

**Jeffrey M. Lanigan**  
Mayor

**John A. Nash**  
Common Council  
President

**Brian Adams**  
City Treasurer



**BOARD OF ESTIMATE AND CONTRACT**  
CITY HALL • ROME, NEW YORK 13440-5815

**Gerard F. Feeney**  
Corporation Counsel

**Joseph Guiliano**  
Commissioner of Public  
Works

**Eric Seelig**  
City Clerk

TO STREAM MEETINGS OF THE BOARD OF ESTIMATE AND CONTRACT LIVE,  
PLEASE VISIT [WWW.YOUTUBE.COM/@ROMENEWYORK\\_OFFICIAL/STREAMS](http://WWW.YOUTUBE.COM/@ROMENEWYORK_OFFICIAL/STREAMS).

**BOARD OF ESTIMATE AND CONTRACT MEETING**  
**REGULAR SESSION**

**JULY 11, 2024**  
**3:00 P.M.**

**1. CALL THE ROLL OF MEMBERS BY THE CLERK**

**2. READING OF MINUTES OF PRECEDING SESSION**

(Motion in order that the reading of the minutes of the preceding session be dispensed with and that they be approved.)

**3. COMMUNICATIONS**

**4. PUBLIC SPEAKERS**

**5. REPORT OF DEPARTMENT HEADS**

**6. RESOLUTIONS**

**RES. NO. 175** AUTHORIZING 2024 BUDGETARY TRANSFER. **Adams**

**RES. NO. 176** AUTHORIZING THE MAYOR OF THE CITY OF ROME TO ACCEPT THE DETERMINATION AND FINDINGS FOR THE NORTHWEST WATER PROJECT CONTRACT 11. **Guiliano**

**RES. NO. 177** AUTHORIZING THE MAYOR OF THE CITY OF ROME TO ENTER INTO AN AGREEMENT WITH LABELLA ASSOCIATES, D.P.C FOR AN AMOUNT NOT TO EXCEED \$15,500. **Andrews**

**RES. NO. 178** AUTHORIZING THE MAYOR OF THE CITY OF ROME TO ENTER INTO AN AGREEMENT WITH BRICE GRIFFIN FOR AN AMOUNT NOT TO EXCEED \$1,500.00. **Hickey**

**RES. NO. 179** AUTHORIZING AMENDMENT NO. 3 TO CONTRACT WITH CDM SMITH NY, INC., PURSUANT TO BOARD OF ESTIMATE AND CONTRACT RESOLUTION NO. 110 ADOPTED JULY 15, 2021 (\$161,000.00). **Guiliano**

**RES. NO. 180** AUTHORIZING THE IMPLEMENTATION AND FUNDING OF 100% OF THE COSTS OF A PROJECT WITH THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION. **Guiliano**

**7. TABLED LEGISLATION**

**8. ADJOURNMENT**

**RESOLUTION NO. 175**

**AUTHORIZING 2024 BUDGETARY TRANSFER.**

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

BE IT RESOLVED, that pursuant to Rome Charter Laws, Title A, Article VII, Section 91, the City Treasurer of the City of Rome is hereby authorized and directed to make the following budgetary transfer:

**REASON: Authorization for 2024 Budget Transfer for AI**

Authorizing Budgetary Transfer for \$2,500.00 into Advertising & Printing for recruitment purposes

<u>FROM CODE NO.</u>		<u>AMOUNT</u>
AI3120.411	Dues & Publications	\$2,500.00

<u>TO CODE NO.</u>		<u>AMOUNT</u>
AI3120.416	Advertising & Printing	\$2,500.00

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Lanigan \_\_\_\_\_ Nash \_\_\_\_\_ Feeney \_\_\_\_\_  
Guiliano \_\_\_\_\_ Adams \_\_\_\_\_

ADOPTED \_\_\_\_\_ DEFEATED \_\_\_\_\_

**RESOLUTION NO. 176**

**AUTHORIZING THE MAYOR OF THE CITY OF ROME TO  
ACCEPT THE DETERMINATION AND FINDINGS FOR  
THE NORTHWEST WATER PROJECT CONTRACT 11.**

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

WHEREAS, Joseph Guiliano, Commissioner of Public Works for the City of Rome, New York has recommended that the Common Council of the City of Rome, New York, adopt the attached Determination and Findings in connection with the acquisition of various easements for the Northwest Water Project Contract 11; now, therefore,

BE IT RESOLVED, by the Board of Estimate and contract of the City of Rome hereby adopts the attached Determination and Findings, and that the Mayor of the City of Rome is hereby authorized to accept said Determination and Findings, in connection with the acquisition of various easements for the Northwest Water Project Contract 11, which said document is made part of this Resolution.

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Lanigan \_\_\_\_\_ Nash \_\_\_\_\_ Feeney \_\_\_\_\_  
Guiliano \_\_\_\_\_ Adams \_\_\_\_\_

ADOPTED \_\_\_\_\_ DEFEATED \_\_\_\_\_

**DETERMINATION AND FINDINGS OF THE  
COMMON COUNCIL OF THE CITY OF ROME  
IN CONNECTION WITH THE ACQUISITION OF VARIOUS EASEMENTS  
FOR THE NORTHWEST WATER PROJECT CONTRACT 11**

**FACTS**

1. On or about June 25, 2014, the Common Council of the City of Rome, Oneida County (the "City") approved the installation of a redundant underground water line known as the Northwest Water System Improvement Project Contract 11 (the "Waterline Project") that will serve the residents of the City through the provision of better continuity of: (a) potable water supply; and (b) water pressure for fire protection purposes.
2. The Waterline Project was amended by Resolution No. 61A adopted on April 13, 2016 which increased the scope and changed the location of the tank and pump station for the Waterline Project (the "Waterline Project" as amended by the scope and location changes set forth in Resolution No. 61A is hereinafter called the "Waterline Project").
3. The City has acquired the bulk of the easements required to undertake and thereafter complete the installation of the Waterline Project.
4. On or about March 12, 2015, the City of Rome, Oneida County (the "City") issued a negative declaration for the Waterline Project (the "SEQR Resolution") which negative declaration was subsequently reaffirmed by the City in Resolution No. 98 that was adopted on July 27, 2016.
5. Prior to April 24, 2024, the Commissioner of Public Works of the City (the "Commissioner") advised the Common Council that certain property owners ("Property Owners") have not provided the City with the final executed easements to install the Waterline Project over their respective properties (the "Easements").
6. On April 24, 2024, the Common Council of the City approved a certain Resolution which established a public hearing under Eminent Domain Procedure Law ("EDPL") §201 on the acquisition of Easements for the Waterline Project over the real property owned by the Property Owners for May 10, 2024 at City Hall, Common Council Chambers, 198 Washington Street, City of Rome, New York 13440 (the "Public Hearing") (**Exhibit "1"**).
7. Pursuant to Article 2 of the EDPL, on April 26, 2024, the City provided timely notice of the Public Hearing as required by EDPL §201 to the Property Owners (**Exhibit "2"**).
8. Pursuant to EDPL §202(A), a Notice of Public Hearing was published in The Daily Sentinel for five successive issues commencing on April 30, 2024 and continuing each publication day thereafter and including May 7, 2024 (**Exhibit "3"**).
9. On April 26, 2024 and pursuant to EDPL §202(C)(1), the Notice of Public Hearing was mailed and served on all of the Property Owners at the respective addresses of the Property Owners set forth on the 2023 assessment roll. The respective notice of public hearing for each

Property owner was sent by certified mail return receipt requested service which service occurred more than ten (10) days prior to the Public Hearing (**Exhibit "2"**).

10. In compliance with EDPL §203, the City conducted the Public Hearing on May 10, 2024 at 10.00 AM at City Hall, Common Council Chambers, 198 Washington Street, City of Rome, New York. The Public Hearing was opened at 10:01 AM whereby the notice of Public Hearing was read in open session (**Exhibit "4"**, p.3, Line 3).

11. The transcript of the Public Hearing and all documents submitted to the City at the Public Hearing were available for public inspection at the Office of Commissioner of Public Works of the City (**Exhibit "4"**).

12. The City held open the opportunity to submit written comment on the acquisition of the Easements until May 15, 2024 at the close of regular business of the City (**Exhibit "4"**, p. 6, Lines 11-19) ("Closure of the Public Comment Period").

13. Following the reading of the Notice of Public Hearing, the Commissioner of the Department of Public Works made a statement that the Northwest Water Project had been ongoing for approximately ten years and that this is Phase 3 of the Project involving a water tower north of the Marina Road. The Commissioner stated that the project will benefit the residents along Turin Road and the housing developments on Glen Road, Northgate Estates and along Townline Road. It was further added the project will benefit approximately 500 homes through the increased water pressure. The Commissioner stated that the acquisition of the Easement was needed since the NYS Department of Transportation did not approve the installation of the Waterline Project in their right of way and as a result the location of the Easements was constrained by the separation between water and sewer lines and other public utility facilities.

14. The transcript of the Public Hearing along with all written documents submitted to the City were placed in the Department of Public Works.

15. At 10.12 AM, the reading of the Notice of Public Hearing was completed and the public in attendance was invited to speak.

16. Vincent Rossi and Ms. Dawn Zagurski, the owner of Sam'z Eats & Sweets LLC which owns the property known as 8201 Bielby Road, City of Rome, Oneida County, New York (the "SES Property"), spoke about the impact of the Waterline Project on the SES Property and the potential impact of the construction and installation of the waterlines on the business conducted at the SES Property.

17. Other than Ms. Zagurski, no other Property Owner attended the Public Hearing.

18. At the Closure of the Public Comment Period, no other Property Owner provided written comment to the Department of Public Works.

## **ANALYSIS OF PUBLIC COMMENTS**

The City has considered the public comments on the eminent domain of the Easements for the Waterline Project on the property of the Property Owners which was limited to only the SES Property as follows.

I. Written Objections from Vincent Rossi on behalf of the SES Property. The contentions of Mr. Rossi have been considered and evaluated by the City as follows as follows:

1. **The scope of the Easement and Difference between a Temporary Easement and Permanent Easement.** The City's contractor will undertake all of the work within the boundary of the Easement and does not expect to go outside of the area of the Easement on the SES Property.

2. **Photograph Public Hearing Exhibit 4 Page 2.** The question poised for the SES Property was the beginning and end of the public right of way relative to Exhibit "4", p.2. The City volunteered to line and/or flag the Easement Area on the SES Property but the City indicated that the Easement would temporarily impact approximately one-half to one-quarter of the length of the parking bay. The City indicated that the contractor would excavate, set and test no more than three pipes in length as Waterline Project traverse over the SES Property so that there would not be an open trench affecting more than two or three parking spaces at a time. The excavation and setting of pipes would involve a matter of hours not days.

Ms. Zagurski asked about work limitations before 11:00 AM opening. The City made a commitment that it would work with the contractor to try and establish work hours minimizing the impact on the business hours being conducted on the SES Property. Ms. Zagurski indicated that the timing of the installation of the Waterline Project comes during her five (5) month prime season.

3. **Photograph Public Hearing Exhibit 4 Page 4.** Ms. Zagurski sought information on the impact on the green area and handicapped spaces and the five parking spaces in the photograph on p.4. Commissioner Guiliano confirmed that the Waterline will be installed in the middle of the easement over the SES Property.

4. **Photograph Public Hearing Exhibit 4 Page 5.** Commissioner Guiliano confirmed that the pipes for the Waterline Project will be installed in six to eight feet east toward the building will be the location of the waterline. Ms. Zagurski indicated that area was her main parking area. Ms. Zagurski indicated that she had a concern about access to and from her property. Commissioner Guiliano indicated that installation of the pipes will be undertaken that following the setting of the waterline, the excavated area will be back filled in sections to minimize the impact on the parking spaces. The interruption of access will be restored as soon as the area is back filled so that it should be a matter of hours absent an emergency conflict with another utility.

5. **Photograph Public Hearing Exhibit 4 Page 5.** Ms. Zagurski inquired about the removal of the signage posts, and rules to separate the customers for the area being excavated. Commissioner Guiliano indicated that the Contractor assumes all liability in the work zone until the City signs off on the completion of the work on each property.

6. **Photograph Public Hearing Exhibit 4 Pages 12 and 14 – Enter and Exit Signs.** Ms. Zagurski indicated that these directional signs are electrified. Commissioner

Guilano indicated that the underground utilities will be located prior to any excavation. The signs may not need to be excavated but that will be determined in the field. Any excavated signs would be reinstalled by the contractor.

7. **Blacktop Restoration and Stripping.** Ms. Zagurski inquired how long before the black top is restored and stripped. Commissioner Guilano indicated that the Contractor and the City will set the final restoration timeline for the installation of blacktop during the establishment of the final construction schedule which has not been finalized. In terms of the restoration of parking areas, Commissioner Guiliano indicated that crusher run may be temporarily installed with a final top coat of asphalt that will be stripped. Commissioner Guiliano indicated that there is no established schedule for this section of the work

8. **Detouring of Traffic.** Ms. Zagurski asked about detouring of traffic. Commissioner Guiliano did not expect any detours of traffic except during the period when the work proceeds across the entrance to the SES Property. Commissioner Guiliano indicated that traffic may be one way north bound and then southbound on Route 26.

9. After polling the Common Council Chambers, the Public Hearing was closed at 10:38.

#### **DETERMINATION AND FINDINGS**

The City considered the proposed acquisition of the Easements pursuant to the EDPL, the importance of the Waterline Project on the health and safety of its residents, the comments made at the Public Hearing. The City adopts these Determinations and Findings as set forth below:

1. The public use, benefit, and purpose from the acquisition of the Easements will be served as follows:
  - (a) An increase in the supply and reliability of the water system of the City of Rome will be served by the installation of the redundant waterline known as the Waterline Project. This installation will reduce the chance or probability that there will be a disruption of water service to the residents of the City since the City will have a second water line in place to serve areas of the City which have only a second line.
  - (b) An increase in the quality of the water supplied by the City.
  - (c) An increase in water pressure in the City since certain areas of the City are currently impacted by low water pressure. The Waterline Project is being installed to increase water pressure that will better fire protection services for the residents. This should also result in better insurance rates for the residents of the City.
2. The approximate location of the proposed public project and the reasons for the selection of the location for the Waterline Project as follows:

- (a) As set forth in the minutes of the Public Hearing, the DOT did not allow the waterline to be installed in the DOT right of way so that waterline was designed to be installed in the location on private property through the easements shown in the Project documents that were long ago approved.
3. The general effect of the proposed project on the environment and the residents of the City of Rome follows:
  - (a) The Waterline Project will ensure that clean and safe potable water will be available to the residents of the City.
  - (b) The Waterline Project will increase water pressure and improve fire fighting ability in the City.
4. The other factors considered by the City were as follows:
  - (a) The longstanding approval of the Waterline Project and the need to complete the Waterline Project.
  - (b) The disruption from the installation of the Waterline Project is expected to be minimal since the excavated areas will be back filled promptly after the redundant water line has been installed.
5. Pursuant to EDPL §202, a Notice of Public Hearing was published in The Daily Sentinel from April 30, 2024, May 1, 2024, May 2, 2024, May 3, 2024 and May 7, 2024. The same Notice of Public Hearing was served on all interested property owners, by certified mail return receipt requested service, more than ten (10) days prior to the Public Hearing.
6. Pursuant to EDPL §203, a Public Hearing was conducted on May 10, 2024. At the Public Hearing the City outlined the purpose and proposed location of the Waterline Project and had a copy of the waterline drawing and maps at the Public Hearing.
7. No written submissions were made to the City.
8. Following the closing of the Public Hearing, copies of the complete record of the Public Hearing including the transcript were filed with the City at the Office of the Department of Public Works.
9. The City has considered the proposed taking of the Easements, the comments made by speakers at the hearing and in writing and other matters related to the acquisition of the Easements.
10. The City has previously made findings and resolutions pursuant to the SEQRA.
11. The City finds that the necessary justification exists to proceed to condemn the Easements for the installation of the Waterline Project pursuant to EDPL §204(B) that:



- (a) The public use, benefit or purpose of the acquisition of the Easement for the redundant Waterline Project has been established in the record;
  - (b) The location for the proposed public project has been established and an explanation for the reasons for the selection of that location for the Waterline Project has been provided; and
  - (c) The general effect of the proposed use of the Easements for the installation of the Waterline Project on the environment and the residents of the local area, the City of Rome have been comprehensively examined.
12. Copies of all documentation concerning the above acquisition and condemnation of the Easements are on file at the offices of the City of Rome Department of Public Works located at City Hall, 198 Washington Street, City of Rome, New York 13440, which include the transcript of Public Hearing held on May 10, 2024 and all documentation submitted to the City concerning said acquisition.
13. For all the reasons stated in these Determinations and Findings and the information known to the members of the Common Council of the City, the Common Council of the City hereby determines that:
- a. the acquisition of the Easements from the Property Owners that received notices of the Public Hearing from the City pursuant to by eminent domain will serve a public use that will benefit the residents of City of Rome within the meaning of the EDPL.

Dated: July 1, 2024  
Rome, New York

CITY OF ROME

*Joseph Guiliano*

Name: Joseph G. Guiliano

Title: Commissioner of Public Works

## LISTING OF EXHIBITS

- Exhibit "1"** April 24, 2024 Resolution of the Common Council of the City of Rome.
- Exhibit "2"** Affidavit of Mailing dated April 26, 2024
- Exhibit "3"** Affidavit of Publication from The Daily Sentinel
- Exhibit "4"** Transcript of Public Hearing dated May 10, 2024.
- Exhibit "5"** Exhibit "4" from the Public Hearing from the SES Property.

**RESOLUTION NO. 177**

**AUTHORIZING THE MAYOR OF THE CITY OF ROME TO  
ENTER INTO AN AGREEMENT WITH LABELLA ASSOCIATES, D.P.C  
FOR AN AMOUNT NOT TO EXCEED \$15,500.**

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

WHEREAS, Gerard F. Feeney, Corporation Counsel for the City of Rome, New York has recommended that the City of Rome, New York, retain the services of LaBella Associates D.P.C, for professional services relating to the City of Rome’s Canal Waterfront Project, at an amount not to exceed \$15,500, pursuant to the attached proposal; now, therefore,

BE IT RESOLVED, by the Board of Estimate and Contract of the City of Rome, that the Mayor of the City of Rome is hereby authorized to enter into an agreement with of LaBella Associates D.P.C, for professional services relating to the City of Rome’s Canal Waterfront Project, at an amount not to exceed \$15,500, pursuant to the attached proposal, which is made part of this Resolution.

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Lanigan \_\_\_\_\_ Nash \_\_\_\_\_ Feeney \_\_\_\_\_  
Guiliano \_\_\_\_\_ Adams \_\_\_\_\_

ADOPTED \_\_\_\_\_ DEFEATED \_\_\_\_\_

# Professional Services Agreement

Agreement made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_  
between

**LaBella Associates, D.P.C.**  
**("LaBella")**

and

**The City of Rome, New York**  
**("Client")**

for services related to the following Project:

**Preliminary Design and Grant Support Canal Waterfront**  
**City of Rome, Oneida County, New York**  
**("Project")**

LaBella and Client hereby agree as follows:

**Description of Services:** LaBella shall perform the services set forth and described in LaBella's proposal, dated June 28, 2024, a copy of which is attached as *Exhibit A*, in accordance with the terms and conditions of this contract attached as *Exhibit B*.

**Compensation for Services:** A retainer in the amount of \$0.00 shall be required prior to the initiation of services. This retainer will be held until the end of the Project and applied to Client's final invoice. Any excess amount shall be returned to Client. Client shall compensate LaBella for its professional services as set forth in LaBella's proposal. LaBella shall submit invoices for services rendered monthly. Client shall make payment to LaBella no later than thirty (30) days after the date of each invoice.

**Term:** LaBella shall commence performing its services when Client gives notice to proceed. This Agreement shall terminate when LaBella's services are completed and final payment has been received from Client, or as otherwise provided in this Agreement.

**Insurance:** LaBella shall maintain, at its own expense, throughout the term of this Agreement and until the expiration of all applicable statutes of limitation, the following insurance coverages:

- Comprehensive general liability insurance with policy limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage;
- Automobile liability insurance covering owned, non-owned, rented and hired vehicles operated by LaBella with policy limits of not less than \$1,000,000 combined single limit and aggregate for bodily injury and property damage;

- Umbrella liability insurance with policy limits of not less than \$10,000,000 each occurrence and \$10,000,000 in the aggregate;
- Worker's compensation insurance at statutory limits and employer's liability insurance with a policy limit of not less than \$1,000,000 for all employees engaged in the rendering of professional services under this Agreement;
- Cyber insurance with policy limits of not less than \$5,000,000 and excess Cyber insurance with policy limits of not less than \$5,000,000;
- Professional liability insurance with policy limits of not less than \$5,000,000 per claim and \$7,500,000 in the aggregate; and
- Pollution liability insurance with policy limits of not less than \$5,000,000 per claim and \$7,500,000 in the aggregate. Pollution liability coverage is only provided for professional services.

Client shall be named as an additional insured on a primary and non-contributory basis under the CGL, Automobile and Umbrella insurance policies. LaBella shall provide to the Client certificates of insurance evidencing compliance with the requirements of this Agreement. The certificates shall contain a provision that at least thirty (30) days prior written notice shall be given to Client in the event of cancellation, non-renewal, or reduction of the insurance.

**Indemnification:** To the fullest extent permitted by law, LaBella shall indemnify and hold the Client and its officers and employees harmless from and against liabilities, damages, losses and judgments, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts, errors or omissions of LaBella, its employees and its consultants in the performance of professional services under this Agreement.

In recognition of the relative risks and benefits of the Project to both Client and LaBella, the risks have been allocated such that Client agrees, to the fullest extent permitted by law, to limit the liability of LaBella and LaBella's consultants for any and all claims, liabilities, damages, losses, costs, and judgments of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of LaBella and LaBella's consultants shall not exceed \$50,000 or LaBella's total fee for services rendered on this Project, whichever is greater.

**LaBella Associates, D.P.C.**

**City of Rome**

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

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

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

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

Date \_\_\_\_\_

**Exhibit A**  
**LaBella's Proposal**



June 28, 2024

Matthew Andrews, Deputy Director  
Community & Economic Development  
City of Rome  
198 N. Washington Street  
Rome, NY 13440

**RE: Proposal for Professional Services  
Preliminary Design and Grant Support  
Canal Waterfront, City of Rome, Oneida County, New York  
LaBella Proposal No. P2400662**

Dear Mr. Andrews:

LaBella Associates (LaBella) is pleased to submit to the City of Rome (hereinafter "Client") a proposal for professional services associated with support for preliminary design of the rewatering of the Clinton's Ditch in the Canal Waterfront area in the City of Rome (hereinafter referred to as the "project site").

#### PROJECT UNDERSTANDING

Based on our review of the information provided, LaBella understands the following:

- The City is seeking grant funds to construct the project and as such will need supporting information on the design to be provided to the funding agencies.
- The project will incorporate the following into the design approach for the project:
  - Regional Green Stormwater Infrastructure – projects utilize green stormwater infrastructure to restore natural landscape features, such as floodplains, riparian buffers, streams, and wetlands.
  - Local Green Stormwater Infrastructure – projects are typically located in an urban environment and consist of site and neighborhood specific practices, such as bioretention, cisterns, downspout disconnections, green roofs, green walls, permeable pavements, stormwater street trees and urban forestry programs.
- The project site consists of one (1) parcel identified as Section, Block and Lot: 242.073-1-18 which is approximately 2.1 acres owned and controlled by the City.
- This proposal is based on design presented on a drawing set entitled "Rome Waterfront Village" prepared by CLA Site and O'BRIEN & GERE ENGINEERS dated March 2018.
- Project will plan to accept stormwater run-off from the adjacent Pennrose that recently received site plan approval as well as the Depaul site that was recently constructed.
- Additional off-site stormwater along James Street and Baptiste Avenue will need to be investigated to determine if stormwater can be redirected into the planned rewatering.



- Archeological investigations were completed in the past for the project area. Additional consultation with SHPO may be required for the project. If additional investigations are determined, we can assist the City with getting proposals for the additional services.
- It is anticipated that that the City will provide the record plans and designs that have been completed for the Canal Waterfront and the adjacent Depaul Development. Any plans available in AutoCAD format will be provided by the City.
- No additional survey or underground utility location services are planned at this time. If it is determined that additional survey or location services are needed after review of the existing conditions and record plans, we will provide the City a proposal or work with the record surveyor on getting proposals for the additional scope.

## SCOPE OF SERVICES

Based on our understanding, we offer the following scope of service which we believe is needed to accomplish your desired objectives. The work schedule and fees are included in the Fee & Time Schedule Summary Table which follows the Scope of Services. This proposal presents the scope of work in the following tasks or phases:

### **Phase 01 –Feasibility Study**

**Scope** – LaBella will prepare a feasibility study and will work with the Client to evaluate the project's eligibility for grant programs and identify the projected costs of eligible activities, as not all components of the project may prove to be eligible for specific funding.

The feasibility study is a written document that provides the basis and justification for the design and will include the following required elements:

- Cover Page: Project title, owner, preparer, professional's stamp, and date.
- Executive Summary: Overview of the project's purpose.
- Project Objectives: Description of goals for green infrastructure elements and indication of whether the elements are a portion of a larger project.
- Existing Conditions: Evaluation of the proposed project site and discussion of the feasibility of the proposed green infrastructure practice(s) in regard to current land use and location of underground utilities, depth to bedrock at practice location(s), USGS soil classification at practice location(s), depth to water table at practice location(s), other site constraints such as wetlands, flood plain elevations, threatened and endangered species, etc., and results of any subsurface investigations.
- Project Description: Explanation of the proposed project, practices and why they were selected. In addition, an estimation of the water quality volume to be managed through infiltration, evapotranspiration, and/or use on site will be included.
- Proposed Project Schedule: Estimated construction start date and completion date (should be no longer than two (2) years from the application date).
- Anticipated Regulatory Approval and Permits: A list of all anticipated approvals and permits applicable.
- Project Cost Estimate: Estimation of costs for construction, engineering equipment, legal, administrative force account, technical force account and contingency. All





costs will be in current year dollars. It is assumed that the previous cost estimates for the waterfront project will be available. Estimates will be prepared for the connection of the adjacent areas to the rewatered ditch and those estimates will be summarized with what was previously prepared.

- Long-Term Operation and Maintenance: Description of long-term operation and maintenance plan for the project. The description will include a detailed explanation of the workforce, funding, frequency and maintenance activities.

**Assumptions** – The above scope and estimated fee assumes the following:

- The existing conditions graphic, conceptual site plan and site photographs will be taken from the documents previously prepared by CLA Site.
- To fully understand the restrictions/limitations of the project site, LaBella will review online resources/databases, as well as record documents relative to local, county, state and federal regulatory programs. We will not contact local, state or federal agencies at this time to confirm online information.
- Field soil testing, including infiltration and deep test pits, is excluded at this time. However, testing may be required should the project receive funding and progress to design development documents.
- Site visits are not included in the above scope and estimate fee.

**Deliverables** – A draft feasibility study (PDF) will be issued to the Client for review. Any comments will then be incorporated into a final feasibility study (PDF) for inclusion in the grant application.

### **Phase 02 –Preliminary Design Plans**

**Scope** – LaBella will supplement the previously prepared plans for the rewatering of the Clinton's ditch to incorporate the stormwater run-off from the adjacent project sites as well as off-site areas. The plans will be prepared to enough detail to show the design intent for the project and that the project is feasible. The following is a list of anticipated plans that will be developed as part of the preliminary design:

- Cover Page
- Existing Conditions Plan
- Site Layout Plan
- Grading Plan
- Landscape Plan
- Example Details

### **Phase 03 –Preliminary Stormwater Modeling**

**Scope** – LaBella prepare a preliminary stormwater model that reviews the run-off from the adjacent project sites as well as potential off-site road areas that may be able to be redirected into the rewatered Clinton's Ditch. The modeling will consider the volume of water sent to the new practice to support the rewatering objective will providing the volumes needed to provide the required water quantity and quality goals of the grant. It is



anticipated that the studies that Depaul did to support the construction of the adjacent project will be made available to incorporate those run-off volumes into the combined model for the area.

**Deliverables** – A letter report and supporting models will be issued to the Client for review and use in the grant application.

### **LIMITATIONS**

This proposal includes only those specific services described above. Items not addressed as part of this proposal include, but are not necessarily limited to:

- Preparation and submission of documents to the City Planning Board and/or Zoning Board of Appeals for approval(s).
- Payment of application fees.
- Preparation of design and construction drawings.
- Completion of SEQR Environmental Assessment Forms.
- Environmental assessments, investigations or permitting.
- Geotechnical investigations and preparation of a Geotechnical Interpretive Report with recommendations.
- Land surveying, underground utility locating and/or subdivision mapping.
- Preparation of a Stormwater Pollution Prevention Plan (SWPPP).
- Archaeological services.
- FEMA Flood zone, NYS Coastal Zone, or US ACOE permitting.
- Traffic studies and/or engineering.
- Hydrant flow testing.
- Building and foundation design.
- Retaining wall or other supporting structures design.
- Design of electric, gas or communication services.

LaBella would welcome the opportunity to provide these services if determined to be necessary.

### **SUBSTANTIVE REVISIONS**

The Scope of Services provided in this proposal was developed based on information available at the time it was prepared, including the known conditions of the site. In the event of project changes (e.g., additional information becomes available, regulatory agencies require additional studies, the extent of the project or its design, etc.) a Professional Services Change Order will be provided to you. Additionally, Client requested changes to the documents after the originals are submitted to regulatory agencies will constitute a change in services and will also require a Professional Services Change Order.

### **PROFESSIONAL SERVICES FEE & TIME SCHEDULE**

LaBella proposes to bill each phase as indicated in the following Fee & Time Summary Table. Invoices will be issued monthly for all services performed during that month and are payable upon receipt. Fixed fee phases will be billed commensurately with the percentage of the phase that has been completed. Time and Materials phases will be invoiced based on the actual hours incurred.



LaBella will make its best effort to complete all identified phases within the overall estimated budget. It is possible that it will be necessary to exceed these amounts in order to complete the scope of services for the project. We will not exceed the total estimated fee without obtaining authorization.

#### FEE & TIME SCHEDULE SUMMARY TABLE

Phase	Phase Description	Fixed Fee	Time and Materials Estimate	Estimated Schedule
01	Feasibility Study	\$3,500	---	Start: upon authorization End: 2-Weeks
02	Preliminary Design Plans	\$8,000	---	Start: upon authorization End: 4-Weeks
03	Preliminary Stormwater Modeling	\$4,000	---	Start: upon authorization End: 4-Weeks
Total Fee		\$15,500		

#### AGREEMENT

We look forward to working with you on this project. Attached please find a copy of our Standard Agreement. Receipt of an executed copy of this Agreement will be our authorization to schedule the performance of this work. This proposal is valid for 30 days.

Please feel free to contact me at (518) 266-7324 or [rkeating@labellapc.com](mailto:rkeating@labellapc.com) if you have any questions. LaBella looks forward to working with you on this project.

Respectfully submitted,

Roger E. Keating, PE, LEED AP BD+C  
Senior Civil Engineer, Regional Leader

**Exhibit B**  
**Terms and Conditions**

## **Terms and Conditions**

**LaBella's Responsibilities:** LaBella shall designate a representative authorized to act on its behalf with respect to the Project. All notices required under this Agreement shall be given to that representative.

LaBella shall perform its services consistent with the professional skill and care ordinarily provided by members of the same profession practicing in the same or similar locality under the same or similar circumstances. LaBella shall perform its services as expeditiously as is consistent with such professional skill and care, and the orderly progress of the Project.

LaBella shall not at any time supervise, direct, control or have authority over any contractor or subcontractor's work, nor shall LaBella have authority over, or be responsible for, the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor or subcontractor, or the safety precautions and programs incident thereto, for safety or security at the Project location, nor for any failure of a contractor or subcontractor to comply with laws and regulations applicable to the performance of their work and the furnishing of materials on the Project. LaBella shall not be responsible for the acts or omissions of any contractor or subcontractor.

**Client's Responsibilities:** Client shall designate a representative authorized to act on its behalf with respect to the Project. All notices required under this Agreement shall be given to that representative.

Client shall provide LaBella with all available information regarding, and site access to, the Project necessary for LaBella to perform its professional services, including Client's requirements for the Project. Client also shall provide information regarding the Project site and any existing facilities, including destructive testing and investigation of concealed conditions and hazardous substances or injurious conditions. If Client does not perform destructive testing or investigation, nor provide information beyond that which is apparent by non-intrusive observations, or in the event documentation or information furnished by Client is inaccurate or incomplete, then any resulting damages, losses and expenses, including the cost of LaBella's changes in service or additional services, shall be borne by Client.

Client shall examine documents submitted by LaBella and render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of LaBella's services.

**Additional Services:** LaBella may provide additional services after execution of this Agreement without invalidating the Agreement. LaBella shall not proceed to provide any additional services, unless and until LaBella receives written direction from Client. Client shall compensate LaBella for additional services as set forth in LaBella's proposal, or any supplemental proposal or contract modification, or as agreed upon in writing signed by both parties.

**Assignment:** Neither party may assign any benefit or obligation under this Agreement without the prior written consent of the other party, except LaBella may use the services of persons and entities not in LaBella's employ when appropriate and customary to do so.

**Confidentiality:** During the Project, confidential and/or proprietary information of the Client might be furnished to LaBella. LaBella shall use such information for the purpose of providing its professional services on the Project, and for no other purpose. LaBella shall hold such information in strict confidence and shall not disclose such information to any person or entity, except sub-consultants engaged on the Project or as required by law. Upon completion of its services, LaBella shall return or destroy all confidential and/or proprietary information to the Client.

**Instruments of Service:** All documents prepared or furnished by LaBella pursuant to this Agreement are instruments of professional service, and LaBella shall retain its ownership and property interest therein, including all copyrights and the right to reuse the documents. Upon payment in full for services rendered, LaBella grants Client a license to use the instruments of service for the purposes of constructing, occupying and maintaining the Project. Reuse or modification of any documents by Client without LaBella's written permission shall be at Client's sole risk, and Client agrees to defend, indemnify, and hold LaBella harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.

Client and Client's contractors and other consultants may rely only upon printed copies (also known as hard copies) of documents that are signed and sealed by a licensed professional employed by LaBella. If there is any discrepancy between printed copies and any electronic copies, the most recent version of the printed and certified copies shall govern. Any electronic copies (files) provided by LaBella will be provided solely as a convenience and shall not be considered "Contract Documents," "Construction Documents" or any type of certified document. All documents considered "Contract Documents," "Construction Documents" or any type of certified document shall consist only of printed copies having an original signature and seal of a licensed professional employed by LaBella. Client is advised that electronic copies of documents can deteriorate or be inadvertently modified without LaBella's consent or may otherwise be corrupted or defective. Accordingly, Client and Client's contractors or other consultants may not rely upon the accuracy of any electronic copies of documents.

**Escalation:** In the event the term of this Agreement is extended beyond the period of service set forth in LaBella's proposal, then compensation for professional services is subject to review and escalation by LaBella upon thirty (30) days written notice to Client.

**Suspension:** Client may suspend this Agreement in whole or in part at any time for convenience upon seven (7) days written notice. Upon receipt of notice, LaBella shall immediately discontinue all services. LaBella shall be entitled to compensation for all services rendered up to the date of suspension. If the suspension exceeds three (3) months, an equitable adjustment in compensation shall be negotiated to compensate LaBella for all reasonable costs incurred by LaBella on account of the suspension of the Project.

LaBella may suspend its performance under this Agreement if any delinquent amounts due for services and expenses have not been paid. LaBella may refuse to release drawings, plans, specifications, reports, maps, materials and any other instruments of service prepared by LaBella

for Client until all arrearages are paid in full. LaBella shall not be liable to Client for delay or any other damages due to any such suspension of services.

**Termination:** Either party may terminate this Agreement for cause upon seven (7) days written notice with an opportunity to cure any default during that period. In any event, without regard to the party terminating the Agreement, Client shall remit payment of all amounts that are not in dispute no later than thirty (30) days after the date of each invoice.

**Disputes:** The parties agree that mediation before a mutually agreeable neutral third party shall be a condition precedent to any legal action arising out of this Agreement, unless waived in writing by the parties. The cost of the mediation shall be borne equally by the parties. The mediation shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, unless the parties agree otherwise. No demand for mediation shall be made after the date that the applicable statute of limitations would bar a legal or equitable action based on the claim or dispute.

**Venue and Jurisdiction:** Any legal suit, action or proceeding arising out of or relating to this agreement shall be instituted in a court of competent jurisdiction located in the state and county where the project is located. The parties hereby waive any objection which they may have now or hereafter to the venue of any such suit, action or proceeding, and hereby irrevocably consent to the personal jurisdiction of any such court in any such suit, action or proceeding.

**Choice of Law:** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the state where the project is located without giving effect or reference to any conflict of laws provisions.

**Consequential Damages:** In any suit, action or proceeding, the parties shall be entitled to recover compensatory damages incurred as a result of the breach of this Agreement, but, to the fullest extent permitted by law, neither party shall be liable to the other for any special, incidental, indirect, or consequential damages.

**Late Fees, Costs and Attorneys' Fees:** An additional charge of 1.5% of an invoice will be imposed each month on all past due accounts. Imposition of such charges does not constitute an extension of the payment due date. If LaBella must bring suit to collect payment of any invoices, then Client agrees to pay LaBella's costs and expenses, including reasonable attorneys' fees.

**Remedies Cumulative:** The rights and remedies available to a party under this Agreement are cumulative and in addition to, not exclusive of, or in substitution for, any other rights or remedies either party may have at law, or in equity, or under this Agreement. Nothing contained in this Agreement shall be deemed to preclude either party from seeking injunctive relief, if necessary, to prevent the other party from willfully or intentionally breaching its obligations under this Agreement or to compel the other party to perform its obligations hereunder.

**Non-Waiver:** Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any right

accruing under this Agreement, nor affect any subsequent breach, nor affect the effectiveness of this Agreement or any part hereof, nor prejudice either party as regards any subsequent action.

**Force Majeure:** Neither party to this Agreement shall be liable to the other for delays in performing the obligations called for by this Agreement, or the direct and indirect costs resulting from such delays, that are caused by labor strikes, riots, war, acts of government authorities other than the Client (if a governmental authority), extraordinary weather conditions, epidemics, pandemics or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

**Severability:** The provisions of this Agreement are hereby agreed and declared to be severable. Any term or provision of this Agreement which is held to be unenforceable by a court of competent jurisdiction shall be deemed to have been stricken from this Agreement, and the remaining terms and provisions of this Agreement shall be construed and enforced without such terms or provisions.

**Counterparts:** This Agreement may be executed in one or more counterparts, each one of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Scope of Agreement:** This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral, except that terms specific to future projects shall be set forth in LaBella's proposals. This Agreement may be amended only by written instrument signed by both parties.



**RESOLUTION NO. 178**

**AUTHORIZING THE MAYOR OF THE CITY OF ROME TO  
ENTER INTO AN AGREEMENT WITH BRICE GRIFFIN  
FOR AN AMOUNT NOT TO EXCEED \$1,500.00.**

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

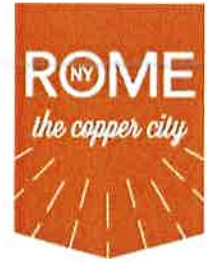
WHEREAS, Ryan Hickey, Deputy Director of the Department of Parks and Recreation for the City of Rome, New York has recommended that the City of Rome, New York, retain the services of Brice Griffin, to conduct a Summer Youth Baseball Program for ages 4-13 at the Bell Road Sports Complex, located in the City of Rome New York, at an amount not to exceed \$1,500.00, from July 12, 2024 through September 6, 2024; now, therefore,

BE IT RESOLVED, by the Board of Estimate and Contract of the City of Rome, that the Mayor of the City of Rome is hereby authorized to enter into an agreement with Brice Griffin, to conduct a Summer Youth Baseball Program for ages 4-13 at the Bell road Sports Complex, located in the City of Rome New York, at an amount not to exceed \$1,500.00, from July 12, 2024 through September 6, 2024.

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Lanigan \_\_\_\_\_ Nash \_\_\_\_\_ Feeney \_\_\_\_\_  
Guiliano \_\_\_\_\_ Adams \_\_\_\_\_

ADOPTED \_\_\_\_\_ DEFEATED \_\_\_\_\_



## SANDLOT BASEBALL IS BACK!

ROME YOUTH BASEBALL HAS PARTNERED WITH THE CITY OF ROME FOR OUR 3<sup>RD</sup> ANNUAL SUMMER BASEBALL PROGRAM

**FREE TO JOIN - PARENTS/GUARDIANS JUST NEED TO SIGN A WAIVER FORM AVAILABLE AT THE FIELD - EQUIPMENT PROVIDED**

OPEN TO ANY KIDS FROM ROME AND ALL SURROUNDING AREAS  
AGES 4-13

GAMES PLAYED ON TUESDAYS AND FRIDAYS @6PM

**THE FUN STARTS FRIDAY, JULY 12<sup>TH</sup>**

Games will be held at the Bobby Page Memorial Fields on Bell Road

**Coaches will be at the field for safety and to provide some basic instruction to the kids, but this is Sandlot Baseball! Where the kids grow and learn from each other by playing baseball, the way it was meant to be played...**



If interested in signing up or if you have any questions, please contact Coach Brice Griffin (315) 382-6375 or Coach Chris Jackson (315) 335-6684 or reach out to us on Facebook

**City of Rome Youth Baseball Cal Ripken League**

**RESOLUTION NO. 179**

**AUTHORIZING AMENDMENT NO. 3 TO CONTRACT WITH CDM SMITH NY, INC.,  
PURSUANT TO BOARD OF ESTIMATE AND CONTRACT RESOLUTION NO. 110  
ADOPTED JULY 15, 2021 (\$161,000.00).**

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

WHEREAS, pursuant to Board of Estimate and Contract Resolution No. 110 adopted on July 15, 2021, the Mayor was authorized to enter into an agreement with CDM Smith NY, Inc., for services relative to the Kessinger Dam Rehab Project, for a total contract amount not to exceed \$34,100.00, and

WHEREAS, pursuant to Board of Estimate and Contract Resolution No. 137 adopted on June 23, 2022, the Mayor was authorized to enter into Amendment No. 1 with CDM Smith NY, Inc., for additional services for the Kessinger Dam Rehab Project, for a total contract amount not to exceed \$293,600.00, and

WHEREAS, pursuant to Board of Estimate and Contract Resolution No. 237 adopted on October 26, 2023, the Mayor was authorized to enter into Amendment No. 2 with CDM Smith NY, Inc., for additional services for the Kessinger Dam Rehab Project, for a total contract amount not to exceed \$552,600.00, and

WHEREAS, it has been recommended by Joseph Guiliano, Commissioner of Public Works for the City of Rome, that CDM Smith NY, Inc., be awarded Change Order No. 3 for this project for a total amount not to exceed \$161,000.00, pursuant to the documentation attached hereto; now, therefore,

BE IT RESOLVED, that the Mayor of the City of Rome, New York be and is hereby authorized to enter into Amendment No. 3 with CDM Smith NY, Inc., for additional services relative to the Kessinger Dam Rehab Project, pursuant to the documentation attached hereto, and by this reference made a part hereof, for a total amount not to exceed \$161,000.00, and

BE IT FURTHER RESOLVED, that the total amount of Amendment No. 3 as described hereinabove shall be in a total amount of \$161,000.00, increasing the total contract price to an amount not to exceed \$713,600.00, and

BE IT FURTHER RESOLVED, Resolution No. 110 adopted by the Board of Estimate and Contract on July 15, 2021 will otherwise remain as originally adopted and previously amended.

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Lanigan \_\_\_\_\_ Nash \_\_\_\_\_ Feeney \_\_\_\_\_  
Guiliano \_\_\_\_\_ Adams \_\_\_\_\_

ADOPTED \_\_\_\_\_ DEFEATED \_\_\_\_\_

**RESOLUTION NO. 71A**

**AUTHORIZING THE EXPENDITURE OF MONEY FROM  
THE REPAIR RESERVE FUND FOR CITY DAMS.**

By Councilor Anderson:

WHEREAS, on December 8, 2021 the Common Council of the City of Rome, by way of Resolution 90, authorized the creation of a repair reserve fund, as set forth in General Municipal Law 6-d, for the accumulation of funds to finance future repairs in the City of Rome; and

WHEREAS, at that same meeting the Common Council, by way of Resolution 91, allocated \$3,500,000.00 into the repair reserve fund to be used for planned repairs at the City's dams; and

WHEREAS, Treasurer David Nolan and Commissioner of Public Works Butch Conover are recommending the use of money from said fund, more specifically \$259,500.00 for the Kessinger Dam engineering proposal and \$320,000.00 for the Boyd Dam engineering assessment; and

WHEREAS, a public hearing was held pursuant to General Municipal Law 6-d on June 22, 2022 at 6:50 p.m. giving the public an opportunity to be heard relative to said use of funds; and

WHEREAS, after considering the recommendations of City officials and the public, the Common Council finds the above mentioned expenditures to be in the best interests of the City of Rome; now, therefore

BE IT RESOLVED, that the Common Council of the City of Rome does hereby authorize the Treasurer of the City of Rome to expend \$259,500.00 for the Kessinger Dam engineering proposal and \$320,000.00 for the Boyd Dam engineering assessment, to be paid for out of the repair reserve fund.

Seconded by Councilor Rogers.

Motion to Table by Anderson, seconded by Rogers, and so ordered June 8, 2022.

Motion to remove from Table by Anderson, seconded by Rogers, and so ordered June 22, 2022.

Motion by Rogers to amend to include date and time of public hearing, seconded by Sparace, and so ordered June 22, 2022.

AYES: Sparace, Mortise, Rogers, Smith, Anderson, Dursi, Tracy

NAYS: None

ADOPTED: June 22, 2022



308 Maltbie Street, Suite 101  
Syracuse, New York 13204  
tel: 315 434-3247

June 27, 2024

Mr. Joseph Guiliano  
City of Rome  
198 N. Washington Street  
Rome, NY 13440

Subject: Kessinger Dam Rehabilitation Design Amendment 3 Proposal

Dear Mr. Guiliano:

CDM Smith NY Inc. (CDM Smith) has been advancing the design of improvements to Kessinger Dam based on the condition assessment conducted in September 2021 and on the additional field investigations and concrete cores and analysis conducted in late 2023. Currently, we are advancing the design to the 90% phase for the structural improvements to the dam and gatehouse equipment upgrades including addition of mixers and a floating boom to help alleviate ice buildup on the screens, new trash racks, and an auto-strainer to improve the handling of screenings.

The foundation walls of the gatehouse require more extensive repairs than originally planned based on the analysis of three concrete cores taken from the exterior of the gatehouse foundation walls in November 2023. We recommend additional coring and analyzing additional concrete samples from the gatehouse foundation wall to better estimate the extent and quantities of concrete repair required. Specifically, we recommend collecting cores from the interior of the foundation when the City drains the reservoir for routine maintenance this summer. These cores will help determine the extent of deterioration on the interior of the foundation walls and the repairs necessary to extend the life of the structure. The opinion of probable construction cost estimate provided to the City in Spring 2024 made some assumptions for this repair, but the extent of repairs should be better understood to allow for the detailed design of the gatehouse and reduce the risk of finding additional structural issues during construction.

In addition to the gatehouse foundation analysis and design, additional design of improvements related to the overall project are described below for your consideration. For ease of review, CDM Smith has organized this proposal into the following sections:

- Section 1 – Background
- Section 2 – Scope of Work
- Section 3 – Project Schedule

- Section 4 – Project Costs

## **Section 1 - Background**

### *Concrete Analysis, Expanded Concrete Coring Program for Gatehouse Interior*

The concrete cores that were previously taken and analyzed showed signs of alkali silica reaction (ASR) in the cores in the exterior wall of the foundation of the gatehouse. ASR occurs when the high pH of a concrete pore solution (due to the alkalis [Na<sub>2</sub>O and K<sub>2</sub>O] present in cement) results in the dissolution of certain reactive silica minerals in some aggregates. Chert, quartzite, and opal are some examples of aggregates with reactive silica. Once dissolved, this silica combines with the alkalis to form an alkali-silica reaction product (i.e., a gel type material), that expands in the presence of water. If water is not available, the gel does not expand. The expansive gel exerts a pressure within the concrete causing the fracturing of the aggregates and paste and eventually failure of the concrete. Since the options for rehabilitation of the concrete are extensive due to the deterioration observed and the presence of ASR in previously collected samples, we recommend collecting additional samples on the interior of the gatehouse foundation through additional coring and analysis. The coring of the interior concrete can only be performed when the City has the reservoir drained, which is done annually.

After the analysis is complete, we will recommend repair options to the City and develop the design of the gatehouse improvements which is assumed to be removal of an approximately 2 to 3 foot thickness of the concrete foundation wall and replacement with new concrete.

### *Support for Instrumentation and Controls of Existing Equipment*

The City is planning to have their systems integrator (Aqualogics Systems Inc.) upgrade the existing control panel for the two screens. We will coordinate with Aqualogics to scope the instrumentation and control needs of the auto-strainer and the spray nozzles for the screenings trough. We anticipate adding a control valve on the pump discharge header so that pumped flow can go to either the trough or one of the two screens. There is not sufficient electrical power at the site to add a dedicated pump for the spray nozzle for the screenings trough.

### *FEMA Disaster Relief Funds - Mitigation Improvements to the Access Road*

CDM Smith has been supporting the City with engineering reports, development of costs, and meeting attendance for the FEMA disaster relief funding from the August 2021 storm. During recent discussions, the FEMA representatives have asked about modifying the access road to the dam to mitigate erosion during large storm events since the steep slope (approx. 25% slope) erodes easily with heavy rainfall. Much of the area is confined by the vertical rock face, making substantial modifications very difficult, but it may be feasible to reduce the steepness of the access road with some regrading and a shift of the road alignment at the top of the ravine. We propose to develop some preliminary design concepts for modifying the access road. We initially will use contour



information from FEMA LiDAR and, if an option looks feasible, we would recommend a formal field survey and detailed design to modify the access road.

## **Section 2 – Scope of Work**

### **Task 1 Field Investigations**

#### *Expanded Concrete Coring and Analysis*

CDM Smith proposes to subcontract with Atlantic Testing Laboratories to perform one day of coring to collect additional concrete cores of the gatehouse foundation wall from the interior area below the grates and the hatch in the gatehouse. We are targeting the collection of 4 to 6 samples during this timeframe. The actual number of cores will be based on the time it takes to core and move from one location to the next within the lower level of the gatehouse within the time period that the City can bypass flow. Tests for compressive strength and a petrographic analysis will be performed on select cores to understand the materials and deterioration in the concrete. CDM Smith will have a representative on-site while coring takes place, and we will coordinate with City staff to plan the work.

### **Task 2 – Design of Improvements**

CDM Smith will develop design documents for the added improvements to rehabilitate the gatehouse. These items include:

- Develop plans and details for rehabilitation of concrete foundation which is assumed to be removal of a couple of feet of deteriorated concrete and rebuilding with new concrete.
- Analyze gatehouse for structural stability for temporary conditions during construction.
- Develop plan to bypass flow to the existing tunnel to maintain flows to the Water Filtration Plant during construction.
- Develop design criteria and specification for a coffer dam to maintain a dry work area.
- Update opinion of probable construction cost
- Meet with the City's system integrator (Aqualogics) to discuss controls of equipment (both existing and new).
- Develop description of controls for using existing pumps to discharge water through the new spray nozzles along the screenings trough in a sequence that pumps spray water to screens and then to nozzles and then back to screens based on input from operators and system integrator.





- Add heat tracing to trough carrying screenings out of the building if evaluation shows there is sufficient electrical power capacity to do so.

We will provide updated 90% design documents to the City for review. After the review meeting with the City, we will address comments and incorporate edits and then submit the 90% design drawings and specifications to the NYS Department of Environmental Conservation (DEC), NYS Environmental Facilities Corporation (EFC), and Department of Health (DOH) as appropriate for review. Upon receiving comments from the City and regulatory agencies we will finalize the design and provide PDFs of drawings and specifications for bidding.

### **Task 3 Support for FEMA Disaster Relief Funding**

CDM Smith will continue to attend meetings with the City and FEMA representatives as requested to discuss the project related to the damages caused by the August 2021 storm. We will respond to questions on the engineering report that was revised and submitted in April 2024. As FEMA representatives discussed on recent calls, improvements to the access road to make it more resilient may be reimbursable. CDM Smith will review the existing grade at the 90-degree bend in the main road leading to the dam using contours from FEMA LiDAR and make an assessment on the feasibility of modifying the access road to reduce the slope. We have assumed a \$35,000 allowance for the feasibility review and topographical survey, permitting, and design, assuming there is a feasible alternative to modify the access road. Once the feasibility review is complete, we will provide the City with an estimated fee for design and permitting if different than \$35,000.

### **Assumptions:**

1. City will support the planning and coring efforts by coordinating reservoir cleaning with coring work, providing access to the foundation level inside the gatehouse during reservoir cleaning, supporting lock-out tag-out and coordination efforts with the fire department for confined space entry procedures.
2. City will contract with their preferred systems integrator to make program changes required to operate the water nozzles at the screenings discharge chute and the auto-strainers.
3. Electrical service will not be upgraded to the gatehouse. Proposed equipment will be powered from the existing service.







Mr. Joseph Guiliano  
June 27, 2024  
Page 5

### Section 3 – Project Schedule

The anticipated schedule for the additional field investigations of the dam and design modifications are as follows:

- Coring program – August 2024 when the City drains the reservoir for cleaning
- Testing and Analysis of Cores – August to September 2024
- 90% Design - September to October 2024
- Client and Regulatory Review Period – November to December 2024
- 100% Design, Develop Bid Documents – December 2024 to January 2025
- Bidding – February to early March 2025
- Construction Contract Award – April 2025
- Construction Start – May to June 2025 after spring highwaters subside

### Section 4 – Project Costs

CDM Smith proposes to complete the additional engineering services described in Section 2 for a not-to-exceed fee of \$161,000 including labor, expenses, and subcontractors (includes 5% markup), thus increasing our existing contract from \$552,600 to \$713,600.

CDM Smith looks forward to continuing to support the City with infrastructure improvements on this very important project. If you have any questions, please call Nancy at (315) 434-3247.

Sincerely,

Daniel D. Durfee, P.E.  
Vice President  
CDM Smith NY Inc.

Nancy Oram Vigneault, P.E., PMP, BCEE  
Associate  
CDM Smith NY Inc.

cc: Mark Calvino – CDM Smith



**RESOLUTION NO. 180**

**AUTHORIZING THE IMPLEMENTATION AND FUNDING  
OF 100% OF THE COSTS OF A PROJECT WITH THE  
NEW YORK STATE DEPARTMENT OF TRANSPORTATION.**

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

WHEREAS, the Merrick Road Culvert Replacement project, P.I.N. 2754.82 (the "Project") is eligible for reimbursement of qualified costs from Bridge NY funding that calls for the post-reimbursement apportionment of the qualified costs to be borne at the ratio of 100% Bridge NY funds and 0% non-Bridge NY funds; and

WHEREAS, the City of Rome will design, let, and administer all phases of the Project; and

WHEREAS, the City of Rome desires to advance the Project by making a commitment of 100% of the costs of work for the Project or portions thereof, with the understanding that qualified costs will be reimbursed from Bridge NY funding; now, therefore

BE IT RESOLVED, that the Board of Estimate and Contract of the City of Rome, hereby authorizes the City of Rome to pay 100% of the costs of work for the Project or portions thereof, with the understanding that qualified costs will be reimbursed from Bridge NY funding, and

BE IT FURTHER RESOLVED, that the sum of \$1,500,000.00 will be appropriated and made available to cover the cost of participation in the Project; and

BE IT FURTHER RESOLVED, the Board of Estimate and Contract agrees that the City of Rome shall be responsible for all costs of the Project, including costs which exceed the amount of reimbursement available from the NY Bridge funding awarded to the City of Rome; and

BE IT FURTHER RESOLVED, that in the event the costs of the Project exceed the amount appropriated above, the City of Rome shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the New York State Department of Transportation; and

BE IT FURTHER RESOLVED, that construction of the Project shall begin no later than 24 months after awarding and the construction phase of the Project shall be completed within 30 months; and

BE IT FURTHER RESOLVED, that the Mayor of the City of Rome be and is hereby authorized to execute all necessary agreements, certifications or reimbursement requests with the New York State Department of Transportation for State Aid and/or Bridge NY funding on behalf of the City of Rome in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality's funding of the Project costs; and

BE IT FURTHER RESOLVED, that the City of Rome will be responsible for all maintenance of the Project; and

BE IT FURTHER RESOLVED, that a certified copy of this Resolution be filed with the New York State Commissioner of transportation by attaching it to any necessary Agreement in connection with the Project; and

BE IT FURTHER RESOLVED, this Resolution shall take effect immediately.

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Lanigan \_\_\_\_\_ Nash \_\_\_\_\_ Feeney \_\_\_\_\_  
Guiliano \_\_\_\_\_ Adams \_\_\_\_\_

ADOPTED \_\_\_\_\_ DEFEATED \_\_\_\_\_

## BridgeNY Culvert Local Project Agreement

CONTRACT NO. D040976

This Agreement is by and between:

the New York State Department of Transportation ("NYSDOT"), having its principal office at 50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State");

and the City of Rome (the "Municipality/Sponsor")  
with its office at 198 N. Washington Street, Rome, NY 13440.

This Agreement identifies the party responsible for administration and establishes the method or provision for funding of applicable phases of a BridgeNY State aid project for the improvement or replacement of a culvert, not on the State highway system, as such project and phases are more fully described by Schedule A annexed to this Agreement. The phases that are potentially the subject of this Agreement, as further enumerated, are: Preliminary Engineering ("PE") and Right-of-Way Incidental ("ROW Incidentals") work; Right-of-Way Acquisition; and Construction, Construction Supervision and/or Construction Inspection. The project shall be identified for the purposes of this Agreement as BNY 2022: MERRICK RD OVER WOOD CREEK, CITY OF ROME, ONEIDA COUNTY (as more specifically described in such Schedule A, the "Project").

### WITNESSETH:

WHEREAS, project eligibility for the BridgeNY Program, and other State Aid Program funds is determined by NYSDOT; and

WHEREAS, under related authorizations, NYSDOT and the Municipality/Sponsor are desirous of progressing the Project under State Aid Programs; and

WHEREAS, under New York General Municipal Law § 99-r, the governing board of any municipal corporation may contract with NYSDOT for services and work including design and construction of the nature contemplated by the Project; and

WHEREAS, The Legislative Body of the Municipality/Sponsor by Resolution No. \_\_\_\_\_, adopted at meeting held on \_\_\_\_\_, approved the Project, and

WHEREAS, the Municipality/Sponsor has appropriated necessary funds in connection with any Municipal/Sponsor share identified in Schedule A; and

WHEREAS, the Municipality/Sponsor has further authorized the \_\_\_\_\_ of the Municipality/Sponsor to execute this Agreement and the applicable Schedule A on behalf of the Municipality/Sponsor and a copy of such Resolution(s) is attached to and made a part of this Agreement (where New York City is the Municipality/Sponsor, such resolution is not required).

NOW, THEREFORE, the parties agree as follows:

1. *Documents Forming this Agreement.* The Agreement consists of the following:

- Agreement Form - This document titled "BridgeNY Culvert Local Project Agreement";
- Schedule "A" - Description of Project Phase, Funding and Deposit Requirements.
- Schedule "B" - Phases, Subphase/Tasks, and Allocation of Responsibility.
- Appendix "A" - Standard Clauses for New York State Contracts.
- Appendix "A-1"- Supplemental Title VI Provisions (Civil Rights Act).
- Appendix "B" - Minority and Women-Owned Business Enterprises(M/WBE)-Service Disabled Veteran Owned Businesses(SDVOB) – Equal Employment Opportunity(EEO) Policy Statement.
- Municipal/Sponsor Resolution(s) - duly adopted Municipal/Sponsor resolution(s) authorizing the appropriate Municipal/Sponsor official to execute this Agreement on behalf of the Municipality/Sponsor and appropriating or otherwise providing the Project funding required therefor. (Where New York City is the Municipality/Sponsor, such resolution is not required).

**\*Note – Resolutions for BridgeNY projects must also include an express commitment by the Municipality/Sponsor that construction shall commence no later than twenty-four (24) months after award, and the project must be completed within thirty (30) months of commencing construction. Award is defined as an executed Federal Aid Agreement, approved by the Office of the State Comptroller.**

1.1 Within Appendix A-1, the term "Contractor" herein refers to any party other than the State, whether a **Municipality/Sponsor**, contractor, licensor, licensee, lessor, lessee, or any other party to this Project Agreement, or a subcontractor to any party other than the State.

2. *General Description of Work and Responsibility for Administration and Performance.* Subject to the allocations of responsibility for administration and performance thereof as shown in Schedule B (attached), the work of the Project may consist generally of the categories of work marked and described in Schedule B for the scope and phase in effect according to Schedule A or one or more Supplemental Schedule(s) A as may hereafter be executed and approved by the parties hereto as required for a State contract, and any additions or deletions made thereto by NYSDOT subsequent to the development of such Schedule(s) A for the purposes of conforming to New York State or to Federal Highway Administration requirements or standards, including but not limited to compliance with 28 CFR 35.105 which requires a Municipality/Sponsor employing 50 or more persons to prepare a Transition plan addressing compliance with the Americans with Disabilities Act (ADA).

The Municipality/Sponsor understands that funding is contingent upon the Municipality/Sponsor's compliance with the applicable requirements of the "Local Projects Manual (LPM" formerly known as the "Procedures for Locally Administered Federal Aid Projects (PLAFAP)" Manual (available through NYSDOT's web site at <https://www.dot.ny.gov/plafap>, and as such may be amended from time to time.

3. *Municipal/Sponsor Deposit.* Where the work is performed by consultant or construction contract entered into by NYSDOT, or by NYSDOT forces, the Municipality/Sponsor shall deposit with the State Comptroller through NYSDOT prior to the award of NYSDOT's contract or NYSDOT's performance of work by its own forces, the full amount of the Project costs due in accordance with Schedule A.

4. *Payment or Reimbursement of Costs.* For work performed by NYSDOT, NYSDOT will directly apply the required Municipality/Sponsor Deposit and, if applicable, shall request Office of the New York State Comptroller (OSC) funding of State aid to the Municipality/Sponsor as described below. For work

performed by or through the Municipality/Sponsor, NYSDOT will reimburse the Municipality/Sponsor up to the amount of the Municipality/Sponsor's award of BridgeNY State aid as described below.

NYSDOT will periodically make reimbursements upon request and certification by the Sponsor. The frequency of reimbursement requests must be in conformance with that stipulated in the NYSDOT Standard Specifications; (§109-06, *Contract Payment*). NYSDOT recommends that reimbursement requests not be submitted more frequently than monthly. In all cases, reimbursement requests must be submitted at least once every six months. A Sponsor's reimbursement requests are restricted to eligible project costs. To be classified as an "eligible project cost", in addition to other requirements of this Agreement, the original expenditure must have been paid within the past 15 months in order to comply with Federal Tax Law and IRS Regulations (26 CFR 1.150-2 (d)(2)(i)), which governs fund disbursements from the issuance of tax-exempt bonds. Expenditures paid greater than 15 months prior to the reimbursement request are ineligible for reimbursement.

4.1 *State aid.* Subject to compliance with this Agreement, NYSDOT shall authorize reimbursement of eligible individual Project costs identified in the applicable Schedule A. Contractor obligations or expenditures that precede the start date of this Agreement shall not be reimbursed. To be eligible for State aid, project costs must be for work which, when completed, has a certifiable service life of at least 50 years for culvert replacements, or at least 10 years for culvert relining.

4.2 *State aid Eligible Project Costs.* Eligible Project costs include costs of acquisition, construction, repair, reconstruction, renovation, equipment and other related costs as set forth in the Project Description in Schedule A or Supplements to Schedule A. Eligible Project costs may also include the reimbursement of salaries and wages to employees of Sponsor for carrying out the Project(s); fees to consultants and professionals retained by Sponsor for planning and performing the Project, and such other costs and expenses directly related to such employees, consultants and professionals for the Project.

4.3 In no event shall the State be obligated to fund or reimburse any costs exceeding the "State Share" provided in Schedule A.

4.4 All items included by the Municipality/Sponsor in the record of costs shall be in conformity with accounting procedures acceptable to NYSDOT and the FHWA. Such items shall be subject to audit by the State, the federal government or their representatives.

4.5 If Project-related work is performed by NYSDOT, NYSDOT will be paid for the full costs thereof. To this end, the reimbursement to the Municipality/Sponsor provided for in section 4.1 above may be reduced by NYSDOT if necessary.

4.6 Municipalities/Sponsor's may not use BridgeNY funds to substitute for the local match to a federally-aided project.

5. *Supplemental Agreements and Supplemental Schedule(s)* Supplemental Agreements or Supplemental Schedule(s) may be entered into by the parties and must be executed and approved in the manner required for a State contract. A Supplemental Schedule is defined as a Supplemental Agreement which revises only the Schedule A of a prior Agreement or Supplemental Agreement. In the event Project cost estimates increase over the amounts provided for in Schedule A, no additional reimbursement shall be due to the Municipality/Sponsor unless the parties enter into a Supplemental Agreement or Supplemental Schedule A for reimbursement of additional Eligible Project Costs.

6. *State Recovery of Ineligible Reimbursements.* NYSDOT shall be entitled to recover from the Municipality/Sponsor any monies paid to the Municipality/Sponsor pursuant to this Agreement which are subsequently determined to be ineligible for State aid hereunder. In the event the Municipality/Sponsor withdraws the project, suspends or delays work on the Project, fails to adequately or expediently progress the Project, or takes other action that results in the loss of the Municipality/Sponsor's participation or eligibility, the Municipality/Sponsor shall refund to the State all reimbursements or payments received from the State, and the Municipality/Sponsor shall reimburse the State for 100% of all costs incurred by NYSDOT. To satisfy the refund, the State or NYSDOT may offset any other State or Federal aid owed, or may otherwise come due, to the Municipality/Sponsor.

7. *Municipal/Sponsor Liability.*

7.1 If the Municipality/Sponsor performs work under this Agreement with its own forces, it shall be responsible for all damage to person or property arising from any act or negligence performed by or on behalf of the Municipality/Sponsor, its officers, agents, servants or employees, contractors, subcontractors or others in connection therewith. The Municipality/Sponsor specifically agrees that its agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

7.2 To the fullest extent permitted by law, the Municipality/Sponsor shall indemnify and save harmless the State for all damages and costs arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Municipality/Sponsor, its officers, agents, servants, employees, contractors, subcontractors or others under this Agreement. Negligent performance of service, within the meaning of this section, shall include, in addition to negligence founded upon tort, negligence based upon the failure of the Municipality/Sponsor or its officers, agents, servants, employees, contractors, subcontractors or others to meet professional standards resulting in obvious or patent errors in the progression of its work. Additionally, the Municipality/Sponsor shall defend the State in any action arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Municipality/Sponsor, its officers, agents, servants, employees, contractors, subcontractors or others under this Agreement.

7.3 The Municipality/Sponsor shall at all times during the Contract term remain responsible. The Municipality/Sponsor agrees, if requested by the Commissioner of Transportation or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

7.4 The Municipality/Sponsor shall at all times during the Contract term remain responsible. The Municipality/Sponsor agrees, if requested by the Commissioner of Transportation or his or her designee, to present evidence of its continuing legal authority to do business in New York

State integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of Transportation or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Municipality/Sponsor or the Municipality/Sponsor's officers, agents, servants, employees, contractors, or subcontractors. In the event of such suspension, the Municipality/Sponsor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Municipality/Sponsor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Transportation or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

7.3 Upon written notice to the Municipality/Sponsor, and a reasonable opportunity to be heard with appropriate NYSDOT officials or staff, the Contract may be terminated by the Commissioner of Transportation or his or her designee at the Municipality's/Sponsor's expense where the Municipality/Sponsor is determined by the Commissioner of Transportation or his or

her designee to be non-responsible. In such event, the Commissioner of Transportation or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

8. *Maintenance.* The Municipality/Sponsor shall be responsible for the maintenance of the project at the sole cost and expense of the Municipality/Sponsor. If the Municipality/Sponsor intends to have the project maintained by another entity, any necessary maintenance agreement will be executed and submitted to NYSDOT before construction of the Project is begun. Upon its completion, the Municipality/Sponsor will operate and maintain the Project at no expense to NYSDOT; and during the useful life of the Project, the Municipality/Sponsor shall not discontinue operation and maintenance of the Project, nor dispose of the Project, unless it receives prior written approval to do so from NYSDOT.

8.1 The Municipality/Sponsor may request such approved disposition from NYSDOT where the Municipality/Sponsor either causes the purchaser or transferee to assume the Municipality/Sponsor's continuing obligations under this Agreement, or agrees immediately to reimburse NYSDOT for the pro-rata share of the funds received for the project, plus any direct costs incurred by NYSDOT, over the remaining useful life of the Project.

8.2 If a Municipality/Sponsor fails to obtain prior written approval from NYSDOT before discontinuing operation and maintenance of the Project or before disposing of the project, in addition to the costs provided, above in 8.1, Municipality/Sponsor shall be liable for liquidated damages for indirect costs incurred by NYSDOT in the amount of 5% of the total funding provided through NYSDOT.

8.3 For NYSDOT-administered projects, NYSDOT is responsible for maintenance only during the NYSDOT-administered construction phase. Upon completion of the construction phase, the Municipality/Sponsor's maintenance obligations start or resume.

9. *Independent Contractor.* The officers and employees of the Municipality/Sponsor, in accordance with the status of the Municipality/Sponsor as an independent contractor, covenant and agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the State by reason hereof, and that they will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to, Workers Compensation coverage, Unemployment Insurance



benefits, Social Security or Retirement membership or credit.

---

10. *Contract Executory.*

10.1 This Agreement shall be deemed executory only to the extent of the monies available to the State for its performance and no liability on account thereof shall be incurred by the State beyond monies available therefor.

10.2 This Agreement shall remain in effect so long as State funding authorizations are in effect and funds are made available pursuant to the laws controlling such authorizations and availabilities. However, if such authorizations or availabilities lapse and are not renewed, continued or reenacted, as to funds encumbered or available and to the extent of such encumbrances or availabilities, this Agreement shall remain in effect for the duration of such encumbrances or availabilities. Although the liquidity of encumbrances or the availability of funds may be affected by budgetary hiatuses, a State budgetary hiatus will not by itself be construed to lapse this Agreement, provided any necessary State appropriations or other funding authorizations are enacted. **Municipality/Sponsor's** continued performance during such a budgetary hiatus cannot, by itself, obligate the State to making expenditures without appropriations.

11. *No Assignment or Other Disposition of Agreement.* The Municipality/Sponsor agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title or interest therein, or its power to execute such Agreement to any entity, public or private, without the previous written consent of NYSDOT first having been obtained.

12. *Term of Agreement.* The Project phase(s) and Term are identified in Schedule(s) A executed herewith and incorporated herein or as subsequently identified in any duly executed and approved supplemental Schedule(s) A as of the date of such supplemental Schedule(s) A. This Agreement shall remain in effect so long as applicable funding authorizations are in effect and funds are made available pursuant to the laws controlling such authorizations and availabilities.

**12.1 Time is of the essence.** The Municipality/Sponsor understands that construction of BridgeNY Projects must commence no later than twenty-four (24) months after award, and the project must be completed within thirty (30) months of commencing construction. Award is defined as an executed BridgeNY Agreement approved by the Office of the State Comptroller.

13. *NYSDOT Obligations.* NYSDOT's responsibilities and obligations are as specifically set forth in this agreement, and neither NYSDOT nor any of its officers or employees shall be responsible or liable, nor shall the Municipality/Sponsor assert, make or join in any claim or demand against NYSDOT, its officers or employees, for any damages or other relief based on any alleged failure of NYSDOT, its officers or employees, to undertake or perform any act, or for undertaking or performing any act, which is not specifically required or prohibited by this Agreement.

14. *Ethics Considerations.* In addition to Municipality's/Sponsor's conforming with the applicable provisions of Public Officers Law §73 (Business or Professional Activities by State Officers and Employees and Party Officers) and General Municipal Law §806 (Code of Ethics) as related to the expenditure of the Program Funding made hereunder, no member of Municipality's/Sponsor's governing body, its officers or employees, or any member of the Board of Directors or staff, nor any member of their families shall benefit financially either directly or indirectly from the Program Funding unless such action is otherwise in accordance with law and is necessary for the accomplishment of the Project. In such event, Municipality/Sponsor shall disclose such relationship to NYSDOT and shall obtain prior written

approval therefor from NYSDOT

15. *Reporting Requirements.* The Municipality/Sponsor agrees to comply with and submit to NYSDOT in a timely manner all applicable reports required under the provisions of this Agreement and in accordance with current Federal and State laws, rules, and regulations.

16. *NYSDOT Performance Review.* NYSDOT may review the Municipality's/Sponsor's performance of this Agreement in such manner and at such times as NYSDOT shall determine, and such review may include field visits by NYSDOT representatives to the Project and/or the offices of Municipality/Sponsor. Municipality/Sponsor shall at all times make available its employees, records and facilities to authorized NYSDOT representatives in connection with any such review. Such review shall be for the purpose, among other things, of ascertaining the quality and quantity of Municipality's/Sponsor's performance of the Project, its use and operation.

