

**RESOLUTION TO APPROVE CONTRACT FOR ASBESTOS ABATEMENT SERVICES WITH
ORION DES, LLC**

A regular meeting of the Troy Community Land Bank Corporation (the "TCLB") was convened in public session at City Hall located at 433 River Street, 5th Floor in the City of Troy, Rensselaer County, New York on December 18, 2019 at 8:30 a.m. o'clock local time, local time.

The meeting was called to order by the Chair of TCLB and, upon roll being called, the following members of the Agency were:

PRESENT:

Heather King	Chair
Suzanne Spellman	Vice-Chair
Sharon Nichols	Treasurer
Brian Barker	Secretary
Andrew Cooper	Member
Jeanette Nicholson	Member
John Cubit	Member
John Carmello	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Anthony Tozzi	Chief Executive Officer
Catherine Hedgeman, Esq.	Agency Counsel

The following resolution was offered by Brian Barker, seconded by Suzanne Spellman, to wit:

**RESOLUTION APPROVING CONTRACT FOR ASBESTOS ABATEMENT
SERVICES WITH ORION DES, LLC**

WHEREAS, the Troy Community Land Bank (Land Bank) sought an emergency proposal for Asbestos Abatement for 3325 Sixth Avenue Troy, New York due to an emergency order issued by the City of Troy regarding the condition of the property located at 3325 Sixth Avenue; and

WHEREAS, in response thereto, ORION DES, LLC has submitted a proposed contract to render the requested emergency Services which is attached hereto ; and

WHEREAS, the Land Bank, through its Executive Director, has submitted the proposed contract from ORION DES, LLC to the Board of Directors for review, and the Board has had the opportunity to review said proposed contract; and

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TROY COMMUNITY LAND BANK, AS FOLLOWS:

Section 1. The TCLB hereby finds and determines as follows:

- (A) The TCLB hereby approves all the terms and conditions of the proposed contract attached hereto; and
- (B) The TCLB by and through its Executive Director and Board Chairman are authorized to execute all documents and make all payments pursuant to the contract; and
- (C) This Resolution shall be effective immediately upon passage.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Heather King	VOTING	<input checked="" type="checkbox"/>
Suzanne Spellen	VOTING	<input checked="" type="checkbox"/>
Sharon Nichols	VOTING	<input checked="" type="checkbox"/>
Brian Barker	VOTING	<input checked="" type="checkbox"/>
Andrew Cooper	VOTING	<input checked="" type="checkbox"/>
Jeanette Nicholson	VOTING	<input checked="" type="checkbox"/>
John Cubit	VOTING	<input checked="" type="checkbox"/>
John Carmello	VOTING	<input checked="" type="checkbox"/>

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK
COUNTY OF RENSSELEAR

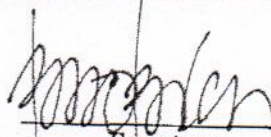
)
) SS.:
)

I, the undersigned Secretary of the Troy Community Land Bank (the "TCLB"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on December 18, 2019 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

18th IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this day of December, 2019.


Secretary

(SEAL)

EXHIBIT A

Contract

- SEE ATTACHED -

ADD DATE TO LAST PAGE
PROPOSED FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED SUM)

THIS AGREEMENT is by and between Troy Community Land Bank ("Owner") and Orion DES, LLC ("Contractor"). Owner and Contractor hereby agree as follows:

ARTICLE 1-WORK

- 1.1 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Contractor shall perform all necessary work to complete abatement of all previously identified asbestos-containing materials from the roof areas of the building located at 3325 Sixth Avenue, Troy, NY.

ARTICLE 2-THE PROJECT

- 2.1 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Abatement and disposal of all asbestos-containing materials from the roof areas of the building. The work scope is including but not limited to: Coordination of all work, Communications, verifying and coordination with all utility companies as needed to execute the work; Acquiring any and all Permits and Notifications required to perform work on the property. Assessing and verifying existing conditions. All necessary and required Testing and Approvals; Special Inspections, Sampling, Reporting, Demolition, Handling and Removal of all Hazardous materials, General Housekeeping, Dust control, Security, ALL in Accordance with the Contract, Plans and Specifications.

ARTICLE 3-ARCHITECT

- 3.1 The Project has been designed by Troy Architecture Practice, PLLC (Architect).

ARTICLE 4 -CONTRACT TIMES

- 4.1 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract. The building is in a state of advanced deterioration. The City of Troy requires the Owner to stabilize the building to eliminate safety risks to the public.

- 4.2 *Dates for Substantial Completion*

A. The Work shall be completed within 5 business days of the notice to proceed.

ARTICLE 5-CONTRACT PRICE

5.1 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.1.A below:

- A. For abatement and disposal of all asbestos-containing roofing materials, a contract sum of \$22,444.00.

ARTICLE 6 - PAYMENT PROCEDURES

6.1 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment to the Architect for approval. Applications for Payment will be processed by Owner within 30 days of receipt.

6.2 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.2.A.1 below.

1. *Prior to Substantial Completion*, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.2 of the General Conditions.

- a. 95 percent of Work completed (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed less 200 percent of Owner's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.3 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price.

ARTICLE 7 - INTEREST

- 7.1 All moneys not paid when due shall bear interest at the rate of .05 percent per annum.

ARTICLE 8-CONTRACTOR'S REPRESENTATIONS

- 8.1 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - 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, and performance 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, and performance of the Work.
 - D. Contractor has carefully studied all available drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, and reports and drawings of Hazardous Environmental Conditions, if any, at the Site as containing reliable "technical data."
 - E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
 - F. Based on the information and observations referred to in Paragraph 8.1.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
 - G. 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.
 - H. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Contractor.
 - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.1 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement.
 - 2. Project Manual, including Specifications and drawings
 - 3. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid.
 - b. Documentation submitted by Contractor prior to Notice of Award.
 - 4. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
- B. The documents listed in Paragraph 9.1.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented under mutual agreement of Owner, Contractor and Architect

ARTICLE 10 - MISCELLANEOUS

10.1 *Terms*

- A. Terms used in this Agreement will have meanings as generally used and understood in the construction industry

10.2 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.3 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.5 *Severability*

- A. 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 the Contract Documents shall be reformed to replace such stricken provision or part hereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.5 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.5:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice, means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels and
 - 4. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.6 TERMINATION OF AGREEMENT; REMEDY FOR BREACH

This Agreement may be terminated by the Land Bank or the Contractor as follows:

- 10.6.1 The Land Bank may terminate this Agreement if the Contractor refuses or fails to supply enough properly skilled workers or proper materials to meet any of its requirements, if the Contractor fails to make payment to Land Bank-approved subcontractors for materials or labor, or disregards laws, ordinances or rules and regulations or orders of a public entity having jurisdiction over the work, or if the Contractor is substantially in breach of any of its provisions. Additionally, the Land Bank may, without cause, order the Contractor in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the Land Bank may determine.
- 10.6.2 The Contractor may terminate this Agreement if the Land Bank is substantially in breach of it.
- 10.6.3 In the event of a breach by the Contractor, the Contractor shall pay to the Land Bank all direct and consequential damages caused by such breach, including, but not limited to, all sums expended by the Land Bank to procure a substitute Contractor to satisfactorily complete the work, together with the Land Bank's own costs incurred in procuring a substitute Contractor.

10.7 ADDITIONAL GROUNDS FOR CANCELLATION OF AGREEMENT BY THE LAND BANK;

DISQUALIFICATION FOR FUTURE CONTRACTS WITH PUBLIC AUTHORITIES

- 10.7.1 Notwithstanding anything herein to the contrary, and to the extent permitted by law, this Agreement may be cancelled or terminated by the Land Bank without penalty or damages of any kind upon (1) refusal by an owner, shareholder, member, manager director or officer of the Legal Consultant, when called before a grand jury, head of state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, or (2) refusal of such person to sign a waiver of immunity against subsequent criminal prosecution, or (3) refusal of such person to answer any relevant question with respect to such transaction or contract.
- 10.7.2 Further, such person, and any firm, partnership, limited liability company or corporation of which such person is a shareholder, member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal.

- 10.7.3 In the event of cancellation or termination of this Agreement pursuant to this article, any monies owing by the Land Bank for services completed prior to the cancellation or termination shall be paid to the Contractor.

10.8 NON-DISCRIMINATION

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 agrees that neither it nor its Land Bank-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, or marital status refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

10.9 IRANIAN ENERGY SECTOR DIVESTMENT

Contractor hereby represents that Contractor is in compliance with New York State Public Authorities Law Section 2829-c entitled "Iranian Energy Sector Divestment." By signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state finance law. Specifically, the Contractor represents that it has not:

- (a) Provided goods or services of \$20 Million or more in the energy sector of Iran including but not limited to the provision of oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or
- (b) Acted as a financial institution and extended \$20 Million or more in credit to another person for forty-five days or more, if that person's intent was to use the credit to provide goods or services in the energy sector in Iran.

10.10 INDEPENDENT CONTRACTOR STATUS

Contractor is and will function as an independent Contractor under the terms of this Agreement and shall not be considered an agent or employee of the Land Bank for any purpose. The agents, representatives and employees of the Contractor shall not in any manner be, or be held out to be, the agents, representatives or employees of the Land Bank.

10.11 NON-COLLUSIVE BIDDING

By execution of this Agreement, Contractor warrants, under penalty of perjury, that to the best of knowledge and belief; the prices communicated to the Land Bank in establishing the costs of goods and services covered in this Agreement have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other contractor or with any competitor. Unless otherwise required by law, Contractor also warrants that the prices which have been quoted in its Proposal have not been knowingly disclosed by the Contractor prior to opening, directly or indirectly, to any other contractor or to any competitor. Contractor also warrants that no attempt has been made or will be made to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

10.12 NO WAIVER OF PERFORMANCE

Failure of the Land Bank to insist upon strict and prompt performance of the provisions of this Agreement, or any of them, and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of the Land Bank's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of the Contractor.

10.12 GROUNDS FOR CANCELLATION OF AGREEMENT BY THE LAND BANK; DISQUALIFICATION FOR FUTURE CONTRACTS WITH PUBLIC AUTHORITIES

10.13.1 Notwithstanding anything herein to the contrary, this Agreement may be cancelled or terminated by the Land Bank without penalty or damages of any kind upon (1) refusal by an owner, shareholder, member, manager, director or officer of the Contractor, when called before a grand jury, head of state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, or (2) refusal of such person to sign a waiver of immunity against subsequent criminal prosecution, or (3) refusal of such person to answer any relevant question with respect to such transaction or contract. Further, such person, and any firm, partnership, limited liability company or corporation of which such person is a shareholder, member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal.

10.13.2 In the event of cancellation or termination of this Agreement pursuant to this article, any monies owing by the Land Bank for services completed prior to the cancellation or termination shall be paid to the Contractor.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on May 14, 2019 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

ORION DES, LLC

TROY COMMUNITY LAND BANK CORP.

By: _____

By: _____

Title: Executive Director

Title: _____

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement)

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign)

Address for giving notices:

Address for giving notices:

8D Petra Lane

Troy Community Land Bank
Corporation 200 Broadway, Suite

Albany, NY 12205

Troy, NY 12180-0826

Attest:

License No.: