



TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

TO: Town Board
FROM: Charles D. Grieco, Esq.
DATE: March 20, 2014
RE: Police Department Expansion Grant Contract

Honorable Members of the Town Board, below is the proposed resolution that the Supervisor is authorized to execute on behalf of the Town the Dormitory Authority of the State of New York Grant Disbursement Agreement for the Police Department Expansion Project (Project ID No. 5730)

WHEREAS: The Town of West Seneca was appropriated grant monies from the New York State Timothy Kennedy through the Dormitory Authority of the State of New York,

WHEREAS: the \$350,000 EDAP Grant was appropriated for the expansion of the Police Department, including the Dispatch Center;

NOW, THEREFORE BE IT

RESOLVED, that Connie D. Miner & Co, the Town's Grant Consultant, be authorized and directed to complete the necessary application, forms, etc. to be submitted to the Dormitory Authority of the State of New York for the purpose of securing this grant and seeking reimbursement for the Town of West Seneca, and BE IT FURTHER

RESOLVED, that the Town of West Seneca Supervisor and Police Chief be and hereby are authorized and directed to sign and execute all documents pertaining to the application and acquisition of said funding.

This GRANT DISBURSEMENT AGREEMENT includes all exhibits and attachments hereto and is made on the terms and by the parties listed below and relates to the Project described below:

DORMITORY AUTHORITY OF THE STATE OF NEW YORK ("DASNY"):

515 Broadway
Albany, New York 12207
Contact: Sara Richards, Esq.
Phone: (518) 257-3177
Fax: (518) 257-3475
E-mail: grants@dasny.org

THE GRANTEE:

Town of West Seneca
1250 Union Road
West Seneca, NY 14224
Contact: Ms. Connie D. Miner

Phone: (716) 632-2397
Fax: (716) 558-2250

THE PROJECT:

Expansion of the Police Department

PROJECT LOCATION:

West Seneca Police Department

GRANT AMOUNT:

\$350,000

FUNDING SOURCE:

New York State Economic Development Assistance Program ("NYS EDAP")

For Office Use Only:

PRELIMINARY APPLICATION OR PROJECT INFORMATION SHEET DATE:

4/15/13

DATE GDA SENT TO GRANTEE:

3/11/14

DATE AGREEMENT SIGNED BY GRANTEE:

DATE AGREEMENT SIGNED BY DASNY:

EXPIRATION DATE OF THIS AGREEMENT:

PROJECT ID #: 5730
FMS#: 154502
GranteeID: 1238
GrantID: 5865

TERMS AND CONDITIONS

1. The Project

The Project description, including tasks and a timeline with respect thereto, is set forth in Exhibit A. The Grantee will perform the tasks on the schedule and as described in Exhibit A to this Agreement.

2. Project Budget and Use of Funds

- a) The Grantee will undertake the Project in accordance with the overall Project budget, which includes the Grant funds, as set forth in Exhibit A to this Agreement. The Grant will be applied only to Eligible Expenses, which are separately identified, as described in the Preliminary Application or Project Information Sheet and in Exhibit A hereto.
- b) Grantee agrees and covenants to apply the Grant proceeds only to capital works or purposes, which shall consist of the following:
 - (i) the acquisition, construction, demolition, or replacement of a fixed asset or assets;
 - (ii) the major repair or renovation of a fixed asset, or assets, which materially extends its useful life or materially improves or increases its capacity; or
 - (iii) the planning or design of the acquisition, construction, demolition, replacement, major repair or renovation of a fixed asset or assets, including the preparation and review of plans and specifications including engineering and other services, field surveys and sub-surface investigations incidental thereto.
- c) Grantee agrees and covenants that the Grant proceeds shall not be used for costs that are not capital in nature, which include, but shall not be limited to working capital, rent, utilities, salaries, supplies, administrative expenses, or to pay down debt incurred to undertake the Project.

3. Books and Records

The Grantee will maintain accurate books and records concerning the Project for six (6) years from the date the Project is completed and will make those books and records available to DASNY, its agents, officers and employees during Grantee's business hours upon reasonable request. In the event of earlier termination of this Agreement, such documentation shall be made available to DASNY, its agents, officers and employees for six (6) years following the date of such early termination.

4. Conditions Precedent to Disbursement of the Grant

No Grant funds shall be disbursed until the following conditions have been satisfied:

- (a) DASNY has received a description of the Project, budget and timeline in the form of Exhibit A, and an opinion of Grantee's counsel, in substantially the form appended to this Agreement as Exhibit B; and
- (b) The requirements of the NYS EDAP Program have been met; and
- (c) The monies required to fund the Grant have been received by DASNY; and
- (d) In the event of disbursement pursuant to paragraph 5(b) below, the Grantee has provided DASNY with documentation evidencing that a segregated account has been established by the Grantee into which Grant funds will be deposited (the "Segregated Account"). Eligible Expenses incurred in connection with the Project to be financed with Grant proceeds that are to be paid on invoice shall be paid out of the Segregated Account. The funds in such account shall not be used for any other purpose.
- (e) The Grantee certifies that it is in compliance with the provisions of the NYS EDAP and this Agreement and that the Grant will only be used for the Project set forth in the Preliminary Application or Project Information Sheet and in Exhibit A hereto.

5. Disbursement

Subject to the terms and conditions contained in this Agreement, DASNY shall disburse the Grant to the Grantee, in the manner set forth in Exhibit D, as follows:

- (a) Reimbursement: DASNY shall make payment directly to the Grantee in the amount of Eligible Expenses actually incurred and paid for by the Grantee, upon presentation to DASNY of (i) the Payment Requisition Forms attached to this Agreement as Exhibit E and its attachments; (ii) copies of invoices for Eligible Expenses from the Grantee's contractor and/or vendor and proof of payment from the Grantee to the contractor and/or vendor in a form acceptable to DASNY; and (iii) such additional supporting documentation as DASNY may require in order to clearly demonstrate that Eligible Expenses were incurred and paid by the Grantee in connection with the Project described herein; or
- (b) Payment on Invoice:
 - (1) DASNY may make payment directly to the Grantee in the amount of Eligible Expenses actually incurred by the Grantee, upon presentation to DASNY of (i) the Payment Requisition Forms attached to this Agreement as Exhibit E and its attachments; (ii) copies of invoices for Eligible Expenses from the Grantee's contractor and/or vendor in a form acceptable to DASNY evidencing the completion of work; and (iii) such additional supporting documentation as DASNY may require in order to clearly demonstrate that Eligible Expenses were incurred by the Grantee in connection with the Project described herein.
 - (2) The Grantee must deposit all Grant proceeds paid on invoice pursuant to this paragraph (b) into the Segregated Account established pursuant to Paragraph 4(d). All Eligible Expenses incurred in connection with the Project to

be financed with Grant funds that are to be paid on invoice must be paid out of this account. The account shall not be used for any other purpose.

(3) The Grantee must provide proof of disbursement of Grant funds to the respective contractor and/or vendor in a form acceptable to DASNY, within sixty (60) days of the date that Grant funds are disbursed to the Grantee to pay for such costs. DASNY will not make any additional disbursements from Grant funds until such time as proof of payment is provided.

(4) Utilizing the Grant funds paid to the Grantee pursuant to this section for any purpose other than paying the contractors and/or vendors identified in the requisition documentation in the amounts set forth in the requisition shall constitute a default under this Agreement and shall, at a minimum, result in the denial of payment on invoice for subsequent requisitions.

(5) DASNY may deny payment on invoice at its sole and absolute discretion, thereby restricting the method of payment pursuant to this contract to reimbursement subject to the terms of Section 5(a).

(c) Electronic Payments Program: DASNY reserves the right to implement an electronic payment program ("Electronic Payment Program") for all payments to be made to the Grantee thereunder. Prior to implementing an Electronic Payment Program, DASNY shall provide the Grantee written notice one hundred twenty days prior to the effective date of such Electronic Payment Program ("Electronic Payment Effective Date"). Commencing on or after the Electronic Payment Effective Date, all payments due hereunder by the Grantee shall only be rendered electronically, unless payment by paper check is expressly authorized by DASNY. Commencing on or after the Electronic Payment Effective Date the Grantee further acknowledges and agrees that DASNY may withhold any request for payment hereunder, if the Grantee has not complied with DASNY's Policies and Procedures relating to its Electronic Payment Program in effect at such time, unless payment by paper check is expressly authorized by DASNY.

(d) In no event will DASNY make any payment which would cause DASNY's aggregate disbursements to exceed the Grant amount.

(e) The Grant, or a portion thereof, may be subject to recapture by DASNY as provided in Section 9(c) hereof.

6. Non Discrimination and Affirmative Action

The Grantee shall make its best effort to comply with DASNY's Non-Discrimination and Affirmative Action policies set forth in Exhibit F to this Agreement.

7. No Liability of DASNY or the State

DASNY shall not in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the Project and the Grantee hereby agrees to indemnify and hold harmless DASNY, the State and

their respective agents, officers, employees and directors (collectively, the "Indemnitees") from and against any and all such liability and any other liability for injury or damage, cost or expense resulting from the payment of the Grant by DASNY to the Grantee or use of the Project in any manner, including in a manner which, if the bonds are issued on a tax-exempt basis, (i) results in the interest on the bonds issued by DASNY the proceeds of which were used to fund the Grant (the "Bonds") to be includable in gross income for federal income tax purposes or (ii) gives rise to an allegation against DASNY by a governmental agency or authority, which DASNY defends that the interest on the Bonds is includable in gross income for federal income tax purposes, other than that caused by the gross negligence or the willful misconduct of the Indemnitees.

8. Warranties and Covenants

The Grantee warrants and covenants that:

- (a) The Grant shall be used solely for Eligible Expenses in accordance with the terms and conditions of this Agreement.
- (b) No materials, if any, purchased with the Grant will be used for any purpose other than the eligible Project costs as identified in Exhibit A.
- (c) The Grantee agrees to utilize all funds disbursed in accordance with this Agreement in accordance with the terms of the NYS EDAP Program.
- (d) The Grantee is solely responsible for all Project costs in excess of the Grant. The Grantee will incur and pay Project costs and submit requisitions for reimbursement in connection with such costs.
- (e) The Grantee has sufficient, secured funding for all Project costs in excess of the Grant, and will complete the Project as described in the Preliminary Application or Project Information Sheet and in this Agreement.
- (f) The Grantee agrees to use its best efforts to utilize the Project for substantially the same purpose set forth in this Agreement until such time as the Grantee determines that the Project is no longer reasonably necessary or useful in furthering the public purpose for which the grant was made.
- (g) There has been no material adverse change in the financial condition of the Grantee since the date of submission of the Preliminary Application or Project Information Sheet to DASNY.
- (h) No part of the Grant will be applied to any expenses paid or payable from any other external funding source, including State or Federal grants, or grants from any other public or private source.
- (i) The Grantee owns, leases, or otherwise has control over the site where the Project will be located. If the Project includes removable equipment or furnishings including but not limited to, computer hardware and software, air conditioning units, lab equipment, office furniture and telephone systems, Grantee will develop, implement and maintain an inventory system for tracking such removable equipment and furnishings.

- (j) The Project to be funded by the Grant will be located in the State of New York. If the Grant will fund all or a portion of the purchase of any type of vehicle, such vehicle will be registered in the State of New York and a copy of the New York State Vehicle Registration documents will be provided to DASNY's Accounts Payable Department at the time of requisition.
- (k) Grantee is in compliance with, and shall continue to comply in all material respects, with all applicable laws, rules, regulations and orders affecting the Grantee and the Project.
- (l) The Grantee has obtained all necessary consents and approvals from the property owner in connection with any work to be undertaken in connection with the Project.
- (m) All contractors and vendors retained to perform services in connection with the Project shall be authorized to do business in the State of New York and shall possess and maintain all professional licenses and/or certifications required to perform the tasks undertaken in connection with the Project.
- (n) Neither the Grantee nor any of the members of its Board of Directors or other governing body or its employees have given or will give anything of value to anyone to procure the Grant or to influence any official act or the judgment of any person in the performance of any of the terms of this Agreement.
- (o) The Grant shall not be used in any manner for any of the following purposes:
 - (i) political activities of any kind or nature, including, but not limited to, furthering the election or defeat of any candidate for public, political or party office, or for providing a forum for such candidate activity to promote the passage, defeat, or repeal of any proposed or enacted legislation;
 - (ii) religious worship, instruction or proselytizing as part of, or in connection with, the performance of this Agreement;
 - (iii) payments to any firm, company, association, corporation or organization in which a member of the Grantee's Board of Directors or other governing body, or any officer or employee of the Grantee, or a member of the immediate family of any member of the Grantee's Board of Directors or other governing body, officer, or employee of the Grantee has any ownership, control or financial interest, including but not limited to an officer or employee directly or indirectly responsible for the preparation or the determination of the terms of the contract or other arrangement pursuant to which the proceeds of the Grant are to be disbursed. For purposes of this paragraph, "ownership" means ownership, directly or indirectly, of more than five percent (5%) of the assets, stock, bonds or other dividend or interest bearing securities; and "control" means serving as a member of the board of directors or other governing body, or as an officer in any of the above; and

- (iv) payment to any member of Grantee's Board of Directors or other governing body of any fee, salary or stipend for employment or services, except as may be expressly provided for in this Agreement.

- (p) The relationship of the Grantee (including, for purposes of this paragraph, its officers, employees, agents and representatives) to DASNY arising out of this Agreement shall be that of an independent contractor. The Grantee covenants and agrees that it will conduct itself in a manner consistent with such status, that it will neither hold itself out as, nor claim to be, an officer, employee, agent or representative of DASNY or the State by reason hereof, and that it will not by reason thereof, make any claim, demand or application for any right or privilege applicable to an officer, employee, agent or representative of DASNY or the State, including without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

- (q) The information contained in the Preliminary Application or Project Information Sheet submitted by the Grantee in connection with the Project and the Grant, as such may have been amended or supplemented and any supplemental documentation requested by the State or DASNY in connection with the Grant, is incorporated herein by reference in its entirety. In the event of an inconsistency between the descriptions, conditions, and terms of this Agreement and those contained in the Preliminary Application or Project Information Sheet, the provisions of this Agreement shall govern. The Grantee hereby acknowledges that DASNY has relied on the statements and representations made by the Grantee in the Preliminary Application or Project Information Sheet and any supplemental information in making the Grant. The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Preliminary Application or Project Information Sheet, supplemental information, or otherwise in connection with the Grant and that the information contained in the Preliminary Application or Project Information Sheet and supplemental information continues on the date hereof to be materially correct and complete.

- (r) The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Grantee Questionnaire ("GQ") completed by the Grantee in connection with the Project and the Grant and attached hereto as Exhibit C, and that the responses in the GQ continue on the date hereof to be materially correct and complete. The Grantee hereby acknowledges that DASNY has relied on the statements and representations made by the Grantee in the GQ in making the Grant, and that the Grantee will be required to reaffirm the information therein each time a requisition for grant funds is presented to DASNY.

- (s) The Grantee is duly organized, validly existing and in good standing under the laws of the State of New York, or is duly organized and validly existing under the laws of another jurisdiction and is authorized to do business and is in good standing in the State of New York and shall maintain its corporate existence in good standing in each such jurisdiction for the term of this Agreement, and has full power and authority to execute and deliver the Agreement and to perform its obligations thereunder;

- (t) The Grantee agrees to provide such documentation to DASNY as may be requested by DASNY in its sole and absolute discretion to support a requisition for payment, to determine compliance by the Grantee with the terms of this Agreement or otherwise reasonably requested by DASNY in connection with the Grant, and further acknowledges that if documentation requested in connection with a requisition for payment does not, in the sole and absolute discretion of DASNY, provide adequate support for the costs requested, that such requisition request shall be denied and payment shall not be made to the Grantee.
- (u) The Agreement was duly authorized, executed and delivered by the Grantee and is binding on and enforceable against the Grantee in accordance with its terms.

9. Default and Remedies

(a) Each of the following shall constitute a default by the Grantee under this Agreement:

- (i) Failure to perform or observe any obligation, warranty or covenant of the Grantee contained herein, or the failure by the Grantee to perform the requirements herein to the reasonable satisfaction of DASNY and within the time frames established therefor under this Agreement.
- (ii) Failure to comply with any request for information reasonably made by DASNY to determine compliance by the Grantee with the terms of this Agreement or otherwise reasonably requested by DASNY in connection with the Grant.
- (iii) The making by the Grantee of any false statement or the omission by the Grantee to state any material fact in or in connection with this Agreement or the Grant, including information provided in the Preliminary Application or Project Information Sheet or in any supplemental information that may be requested by the State or DASNY.
- (iv) The Grantee shall (A) be generally not paying its debts as they become due, (B) file, or consent by answer or otherwise to the filing against it of, a petition under the United States Bankruptcy Code or under any other bankruptcy or insolvency law of any jurisdiction, (C) make a general assignment for the benefit of its general creditors, (D) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (E) be adjudicated insolvent or be liquidated or (F) take corporate action for the purpose of any of the foregoing.
- (v) An order of a court having jurisdiction shall be made directing the sale, disposition or distribution of all or substantially all of the property belonging to the Grantee, which order shall remain undismissed or unstayed for an aggregate of thirty (30) days.
- (vi) The Grantee abandons the Project prior to its completion.
- (vii) The Grantee is found to have falsified or modified any documents submitted in connection with this grant, including but not limited to

invoice, contract or payment documents submitted in connection with a Grantee's request for payment/reimbursement.

(viii) Utilizing the Grant funds paid to the Grantee pursuant to Section 5(b) for any purpose other than paying the contractors and/or vendors identified in the requisition documentation in the amounts set forth in the requisition.

(b) Upon the occurrence of a default by the Grantee and written notice by DASNY indicating the nature of the default, DASNY shall have the right to terminate this Agreement.

(c) Upon any such termination, DASNY may withhold any Grant proceeds not yet disbursed and may require repayment of Grant proceeds already disbursed. If DASNY determines that any Grant proceeds had previously been released based upon fraudulent representations or other willful misconduct, DASNY may require repayment of those funds and may refer the matter to the appropriate authorities for prosecution. DASNY shall be entitled to exercise any other rights and seek any other remedies provided by law.

10. Term of Agreement

Notwithstanding the provisions of Section 9 hereof, this Agreement shall terminate three (3) years after the latest date set forth on the front page hereof without any further notice to the Grantee. DASNY, in its sole discretion, may extend the term of this Agreement upon a showing by the Grantee that the Project is under construction and is expected to be completed within the succeeding twelve (12) months. All requisitions must be submitted to DASNY in proper form prior to the termination date in order to be reimbursed.

11. Project Audit

DASNY shall, upon reasonable notice, have the right to conduct, or cause to be conducted, one or more audits, including field inspections, of the Grantee to assure that the Grantee is in compliance with this Agreement. This right to audit shall continue for six (6) years following the completion of the Project or earlier termination of this Agreement.

12. Survival of Provisions

The provisions of Sections 3, 7, 8(n), 8(o) and 11 shall survive the expiration or earlier termination of this Agreement.

13. Notices

Each notice, demand, request or other communication required or otherwise permitted hereunder shall be in writing and shall be effective upon receipt if personally delivered or sent by any overnight service or three (3) days after dispatch by certified mail, return receipt requested, to the addresses set forth on this document's cover page.

14. Assignment

The Grantee may not assign or transfer this Agreement or any of its rights hereunder.

15. Modification

This Agreement may be modified only by a written instrument executed by the party against whom enforcement of such modification is sought.

16. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall be construed without the aid of any presumption or other rule of law regarding construction against the party drafting this Agreement or any part of it. In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such provision(s) had never been contained herein.

17. Confidentiality of Information

Any information contained in reports made to DASNY or obtained by DASNY as a result of any audit or examination of Grantee's documents or relating to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, provided that such information is clearly marked "confidential" by the Grantee that concerns or relates to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses or expenditures, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, which is determined by DASNY to be exempt from public disclosure under the Freedom of Information Law, shall be considered business confidential and is not to be released to anyone, except DASNY and staff directly involved in assisting the Grantee, without prior written authorization from the Grantee, as applicable. Notwithstanding the foregoing, DASNY will not be liable for any information disclosed, in DASNY's sole discretion, pursuant to the Freedom of Information Law, or which DASNY is required to disclose pursuant to legal process.

18. Executory Clause

This Agreement shall be deemed executory to the extent of monies available for the NYS EDAP Program to DASNY.