17. *Electronic Contract Payments.* Municipality/Sponsor shall provide complete and accurate supporting documentation of eligible local expenditures as required by this Agreement, NYSDOT and the State Comptroller. Following NYSDOT approval of such supporting documentation, payment for invoices submitted by the Municipality/Sponsor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices from the Statewide Financial System (SFS). The Municipality/Sponsor shall comply with the State Comptroller's procedures for all applicable State Aid to authorize electronic payments. Instructions and authorization forms are available on the New York State Comptroller's website at <https://www.osc.state.ny.us/state-vendors> or by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us).

18. *Compliance with Legal Requirements.* Municipality/Sponsor must comply with all applicable federal, state and local laws, rules and regulations, including but not limited to the following:

18.1 *New York State Executive Law Article 15-A, Participation by Minority Group members and Women with Respect to State Contracts and New York State Executive Law Article 17-B, Participation by Service-Disabled Veterans with Respect to State Contracts,* including requirements relating to equal employment opportunity, and utilization goals and contracting opportunities for minority and women-owned business enterprises and service-disabled veteran owned business, without additional cost to NYSDOT.

18.1.1 *EEO Policy Statement.* Pursuant to 5 NYCRR §143.2, a Municipality/Sponsor shall adopt an EEO policy if one is not previously adopted, as provided in Appendix B, and submit to NYSDOT a signed copy of Appendix B.

18.1.2 *Minority-owned and Women-owned Business Enterprise (M/WBE) and Service-Disabled Veteran Owned Business (SDVOB) Goals.* Municipality/Sponsor must comply with all M/WBE and SDVOB requirements and goals stated within the provisions of Appendix B, titled, "Minority and Women-owned Business Enterprises-Service-Disabled Veteran Owned Business – Equal Employment Opportunity Policy Statement".

18.1.3 *M/WBE and SDVOB Guidance.* Refer to the New York State Department of Transportation website and Appendix B for guidance related to M/WBE and SDVOB goals at [www.dot.ny.gov/main/business-center/civil-rights/](http://www.dot.ny.gov/main/business-center/civil-rights/).

Assigned M/WBE and SDVOB goals must be included in the Municipality's/Sponsor's proposed contract documents when submitted for NYSDOT approval prior to project advertisement. Any requests for a reduction or waiver of the goals must be submitted at that time so that the correct

goals are included in the project advertisement.

18.1.4 *Good Faith Efforts.* If a Municipality/Sponsor fails to meet the M/WBE or SDVOB requirements set forth in Appendix B, they must demonstrate Good Faith Efforts pursuant to 5 NYCRR §142.8.

18.1.5 *M/WBE and SDVOB Compliance Reports.* The Municipality/Sponsor shall require their consultants and contractors to submit electronic, monthly M/WBE and SDVOB compliance reports via NYSDOT's Civil Rights Reporting Software, Equitable Business Enterprise (EBO), on or before the 15<sup>th</sup> day of the immediately preceding month. The Municipality/Sponsor must apply for access to EBO at the following website: [www.dot.ny.gov/dotapp/ebo](http://www.dot.ny.gov/dotapp/ebo).

18.1.6 *Failure to Comply.* If the Sponsor fails to monitor and administer contracts in accordance with State requirements, the Sponsor will not be reimbursed for associated activities within the affected contracts. The Sponsor must ensure that any contract it awards under this Agreement has a Minority-owned and Women-owned Business Enterprise (M/WBE) and a Service-Disabled Veteran Owned Business (SDVOB) Utilization Plan and complies with such plans. If, without prior written approval by NYSDOT, the Sponsor's contractors and subcontractors fail to complete work for the project as proposed in the M/WBE and SDVOB Schedule of Utilization, NYSDOT at its discretion may (1) cancel, terminate or suspend this Agreement or such portion of this Agreement, or (2) assess liquidated damages in an amount of up to 20% of the portion of the Sponsor's contracts and subcontracts, funded in whole or in part by this Agreement, to which contract goals are established in accordance with NYSDOT guidance.

18.1.7 *Equal Employment Opportunity (EEO) Requirements.* EEO goals (as provided in the "Local Projects Manual"), EEO Policy Statement (as provided in "Appendix B – M/WBE-SDVOB and EEO Policy Statements") and specifications (as provided in NYSDOT's *Standard Specifications §102-11 Equal Employment Opportunity Requirements*) must be included in the contract documents and project advertisement.

[www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us](http://www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us)

18.1.8 *EEO Monitoring and Reporting.* EEO participation shall be monitored by the Municipality/Sponsor as the project progresses. EEO participation shall be reported by the contractor through NYSDOT's civil rights reporting software, EBO.

18.2 New York State Environmental Law, Article 6, the State Smart Growth Public Infrastructure Policy Act, including providing true, timely and accurate information relating to the project to ensure compliance with the Act, accessible at [www.dot.ny.gov/programs/smart-planning/smartgrowth-law](http://www.dot.ny.gov/programs/smart-planning/smartgrowth-law).

19. *Compliance with Procedural Requirements.* The Municipality/Sponsor understands that funding is contingent upon the Municipality's/Sponsor's compliance with the requirements stated in the applicable BridgeNY – Notice of Funding Availability and guidance connected thereto.

Locally-administered BridgeNY transportation projects shall be constructed in accordance with the current version of NYSDOT Standard Specifications and NYSDOT-approved Special Specifications. (Cities with a population of 3 million or more may pursue approval of their own construction specifications and procedures on a project by project basis).

20. *Extended Records Retention Requirements.*

20.1 To ensure that NYSDOT meets certain strict requirements under the 26 CFR Part 1.150-2(d)(2)(i) - (d)(2)(iii) and to ensure that NYSDOT may authorize the use of funds for this project, the Sponsor must retain the following documents in connection with the Projects:

- a. Documents evidencing the specific assets financed with such proceeds, including but not limited to project costs, and documents evidencing the use and ownership of the property constructed, improved, or related to this Agreement, as provide in Schedule B; and
- b. Documents, if any, evidencing the sale or other disposition of the financed property.

20.2 Notwithstanding any other provision of this contract to the contrary, the Sponsor covenants to retain those records described above, for **thirty-six (36) years** per the 26 CFR Part 1.150-2(d)(2)(i) - (d)(2)(iii) after the date of NYSDOT's final payment of the eligible project cost(s).

20.3 Failure to maintain such records in a manner that ensures complete access thereto, for the period described above, shall constitute a material breach of the contract and may, at the discretion of NYSDOT, result in loss of funds allocated, or the Sponsor's repayment of funds distributed, to the Sponsor under this Agreement.

21. *Notice Requirements.*

21.1 All notices permitted or required hereunder shall be in writing and shall be transmitted:

- (a) Via certified or registered United States mail, return receipt requested;
- (b) By personal delivery;
- (c) By expedited delivery service; or
- (d) By e-mail; or
- (e) By facsimile transmission.

21.2 For all BridgeNY Culvert Local Project Agreement purposes, such notices shall be addressed by the Municipality/Sponsor to the officially designated Regional Local Project Liaison (RLPL) and, by NYSDOT, to the officially designated Primary Municipality/Sponsor's Contact, or to such different parties and addresses as the parties from time-to-time mutually agree to designate. The parties herein agree to exchange such contact information above which shall include Organization Name, Individual Name & Title, Mailing address, Telephone number and E-mail address as noted below.

21.3 Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States Mail, as of the date of first attempted delivery at the address and in the manner provided herein, or email, upon receipt.

21.4 The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

**New York State Department of Transportation (NYSDOT)**

**Name:** Jim McLaughlin

**Title:** Project Manager

**Address:** 207 Genesee Street, 13<sup>th</sup> Floor Planning Group, Utica, NY 13501

**Telephone Number:** 315-793-2450

**Facsimile Number:** 315-793-2719

**E-Mail Address:** Jim. McLaughlin@dot.ny.gov

**Municipality/Sponsor City of Rome**

**Name:** Joseph G. Guiliano

**Title:** Commissioner of Public Works

**Address:** 198 N. Washington Street, Rome, NY 13440

**Telephone Number:** 315-339-7627

**Facsimile Number:** 315-838-1167

**E-Mail Address:** jguiliano@romecitygov.com

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officials.

MUNICIPALITY/SPONSOR:

MUNICIPALITY/SPONSOR ATTORNEY:

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

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

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

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

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

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF **ONEIDA**     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_; that he/she is the \_\_\_\_\_ of the Municipal/Sponsor Corporation described in and which executed the above instrument; (except New York City) that it was executed by order of the \_\_\_\_\_ of said Municipal/Sponsor Corporation pursuant to a resolution which was duly adopted on \_\_\_\_\_ and which a certified copy is attached and made a part hereof; and that he/she signed his name thereto by like order.

**APPROVED FOR NYSDOT:**

**APPROVED AS TO FORM:  
STATE OF NEW YORK ATTORNEY GENERAL**

By: \_\_\_\_\_  
For Commissioner of Transportation

By: \_\_\_\_\_  
Assistant Attorney General

Agency Certification: In addition to the acceptance of this contract I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

**COMPTROLLER'S APPROVAL:**

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

By: \_\_\_\_\_  
For the New York State Comptroller  
Pursuant to State Finance Law §112

\_\_\_\_\_  
Notary Public



NYS DOT/State-Local Agreement – Schedule A PIN 2754.82

<b>B. Local Deposit(s) from Section A:</b>	\$ 0.00
<b>Additional Local Deposit(s)</b>	\$0.00
<b>Total Local Deposit(s)</b>	\$ 0.00

<b>C. Total Project Costs</b> <i>All totals will calculate automatically.</i>			
<b>Total FEDERAL Cost</b>	<b>Total STATE Cost</b>	<b>Total LOCAL Cost</b>	<b>Total ALL SOURCES Cost</b>
\$ 0.00	\$1,500,000.00	\$ 0.00	\$1,500,000.00
		<b>Total FEDERAL Cost</b>	\$ 0.00
		<b>Total STATE Cost</b>	\$1,500,000.00
<b>SFS TOTAL CONTRACT AMOUNT</b>			<b>\$1,500,000.00</b>

<b>D. Point of Contact for Questions Regarding this Schedule A (Must be completed)</b>	Name: <u>Jim McLaughlin</u> Phone No: <u>315-793-2450</u>
--	--

See Agreement (or Supplemental Agreement Cover) for required contract signatures.

**Footnotes (FN):** (See LPB's SharePoint for link to sample footnotes)

- This is a 2022 Bridge NY Culvert project with a programmed amount of \$1,500,000.00 Funding may be applied to all phases of the project.
- State Fund Source: 100% State Bonded PIT (Consultant)
- Projects must begin construction no later than 24 months after award; award is defined as approved State-Local Agreement (SLA) by the NYS Office of the State Comptroller. The Project Sponsor must expeditiously progress their execution of the State-Local Agreement.
- Projects must be fully completed 30 months of commencing construction; construction is defined as an award to a contractor or commencement of work by municipal forces. Therefore, Sponsors are strongly encouraged to have projects substantially complete 24 months of commencing construction
- 
- 
- 
- 
- 
- 
-



## SCHEDULE B: Phases, Sub-phase/Tasks, and Allocation of Responsibility

**Instructions:** Identify the responsibility for each applicable Sub-phase task by entering X in either the *NYSDOT* column to allocate the task to State labor forces or a State Contract, or in the *Sponsor* column indicating non-State labor forces or a locally administered contract.

### A1. Preliminary Engineering ("PE") Phase

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u>	<u>Sponsor</u>
1. <u>Scoping</u> : Prepare and distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, Smart Growth checklist, land use and development analysis and forecasts.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Prepare Smart Growth Checklist for NYSDOT Attestation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. <u>Preliminary Design</u> : Prepare and distribute Design Report/Design Approval Document (DAD), including environmental analysis/assessments, and other reports required to demonstrate the completion of specific design sub-phases or tasks and/or to secure the approval/authorization to proceed.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Review and Circulate all project reports, plans, and other project data to obtain the necessary review, approval, and/or other input and actions required of other NYSDOT units and external agencies.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Obtain aerial photography and photogrammetric mapping.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Perform all surveys for mapping and design.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. <u>Detailed Design</u> : Perform all project design, including preparation of plan sheets, cross-sections, profiles, detail sheets, specialty items, shop drawings, and other items required in accordance with the Highway Design Manual, including all Highway Design, including pavement evaluations, including taking and analyzing cores; design of Pavement mixes and applications procedures; preparation of bridge site data package, if necessary, and all Structural Design, including hydraulic analyses, if necessary, foundation design, and all design of highway appurtenances and systems [e.g., Signals, Intelligent Transportation System (ITS) facilities], and maintenance protection of traffic plans. Federal Railroad Administration (FRA) criteria will apply to rail work.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Perform landscape design (including erosion control).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need of cultural resources survey.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Phase/Sub-phase/Task**Responsibility: **NYSDOT** **Sponsor**

- |   |                          |                                     |
|---|--------------------------|-------------------------------------|
| 11. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance, separate, any portions of the project which may be more appropriately progressed separately and independently.   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 12. Compile PS&E package, including all plans, proposals, specifications, estimates, notes, special contract requirements, and any other contract documents necessary to advance the project to construction.   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 13. Conduct any required soils and other geological investigations.   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 14. Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocations plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 15. Determine the need and apply for any required permits, including U.S. Coast Guard, U.S. Army Corps of Engineers, Wetlands (including identification and delineation of wetlands), SPDES, NYSDOT Highway Work Permits, and any permits or other approvals required to comply with local laws, such as zoning ordinances, historic districts, tax assessment and special districts. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 16. Prepare and execute any required agreements, including:<br>- Railroad force account<br>- Maintenance agreements for sidewalks, lighting, signals, betterments<br>- Betterment Agreements<br>- Utility Work Agreements for any necessary Utility Relocations of Privately owned Utilities  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 17. Provide overall supervision/oversight of design to assure conformity with Federal and State design standards or conditions, including final approval of PS&E (Contract Bid Documents) by NYSDOT.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

**A2. Right-of-Way (ROW) Incidentals****Phase/Sub-phase/Task**Responsibility: **NYSDOT** **Sponsor**

- |  |                          |                                     |
|--|--------------------------|-------------------------------------|
| 1. Prepare ARM or other mapping, showing preliminary taking lines.                       | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. ROW mapping and any necessary ROW relocation plans.                                   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Obtain abstracts of title and certify those having an interest in ROW to be acquired. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. Secure Appraisals.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Perform Appraisal Review and establish an amount representing just compensation.      | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Phase/Sub-phase/Task

Responsibility: NYSDOT Sponsor

- |   |                          |                                     |
|---|--------------------------|-------------------------------------|
| 6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including <i>de minimis</i> determination, as may be applicable. <b>If NYSDOT is responsible for acquiring the right-of-way, this determination may be performed by NYSDOT only if NYSDOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.</b> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedures Law, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

**B. Right-of-Way (ROW) Acquisition**

Phase/Sub-phase/Task

Responsibility: NYSDOT Sponsor

- |   |                          |                                     |
|---|--------------------------|-------------------------------------|
| 1. Perform all Right-of-Way (ROW) Acquisition work, including negotiations with property owners, acquisition of properties and accompanying legal work, payments to and/or deposits on behalf of property owners; Prepare, publish, and pay for any required legal notices; and all other actions necessary to secure title to, possession of, and entry to required properties. <b>If NYSDOT is to acquire property, including property described as an uneconomic remainder, on behalf of the Municipality/Sponsor, the Municipality/Sponsor agrees to accept and take title to any and all permanent property rights so acquired which form a part of the completed Project.</b> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Provide required relocation assistance, including payment of moving expenses, replacement supplements, mortgage interest differentials, closing costs, mortgage prepayment fees.   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Conduct eminent domain proceedings, court and any other legal actions required to acquire properties.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. Monitor all ROW Acquisition work and activities, including review and processing of payments of property owners.   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Provide official certification that all right-of-way required for the construction has been acquired in compliance with applicable Federal, State or Local requirements and is available for use and/or making projections of when such property(ies) will be available if such properties are not in hand at the time of contract award.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6. Conduct any property management activities, including establishment and collecting rents, building maintenance and repairs, and any other activities necessary to sustain properties and/or tenants until the sites are vacated, demolished, or otherwise used for the construction project.   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 7. Subsequent to completion of the Project, conduct ongoing property management activities in a manner consistent with applicable Federal, State and Local requirements including, as applicable, the development of any ancillary uses, establishment and collection of rent, property maintenance and any other related activities.   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

**C. Construction, Construction Support (C/S) and Construction Inspection (C/I) Phase**

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
1. Advertise contract lettings and distribute contract documents to prospective bidders.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Conduct all contract lettings, including receipt, opening, and analysis of bids, evaluation/certification of bidders, notification of rejected bids/bidders, and awarding of the construction contract(s).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Compile and submit Contract Award Documentation Package.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Review/approve any proposed subcontractors, vendors, or suppliers.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Conduct and control all construction activities in accordance with the plans and proposal for the project. Maintain accurate, up-to-date project records and files, including all diaries and logs, to provide a detailed chronology of project construction activities. Procure or provide all materials, supplies and labor for the performance of the work on the project, and ensure that the proper materials, equipment, human resources, methods and procedures are used.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7a. For non-NHS or non-State Highway System Projects: Test and accept materials, including review and approval for any requests for substitutions.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7b. For NHS or State Highway System Projects: Inspection and approval of materials such as bituminous concrete, Portland cement concrete, structural steel, concrete structural elements and/or their components to be used in a federal aid project will be performed by, and according to the requirements of NYSDOT. The Municipality/Sponsor shall make or require provision for such materials inspection in any contract or subcontract that includes materials that are subject to inspection and approval in accordance with the applicable NYSDOT design and construction standards associated with the federal aid project.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7c. For projects that fall under both 7a and 7b above, check boxes for each.		
8. Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Administer construction contract, including the review and approval of all contractor requests for payment, orders-on-contract, force account work, extensions of time, exceptions to the plans and specifications, substitutions or equivalents, and special specifications.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Review and approve all shop drawings, fabrication details, and other details of structural work.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Administer all construction contract claims, disputes or litigation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Phase/Sub-phase/Task**

**Responsibility: NYSDOT Sponsor**

- | Phase/Sub-phase/Task   | NYSDOT                   | Sponsor                             |
|--|--------------------------|-------------------------------------|
| 12. Perform final inspection of the complete work to determine and verify final quantities, prices, and compliance with plans specifications, and such other construction engineering supervision and inspection work necessary to conform to Municipal, State and FHWA requirements, including the final acceptance of the project by NYSDOT.   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 13. Pursuant to Federal Regulation 49 CFR 18.42(e)(1) The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

---

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

June 2023

**TABLE OF CONTENTS**

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6-7
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

**STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in



accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

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

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS).** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS).** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business and Technology Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public

Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual

employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions,

seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

## APPENDIX A-1 SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

(To be included in all contracts)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, age, color, sex, national origin, and/or disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a) Withholding of payments to the contractor under the contract until the contractor complies; and/or
  - b) Cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

# APPENDIX B

## MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES-SERVICE DISABLED VETERAN OWNED BUSINESSES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

### M/WBE, SDVOB, AND EEO POLICY STATEMENT

I, \_\_\_\_\_, the representative for (Municipality/Sponsor/Grantee) adopted, or agree to adopt, the following policies with respect to the project being developed or services rendered at

\_\_\_\_\_  
(Insert project/service description)

#### **M/WBE/SDVOB**

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

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs, WBEs, and SDVOBs, including solicitations to M/WBE and SDVOB contractor associations.
- (2) Obtain a list of State-certified M/WBEs from <https://ny.newnycontracts.com/> and solicit bids from them directly.
- (3) Obtain a list of State certified SDVOBs from <https://online.ogs.ny.gov/SDVOB/search> and solicit bids from them directly.
- (4) Ensure that plans, specifications, requests for proposals, and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs and SDVOBs.
- (5) Where feasible, divide the work into smaller portions to enhanced participation by M/WBEs/SDVOBs and encourage joint ventures and other partnerships among M/WBE/SDVOBs contractors to enhance their participation.
- (6) Document and maintain records of bid solicitation, including those to M/WBEs/SDVOBs and the results thereof. This organization will also maintain records of actions that its subcontractors have taken toward meeting M/WBE/SDVOB contract participation goals.
- (7) Ensure that progress payments to M/WBEs/SDVOBs are made on a timely basis so that undue financial hardship is avoided and that, if legally permissible, bonding and other credit requirements are waived, appropriate alternatives developed to encourage M/WBE/SDVOB participation.

#### **EEO**

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, disability, or marital status.
- (c) At the request of the Sponsor, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) This organization shall comply with the provisions of the Human Rights Law, all other State, and Federal statutory and constitutional non-discrimination provisions. This organization and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

By \_\_\_\_\_

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

## APPENDIX B

\_\_\_\_\_  
(Name of Designated Liaison) is designated as this organization's Minority and Women-Owned Business Enterprise Liaison and Service-Disabled Veteran Owned Business Liaison responsible for administering M/WBE/SDVOB-EEO program.

The Municipality/Sponsor/Grantee agrees that the Standard M/WBE and/or SDVOB Contract Goals for projects let and funded (in whole or in part) with proceeds of this Agreement (Contract # \_\_\_\_\_) are provided below.

### STANDARD CONTRACT GOALS

CATEGORY/CONTRACT TYPE	MBE	WBE	SDVOB
C: Commodities	10.00%	20.00%	6.00%
CC: Construction Consultants (Architectural/Engineering)	20.00%	10.00%	6.00%
CN: Construction	7.99%	10.00%	6.00%
SC: Services/Consultants (Non-Architectural/Engineering)	6.00%	16.00%	6.00%

These Standard Contract Goals are based on the New York State Department of Transportation's (NYSDOT's) Agency M/WBE and SDVOB Goal Plan as a result of programmatic analysis. The plans are available at: [FY23-24 M/WBE Goal Plan](#) and [FY2021 SDVOB Goal Plan](#). In furtherance of such goals, the Municipality/Sponsor/Grantee is also required to consider the following statutory factors in all related contracts executed by the Sponsor/Municipality/Grantee:

- (1) the contract and subcontract scope(s) of work,
- (2) the potential subcontract opportunities available in the prime contract,
- (3) the relevant availability data contained within the disparity study with respect to the scope of the contract and potential subcontracting opportunities,
- (4) the number and types of certified minority-owned and women-owned business enterprises (M/WBE) found in the directory of certified minority-owned and women-owned businesses available to perform the related contract work and the number and types of certified service-disabled veteran-owned businesses (SDVOB) found in the SDVOB directory available to perform the related contract work,
- (5) the geographic location of the contract performance,
- (6) the extent to which geography is material to the performance of the contract,
- (7) the ability of certified M/WBEs and SDVOBs located outside of the geographic location of contract performance, notwithstanding the regional location of the certified enterprise, to perform on the Municipality/Sponsor/Grantee's contract,
- (8) the total dollar value of the work required by the Municipality's/Sponsor's/Grantee's contract in relation to the dollar value of the subcontracting opportunities; and
- (9) the relationship of the monetary size and term of the Municipality's/Sponsor's/Grantee's contract to the monetary size and term of the project for which the contract is awarded (See 5 NYCRR 142.2 and 9 CRR-NY 252.2(h)).

**Pre-Advertisement:** As a result of Municipality's/Sponsor's/Grantee's analysis of the statutory factors in relation to a contract's work scope and circumstances, if the Municipality/Sponsor/Grantee believes a non-standard goal is appropriate and supportable, the Municipality/Sponsor/Grantee may obtain NYSDOT approval by submitting a [M/WBE and/or SDVOB Pre-Advertisement Goal Modification Request](#), with justification, prior to public advertisement of the contract.

## APPENDIX B

**Pre-Award:** If the Municipality/Sponsor/Grantee receives proposals or bids that do not provide commitments that meet or exceed the advertised goals, the Municipality/Sponsor/Grantee must obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Waiver Request *demonstrating the Contractor's Good Faith Efforts to meet the goals, along with supporting justification, prior to awarding the contract.*

**Post Award:** If any consultant/contractor fails to attain its M/WBE and/or SDVOB commitment on a contract, the Municipality/Sponsor/Grantee must obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Waiver Request, *demonstrating Good Faith Efforts to meet the goals, along with supporting justification before NYSDOT will distribute final payment of grant proceeds.*

All forms referenced above are available at: <https://www.dot.ny.gov/main/business-center/civil-rights/>. Nothing stated within this or associated document(s) guarantees NYSDOT's approval of a goal modification or goal waiver.

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

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

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

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



**SAMPLE BRIDGE NY RESOLUTION BY MUNICIPALITY**  
**(Culvert Project – Municipality Administered)**  
**RESOLUTION NUMBER: \_\_\_\_\_**

**Authorizing the implementation and funding of 100% of the costs of a transportation project, of which qualified costs may be reimbursed from Bridge NY funds.**

WHEREAS, a project for the \_\_\_\_\_, P.I.N. \_\_\_\_\_ (the "Project") is eligible for reimbursement of qualified costs from Bridge NY funding that calls for the post-reimbursement apportionment of the qualified costs to be borne at the ratio of 100% Bridge NY funds and 0% non-Bridge NY funds; and

WHEREAS, the \_\_\_\_\_ of \_\_\_\_\_ will design, let, and administer all phases of the Project.

WHEREAS, the \_\_\_\_\_ of \_\_\_\_\_ desires to advance the Project by making a commitment of 100% of the costs of \_\_\_\_\_ work for the Project or portions thereof.

NOW, THEREFORE, the \_\_\_\_\_ Board, duly convened does hereby

RESOLVE, that the \_\_\_\_\_ Board hereby approves the Project; and it is hereby further

RESOLVED, that the \_\_\_\_\_ Board hereby authorizes the \_\_\_\_\_ of \_\_\_\_\_ to pay 100% of the cost of \_\_\_\_\_ work for the Project or portions thereof, with the understanding that qualified costs will be reimbursed from Bridge NY funding; and it is further

RESOLVED, that the sum of \_\_\_\_\_ is hereby appropriated from \_\_\_\_\_ [or, appropriated pursuant to \_\_\_\_\_] and made available to cover the cost of participation in the above phase of the Project; and it is further

RESOLVED, that the \_\_\_\_\_ BOARD hereby agrees that the \_\_\_\_\_ of \_\_\_\_\_ shall be responsible for all costs of the Project, including costs which exceed the amount of reimbursement available from the NY Bridge Funding awarded to the \_\_\_\_\_ of \_\_\_\_\_; and it is further

RESOLVED, that in the event the costs of the Project exceed the amount appropriated above, the \_\_\_\_\_ of \_\_\_\_\_ shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the \_\_\_\_\_ thereof, and it is further

RESOLVED, that the \_\_\_\_\_ BOARD hereby agrees that \_\_\_\_\_ of \_\_\_\_\_ hereby commits that construction of the Project shall begin no later than twenty-four (24) months after award and the construction phase of the Project shall be completed within thirty (30) months; and it is further

RESOLVED, that the \_\_\_\_\_ of the \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ be and is hereby authorized to execute all necessary agreements, certifications or reimbursement requests with NYSDOT for State Aid and/or Bridge NY funding on behalf of the \_\_\_\_\_ of \_\_\_\_\_ in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality's funding of the Project costs, and it is further

RESOLVED, that the \_\_\_\_\_ of \_\_\_\_\_ will be responsible for all maintenance of the Project; and it is further

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project; and it is further

RESOLVED, this Resolution shall take effect immediately.



Department of  
Transportation

KATHY HOCHUL  
Governor

MARIE THERESE DOMINGUEZ  
Commissioner

LINDA A. LUBEY, P.E.  
Regional Director

May 21, 2024

Honorable Jeffrey Lanigan  
Mayor, City of Rome  
198 North Washington Street  
Rome, NY 13440

**RE: PIN 2754.82.301 (D040976)  
BNY 2022: Merrick Rd  
Over Wood Creek  
City of Rome, Oneida County**

Dear Mayor Lanigan:

Enclosed is the Original Agreement for the above-referenced project. Also enclosed is a sample resolution.

The Agreement is necessary to identify the 100% state funding share for the project. When the Agreement is fully executed, the City can be reimbursed up to \$1,500,000.00 in state funds as eligible expenditures are made per Schedule A and work is performed as outlined per Schedule B of the Agreement. This amount includes all project phases, which will be authorized as project milestones are met.

You are requested to have two (2) original Agreements, two (2) additional original signature pages and two (2) original certified resolutions signed by the appropriate officials and returned to this office for further processing.

If you have any questions, please call me at 315-793-2450.

Sincerely,

Jim McLaughlin  
Regional Local Project Liaison

JM:mr  
Enclosures

cc: Deborah Windecker, Regional Planning and Program Manager

RESOLUTION NO. 268

AUTHORIZING THE MAYOR OF THE CITY OF ROME TO  
ENTER INTO AN AGREEMENT WITH  
NEW YORK STATE DEPARTMENT OF TRANSPORTATION.

By \_\_\_\_\_;

WHEREAS, Butch Conover, Commissioner of the Department of Public Works for the City of Rome, New York has recommended that the City of Rome, New York, enter into an agreement with the New York State Department of Transportation ("DOT") for the replacement of the Merrick Road Culvert structure, for a total amount not to exceed \$1,500,000.00 with reimbursement of \$1,500,000.00 from DOT, pursuant to the terms set forth in the attached Agreement; now, therefore,

BE IT RESOLVED, by the Board of Estimate and Contract of the City of Rome, that the Mayor of the City of Rome is hereby authorized to enter into an agreement with New York State Department of Transportation for the replacement of the Merrick Road Culvert structure, for a total amount not to exceed \$1,500,000.00 with reimbursement of \$1,500,000.00 from DOT, pursuant to the terms set forth in the attached Agreement, which is made part of this Resolution.

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Izzo \_\_\_\_\_ Viscelli \_\_\_\_\_ Feeney \_\_\_\_\_  
Conover \_\_\_\_\_ Nolan \_\_\_\_\_

ADOPTED \_\_\_\_\_ DEFEATED \_\_\_\_\_

## BridgeNY Culvert Local Project Agreement

CONTRACT NO. D040976

This Agreement is by and between:

the New York State Department of Transportation ("NYSDOT"), having its principal office at 50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State");

and the City of Rome (the "Municipality/Sponsor")  
with its office at 198 N. Washington Street, Rome, NY 13440.

This Agreement identifies the party responsible for administration and establishes the method or provision for funding of applicable phases of a BridgeNY State aid project for the improvement or replacement of a culvert, not on the State highway system, as such project and phases are more fully described by Schedule A annexed to this Agreement. The phases that are potentially the subject of this Agreement, as further enumerated, are: Preliminary Engineering ("PE") and Right-of-Way Incidental ("ROW Incidentals") work; Right-of-Way Acquisition; and Construction, Construction Supervision and/or Construction Inspection. The project shall be identified for the purposes of this Agreement as BNY 2022: MERRICK RD OVER WOOD CREEK, CITY OF ROME, ONEIDA COUNTY (as more specifically described in such Schedule A, the "Project").

### WITNESSETH:

WHEREAS, project eligibility for the BridgeNY Program, and other State Aid Program funds is determined by NYSDOT; and

WHEREAS, under related authorizations, NYSDOT and the Municipality/Sponsor are desirous of progressing the Project under State Aid Programs; and

WHEREAS, under New York General Municipal Law § 99-r, the governing board of any municipal corporation may contract with NYSDOT for services and work including design and construction of the nature contemplated by the Project; and

WHEREAS, The Legislative Body of the Municipality/Sponsor by Resolution No. \_\_\_\_\_, adopted at meeting held on \_\_\_\_\_, approved the Project, and

WHEREAS, the Municipality/Sponsor has appropriated necessary funds in connection with any Municipal/Sponsor share identified in Schedule A; and

WHEREAS, the Municipality/Sponsor has further authorized the \_\_\_\_\_ of the Municipality/Sponsor to execute this Agreement and the applicable Schedule A on behalf of the Municipality/Sponsor and a copy of such Resolution(s) is attached to and made a part of this Agreement (where New York City is the Municipality/Sponsor, such resolution is not required).

NOW, THEREFORE, the parties agree as follows:

1. *Documents Forming this Agreement.* The Agreement consists of the following:
  - Agreement Form - This document titled "BridgeNY Culvert Local Project Agreement";
  - Schedule "A" - Description of Project Phase, Funding and Deposit Requirements.
  - Schedule "B" - Phases, Subphase/Tasks, and Allocation of Responsibility.
  - Appendix "A" - Standard Clauses for New York State Contracts.
  - Appendix "A-1" - Supplemental Title VI Provisions (Civil Rights Act).
  - Appendix "B" - Minority and Women-Owned Business Enterprises(M/WBE)-Service Disabled Veteran Owned Businesses(SDVOB) – Equal Employment Opportunity(EEO) Policy Statement.
  - Municipal/Sponsor Resolution(s) - duly adopted Municipal/Sponsor resolution(s) authorizing the appropriate Municipal/Sponsor official to execute this Agreement on behalf of the Municipality/Sponsor and appropriating or otherwise providing the Project funding required therefor. (Where New York City is the Municipality/Sponsor, such resolution is not required).

**\*Note – Resolutions for BridgeNY projects must also include an express commitment by the Municipality/Sponsor that construction shall commence no later than twenty-four (24) months after award, and the project must be completed within thirty (30) months of commencing construction. Award is defined as an executed Federal Aid Agreement, approved by the Office of the State Comptroller.**

1.1 Within Appendix A-1, the term "Contractor" herein refers to any party other than the State, whether a **Municipality/Sponsor**, contractor, licensor, licensee, lessor, lessee, or any other party to this Project Agreement, or a subcontractor to any party other than the State.

2. *General Description of Work and Responsibility for Administration and Performance.* Subject to the allocations of responsibility for administration and performance thereof as shown in Schedule B (attached), the work of the Project may consist generally of the categories of work marked and described in Schedule B for the scope and phase in effect according to Schedule A or one or more Supplemental Schedule(s) A as may hereafter be executed and approved by the parties hereto as required for a State contract, and any additions or deletions made thereto by NYSDOT subsequent to the development of such Schedule(s) A for the purposes of conforming to New York State or to Federal Highway Administration requirements or standards, including but not limited to compliance with 28 CFR 35.105 which requires a Municipality/Sponsor employing 50 or more persons to prepare a Transition plan addressing compliance with the Americans with Disabilities Act (ADA).

The Municipality/Sponsor understands that funding is contingent upon the Municipality/Sponsor's compliance with the applicable requirements of the "Local Projects Manual (LPM" formerly known as the "Procedures for Locally Administered Federal Aid Projects (PLAFAP)" Manual (available through NYSDOT's web site at <https://www.dot.ny.gov/plafap>, and as such may be amended from time to time.

3. *Municipal/Sponsor Deposit.* Where the work is performed by consultant or construction contract entered into by NYSDOT, or by NYSDOT forces, the Municipality/Sponsor shall deposit with the State Comptroller through NYSDOT prior to the award of NYSDOT's contract or NYSDOT's performance of work by its own forces, the full amount of the Project costs due in accordance with Schedule A.

4. *Payment or Reimbursement of Costs.* For work performed by NYSDOT, NYSDOT will directly apply the required Municipality/Sponsor Deposit and, if applicable, shall request Office of the New York State Comptroller (OSC) funding of State aid to the Municipality/Sponsor as described below. For work performed by or through the Municipality/Sponsor, NYSDOT will reimburse the Municipality/Sponsor up to the amount of the Municipality/Sponsor's award of BridgeNY State aid as described below.

NYSDOT will periodically make reimbursements upon request and certification by the Sponsor. The frequency of reimbursement requests must be in conformance with that stipulated in the NYSDOT Standard Specifications; (§109-06, *Contract Payment*). NYSDOT recommends that reimbursement requests not be submitted more frequently than monthly. In all cases, reimbursement requests must be submitted at least once every six months. A Sponsor's reimbursement requests are restricted to eligible project costs. To be classified as an "eligible project cost", in addition to other requirements of this Agreement, the original expenditure must have been paid within the past 15 months in order to comply with Federal Tax Law and IRS Regulations (26 CFR 1.150-2 (d)(2)(i)), which governs fund disbursements from the issuance of tax-exempt bonds. Expenditures paid greater than 15 months prior to the reimbursement request are ineligible for reimbursement.

4.1 *State aid.* Subject to compliance with this Agreement, NYSDOT shall authorize reimbursement of eligible individual Project costs identified in the applicable Schedule A. Contractor obligations or expenditures that precede the start date of this Agreement shall not be reimbursed. To be eligible for State aid, project costs must be for work which, when completed, has a certifiable service life of at least 50 years for culvert replacements, or at least 10 years for culvert relining.

4.2 *State aid Eligible Project Costs.* Eligible Project costs include costs of acquisition, construction, repair, reconstruction, renovation, equipment and other related costs as set forth in the Project Description in Schedule A or Supplements to Schedule A. Eligible Project costs may also include the reimbursement of salaries and wages to employees of Sponsor for carrying out the Project(s); fees to consultants and professionals retained by Sponsor for planning and performing the Project, and such other costs and expenses directly related to such employees, consultants and professionals for the Project.

4.3 In no event shall the State be obligated to fund or reimburse any costs exceeding the "State Share" provided in Schedule A.

4.4 All items included by the Municipality/Sponsor in the record of costs shall be in conformity with accounting procedures acceptable to NYSDOT and the FHWA. Such items shall be subject to audit by the State, the federal government or their representatives.

4.5 If Project-related work is performed by NYSDOT, NYSDOT will be paid for the full costs thereof. To this end, the reimbursement to the Municipality/Sponsor provided for in section 4.1 above may be reduced by NYSDOT if necessary.

4.6 Municipalities/Sponsor's may not use BridgeNY funds to substitute for the local match to a federally-aided project.

5. *Supplemental Agreements and Supplemental Schedule(s)* Supplemental Agreements or Supplemental Schedule(s) may be entered into by the parties and must be executed and approved in the manner required for a State contract. A Supplemental Schedule is defined as a Supplemental Agreement which revises only the Schedule A of a prior Agreement or Supplemental Agreement. In the event Project cost estimates increase over the amounts provided for in Schedule A, no additional reimbursement shall be due to the Municipality/Sponsor unless the parties enter into a Supplemental Agreement or Supplemental Schedule A for reimbursement of additional Eligible Project Costs.

6. *State Recovery of Ineligible Reimbursements.* NYSDOT shall be entitled to recover from the Municipality/Sponsor any monies paid to the Municipality/Sponsor pursuant to this Agreement which are subsequently determined to be ineligible for State aid hereunder. In the event the Municipality/Sponsor withdraws the project, suspends or delays work on the Project, fails to adequately or expeditiously progress the Project, or takes other action that results in the loss of the Municipality/Sponsor's participation or eligibility, the Municipality/Sponsor shall refund to the State all reimbursements or payments received from the State, and the Municipality/Sponsor shall reimburse the State for 100% of all costs incurred by NYSDOT. To satisfy the refund, the State or NYSDOT may offset any other State or Federal aid owed, or may otherwise come due, to the Municipality/Sponsor.

7. *Municipal/Sponsor Liability.*

7.1 If the Municipality/Sponsor performs work under this Agreement with its own forces, it shall be responsible for all damage to person or property arising from any act or negligence performed by or on behalf of the Municipality/Sponsor, its officers, agents, servants or employees, contractors, subcontractors or others in connection therewith. The Municipality/Sponsor specifically agrees that its agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

7.2 To the fullest extent permitted by law, the Municipality/Sponsor shall indemnify and save harmless the State for all damages and costs arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Municipality/Sponsor, its officers, agents, servants, employees, contractors, subcontractors or others under this Agreement. Negligent performance of service, within the meaning of this section, shall include, in addition to negligence founded upon tort, negligence based upon the failure of the Municipality/Sponsor or its officers, agents, servants, employees, contractors, subcontractors or others to meet professional standards resulting in obvious or patent errors in the progression of its work. Additionally, the Municipality/Sponsor shall defend the State in any action arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Municipality/Sponsor, its officers, agents, servants, employees, contractors, subcontractors or others under this Agreement.

7.3 The Municipality/Sponsor shall at all times during the Contract term remain responsible. The Municipality/Sponsor agrees, if requested by the Commissioner of Transportation or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

7.4 The Municipality/Sponsor shall at all times during the Contract term remain responsible. The Municipality/Sponsor agrees, if requested by the Commissioner of Transportation or his or her designee, to present evidence of its continuing legal authority to do business in New York

State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of Transportation or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Municipality/Sponsor or the Municipality/Sponsor's officers, agents, servants, employees, contractors, or subcontractors. In the event of such suspension, the Municipality/Sponsor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Municipality/Sponsor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Transportation or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

7.3 Upon written notice to the Municipality/Sponsor, and a reasonable opportunity to be heard with appropriate NYSDOT officials or staff, the Contract may be terminated by the Commissioner of Transportation or his or her designee at the Municipality's/Sponsor's expense where the Municipality/Sponsor is determined by the Commissioner of Transportation or his or

her designee to be non-responsible. In such event, the Commissioner of Transportation or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

8. *Maintenance.* The Municipality/Sponsor shall be responsible for the maintenance of the project at the sole cost and expense of the Municipality/Sponsor. If the Municipality/Sponsor intends to have the project maintained by another entity, any necessary maintenance agreement will be executed and submitted to NYSDOT before construction of the Project is begun. Upon its completion, the Municipality/Sponsor will operate and maintain the Project at no expense to NYSDOT; and during the useful life of the Project, the Municipality/Sponsor shall not discontinue operation and maintenance of the Project, nor dispose of the Project, unless it receives prior written approval to do so from NYSDOT.

8.1 The Municipality/Sponsor may request such approved disposition from NYSDOT where the Municipality/Sponsor either causes the purchaser or transferee to assume the Municipality/Sponsor's continuing obligations under this Agreement, or agrees immediately to reimburse NYSDOT for the pro-rata share of the funds received for the project, plus any direct costs incurred by NYSDOT, over the remaining useful life of the Project.

8.2 If a Municipality/Sponsor fails to obtain prior written approval from NYSDOT before discontinuing operation and maintenance of the Project or before disposing of the project, in addition to the costs provided, above in 8.1, Municipality/Sponsor shall be liable for liquidated damages for indirect costs incurred by NYSDOT in the amount of 5% of the total funding provided through NYSDOT.

8.3 For NYSDOT-administered projects, NYSDOT is responsible for maintenance only during the NYSDOT-administered construction phase. Upon completion of the construction phase, the Municipality/Sponsor's maintenance obligations start or resume.

9. *Independent Contractor.* The officers and employees of the Municipality/Sponsor, in accordance with the status of the Municipality/Sponsor as an independent contractor, covenant and agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the State by reason hereof, and that they will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to, Workers Compensation coverage, Unemployment Insurance



benefits, Social Security or Retirement membership or credit.

10. *Contract Executory.*

10.1 This Agreement shall be deemed executory only to the extent of the monies available to the State for its performance and no liability on account thereof shall be incurred by the State beyond monies available therefor.

10.2 This Agreement shall remain in effect so long as State funding authorizations are in effect and funds are made available pursuant to the laws controlling such authorizations and availabilities. However, if such authorizations or availabilities lapse and are not renewed, continued or reenacted, as to funds encumbered or available and to the extent of such encumbrances or availabilities, this Agreement shall remain in effect for the duration of such encumbrances or availabilities. Although the liquidity of encumbrances or the availability of funds may be affected by budgetary hiatuses, a State budgetary hiatus will not by itself be construed to lapse this Agreement, provided any necessary State appropriations or other funding authorizations are enacted. **Municipality/Sponsor's** continued performance during such a budgetary hiatus cannot, by itself, obligate the State to making expenditures without appropriations.

11. *No Assignment or Other Disposition of Agreement.* The Municipality/Sponsor agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title or interest therein, or its power to execute such Agreement to any entity, public or private, without the previous written consent of NYSDOT first having been obtained.

12. *Term of Agreement.* The Project phase(s) and Term are identified in Schedule(s) A executed herewith and incorporated herein or as subsequently identified in any duly executed and approved supplemental Schedule(s) A as of the date of such supplemental Schedule(s) A. This Agreement shall remain in effect so long as applicable funding authorizations are in effect and funds are made available pursuant to the laws controlling such authorizations and availabilities.

**12.1 Time Is of the essence.** The Municipality/Sponsor understands that construction of BridgeNY Projects must commence no later than twenty-four (24) months after award, and the project must be completed within thirty (30) months of commencing construction. Award is defined as an executed BridgeNY Agreement approved by the Office of the State Comptroller.

13. *NYSDOT Obligations.* NYSDOT's responsibilities and obligations are as specifically set forth in this agreement, and neither NYSDOT nor any of its officers or employees shall be responsible or liable, nor shall the Municipality/Sponsor assert, make or join in any claim or demand against NYSDOT, its officers or employees, for any damages or other relief based on any alleged failure of NYSDOT, its officers or employees, to undertake or perform any act, or for undertaking or performing any act, which is not specifically required or prohibited by this Agreement.

14. *Ethics Considerations.* In addition to Municipality's/Sponsor's conforming with the applicable provisions of Public Officers Law §73 (Business or Professional Activities by State Officers and Employees and Party Officers) and General Municipal Law §806 (Code of Ethics) as related to the expenditure of the Program Funding made hereunder, no member of Municipality's/Sponsor's governing body, its officers or employees, or any member of the Board of Directors or staff, nor any member of their families shall benefit financially either directly or indirectly from the Program Funding unless such action is otherwise in accordance with law and is necessary for the accomplishment of the Project. In such event, Municipality/Sponsor shall disclose such relationship to NYSDOT and shall obtain prior written

approval therefor from NYSDOT.

15. *Reporting Requirements.* The Municipality/Sponsor agrees to comply with and submit to NYSDOT in a timely manner all applicable reports required under the provisions of this Agreement and in accordance with current Federal and State laws, rules, and regulations.

16. *NYSDOT Performance Review.* NYSDOT may review the Municipality's/Sponsor's performance of this Agreement in such manner and at such times as NYSDOT shall determine, and such review may include field visits by NYSDOT representatives to the Project and/or the offices of Municipality/Sponsor. Municipality/Sponsor shall at all times make available its employees, records and facilities to authorized NYSDOT representatives in connection with any such review. Such review shall be for the purpose, among other things, of ascertaining the quality and quantity of Municipality's/Sponsor's performance of the Project, its use and operation.

17. *Electronic Contract Payments.* Municipality/Sponsor shall provide complete and accurate supporting documentation of eligible local expenditures as required by this Agreement, NYSDOT and the State Comptroller. Following NYSDOT approval of such supporting documentation, payment for invoices submitted by the Municipality/Sponsor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices from the Statewide Financial System (SFS). The Municipality/Sponsor shall comply with the State Comptroller's procedures for all applicable State Aid to authorize electronic payments. Instructions and authorization forms are available on the New York State Comptroller's website at <https://www.osc.state.ny.us/state-vendors> or by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us).

18. *Compliance with Legal Requirements.* Municipality/Sponsor must comply with all applicable federal, state and local laws, rules and regulations, including but not limited to the following:

18.1 *New York State Executive Law Article 15-A, Participation by Minority Group members and Women with Respect to State Contracts and New York State Executive Law Article 17-B, Participation by Service-Disabled Veterans with Respect to State Contracts,* including requirements relating to equal employment opportunity, and utilization goals and contracting opportunities for minority and women-owned business enterprises and service-disabled veteran owned business, without additional cost to NYSDOT.

18.1.1 *EEO Policy Statement.* Pursuant to 5 NYCRR §143.2, a Municipality/Sponsor shall adopt an EEO policy if one is not previously adopted, as provided in Appendix B, and submit to NYSDOT a signed copy of Appendix B.

18.1.2 *Minority-owned and Women-owned Business Enterprise (M/WBE) and Service-Disabled Veteran Owned Business (SDVOB) Goals.* Municipality/Sponsor must comply with all M/WBE and SDVOB requirements and goals stated within the provisions of Appendix B, titled, "Minority and Women-owned Business Enterprises-Service-Disabled Veteran Owned Business – Equal Employment Opportunity Policy Statement".

18.1.3 *M/WBE and SDVOB Guidance.* Refer to the New York State Department of Transportation website and Appendix B for guidance related to M/WBE and SDVOB goals at [www.dot.ny.gov/main/business-center/civil-rights/](http://www.dot.ny.gov/main/business-center/civil-rights/).

Assigned M/WBE and SDVOB goals must be included in the Municipality's/Sponsor's proposed contract documents when submitted for NYSDOT approval prior to project advertisement. Any requests for a reduction or waiver of the goals must be submitted at that time so that the correct

goals are included in the project advertisement

18.1.4 *Good Faith Efforts.* If a Municipality/Sponsor fails to meet the M/WBE or SDVOB requirements set forth in Appendix B, they must demonstrate Good Faith Efforts pursuant to 5 NYCRR §142.8.

18.1.5 *M/WBE and SDVOB Compliance Reports.* The Municipality/Sponsor shall require their consultants and contractors to submit electronic, monthly M/WBE and SDVOB compliance reports via NYSDOT's Civil Rights Reporting Software, Equitable Business Enterprise (EBO), on or before the 15<sup>th</sup> day of the immediately preceding month. The Municipality/Sponsor must apply for access to EBO at the following website: [www.dot.ny.gov/dotapp/ebo](http://www.dot.ny.gov/dotapp/ebo).

18.1.6 *Failure to Comply.* If the Sponsor fails to monitor and administer contracts in accordance with State requirements, the Sponsor will not be reimbursed for associated activities within the affected contracts. The Sponsor must ensure that any contract it awards under this Agreement has a Minority-owned and Women-owned Business Enterprise (M/WBE) and a Service-Disabled Veteran Owned Business (SDVOB) Utilization Plan and complies with such plans. If, without prior written approval by NYSDOT, the Sponsor's contractors and subcontractors fail to complete work for the project as proposed in the M/WBE and SDVOB Schedule of Utilization, NYSDOT at its discretion may (1) cancel, terminate or suspend this Agreement or such portion of this Agreement, or (2) assess liquidated damages in an amount of up to 20% of the portion of the Sponsor's contracts and subcontracts, funded in whole or in part by this Agreement, to which contract goals are established in accordance with NYSDOT guidance.

18.1.7 *Equal Employment Opportunity (EEO) Requirements.* EEO goals (as provided in the "Local Projects Manual"), EEO Policy Statement (as provided in "Appendix B – M/WBE-SDVOB and EEO Policy Statements") and specifications (as provided in NYSDOT's *Standard Specifications §102-11 Equal Employment Opportunity Requirements*) must be included in the contract documents and project advertisement.

[www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us](http://www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us)

18.1.8 *EEO Monitoring and Reporting.* EEO participation shall be monitored by the Municipality/Sponsor as the project progresses. EEO participation shall be reported by the contractor through NYSDOT's civil rights reporting software, EBO.

18.2 New York State Environmental Law, Article 6, the State Smart Growth Public Infrastructure Policy Act, including providing true, timely and accurate information relating to the project to ensure compliance with the Act, accessible at [www.dot.ny.gov/programs/smart-planning/smartgrowth-law](http://www.dot.ny.gov/programs/smart-planning/smartgrowth-law).

19. *Compliance with Procedural Requirements.* The Municipality/Sponsor understands that funding is contingent upon the Municipality's/Sponsor's compliance with the requirements stated in the applicable BridgeNY – Notice of Funding Availability and guidance connected thereto.

Locally-administered BridgeNY transportation projects shall be constructed in accordance with the current version of NYSDOT Standard Specifications and NYSDOT-approved Special Specifications. (Cities with a population of 3 million or more may pursue approval of their own construction specifications and procedures on a project by project basis).

20. *Extended Records Retention Requirements.*

20.1 To ensure that NYSDOT meets certain strict requirements under the 26 CFR Part 1.150-2(d)(2)(i) - (d)(2)(iii) and to ensure that NYSDOT may authorize the use of funds for this project, the Sponsor must retain the following documents in connection with the Projects:

- a. Documents evidencing the specific assets financed with such proceeds, including but not limited to project costs, and documents evidencing the use and ownership of the property constructed, improved, or related to this Agreement, as provide in Schedule B; and
- b. Documents, if any, evidencing the sale or other disposition of the financed property.

20.2 Notwithstanding any other provision of this contract to the contrary, the Sponsor covenants to retain those records described above, for **thirty-six (36) years** per the 26 CFR Part 1.150-2(d)(2)(i) - (d)(2)(iii) after the date of NYSDOT's final payment of the eligible project cost(s).

20.3 Failure to maintain such records in a manner that ensures complete access thereto, for the period described above, shall constitute a material breach of the contract and may, at the discretion of NYSDOT, result in loss of funds allocated, or the Sponsor's repayment of funds distributed, to the Sponsor under this Agreement.

21. *Notice Requirements.*

21.1 All notices permitted or required hereunder shall be in writing and shall be transmitted:

- (a) Via certified or registered United States mail, return receipt requested;
- (b) By personal delivery;
- (c) By expedited delivery service; or
- (d) By e-mail; or
- (e) By facsimile transmission.

21.2 For all BridgeNY Culvert Local Project Agreement purposes, such notices shall be addressed by the Municipality/Sponsor to the officially designated Regional Local Project Liaison (RLPL) and, by NYSDOT, to the officially designated Primary Municipality/Sponsor's Contact, or to such different parties and addresses as the parties from time-to-time mutually agree to designate. The parties herein agree to exchange such contact information above which shall include Organization Name, Individual Name & Title, Mailing address, Telephone number and E-mail address as noted below.

21.3 Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States Mail, as of the date of first attempted delivery at the address and in the manner provided herein, or email, upon receipt.

21.4 The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

**New York State Department of Transportation (NYSDOT)**

Name: Jim McLaughlin

Title: Project Manager

Address: 207 Genesee Street, 13<sup>th</sup> Floor Planning Group, Utica, NY 13501

Telephone Number: 315-793-2450

Facsimile Number: 315-793-2719

E-Mail Address: Jim.McLaughlin@dot.ny.gov

**Municipality/Sponsor City of Rome**

Name: Joseph G. Guiliano

Title: Engineer II

Address: 198 N. Washington Street, Rome, NY 13440

Telephone Number: 315-339-7627

Facsimile Number: 315-838-1167

E-Mail Address: jguiliano@romecitygov.com

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]



**SCHEDULE A – Description of Project Phase, Funding and Deposit Requirements  
 NYSDOT/ State-Local Agreement - Schedule A for PIN 2754.82**

<b>OSC Contract #:</b> <u>D040976</u>	<b>Contract Start Date:</b> <u>7/26/2023</u> (mm/dd/yyyy)	<b>Contract End Date:</b> <u>9/30/2033</u> (mm/dd/yyyy) <input type="checkbox"/> Check, if date changed from the last Schedule A
<b>Purpose:</b> <input checked="" type="checkbox"/> Original Standard Agreement <input type="checkbox"/> Supplemental Schedule A No.		
<b>Agreement Type:</b> <input checked="" type="checkbox"/> Locally Administered Municipality/Sponsor (Contract Payee): <u>CITY OF ROME</u> Other Municipality/Sponsor (if applicable): _____		
<input type="checkbox"/> State Administered <small>List participating Municipality(ies) and the % of cost share for each and indicate by checkbox which Municipality this Schedule A applies.</small>		
<input type="checkbox"/> Municipality: _____ % of Cost share <input type="checkbox"/> Municipality: _____ % of Cost share <input type="checkbox"/> Municipality: _____ % of Cost share		
<b>Authorized Project Phase(s) to which this Schedule applies:</b> <input checked="" type="checkbox"/> PE/Design <input checked="" type="checkbox"/> ROW Incidentals <input checked="" type="checkbox"/> ROW Acquisition <input checked="" type="checkbox"/> Construction/CI/CS		
<b>Work Type:</b> <u>HWY CULVERT</u>	<b>County</b> (If different from Municipality): <u>COUNTY OF ONEIDA</u>	
<small>(Check, if Project Description has changed from last Schedule A):</small> <input type="checkbox"/>		
<b>Project Description:</b> <u>BNY 2022: MERRICK RD OVER WOOD CREEK, CITY OF ROME, ONEIDA COUNTY</u>		
<b>Marchiselli Eligible</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

**A. Summary of Participating Costs FOR ALL PHASES** For each PIN Fiscal Share below, show current costs on the rows indicated as "Current." Show the old costs from the previous Schedule A on the row indicated as "Old." All totals will calculate automatically.

PIN Fiscal Share	"Current" or "Old" entry Indicator	Funding Source (Percentage)	TOTAL Costs	FEDERAL Funds	STATE Funds	LOCAL Funds	LOCAL DEPOSIT AMOUNT (Required only if State Administered)
2754.82.301	Current	Other (see FN)	\$1,500,000.00	\$0.00	\$1,500,000.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>TOTAL CURRENT COSTS:</b>			\$1,500,000.00	\$ 0.00	\$1,500,000.00	\$ 0.00	\$ 0.00

NYS DOT/State-Local Agreement – Schedule A PIN 2754.82

<b>B. Local Deposit(s) from Section A:</b>	\$ 0.00
Additional Local Deposit(s)	\$0.00
<b>Total Local Deposit(s)</b>	\$ 0.00

<b>C. Total Project Costs</b> <i>All totals will calculate automatically.</i>			
Total FEDERAL Cost	Total STATE Cost	Total LOCAL Cost	Total ALL SOURCES Cost
\$ 0.00	\$1,500,000.00	\$ 0.00	\$1,500,000.00
		Total FEDERAL Cost	\$ 0.00
		Total STATE Cost	\$1,500,000.00
<b>SFS TOTAL CONTRACT AMOUNT</b>			<b>\$1,500,000.00</b>

<b>D. Point of Contact for Questions Regarding this Schedule A (Must be completed)</b>	Name: <u>Jim McLaughlin</u> Phone No: <u>315-793-2450</u>
--	--

See Agreement (or Supplemental Agreement Cover) for required contract signatures.

**Footnotes (FN):** (See LPB's SharePoint for link to sample footnotes)

- This is a 2022 Bridge NY Culvert project with a programmed amount of \$1,500,000.00. Funding may be applied to all phases of the project.
- State Fund Source: 100% State Bonded PIT (Consultant)
- Projects must begin construction no later than 24 months after award; award is defined as approved State-Local Agreement (SLA) by the NYS Office of the State Comptroller. The Project Sponsor must expeditiously progress their execution of the State-Local Agreement.
- Projects must be fully completed 30 months of commencing construction; construction is defined as an award to a contractor or commencement of work by municipal forces. Therefore, Sponsors are strongly encouraged to have projects substantially complete 24 months of commencing construction
- 
- 
- 
- 
- 
- 
- 
-



## SCHEDULE B: Phases, Sub-phase/Tasks, and Allocation of Responsibility

**Instructions:** Identify the responsibility for each applicable Sub-phase task by entering X in either the *NYSDOT* column to allocate the task to State labor forces or a State Contract, or in the *Sponsor* column indicating non-State labor forces or a locally administered contract.

### A1. Preliminary Engineering ("PE") Phase

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
1. <u>Scoping</u> : Prepare and distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, Smart Growth checklist, land use and development analysis and forecasts.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Prepare Smart Growth Checklist for NYSDOT Attestation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. <u>Preliminary Design</u> : Prepare and distribute Design Report/Design Approval Document (DAD), including environmental analysis/assessments, and other reports required to demonstrate the completion of specific design sub-phases or tasks and/or to secure the approval/authorization to proceed.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Review and Circulate all project reports, plans, and other project data to obtain the necessary review, approval, and/or other input and actions required of other NYSDOT units and external agencies.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Obtain aerial photography and photogrammetric mapping.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Perform all surveys for mapping and design.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. <u>Detailed Design</u> : Perform all project design, including preparation of plan sheets, cross-sections, profiles, detail sheets, specialty items, shop drawings, and other items required in accordance with the Highway Design Manual, including all Highway Design, including pavement evaluations, including taking and analyzing cores; design of Pavement mixes and applications procedures; preparation of bridge site data package, if necessary, and all Structural Design, including hydraulic analyses, if necessary, foundation design, and all design of highway appurtenances and systems [e.g., Signals, Intelligent Transportation System (ITS) facilities], and maintenance protection of traffic plans. Federal Railroad Administration (FRA) criteria will apply to rail work.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Perform landscape design (including erosion control).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need of cultural resources survey.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
11. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance, separate, any portions of the project which may be more appropriately progressed separately and independently.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Compile PS&E package, including all plans, proposals, specifications, estimates, notes, special contract requirements, and any other contract documents necessary to advance the project to construction.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Conduct any required soils and other geological investigations.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
14. Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocations plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15. Determine the need and apply for any required permits, including U.S. Coast Guard, U.S. Army Corps of Engineers, Wetlands (including identification and delineation of wetlands), SPDES, NYSDOT Highway Work Permits, and any permits or other approvals required to comply with local laws, such as zoning ordinances, historic districts, tax assessment and special districts.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Prepare and execute any required agreements, including: <ul style="list-style-type: none"> <li>- Railroad force account</li> <li>- Maintenance agreements for sidewalks, lighting, signals, betterments</li> <li>- Betterment Agreements</li> <li>- Utility Work Agreements for any necessary Utility Relocations of Privately owned Utilities</li> </ul>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Provide overall supervision/oversight of design to assure conformity with Federal and State design standards or conditions, including final approval of PS&E (Contract Bid Documents) by NYSDOT.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

#### **A2. Right-of-Way (ROW) Incidentals**

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
1. Prepare ARM or other mapping, showing preliminary taking lines.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. ROW mapping and any necessary ROW relocation plans.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Obtain abstracts of title and certify those having an interest in ROW to be acquired.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Secure Appraisals.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Perform Appraisal Review and establish an amount representing just compensation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including <i>de minimis</i> determination, as may be applicable. <b>If NYSDOT is responsible for acquiring the right-of-way, this determination may be performed by NYSDOT only if NYSDOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedures Law, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

### **B. Right-of-Way (ROW) Acquisition**

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
1. Perform all Right-of-Way (ROW) Acquisition work, including negotiations with property owners, acquisition of properties and accompanying legal work, payments to and/or deposits on behalf of property owners; Prepare, publish, and pay for any required legal notices; and all other actions necessary to secure title to, possession of, and entry to required properties. <b>If NYSDOT is to acquire property, including property described as an uneconomic remainder, on behalf of the Municipality/Sponsor, the Municipality/Sponsor agrees to accept and take title to any and all permanent property rights so acquired which form a part of the completed Project.</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Provide required relocation assistance, including payment of moving expenses, replacement supplements, mortgage interest differentials, closing costs, mortgage prepayment fees.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Conduct eminent domain proceedings, court and any other legal actions required to acquire properties.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Monitor all ROW Acquisition work and activities, including review and processing of payments of property owners.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Provide official certification that all right-of-way required for the construction has been acquired in compliance with applicable Federal, State or Local requirements and is available for use and/or making projections of when such property(ies) will be available if such properties are not in hand at the time of contract award.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Conduct any property management activities, including establishment and collecting rents, building maintenance and repairs, and any other activities necessary to sustain properties and/or tenants until the sites are vacated, demolished, or otherwise used for the construction project.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Subsequent to completion of the Project, conduct ongoing property management activities in a manner consistent with applicable Federal, State and Local requirements including, as applicable, the development of any ancillary uses, establishment and collection of rent, property maintenance and any other related activities.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**C. Construction, Construction Support (C/S) and Construction Inspection (C/I) Phase**

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
1. Advertise contract lettings and distribute contract documents to prospective bidders.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Conduct all contract lettings, including receipt, opening, and analysis of bids, evaluation/certification of bidders, notification of rejected bids/bidders, and awarding of the construction contract(s).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Compile and submit Contract Award Documentation Package.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Review/approve any proposed subcontractors, vendors, or suppliers.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Conduct and control all construction activities in accordance with the plans and proposal for the project. Maintain accurate, up-to-date project records and files, including all diaries and logs, to provide a detailed chronology of project construction activities. Procure or provide all materials, supplies and labor for the performance of the work on the project, and ensure that the proper materials, equipment, human resources, methods and procedures are used.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7a. For non-NHS or non-State Highway System Projects: Test and accept materials, including review and approval for any requests for substitutions.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7b. For NHS or State Highway System Projects: Inspection and approval of materials such as bituminous concrete, Portland cement concrete, structural steel, concrete structural elements and/or their components to be used in a federal aid project will be performed by, and according to the requirements of NYSDOT. The Municipality/Sponsor shall make or require provision for such materials inspection in any contract or subcontract that includes materials that are subject to inspection and approval in accordance with the applicable NYSDOT design and construction standards associated with the federal aid project.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7c. For projects that fall under both 7a and 7b above, check boxes for each.		
8. Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Administer construction contract, including the review and approval of all contractor requests for payment, orders-on-contract, force account work, extensions of time, exceptions to the plans and specifications, substitutions or equivalents, and special specifications.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Review and approve all shop drawings, fabrication details, and other details of structural work.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Administer all construction contract claims, disputes or litigation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Phase/Sub-phase/Task**

**Responsibility: NYSDOT Sponsor**

12. Perform final inspection of the complete work to determine and verify final quantities, prices, and compliance with plans specifications, and such other construction engineering supervision and inspection work necessary to conform to Municipal, State and FHWA requirements, including the final acceptance of the project by NYSDOT.
13. Pursuant to Federal Regulation 49 CFR 18.42(e)(1) The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

**TABLE OF CONTENTS**

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6-7
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

**STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in



accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

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

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS).** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS).** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business and Technology Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnyccontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public

Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual

employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions,

seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

**APPENDIX A-1 SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)**  
(To be included in all contracts)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, age, color, sex, national origin, and/or disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a) Withholding of payments to the contractor under the contract until the contractor complies; and/or
  - b) Cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX B

### MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES-SERVICE DISABLED VETERAN OWNED BUSINESSES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

#### M/WBE, SDVOB, AND EEO POLICY STATEMENT

I, \_\_\_\_\_, the representative for (Municipality/Sponsor/Grantee) adopted,  
or agree to adopt, the following policies with respect to the project being developed or services rendered at

\_\_\_\_\_  
(Insert project/service description)

#### **M/WBE/SDVOB**

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

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs, WBEs, and SDVOBs, including solicitations to M/WBE and SDVOB contractor associations.
- (2) Obtain a list of State-certified M/WBEs from <https://ny.newmycontracts.com/> and solicit bids from them directly.
- (3) Obtain a list of State certified SDVOBs from <https://online.ogs.ny.gov/SDVOB/search> and solicit bids from them directly.
- (4) Ensure that plans, specifications, requests for proposals, and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs and SDVOBs.
- (5) Where feasible, divide the work into smaller portions to enhanced participation by M/WBEs/SDVOBs and encourage joint ventures and other partnerships among M/WBE/SDVOBs contractors to enhance their participation.
- (6) Document and maintain records of bid solicitation, including those to M/WBEs/SDVOBs and the results thereof. This organization will also maintain records of actions that its subcontractors have taken toward meeting M/WBE/SDVOB contract participation goals.
- (7) Ensure that progress payments to M/WBEs/SDVOBs are made on a timely basis so that undue financial hardship is avoided and that, if legally permissible, bonding and other credit requirements are waived, appropriate alternatives developed to encourage M/WBE/SDVOB participation.

#### **EEO**

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on state contracts.

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

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

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

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

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

By \_\_\_\_\_

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

## APPENDIX B

\_\_\_\_\_ (Name of Designated Liaison) is designated as this organization's Minority and Women-Owned Business Enterprise Liaison and Service-Disabled Veteran Owned Business Liaison responsible for administering M/WBE/SDVOB-EEO program.

The Municipality/Sponsor/Grantee agrees that the Standard M/WBE and/or SDVOB Contract Goals for projects let and funded (in whole or in part) with proceeds of this Agreement (Contract # \_\_\_\_\_) are provided below.

### STANDARD CONTRACT GOALS

CATEGORY/CONTRACT TYPE	MBE	WBE	SDVOB
C: Commodities	16.00%	18.00%	6.00%
CC: Construction Consultants (Architectural/Engineering)	19.00%	7.00%	6.00%
CN: Construction	8.00%	15.00%	6.00%
SC: Services/Consultants (Non-Architectural/Engineering)	5.00%	12.00%	6.00%

These Standard Contract Goals are based on the New York State Department of Transportation's (NYSDOT's) Agency M/WBE and SDVOB Goal Plan as a result of programmatic analysis. The plans are available at: FY21-22 M/WBE Goal Plan and FY2021 SDVOB Goal Plan. In furtherance of such goals, the Municipality/Sponsor/Grantee is also required to consider the following statutory factors in all related contracts executed by the Sponsor/Municipality/Grantee:

- (1) the contract and subcontract scope(s) of work,
- (2) the potential subcontract opportunities available in the prime contract,
- (3) the relevant availability data contained within the disparity study with respect to the scope of the contract and potential subcontracting opportunities,
- (4) the number and types of certified minority-owned and women-owned business enterprises (M/WBE) found in the directory of certified minority-owned and women-owned businesses available to perform the related contract work and the number and types of certified service-disabled veteran-owned businesses (SDVOB) found in the SDVOB directory available to perform the related contract work,
- (5) the geographic location of the contract performance,
- (6) the extent to which geography is material to the performance of the contract,
- (7) the ability of certified M/WBEs and SDVOBs located outside of the geographic location of contract performance, notwithstanding the regional location of the certified enterprise, to perform on the Municipality/Sponsor/Grantee's contract,
- (8) the total dollar value of the work required by the Municipality's/Sponsor's/Grantee's contract in relation to the dollar value of the subcontracting opportunities; and
- (9) the relationship of the monetary size and term of the Municipality's/Sponsor's/Grantee's contract to the monetary size and term of the project for which the contract is awarded (See 5 NYCRR 142.2 and 9 CRR-NY 252.2(h)).

**Pre-Advertisement:** As a result of Municipality's/Sponsor's/Grantee's analysis of the statutory factors in relation to a contract's work scope and circumstances, if the Municipality/Sponsor/Grantee believes a non-standard goal is appropriate and supportable, the Municipality/Sponsor/Grantee may obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Pre-Advertisement Goal Modification Request, with justification, prior to public advertisement of the contract.

## APPENDIX B

**Pre-Award:** If the Municipality/Sponsor/Grantee receives proposals or bids that do not provide commitments that meet or exceed the advertised goals, the Municipality/Sponsor/Grantee must obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Waiver Request *demonstrating the Contractor's Good Faith Efforts to meet the goals, along with supporting justification, prior to awarding the contract.*

**Post Award:** If any consultant/contractor fails to attain its M/WBE and/or SDVOB commitment on a contract, the Municipality/Sponsor/Grantee must obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Waiver Request, *demonstrating Good Faith Efforts to meet the goals, along with supporting justification before NYSDOT will distribute final payment of grant proceeds.*

All forms referenced above are available at: <https://www.dot.ny.gov/main/business-center/civil-rights/>. Nothing stated within this or associated document(s) guarantees NYSDOT's approval of a goal modification or goal waiver.

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

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

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

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



**SAMPLE BRIDGE NY RESOLUTION BY MUNICIPALITY**  
**(Culvert Project – Municipality Administered)**  
**RESOLUTION NUMBER: \_\_\_\_\_**

**Authorizing the implementation and funding of 100% of the costs of a transportation project, of which qualified costs may be reimbursed from Bridge NY funds.**

WHEREAS, a project for the \_\_\_\_\_, P.I.N. \_\_\_\_\_ (the "Project") is eligible for reimbursement of qualified costs from Bridge NY funding that calls for the post-reimbursement apportionment of the qualified costs to be borne at the ratio of 100% Bridge NY funds and 0% non-Bridge NY funds; and

WHEREAS, the \_\_\_\_\_ of \_\_\_\_\_ will design, let, and administer all phases of the Project.

WHEREAS, the \_\_\_\_\_ of \_\_\_\_\_ desires to advance the Project by making a commitment of 100% of the costs of \_\_\_\_\_ work for the Project or portions thereof,

NOW, THEREFORE, the \_\_\_\_\_ Board, duly convened does hereby

RESOLVE, that the \_\_\_\_\_ Board hereby approves the Project; and it is hereby further

RESOLVED, that the \_\_\_\_\_ Board hereby authorizes the \_\_\_\_\_ of \_\_\_\_\_ to pay 100% of the cost of \_\_\_\_\_ work for the Project or portions thereof, with the understanding that qualified costs will be reimbursed from Bridge NY funding; and it is further

RESOLVED, that the sum of \_\_\_\_\_ is hereby appropriated from \_\_\_\_\_ [or, appropriated pursuant to \_\_\_\_\_] and made available to cover the cost of participation in the above phase of the Project; and it is further

RESOLVED, that the \_\_\_\_\_ BOARD hereby agrees that the \_\_\_\_\_ of \_\_\_\_\_ shall be responsible for all costs of the Project, including costs which exceed the amount of reimbursement available from the NY Bridge Funding awarded to the \_\_\_\_\_ of \_\_\_\_\_; and it is further

RESOLVED, that in the event the costs of the Project exceed the amount appropriated above, the \_\_\_\_\_ of \_\_\_\_\_ shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the \_\_\_\_\_ thereof, and it is further

RESOLVED, that the \_\_\_\_\_ BOARD hereby agrees that \_\_\_\_\_ of \_\_\_\_\_ hereby commits that construction of the Project shall begin no later than twenty-four (24) months after award and the construction phase of the Project shall be completed within thirty (30) months; and it is further

RESOLVED, that the \_\_\_\_\_ of the \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ be and is hereby authorized to execute all necessary agreements, certifications or reimbursement requests with NYSDOT for State Aid and/or Bridge NY funding on behalf of the \_\_\_\_\_ of \_\_\_\_\_ in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality's funding of the Project costs, and it is further

RESOLVED, that the \_\_\_\_\_ of \_\_\_\_\_ will be responsible for all maintenance of the Project; and it is further

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project; and it is further

RESOLVED, this Resolution shall take effect immediately.