:  
REQUIREMENTS AND PROCEDURES**

I. General Provisions

- A. The LCWSA is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the LCWSA (the “[AGENCY]”), to fully comply and cooperate with the [AGENCY] in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, the [AGENCY] hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, XX% for Minority-Owned Business Enterprises (“MBE”) participation and XX% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

<http://www.esd.ny.gov/mwbe.html>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a

finding constitutes a breach of contract and the Contractor shall be liable to the [AGENCY] for liquidated or other appropriate damages, as set forth herein.

### III. Equal Employment Opportunity (EEO)

A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to the [AGENCY] within seventy two (72) hours after the date of the notice by [AGENCY] to award the Contract to the Contractor.
3. If Contractor or Subcontractor does not have an existing EEO policy statement, the [AGENCY] may provide the Contractor or Subcontractor a model statement (see Form \_\_\_\_ – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form \_\_\_\_ - Staffing Plan



To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Form \_\_\_\_\_ - Workforce Employment Utilization Report (“Workforce Report”)

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the [AGENCY] of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
  2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
  3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**IV. MWBE Utilization Plan**

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, [AGENCY] shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

**V. Waivers**

- A. For Waiver Requests Contractor should use Form \_\_\_\_ – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the [AGENCY] shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the [AGENCY], upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the [AGENCY] may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### **VI. Quarterly MWBE Contractor Compliance Report**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form \_\_\_\_\_) to the [AGENCY] by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

#### **VII. Liquidated Damages - MWBE Participation**

- A. Where [AGENCY] determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the [AGENCY] liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the [AGENCY], Contractor shall pay such liquidated damages to the [AGENCY] within sixty (60) days after they are assessed by the [AGENCY] unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the [AGENCY].

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL  
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

I, \_\_\_\_\_, the (awardee/contractor) \_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered at \_\_\_\_\_

**M/WBE** This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

**EEO** sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

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

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin,

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2 \_\_\_\_\_

By \_\_\_\_\_

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

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison  
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

\_\_\_\_\_ 20% Minority and Women's Business Enterprise Participation

\_\_\_\_\_ % Minority Business Enterprise Participation

\_\_\_\_\_ % Women's Business Enterprise Participation

**EEO Contract Goals**

\_\_\_\_\_ % Minority Labor Force Participation

\_\_\_\_\_ % Female Labor Force Participation

\_\_\_\_\_  
(Authorized Representative)

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

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

**EXHIBIT E**

**Form letter for vendor selected in the RFP process**

Dear Vendor,

I am happy to inform you your Quote was selected for the \_\_\_\_\_project. We look forward to working with you on this.

Please sign the attached agreement and provide insurance certificate as required by appendix c attached for your reference and return both agreement and insurance certificate, as soon as possible to my attention, but no latter than \_\_\_\_\_.

Sincerely,

**Form letter for vendor not selected in the RFP process**

Dear \_\_\_\_\_

Thank you for your Quote for the \_\_\_\_\_project. This letter is to inform you that \_\_\_\_\_has been selected for this project.

Thank you again for your time and care in preparing a proposal for our consideration.

Sincerely,

**EXHIBIT F**

**Agreement** - this is a good form for an agreement but make sure you think about any thing unusual about your project because you should add information. Better to say too much than to little. Also update the schedule annually.

This Agreement is dated the \_\_\_\_ day of \_\_\_\_, in the year \_\_\_\_, by and between the Livingston County Water and Sewer Authority (hereinafter called the OWNER), and \_\_\_\_\_ (hereinafter called the CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

1.01 CONTRACTOR shall complete all WORK as specified or indicated in the Request for quotes attached hereto:  
Name of the project is:  
\_\_\_\_\_

Article 2. CONTRACT PRICE/ PAYMENT PROCEEDURES

OWNER shall pay CONTRACTOR for completion of the Work.

2.1 [Describe the terms agreed to for payment – like needing forms etc. ]

Total Lump Sum Price: \_\_\_\_\_

2.2 [If there are multiple terms for payment describe]

Per visit price: \_\_\_\_\_

2.3 The LCWSA processes requests for payment once per month. The payment request must be received in the offices of the LCWSA on the following dates to receive payment in that month. Any request received after these dates will be processed in the following month. **2012 schedule**

<b>Date payment request due at the office</b>	<b>Payment authorization date – Board Meeting</b>
March 21	March 28
April 18	April 25
May 16	May 23
June 20	June 27
July 18	July 25
August 15	August 22
September 19	September 26
October 17	October 24
November 21	November 28
December 19	December 26

Article 3. CONTRACTOR'S REPRESENTATIONS

3.01 In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- A. CONTRACTOR has examined and carefully studied the Request for Quotes.
- B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, performance or furnishing of the Work.
- C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
- D. CONTRACTOR acknowledges that OWNER does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to underground facilities at or contiguous to the Site.
- E. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 4. CONTRACT DOCUMENTS.

4.01 Contents

A. The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 1. This Agreement,
- 2. Request for Quotes
- 3. CONTRACTOR'S proposal, including Livingston County Water and Sewer Authority Appendices A, B, and C, certification forms in compliance with NYS Finance Law 139-j and 139-k.

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement . One counterpart each has been delivered to OWNER, CONTRACTOR. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Agreement).

OWNER Livingston County Water & Sewer Authority

CONTRACTOR: \_\_\_\_\_

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

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

[CORPORATE SEAL]

[CORPORATE SEAL]



**EXHIBIT G**

**LCWSA Purchasing Card Request**

*Please fill in all information as requested:*

Employee Name: \_\_\_\_\_

Requested Maximum Single Transaction Limit: \$ \_\_\_\_\_

\_\_\_\_\_  
Employee Signature Date

\_\_\_\_\_  
Executive Director Signature Date

\*\*\*\*\*

***This section for Office use***

Date card received and provided to Employee: \_\_\_\_\_

Card Number: \_\_\_\_\_

Transaction Credit Limit Assigned: \_\_\_\_\_

**EXHIBIT H**

**LCWSA Credit Card  
JP Morgan Chase Bank – Visa  
Acknowledgement of Card Receipt  
And Cardholder Agreement**

Please read and sign page two of this form:

Employee Name: \_\_\_\_\_

Card Number: \_\_\_\_\_

Transaction Limits: \_\_\_\_\_

You are being entrusted with an LCWSA Credit Card issued by Visa through JP Morgan Chase Bank. The card is provided to take care of your need to purchase materials for LCWSA. The card may be revoked at any time without your permission. Your signature below indicates that you have read the LCWSA Policy - Credit Card Use, and will comply with the LCWSA Purchasing Policies and terms of this user agreement.

I understand that I will be making financial commitments on behalf of LCWSA and will strive to obtain the best value for LCWSA when making purchases.

This credit card is issued in my name. I will not allow any other person to use my assigned card.

I have read the LCWSA Purchasing Policy – Credit Card Use as well as the cardholder agreement, understand them, and I will comply with both of them. Failure to do so may be considered a misappropriation of funds, and may subject me to revocation of card privileges and disciplinary action.

I understand that the policies and procedures related to the credit card use may be updated or changed at any time. The Director will notify me of these changes. I agree to and will be responsible for the execution of any program changes.

I will use the card only for authorized purchases.

I will obtain a hard copy receipt from the vendor each time the card is used. When ordering by phone or via the internet, I will request the vendor provide me with a receipt.

I understand that my card account is subject to internal control reviews and audits to protect the interests of LCWSA and I agree to comply with these reviews and audits.

I am responsible for immediately notifying the JP Morgan Chase Bank, my supervisor and the Principal Account Clerk if the card is lost or stolen. I will complete the Lost or Stolen Card form and submit it to the Principal Account Clerk or my supervisor.

Upon resignation/separation, or the request of my Department Head or the Principal Account Clerk, I will turn in the destroyed (cut-up) card to the Principal Account Clerk.

As I am responsible for all charges on the card, I will complete a Credit Card Transaction Report, reconciled with the attached receipts.

Employee Signature: \_\_\_\_\_

Executive Director Signature: \_\_\_\_\_

**EXHIBIT I**

**LCWSA – Purchasing Card  
JP Morgan Chase Bank – Visa  
Lost/Stolen Card Notification Form**

Name of Cardholder: \_\_\_\_\_

Cardholder Account Number: \_\_\_\_\_

I certify that my Visa card has been lost/stolen. I first noticed it was missing on \_\_\_\_\_(Date). I have called JP Morgan Chase Bank at 1-800-270-7760 and have also spoken with my Department Head to notify them that the card is lost/stolen so that no more charges may be made on it.

Cardholder Signature: \_\_\_\_\_

Department Head Signature: \_\_\_\_\_

*Upon completion of this form, please give it to the Principal Account Clerk for processing.*

## **PURPOSE**

The Livingston County Water & Sewer Authority's Code of Ethics requires directors, committee members, officers, and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. As employees and representatives of the Authority, the practice of honesty and integrity in fulfilling our responsibilities and compliance with all applicable laws and regulations is expected. Employees are strongly encouraged to discuss with supervisors, managers, or other appropriate personnel, when in doubt, about the best and ethical course of action in a particular situation.

The Whistleblower Policy is a method of encouraging the reporting of complaints and concerns regarding questionable accounting, internal accounting controls, and auditing matters, including those regarding the circumvention or attempted circumvention of internal accounting controls or that would otherwise constitute a violation of the Authority's accounting practices.

The Authority's Audit Committee is responsible for investigating & resolving all reported whistleblower complaints and allegations.

## **SCOPE**

It is the responsibility of all directors, committee members, officers, and employees to comply with the Code of Ethics and to report violations or suspected violations in accordance with this Whistleblower Policy.

## **POLICY**

### **I. Definitions**

For purposes of this policy:

1. **Good Faith.** Good faith is evident when the report is made without malice or consideration of personal benefit and the employee has a reasonable basis to believe that the report is true; provided, however, a report does not have to be proven to be true to be made in good faith. Good faith is lacking when the disclosure is known to be malicious or false.
2. **Wrongdoing.** Examples of wrongdoing include, but are not limited to, fraud, including financial fraud and accounting fraud, violation of laws and regulations, unethical behavior or practices, endangerment to public health or safety and negligence of duty.
3. **Adverse Employment Action.** Examples of adverse employment action include, but are not limited to, suspension or termination.

### **II. Protection of Whistleblowers**

No board member, committee member, officer, or employee who in good faith reports a violation of the Authority's Code of Ethics shall suffer harassment, retaliation or adverse employment consequence.

An employee who retaliates against someone who has reported a violation in good faith is subject to adverse employment action.

The identity of any employee who makes reports pursuant to this policy shall not be revealed to persons in the employee's department, division, or work location. The Authority will make good faith efforts to protect the confidentiality of employees making reports provided, however, the Authority or its employees and agents shall be permitted to reveal the reporting employee's identity and confidential information to the extent necessary to permit a thorough and effective investigation or required by law or court proceedings. In addition, the Authority will not tolerate any effort made by any other person or group, to ascertain the identity of any person who makes a good faith allegation anonymously.

The Authority Board and its Audit Committee shall not retaliate and shall not tolerate any retaliation by management or any other person or group, directly or indirectly, against anyone who, in good faith, makes an allegation or provides assistance to the Audit Committee, management or any other person or group, including any governmental, regulatory or law enforcement body, investigating the allegation.

This policy presumes that employees will act in good faith and will not make false accusations when reporting wrongdoing. An employee who knowingly or recklessly makes statements or disclosures that are not in good faith may be subject to adverse employment action. Employees who report acts of wrongdoing pursuant to this policy can and will continue to be held to the Authority's general job performance standards and adherence to the Authority's policies and procedures.

### **III. Reporting Violations**

The Authority suggests that employees share their questions, concerns, suggestions, or complaints with someone who can address them properly. In most cases, an employee's supervisor is in the best position to address an area of concern. However, if you are not comfortable speaking with your supervisor or you are not satisfied with your supervisor's response, you are encouraged to speak with anyone in management whom you are comfortable in approaching. Supervisors and managers are required to report suspected wrongdoings to the Audit Committee, who has specific and exclusive responsibility to investigate all reported violations. For suspected fraud, or when you are not satisfied or uncomfortable with this process, individuals should contact the Audit Committee directly.

Employees who become aware of any wrongdoing or suspected wrongdoing are encouraged to make a report as soon as possible. Acts of wrongdoing may be disclosed in writing, by telephone or in person. Contact information is posted in the employee break room disclosing Audit Committee members, addresses and telephone numbers.

**Note: When reporting an alleged violation by telephone, it is not required to leave your name.**

In the event the act of wrongdoing concerns a member of the Audit Committee, the report of wrongdoing should be filed with the Authority's general counsel who will determine who to disclose the information to for further investigation. The address and phone number of the Authority's general counsel is included on the Audit Committee listing in the employee break room.

### **IV. Procedures for Receiving Accounting Allegations**

1. Any allegation that is made directly to management, whether openly, confidentially, or anonymously, shall be promptly reported to the Audit Committee.

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2. Each allegation forwarded to the Audit Committee, whether openly, confidentially, or anonymously, shall be reviewed by the Audit Committee, who may, in their discretion, consult with any member of management or employee whom they believe would have appropriate expertise or information to assist the Audit Committee. The Audit Committee shall determine whether the Audit Committee or management should investigate the Accounting Allegation, taking into account the following considerations:

- a. If the Audit Committee determines that management should investigate the allegation, management shall thereafter promptly investigate and report the results, in writing, to the Audit Committee. Management shall be free in its discretion to engage outside auditors, counsel or other experts to assist in the investigation and analysis of results.
- b. If the Audit Committee determines that it should investigate the allegation, the Audit Committee shall promptly determine what professional assistance, if any, it needs in order to conduct the investigation. The Audit Committee shall be free in its discretion to engage outside auditors, counsel, or other experts to assist in the investigation and analysis of results.
- c. All whistleblower records shall be retained for a period of seven years.

#### **V. Training**

All employees will be made aware of this policy and its related procedures annually via staff meeting.



**RESOLUTION NO. 2024-01**

**RESOLUTION REVIEWING AND ADOPTING VARIOUS LIVINGSTON COUNTY WATER AND SEWER AUTHORITY POLICIES**

WHEREAS, the New York State Authorities Budget Office (“ABO”) recommends that the Livingston County Water and Sewer Authority (“LCWSA”) Board annually review, and update as necessary, various policies including, but not limited to policies for whistleblower protection, investments, procurement guidelines, and code of ethics, and

WHEREAS, the Executive Director has reviewed these policies and notwithstanding additional updates and revisions may be necessary in the future, recommends the LCWSA Board adopt the following policies, now therefore be it,

RESOLVED, the LCWSA Board adopts the Livingston County Water & Sewer Authority Code of Ethics, Investment Policy, Purchasing, Disposition Policy, and Capital Projects, and Whistleblower Policy.

January 17, 2024  
Livingston County Water & Sewer Authority  
Moved By:  
Seconded By:  
AYES:  
NAYS: