

COUNTY OF SUFFOLK



EDWARD P. ROMAINE  
SUFFOLK COUNTY EXECUTIVE

CHRISTOPHER J. CLAYTON  
COUNTY ATTORNEY

DEPARTMENT OF LAW

November 21, 2024

NYS DEC  
Office of General Counsel  
625 Broadway, 14<sup>th</sup> Floor  
Albany, NY 12233-1500  
Attn: Cheryl A. Salem

Re: Site 152261

Ms. Salem:

Enclosed is a copy of the Fully Executed Access Agreement for the Francis Gabreski Airport between Suffolk County, NY and the New York State Department of Environmental Conservation.

If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,



Arlene Senk  
Legal Secretary

Enc

**FRANCIS S. GABRESKI AIRPORT–PFAS SITE CHARACTERIZATION  
ACCESS AGREEMENT FOR ENVIRONMENTAL TESTING**

**This Contract (“the Contract” or “Agreement”)** is between the **County of Suffolk (“the County”)**, a municipal corporation of the State of New York, acting through its duly constituted **Department of Economic Development and Planning (“the Department”)**, located at **100 Veterans Memorial Highway, Hauppauge, NY 11788**; and

The **State of New York**, acting through the **New York State Department of Environmental Conservation, (“NYSDEC” or “the Contractor”)**, with an office at **625 Broadway, Albany NY 12233**.

Under this Agreement, the NYSDEC and its contractors shall be granted access to County-owned property at Francis S. Gabreski Airport, in Westhampton Beach, N.Y. (“the Airport”), through Airport escorts, in order to conduct groundwater sampling, to make soil borings and to otherwise conduct a Site Characterization. A portion of the Airport has been designated by NYSDEC as the Francis S. Gabreski Airport Site (the “Site”), Site No. 152261. The sampling and investigation is being conducted to determine the presence of Per- and Polyfluoroalkyl Substances (PFAS).

**Term of the Contract:** October 1, 2024 to November 30, 2024.

**Total Cost of the Contract:** There shall be no cost to the County for this Agreement. However, this does not constitute a waiver of any rights NYSDEC may have to recover such costs from any responsible party, pursuant to relevant provisions of statutory or common law. (There shall be no charge to the NYSDEC for its entry to and activities conducted on County property under this Agreement. NYSDEC shall be responsible for the cost of its activities conducted on County property.)

**Terms and Conditions:** Shall be as set forth in Article I and Exhibit 1 and 2, attached hereto and made a part hereof.

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

**(Signatures on next page.)**

**STATE OF DEW YORK  
DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION**

By: Andrew Guglielmi  
Andrew Guglielmi  
Division Director, Division of  
Environmental Remediation  
Date October 25, 2024

**Approved as to Form:  
Christopher J. Clayton  
County Attorney**

By: Jacqueline Caputi  
Jacqueline Caputi  
Assistant County Attorney  
Date 11/4/24

**COUNTY OF SUFFOLK**

By: Kevin B. Molloy  
Kevin B. Molloy  
Chief Deputy County Executive  
Date 11/13/24

**Approved:  
Department of Economic Development and Planning**

By: Sarah Lansdale  
Sarah Lansdale  
Commissioner  
Date 11/1/24

**Recommended:**

By: Joshua J. Smith  
Joshua J. Smith  
Airport Manager  
Francis S. Gabreski Airport  
Date 11/4/2024

**Recommended:  
Department of Health Services**

By: Anthony M. Figliola  
Anthony M. Figliola  
Deputy Commissioner  
Date 11-4-24

**Article I**  
**Description of Services**

**Whereas**, this Agreement concerns environmental testing and sampling to be conducted on or under portions of the Suffolk County Francis S. Gabreski Airport (the "Airport"), in Westhampton Beach, N.Y., as more particularly detailed herein; and

**Whereas**, the Airport is owned by the County; and

**Whereas**, a portion of the Airport has been identified by NYSDEC as the Francis S. Gabreski Airport Site (the "Site"), and given Site No. 152261; and

**Whereas**, the NYSDEC has identified the presence of Per- and Polyfluoroalkyl Substances (PFAS) contamination at the Site and has assigned the Site a Class "P" designation, and has heretofore conducted some environmental testing and sampling but wishes to conduct further testing at additional areas of the airport; and

**Whereas**, the NYSDEC, its representatives, employees, agents and/or contractors, collectively NYSDEC's Representatives, desire access to the Airport and Site for one or more of the purposes set forth in Environmental Conservation Law ("ECL") Sections 27-1309(3)-(4) and 27-1313(8), including its investigation of potential contamination emanating from the Site; and

**Whereas**, Aqueous Film Forming Foam (AFFF) is a fire suppressant used to extinguish flammable liquid fires such as fuel fires; and

**Whereas**, there is some evidence that there were known crash response activities on Airport property where AFFF may have been used; and

**Whereas**, the AFFF used at the Site may have contained PFAS, such as PFOS and PFOA; and

**Whereas**, previous environmental testing has indicated the presence of PFAS groundwater contamination at or under the Airport, including the area near the U.S. Air Force Air National Guard (ANG) Base; and

**Whereas**, the NYSDEC and the County have determined that additional testing and sampling to determine the source, presence and levels of hazardous substances or contamination, including, but not be limited to, PFAS, is necessary to protect the County's drinking water supply, the public health and the environment; and

**Whereas**, the environmental testing and sampling shall be conducted by NYSDEC, or its designated subcontractor, as part of a Site Characterization ("Site Chara."); and

**Whereas**, the environmental testing equipment will be approved by the Airport Manager and appropriate documentation will be submitted to the Federal Aviation Administration (FAA) for equipment heights and locations, prior to the start of the site work; and

**Whereas**, the environmental testing equipment will follow all FAA regulations regarding construction on an active airfield; and

**Whereas**, there will be no permanent structures allowed to be installed on Airport property, other than preapproved ground mount structures that are less than 3 inches above ground; and

**Whereas**, the purpose of this Access Agreement is to facilitate the Site Chara.;

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

**1. Conflicting Provisions**

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

**2. Overview**

The parties desire to have NYSDEC conduct further aspects of a Site Characterization ("Site Chara."), in an area which includes historic crash sites at Gabreski Airport, for hazardous substances or contamination, including, but not limited to, PFAS.

**3. Right to Enter and Perform Specified Work as Part of Site Chara.**

A. The County hereby grants to the NYSDEC its representatives, agents, and contractors, and assigns (NYSDEC's Representatives), the right to enter in, on, over under and across the Work Area, and to perform the Specified Work described herein, with Airport Escorts (see Paragraph 6 of this Article I), during the Term of the Agreement, as described on the front page hereof, unless sooner terminated in accordance with Para. 5 hereof.

B. The Work Area is more fully described in Para. 6 of this Article I and Attachment 1, attached hereto and made a part hereof. The Specified Work is described in Para. 7 of this Article I and Attachment 1.

C. The right to enter and perform the Specified Work shall only be used for the purposes herein specified, or for such other uses as agreed to by mutual written agreement of the parties.

D. Access to locations under current Airport ground lease agreements will require separate coordination and approval from the appropriate Airport tenant. NYSDEC agrees to obtain any such approvals prior to performing the Specified Work.

**4. Reservation of Rights**

A. This Agreement reserves to the County all right, title interest, and privilege not granted herein.

B. This Agreement provides a right of entry to the NYSDEC and NYSDEC's Representatives for the limited and temporary purpose(s) stated herein, is not a lease and is not coupled with any interest in real property.

**5. Term and Termination**

The Term of this Agreement shall be as set forth on the first page hereof, unless sooner terminated. The parties may terminate the Agreement sooner upon mutual written agreement.

**6. Work Area**

A. The land subject to this Access Agreement (the “Work Area”) is located at Francis S. Gabreski Airport, with an address at Sheldon Way, Westhampton Beach, NY 11978. A more detailed map of the Work Area is located in Attachment 1.

B. The County also grants the right to enter and exit over and across other lands owned by the County as necessary to use the described lands for the purposes listed above. Such entry and exit routes are also shown in Attachment 1.

C. The Work Area is located inside the Airport movement areas. Airport Escorts for NYSDEC and NYSDEC’s Representatives shall be required at all times when NYSDEC and NYSDEC’s Representatives are present at the Airport pursuant to this Agreement. The Airport Manager shall designate the Airport Escorts. NYSDEC shall coordinate with the Airport Manager prior to its entry onto the Airport to establish dates and times for site work or inspection. (See Para. 8 of this Article I.)

D. The Work Area shall receive an underground mark-out for underground utilities prior to site work by a licensed mark-out company, to be funded by NYSDEC at no cost to the Airport or County.

E. The Work Area may be modified by mutual written agreement executed by both parties. Minor modifications of the Work Area may be agreed to in writing by the Airport Manager, in his discretion.

**7. Scope of Work Authorized by Agreement**

**A. Scope of Site Chara. (a/k/a “Specified Work”)**

The Agreement shall permit entry in, on, over and across the lands herein described in Paragraph 6 (Work Area) above by the NYSDEC to perform the Site Chara., with Airport Escorts. The Specified Work shall only be conducted in said Work Area.

B. The Site Chara. shall be conducted in accordance with ECL Article 27 Title 13, 6 NYCRR Part 375, as well as any and all relevant guidance and policy documents, including but not limited to DER-10, Technical Guidance for Site Investigation and Remediation.

C. The Site Characterization shall be conducted by NYSDEC in accordance with the *Site Characterization Work Plan, Frances S. Gabreski Airport – Site # 152261*, Old Riverhead Road, Westhampton, New York 11978 (Prepared for: Contract # D009808, Work Assignment No. 29, New York State Department of Environmental Conservation, Division of Environmental Remediation,) (Prepared By: HRP Associates, Inc., 1 Fairchild Square, Suite 110, Clifton Park, NY 12065, HRP #: DEC1029.P2), ), which document is hereby incorporated by reference.

**D. Authorization of Additional Work.**

Subject to Para. 8 below, the NYSDEC shall provide sufficient notice and copies of all work plans for any additional work needed subsequent to any prior SC Work Plans. In the event additional time is needed for the completion of these activities, modifications to this agreement will be made by mutual agreement in writing by both parties.

**E. Provision of Data/Sampling Results.**

NYSDEC shall provide the Suffolk County Department of Health Services (SCDHS) with a copy of all final information, data, test results, sampling results and analysis based upon or obtained as a result of the Site Chara. authorized hereunder. Upon request, NYSDEC shall provide SCDHS with the exact final locations and methodologies associated with the NYSDEC samples, collection and analysis, including, but not limited to specific locations, method of sample collection and any geophysical well data.

**8. Public Safety/Security/ Coordination with County.**

**A. Aviation Use/County and Public Use and Access**

i.) The NYSDEC is aware that the Work Area is located on land within Francis S. Gabreski Airport, overseen and managed by the Department, which Airport is used for aviation purposes and other purposes. The NYSDEC shall comply with all laws, rules, regulations, policies and directives promulgated by governmental entities with jurisdiction (including, but not limited to, the Department and the U.S. Federal Aviation Administration) in connection with Airport use, flight safety and other customary County and public uses of the Work Area.

ii.) Prior to undertaking the Specified Work, NYSDEC shall confer with the Airport Manager; or his designee, to review all requirements for performance of the Specified Work at the Airport and to develop any additional protocols, procedures and schedules necessary to protect public safety and health, protect flight safety and comply with Airport security requirements, as determined by the Airport Manager. Any such protocols, procedures and schedules to accomplish these goals shall be in writing and shall be approved in writing by the Airport Manager and/or other applicable County officials prior to the commencement of the Specified Work. Such documents may include, but not be limited to, written work plans, notices, work schedules, diagrams and/ or any information about the Specified Work as is requested by the County. The Airport Manager, in his sole discretion, may temporarily suspend or change work schedules or locations as required for safety or security, with such notice to the NYSDEC as is practicable under the circumstances.

B. In addition to the above protocols, NYSDEC shall give the Airport Manager written notice of each workday's anticipated entry and departure time upon County property, and the anticipated area of work, no less than forty-eight (48) hours prior to each such entry. Such written notice may be by e-mail to the Airport Manager. NYSDEC shall also check in with the Airport Manager, or his designee, in person upon NYSDEC's arrival and departure each workday.

C. The County and the public (at the County's option) shall continue to have customary access to the portions of the Work Area that are not affected by the Specified Work at particular times. Reasonable

efforts shall be undertaken by the NYSDEC and its contractors to minimize any disruption of the County's and the Airport's customary operation and activities, and any customary public use of the Airport.

D. The NYSDEC shall be responsible for providing the necessary security for the Work Area and any equipment while it is stored on site. NYSDEC shall maintain the Work Area at all times in a manner satisfactory to the County, including any appropriate safety measures.

E. General security for the Airport shall remain the County's responsibility.

#### **9. Tools and Equipment- Ownership and Removal.**

All tools, equipment, and other property taken upon or placed upon the land by the NYSDEC shall remain the property of the NYSDEC and may be removed by the NYSDEC at any time within a reasonable period after the Specified Work is completed. Such reasonable period of time for removal shall be no longer than thirty (30) days. Such tools, equipment, etc. shall be secured by the NYSDEC while it is on the County's property. All tools, equipment, and other property will be stored at a preapproved location authorized by the Airport Manager.

#### **10. Qualifications; Licenses and Professional Standards; Engineering Certificate**

A. NYSDEC represents and warrants that it has, and shall continuously possess, during the Term, the required licensing, education, knowledge, experience, and character necessary to qualify it to render the Services or undertake the activities authorized by this Agreement.

B. NYSDEC agrees to provide documentation of the above credentials and qualifications to the County upon request.

C. **Engineering Certificate.** In the event that the Agreement requires any Engineering Services, the NYSDEC shall ensure that it is in possession of a Certificate of Authorization ("Certificate"), issued pursuant to § 7210 of the New York Education Law, of every person performing any Engineering Services. Such Certificate shall be submitted to the County upon request.

#### **11. Responsible Principal**

NYSDEC shall designate at least one (1) Responsible Principal or manager, who shall be responsible for the daily operation of the Specified Work and who has the authority to act on behalf of the NYSDEC with regard to said Work. The Responsible Principal shall be the NYSDEC's primary contact person for the County. NYSDEC shall furnish the name, address and cell telephone numbers of the Responsible Principal to the Department, so that he/she can be reached at all times.

#### **12. County Inspection**

The Work Area shall be open to County inspection at all times.

#### **13. Insurance**

A. Insurance requirements shall be governed by this Paragraph 13.



B. NYSDEC shall provide to the County a copy of its contract with any NYSDEC contractors and copies of the certificate of insurance provided by such contractors, which shall comply with the requirements in this Paragraph 13.

C. In the event that NYSDEC is self-insured, it may present evidence of such insurance to the County prior to commencement of the Specified Work, in order to satisfy the insurance requirements in this Agreement.

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

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

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

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

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

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

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

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

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

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

J. In the event the Contractor shall fail to provide evidence of insurance, the County may provide the insurance required in such manner as the County deems appropriate and deduct the cost thereof from a Fund Source. "Fund Source" means any direct or indirect sum payable to the Contractor by the County pursuant to any lawful obligation.

#### **14. Hazardous Substances or Waste**

A. In the event that soil, groundwater samples or other materials excavated or taken from the Work Area as a result of the Specified Work are determined to contain Hazardous Substances or Waste, as defined by applicable law, NYSDEC shall be responsible for the proper excavation, storage, handling, transportation, and disposal of such soil, groundwater and/or other materials. NYSDEC shall be identified as the "generator" on all trucking and disposal manifests and disposal documents. NYSDEC shall provide County with copies of all such manifests which shall be duly receipted and acknowledged by all disposal facilities.

B. NYSDEC shall comply with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C.A. §§ 9601 to 9675) (CERCLA), the New York State Environmental Conservation Law, and any other applicable laws in conducting the Specified Work or other work or activities under this Agreement. NYSDEC shall obtain any permits deemed necessary by any governmental entity with jurisdiction prior to commencing the Specified Work and shall maintain such permits during the Specified Work.

#### **15. No Warranty**

NYSDEC acknowledges that, neither the County, nor any agent or representative of the County, has made nor makes any warranty or representation regarding the physical condition of the Airport and the Work Area, including, but not limited to, the presence or absence of Hazardous Substances, as defined by applicable law.

#### **16. NYSDEC Contractor**

A, The County understands that NYSDEC has engaged HRP Associates, Inc. as the subcontractor to perform the Specified Work under this Agreement. The contact information for the subcontractor is:

David Stoll, Senior Project Manager  
HRP Associates, Inc.,  
1 Fairchild Square, Suite 110, Clifton Park, NY 12065.  
david.stoll@hrpassociates.com

Tele: 518-877-7101 Ext.

B. This Access Agreement shall constitute the County's prior written consent to NYSDEC's retention of the above subcontractor for the Services, pursuant to Paragraph 19 of this Article I, provided that the subcontract between the NYSDEC and HRP Associates, Inc. complies with all requirements of this Agreement. NYSDEC shall provide a copy of the subcontract to the County upon request.

#### **17. Cost**

A. There shall be no cost to the NYSDEC imposed by the County for access to the County's property.

B. NYSDEC shall be responsible for all costs and, expenses associated with the Site Chara., the Specified Work, or any other activities performed hereunder. However, this does not constitute a waiver of any rights NYSDEC may have to recover such costs from any responsible party, pursuant to relevant provisions of statutory or common law.

C. There shall be no cost to the County for the Specified Work or any other activities conducted pursuant to this Agreement.

#### **18. Indemnification**

Subject to the availability of lawful appropriations, and as provided by New York State's Court of Claims Act and Section 17 of the New York State Public Officers Law, NYSDEC hereby agrees to indemnify and hold harmless the County for any and all cause of action in law or equity, arising directly from the negligence of NYSDEC and NYSDEC Representatives, to the extent attributable to said negligence, in the use and access of the Airport for performance of the Specified Work.

The duty to indemnify and hold harmless shall be conditioned upon delivery to the Attorney General by the County of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days of receipt.

The NYSDEC, for and on behalf of its employees, agents, consultants, contractors and subcontractors, hereby releases the County from any liability directly arising from the use and access of the Property, to the extent said liability is directly attributable to the negligence of the Department, its employees, agents, consultants, contractors and subcontractors.

**19. Assignment and Subcontracting**

A. The Contractor shall not delegate its duties under the Contract, or assign, transfer, convey, subcontract, sublet, or otherwise dispose of the Contract, or any of its right, title or interest therein, or its power to execute the Contract or assign all or any portion of the moneys that may be due or become due hereunder, (collectively referred to in this paragraph 19 as "Assignment"), to any other person, entity or thing without the prior written consent of the County, and any attempt to do any of the foregoing without such consent shall be void ab initio.

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

**20. Independent Contractor**

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

**21. Severability**

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

**22. Merger; No Oral Changes**

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

**23. Set-Off Rights**

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

**24. Arrears to County**

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

**25. Governing Law**

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

**26. No Waiver**

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

**27. Cooperation on Claims**

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

**28. No Intended Third-Party Beneficiaries**

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

**29. Confidentiality**

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

**30. Record Retention**

The Contractor shall retain all accounts, books, records, and other documents relevant to the Contract as required by statute.

**31. Binding Agreement**

This agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

### **32. Accidents**

The NYSDEC shall notify the County of any accidents and/or claims, or property damage, arising in connection with or out of this Agreement or any activities conducted hereunder on or within County-owned Property, whether or not such accident occurs in the Work Area. Notice of accidents and/or claims shall be given immediately (or as soon as possible) to emergency responders, where applicable, to the Airport Manager, (and to such other County official indicated in Exhibit 1, Para. 33 (Notice.)) by telephone, at (631) 852-8095, or at such other number the County provides to the NYSDEC in writing. In addition, NYSDEC shall provide e-mail notice to the County official(s) indicated in Paragraph 20 (Notice by Telephone or E-Mail) (below).

### **33. Notice by Telephone or E-Mail**

A. In addition to the provisions of Paragraph 34 of Article I of this Agreement, below, when this Agreement expressly provides for telephone and/or e-mail notice to the Airport Manager (for example in the event of Accidents, for prior notice of NYSDEC entry and departure, or for NYSDEC daily check-in and departure, such notices may be transmitted to the following official:

**Joshua J. Smith**  
**Airport Manager**  
**Francis S. Gabreski Airport**  
Suffolk County  
Dept. of Economic Development and Planning – Aviation Division  
Administration Building # 1,  
Westhampton Beach, NY 11978  
631-852-8095 Tel  
631-852-8092 Fax

Joshua.Smith@suffolkcountyny.gov

B. E-mail and telephone notice shall *not* be permitted in any other circumstances than those expressly permitted by this Agreement.

C. This Paragraph 33 shall not apply to service of process.

D. The subject line of any notice sent by e-mail shall be sufficient to convey that the notice is being sent pursuant to this Agreement and shall include the SC Law No. .

### **34. Notice**

Unless otherwise expressly provided herein, all notices shall be in writing and shall be deemed sufficiently given if sent by regular first class mail and certified mail, or personally delivered during business hours as follows: 1.) to the Contractor at the address on page 1 of the Contract and 2.) to the County at the Department, or as to either of the foregoing, to such other address as the addressee shall have indicated by prior written notice to the addressor. All notices received by the Contractor relating to a legal claim shall be

Gabreski Airport -NYSDEC Site Characterization - Access Agreement






















SC Law No. 24-ED-315

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immediately sent to the Department and also to the County Attorney at 100 Veterans Memorial Highway, P.O. Box 6100, (Sixth Floor), Hauppauge, New York, 11788-0099.

**End of Text for Article I**

# Legend

-  Approximate Groundwater Flow Direction
  -  Proposed Waterloo APS Vertical Profile Borings
  -  Proposed Shallow Soil Borings
- Total PFOA + PFOS: Groundwater (ng/L)**
-  NS (Not Sampled)
  -  ND (Non-Detect)
  -  1-10
  -  11-50
  -  51-500
  -  501-5000
  -  5001-15000
- Total PFOA + PFOS: Soil (ug/kg)**
-  Non-Detect (ND)
  -  0.01 - 5.00
  -  5.01 - 10.00
  -  10.01 - 15.00
  -  15.01 - 20.00
  -  20.01 - 25.00
-  Areas of Concern
  -  Air Crash Sites
  -  Airport Development District
  -  Approximate Air National Guard (ANG) Base Boundary
  -  Identified Release Areas

Vertical Profile





**Exhibit 1  
County Terms and Conditions**

**1. Elements of Interpretation**

As used throughout the Contract:

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

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

**2. Meanings of Terms**

As used in the Contract:

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

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

“**Contractor**” means the New York State Department of Environmental Conservation, its officers, officials, employees, agents, servants, sub-contractors, volunteers, and any successor or assign of any one or more of the foregoing performing the Services.

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

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

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

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

“**Event of Default**” means

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

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

c. the Contractor’s failure to maintain insurance required by the Contract with an insurer that has designated the New York Superintendent of Insurance as its lawful agent for service of process; or

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

e. The Contractor’s bankruptcy or insolvency; or

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

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

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

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

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

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

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

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

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

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

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

**End of Text for Exhibit 1**

**Exhibit 2**

**Suffolk County Legislative Requirements**

Note: The following provisions shall apply to the Contractor, where permitted by and consistent with New York State law.

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

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

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

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

**Required Form:**

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

**2. Living Wage Law**

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

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

**Required Forms:**

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

CERTIFICATION/DECLARATION-SUBJECT TO AUDIT."

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

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

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

- a. The Contractor shall not use County funds to assist, promote, or deter union organizing.
- b. No County funds shall be used to reimburse the Contractor for any costs incurred to assist, promote, or deter union organizing.
- c. No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote, or deter union organizing.

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

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

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

**Required Form:**

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

**4. Lawful Hiring of Employees Law**

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

This Contract is subject to the Lawful Hiring of Employees Law of the County of Suffolk. It provides that all covered employers, (as defined), and the owners thereof, as the case may be, that are recipients of compensation from the County through any grant, loan, subsidy, funding, appropriation, payment, tax incentive, contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or an awarding agency, where such compensation is one hundred percent (100%) funded by the

County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees (as defined) and with respect to the alien and nationality status of the owners thereof. The affidavit shall be executed by an authorized representative of the covered employer or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement with the County; and shall be made available to the public upon request.

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

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

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

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

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

**Required Forms:**

“SUFFOLK COUNTY DEPARTMENT OF LABOR,

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

**5. Gratuities**

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

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

**6. Prohibition Against Contracting with Corporations that Reincorporate Overseas**

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

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

**7. Child Sexual Abuse Reporting Policy**

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

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

**8. Non Responsible Bidder**

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

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

**9. Use of Funds in Prosecution of Civil Actions Prohibited**

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

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

**10. Youth Sports**

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

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

**11. Work Experience Participation**

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

**12. Safeguarding Personal Information of Minors**

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

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

**13. Contract Agency Performance Measures and Reporting**

**Requirements**

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

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

**14. Suffolk County Local Laws Website Address**

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

**15. Suffolk County Code of Ethics**

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

<https://suffolkcountyny.gov/Portals/0/formsdocs/Boardofethics/2%2024%20BLUE%20BOOK%20UPDATED.pdf>

**End of Text for Exhibit 2**