

RESOLUTION NO. 470-09 INTRODUCED BY THE PUBLIC WORKS COMMITTEE IN SUPPORT OF CONCORD ASSOCIATES, LP'S PROJECT

WHEREAS, Concord Associates, LP plans to build a resort hotel on the grounds of the former Concord hotel in the Town of Thompson ("Project"), and

WHEREAS, the Sullivan County Legislature has supported the Project from its inception and continues in its support, and

WHEREAS, the Sullivan County Legislature wishes to demonstrate its support for the Project by affirmatively stating that it shall seek to improve the infrastructure surrounding the Project site, including public highways, and

WHEREAS, the County has sought a \$6,000,000.00 reimbursable grant ("Grant") from the New York State Department of Transportation ("NYS DOT") for rehabilitation and reconstruction of portions of Concord Road and Kiamesha Lake Road, and

WHEREAS, it is the intention of the Sullivan County Legislature to obtain the Grant from the NYS DOT once the funding mechanism is put in place appropriating the \$6,000,000.00, in the first place, the Sullivan County Legislature shall authorize the County Manager to execute the necessary documents to acquire the Grant funding.

NOW THEREFORE, BE IT RESOLVED, the Sullivan County Legislature affirmatively states its full support for the Project, and

BE IT FURTHER RESOLVED, that the County Manager shall take all appropriate actions towards acquiring the Grant funding for the rehabilitation/reconstruction of Concord Road and Kiamesha Lake Road.

Moved by Mr. Sorensen seconded by Mr. Hiatt, put to a vote with Mr. Armstrong absent, unanimously carried and **declared duly adopted on motion** November 19, 2009.

STATE OF NEW YORK)

§:

COUNTY OF SULLIVAN)

I, ANNMARIE MARTIN, Clerk to the Legislature of the County of Sullivan, do hereby certify that I have compared the foregoing copy of a resolution with the original thereof now on file in my office and that the same is a correct transcript therefrom and of the whole of said original.

WITNESS my hand and seal of said Legislature this 19th day of November, 2009.

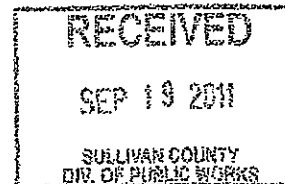

CLERK TO THE SULLIVAN COUNTY LEGISLATURE



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
REGION NINE
44 HAWLEY STREET
BINGHAMTON, NEW YORK 13901-3200
WWW.NYS DOT.GOV

JOHN R. WILLIAMS, P.E.
REGIONAL DIRECTOR

September 16, 2011



JOAN McDONALD
COMMISSIONER

Mr. Robert A. Meyer, P.E., Commissioner
Sullivan County Department of Public Works
Sullivan County Government Center
100 North Street
Monticello, NY 12701

Dear Commissioner Meyer:

**RE: 9ME045.30A, D027544, MULTI-MODAL #4
Concord Road (formerly County Road 182) and County Road 109
(Kiamesha Lake Road)
Town of Thompson, Sullivan County**

Enclosed for processing are five copies of the updated Multi-Modal Program Capital Project Agreement (D027544). The work involves the reconstruction of Concord Road (formerly County Road 182) from NYS Route 42, north 1.3 miles to County Road 109 (Kiamesha Lake Road) and reconstruction of County Road 109 (Kiamesha Lake Road) from NYS Route 42, east 0.5 miles to Concord Road (formerly County Road 182) in the Town of Thompson, Sullivan County.

All five copies must have original signatures (page 7) and all five copies must be notarized. In addition, five certified copies of the necessary Resolution must accompany the Agreements (a sample resolution is included in the agreement). Please return all five copies to our Regional Office for further processing. A completed copy will be returned to you once the agreement has been fully executed.

The estimated cost for the Construction and Construction Supervision and Inspection work is \$6,000,000. The County is eligible for a maximum reimbursement of \$6,000,000 from the State Multi-Modal #4 Program. Therefore, the necessary Resolution must authorize \$6,000,000.

Eligible local cost disbursements made on or after August 1, 2009 will qualify for reimbursement. Also enclosed is a MM #4 Sponsor's Project Payment Request form (FIN 421nm). When work is complete and the bills have been paid, you may submit your reimbursement request form. You may submit interim reimbursement requests. Also submit a copy of the invoice and check. Also enclosed are the Multi-Modal #4 Program Guidelines.


Note: Although this Contract has not been signed, we have confirmed with NYSDOT in June 2014 that \$6,000,000 remains allocated for Concord road improvements as set forth in the Resolution.

As a reminder, all sidewalk work must conform to the Americans with Disabilities Act (ADA) regulations. Chapter 18 of the New York State Department of Transportation Highway Design Manual provides guidance regarding minimum standards and maintenance. Also, water line, sanitary sewer, electric utility, and gas utility work is not eligible for Multi-Modal reimbursement.

This project may involve work within the NYS Route 42 intersections. If so, a Highway Work Permit must be obtained from the NYSDOT Resident Engineer's office located at 165 E. Broadway, Monticello, NY 12701. Their phone number is 845-798-1607.

If you have any questions or need assistance in this matter, please contact Linda Halaburka in our Regional Planning and Program Management Office at (607) 721-8274.

Sincerely,

for 
Pamela M. Eshbaugh, P.E.
Regional Planning & Program Manager

PME/JH/LH
ENC

c: S. Zaman, Resident Engineer, Sullivan County
L. Halaburka, Region 9 Planning and Program Management Office
J. Havtur Region 9 Planning and Program Management Office
File - 9ME045.30A-2
Blue

MULTI-MODAL PROGRAM CAPITAL PROJECT AGREEMENT

COMPTROLLER'S CONTRACT NO. D027544

THIS AGREEMENT made this _____ day of _____, 201_, is by and between:
the New York State Department of Transportation ("NYSDOT"), having its principal office at
60 Wolf Road, Albany, New York 12232 and

Sullivan County (the "Sponsor"), with offices at
100 North Street, Monticello, NY 12701

to provide for the funding, construction, reconstruction, improvement, reconditioning and preservation of a project or projects within the Multi-Modal Programs, consisting of rail passenger facility and equipment, rail freight facility, certain port facility, fixed ferry facility, municipal and private airport and aviation facility, and State, county, town, city, and village road, highway, parkway and bridge capital project(s), as more fully described for the purposes of this contract in Schedule(s) A hereof (the "Project"). The amount of NYSDOT's funding pursuant to this Agreement shall be limited to Project Eligible Costs actually incurred, in no event to exceed the amount(s) identified in Schedule A for funding by NYSDOT.

WITNESSETH:

WHEREAS, Transportation Law '14-k establishes the Multi-Modal Programs, that provide Thruway Authority or Dormitory Authority of the State of New York (DASNY) funding (as applicable) for projects authorized pursuant to such section as approved by the Commissioner of Transportation, following appropriation by the Legislature or pursuant to authorization by the Legislature for capital projects; and

WHEREAS, pursuant to appropriation or authorization for capital projects Multi-Modal Programs funding of the Project herein is authorized and, the **Sponsor** certifies to NYSDOT that the service life of the Project is 10 or more years; and

WHEREAS, for the following project types the **Sponsor** also certifies as follows:

- for airports and aviation facilities - that federal funding is not available to the Project, but the Project is consistent with an approved airport layout plan;
- for State or local roads, highways and bridges - that the Multi-Modal Programs funding is not used for the mandated non-federal share of a federally funded project and the amount of municipal funds appropriated for transportation capital projects is not and shall not be reduced because of the Multi-Modal Programs funding; and

- Check here if State-administered Federal Aid applicable (Cannot apply to aviation or to provide the non-federal matching share of highway/bridge mode projects):

WHEREAS, the United States has provided for the apportionment of federal-aid funds to the State for the purpose of carrying out federal-aid projects; and

WHEREAS, NYSDOT is authorized to provide such federal aid to the **Sponsor** or use such federal aid for the Project and such federal aid is being provided through this agreement; and

WHEREAS, the **Sponsor** is not a sectarian organization,

NOW THEREFORE, the parties agree as follows:

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

- Agreement Form - this document titled "Multi-Modal Program Capital Project Agreement";
- Schedule "A" - Project Description, Funding and Development Schedule;
- Schedule "B" - Scope of Work
- EXHIBIT A - Work Requirements
- EXHIBIT B - Record Keeping Guidelines
- EXHIBIT C (as applicable) - Consultant Selection Procedures
- Appendix "A" - New York State Required Contract Provisions
- Appendix A-1 - Supplemental Title VI Provisions (Civil Rights Act)

■ Local Resolution(s) - duly adopted municipal or, as applicable, corporate resolution(s) authorizing the appropriate official of the **Sponsor** to execute this Agreement on behalf of the **Sponsor** and appropriating or otherwise providing the Project funding required therefor.

1.1 For State administered Federal Aid projects (*not applicable to airports, aviation facilities or road, highway, parkway or bridge projects*) that include federal funding under this Agreement, the Agreement shall also include:

- Appendix "B" (as applicable) Requirements for Federally Aided Transportation Projects

2. **Work, Maintenance & Operation.** **Sponsor** shall render all services and furnish all materials and equipment necessary to complete the Project described in Schedule A, inclusive of the Scope of Work described in Schedule B, and shall fund all costs attendant such completion. 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 Schedules A as may hereafter be executed by the parties hereto and approved as required for a State contract, and any additions or deletions made thereto by **NYSDOT** subsequent to the execution of such Schedules A for the purposes of conforming to New York State or to Federal requirements. **Sponsor** shall perform its work in accordance with the Work Requirements set forth in Exhibit A annexed hereto.

2.1 *Useful Life of Project.* **Sponsor** warrants that the useful life of the project is not less than ten (10) years.

2.2 *Operation and Maintenance of Project.* Upon Project completion, **Sponsor** will operate and maintain the Project at no expense to **NYSDOT** and, during the useful life of the Project according to federal guidelines, **Sponsor** shall not discontinue operation of the Project without the prior written approval of **NYSDOT**.

2.3 *Disposition or Encumbrance of Project.* **Sponsor** will not dispose of or encumber the Project or cause the Project to be withdrawn from public service during its useful life without the prior approval of **NYSDOT**, which approval is reserved for the purposes of assuring compliance with: (1) **NYSDOT** or **Sponsor** assurances or certifications to a Federal agency in connection with federal funding or the Multi-Modal Funding made hereunder; and/or (2) Project restrictions that may apply because the Multi-Modal Funding is funded from the proceeds of tax-exempt debt obligations.

3. *Project Commencement, Completion.* Subject to the State Comptroller's approval, this Agreement takes effect on the date above written. **Sponsor** will diligently pursue the Project to completion within the time set forth in Schedule A. Failing Project completion within such period, or agreement by **NYSDOT** to extend Project completion date for good cause, this Agreement will expire and be of no further force or effect.

4. *Municipal Deposit.* Where work is performed by consultant or construction contract entered by **NYSDOT**, or by **NYSDOT** forces, the **Sponsor** shall deposit with the State Comptroller, prior to the award of **NYSDOT**'s contract or **NYSDOT**'s performance of work by its own forces, the full amount of the non-federal share of the Project costs due in accordance with Schedule A.
5. *Multi-Modal Funding; Reimbursement of Eligible Project Costs.* Subject to compliance with this Agreement, **NYSDOT** agrees to reimburse Project costs identified in Schedule A attached hereto in an amount not to exceed the lesser of actual eligible Project costs or the Multi-Modal Program funding amount. Multi-Modal Program funding shall be used solely for the payment of Eligible Costs (hereinafter defined) **Sponsor** incurs in performing the Project. For work performed by **NYSDOT**, **NYSDOT** will directly apply applicable federal aid and any applicable **Sponsor** Deposit for the non-federally aided portion, and shall request Thruway Authority or Dormitory Authority of the State of New York (DASNY) funding (as applicable) of Multi-Modal aid to the **Sponsor** as described below. For work performed by or through the **Sponsor**, **NYSDOT** will reimburse the **Sponsor** with applicable federal aid and Multi-Modal aid as described below.
- 5.1 *State Administered Federal Aid* (not applicable to airport/aviation or highway/bridge projects). **NYSDOT** will administer federal funds for the benefit of the Municipality for the federal share and will fund the percentage designated in Schedule A of federal aid participating costs incurred in connection with the work covered by this Agreement, subject to the limitations set forth on Schedule A. For work performed by or through the **Sponsor**, **NYSDOT** will reimburse federal aid-eligible expenditures in accordance with **NYSDOT** policy and procedures.
- 5.2 *Multi-Modal Aid.* **NYSDOT** will: (a) for Multi-Modal Program 1 ("MM#1" in Schedule A) funding, request Thruway Authority reimbursement to the **Sponsor** or, for State administered State highway system projects to **NYSDOT**; and/or, (b) for Multi-Modal Program 2 & 4 ("MM#2" and "MM#4" in Schedule A) funding, **NYSDOT** will reimburse to the **Sponsor** from State monies in the first instance, and request corresponding Thruway Authority reimbursement to **NYSDOT**; and/or, (c) for Multi-Modal Program 3 ("MMP3" in Schedule A) funding, request Dormitory Authority of the State of New York (DASNY) reimbursement to the **Sponsor** or, for State-administered State highway system projects to **NYSDOT** for the Multi-Modal share of participating Project costs incurred in connection with the work covered by this Agreement, subject to the amounts thereof and limitations set forth on Schedule A. Only "Eligible Project Costs" (as defined in Multi-Modal Program criteria issued by **NYSDOT**) are reimbursable.
- 5.2.1 *Multi-Modal Eligible Project Costs.* To be eligible for Multi-Modal aid, Project costs must: (a) be eligible pursuant to 5.2.2 below and such other Multi-Modal Program Policies and Criteria as are established for each mode by **NYSDOT**; and, (b) be for work which, when completed, has a certifiable service life of at least 10 years, and (c) meets the requirements of the State Environmental Quality Review Act (SEQRA).
- 5.2.2 *State Aid-Eligible Costs.* State Aid-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. **Sponsor** may also use State-aid 5.2.2 hereunder for the reimbursement of salaries and wages to employees of **Sponsor** for carrying out the Project; 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.
- 5.2.3 *Sponsor Debt Service.* Multi-Modal program funds shall not be used to pay for interest, issuance costs or reserves in connection with the issuance of debt by **Sponsor** to fund the Project, but may repay principal indebtedness incurred to fund Eligible Project costs, which shall then be retired, redeemed or defeased by the **Sponsor**. **Sponsor** shall not issue debt to finance Project costs that are funded from the proceeds of Thruway Authority or Dormitory Authority of the State of New York (DASNY) obligations issued to finance the Multi-Modal program.
- 5.3 *Other State-Aid.* Subject to the terms of applicable appropriations and statutes associated with State-aid for the Project provided through this Agreement, **NYSDOT** will reimburse eligible Project costs from such other State-aid as may be identified in Schedule A hereof for payment under this Agreement. The eligibility of such costs shall be determined in accordance with subdivisions 5.2.2 and 5.2.3 hereof, subject to such further or other reimbursement eligibility requirements or restrictions that impose in connection with the applicable other State-aid funding source or program authorization.

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6. *Payment of Applicable Federal-Aid, Multi-Modal and Other State-Aid.* Payment of applicable Federal-Aid, Multi-Modal and other State-aid hereunder shall be as follows:
 - 6.1 *Payment Upon Completion.* Except where '6.2 applies, payment to **Sponsor** shall be made upon the application of **Sponsor to NYSDOT upon Project completion**, on the basis of work accomplished and, subject to applicable retainage, the submission of duly completed payment requests and certifications in a form approved by **NYSDOT**, including such information as **NYSDOT** deems necessary to assure compliance with the program requirements and this Agreement.
 - 6.2 *Periodic Reimbursement.* If the **Sponsor** and **NYSDOT** find it desirable to have reimbursement made periodically in accordance with a payment cycle established by **NYSDOT** and, upon the request and certification therefor by the **Sponsor**, **NYSDOT** may authorize payments (by the Thruway Authority, State Comptroller, or DASNY, as applicable) based on billings prepared by the **Sponsor** in accordance with **NYSDOT** requirements, and based on costs incurred as disclosed by the records thereof, as required by the Project, with applicable adjustments (including for applicable retainage) to be made after audit by **NYSDOT** or, as applicable because of federal funding, FHWA, the Federal Transit Administration or Federal Aviation Administration. These payments shall be made as moneys become available therefor.
 - 6.3 *Sponsor Certifications.* The **Sponsor** will certify in each payment request that: (i) Project work was performed in accordance with the State Environmental Quality Review Act (SEQRA); (ii) Project work was performed in accordance with the design and contractual requirements of **Sponsor** and **Sponsor's** design professional; and (iii) such payment request does not duplicate reimbursement of costs and services received from other sources.
 - 6.4 *Electronic Contract Payments* Municipality/Sponsor shall provide complete and accurate supporting documentation of eligible Local expenditures as required by this contract, **NYSDOT** and the State Comptroller. Following **NYSDOT** approval of such supporting documentation, payment for invoices submitted by the contracting 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. The contracting **Sponsor** shall comply with the State Comptroller (or applicable Public Authority) procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by E-mail at epunit@osc.state.ny.us, or by telephone at (518) 474-4032. For referral to applicable Public Authority electronic payment registration procedures for certain State funded payments, Local Sponsors should refer to the cover letter instruction included with this document or, otherwise, contact their Regional **NYSDOT** Local Programs Liaison. The contracting Municipality/Sponsor herein acknowledges that it will not receive payment on any invoices submitted under this Contract agreement if it does not comply with the State Comptroller (or applicable Public Authority) electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.
7. *Records and Accounts.* **Sponsor** shall maintain accurate records and accounts of all financial transactions which shall show in detail all income and all expenditures, including but not limited to, payments for Eligible Costs. Such records and accounts shall include, without limitation, property, personnel and financial records, cash receipts and disbursements journal and general subsidiary ledgers. All records and accounts shall be maintained in accordance with generally accepted accounting standards and as required by Exhibit B annexed hereto. All expenditures of reimbursed costs hereunder shall be supported by invoices and/or other documentation sufficient to establish that such monies have been used in accordance with the terms of this Agreement. The Commissioner, Comptroller of the State of New York and any other authorized representatives of the State of New York shall have the right to examine all records and accounts relating to **Sponsor's** financial transactions, including the expenditure of the Multi-Modal Funding and all other funds secured and services rendered for the benefit of **Sponsor** in connection with the Project.
8. *Ethics Considerations.* In addition to **Sponsor's** conforming with the any 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 Multi-Modal Funding made hereunder, no member of **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 Multi-Modal Funding unless such action is otherwise in accordance with law and is necessary for the accomplishment of the Project. In such event, **Sponsor** shall disclose such relationship to **NYSDOT** and shall obtain prior written approval therefor from **NYSDOT**.

9. **NYSDOT Performance Review.** NYSDOT may review the **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 **Sponsor**. **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 **Sponsor's** performance of the Project, its use and operation.
10. **Notice of Governmental Audit.** **Sponsor** shall notify NYSDOT of any audit by any governmental agency of any projects, operations or reports of **Sponsor** within five (5) days of receiving information relating thereto.
11. **Project Maintenance and Operation.** Upon Project completion the **Sponsor** shall provide for the maintenance and operation of the Project facilities and equipment for the purpose of providing safe and efficient transportation operations. The maintenance schedule shall remain in effect for a period of at least 10 years from Project completion and shall not be terminated without prior written authorization from NYSDOT.
12. **State Recovery of Ineligible Reimbursements.** NYSDOT shall be entitled to recover from the **Sponsor** any moneys paid to the **Sponsor** pursuant to this Agreement which are subsequently determined to be ineligible for applicable Federal Aid or Multi-Modal Aid hereunder.
13. **Inspection and Audit.** **Sponsor** shall permit the authorized representative of NYSDOT and/or the New York State Comptroller to inspect and audit all books, records and accounts of **Sponsor** pertaining to the Project under this Agreement. **Sponsor** shall maintain records relating to this Agreement in accordance with the Records requirements of Appendix A.
14. **Contract Executory**
 - 14.1 This Agreement shall be deemed executory only to the extent of money available to the State for its performance and no liability on account thereof shall be incurred by the State beyond money available therefor.
 - 14.2 This agreement shall remain in effect so long as federal and 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 federal or State budgetary hiatus will not by itself be construed to lapse this agreement, provided any necessary federal or State appropriations or other funding authorizations therefor are eventually enacted. **Sponsor's** continued performance during such a budgetary hiatus cannot, by itself, obligate the State to making expenditures without appropriations.
15. **Sponsor Liability.**
 - 15.1 If the **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 **Sponsor**, its officers, agents, servants or employees, contractors, subcontractors or others in connection therewith. The **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.
 - 15.2 The **Sponsor** shall indemnify and save harmless NYSDOT and 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 **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 **Sponsor's** failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

16. *No Assignment of Transfer of Contract.* **Sponsor** agrees not to assign, transfer, convey, sublet or otherwise dispose of this contract or any part thereof, or of its right, title or interest therein, or its power to execute such contract to any entity, public or private, without the previous written consent of **NYSDOT** first having been obtained.
17. *Independent Contractor.* The officers and employees of the **Sponsor**, in accordance with the status of the **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.
18. *Disqualification and Damages.* If the **Sponsor** fails to comply completely with any of the terms and conditions contained within this agreement, including, but not limited to paragraphs 2, 11 and 16, in their entirety at any time, the project shall be disqualified. If the project is disqualified the **Sponsor** must refund all funds received under this agreement to **NYSDOT**, and also pay to **NYSDOT** a liquidated damage fee of 5% of the total funds received under this agreement.
19. *Term of Agreement.* As to the Project and phase(s) described in Schedule(s) A executed herewith, this agreement takes effect as of the date of this Master Agreement as first above written. This agreement takes effect as to the Project and phase(s) established 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 federal aid and Multi-Modal aid 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 federal or State budgetary hiatus will not by itself be construed to lapse this agreement, provided any necessary federal or State appropriations or other funding authorizations therefore are eventually enacted.
20. Appendix A, standard provisions for all New York State Contracts, is attached hereto and is hereby made a part of this agreement as if set forth fully herein.

21. **NOTICE REQUIREMENTS:**

A. All notices permitted or required hereunder shall be in writing and shall be transmitted either (1) Via certified or registered United States mail, return receipt requested; (2) By facsimile transmission; (3) By personal delivery; (4) By expedited delivery service; or (5) By e-mail.

For all Multi-Modal Local Agreement purposes, such notices shall be addressed by the **Sponsor** to the officially designated Regional Local Program Liaison (RLPL) named in **NYSDOT**'s initial request for a detailed Project "PIS" Application and, by **NYSDOT**, to the officially designated Primary **Sponsor**'s Contact designated by formal Legislative Project Nomination, or to such different parties and addresses as the parties may 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, Facsimile number, & E-mail address.

B. 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 in the case of facsimile transmission or email, upon receipt.

C. 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.

IN WITNESS WHEREOF, NYSDOT has caused this Agreement to be signed by its authorized representative and **Sponsor** has caused this Instrument to be signed by its duly authorized officer, to be effective on the date first written above.

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Sponsor

NYS DEPARTMENT OF TRANSPORTATION

BY: _____
TITLE: _____
DATE: _____

BY: _____
for the Commissioner of Transportation

DATE: _____
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.

Sponsor ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF SULLIVAN)

On this _____ day _____, 201____, before me personally came _____, to me known, who being by me duly sworn did depose and say the he/she resides at _____; that he/she is the _____ of the **Sponsor** described in and which executed the above instrument; that he/she was authorized to execute the document on behalf of said **Sponsor** pursuant to a resolution which was duly adopted on _____ and to which a certified copy is attached and made a part hereof.

Notary Public

APPROVED:

APPROVED AS TO FORM:

BY: _____
For the NYS Comptroller pursuant
to Section 112, State Finance Law

BY: _____
NYS Attorney General

**UNIVERSAL MULTI-MODAL PROJECT
SCHEDULE A**

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Multi-Modal Project Agreement - Schedule A

Instruction: One Schedule may be used for all Phases

OSC Contract # **D027544**

Project Commencement Date: August 1, 2009

Project Completion Date: December 31, 2017

AGREEMENT PURPOSE : MAIN (Master) Agreement SUPPLEMENTAL Agreement or Schedule

AGREEMENT COVERS (Check all boxes that apply as shown in area below):

- Multi-Modal (MM) Program #1 (MM#1) MM#2 MM#3 MM#4
 Multi-Modal Program #1, 2, 3 or 4 & other State Funding Multi-Modal Program #1, 2, 3 or 4 & Federal Aid
 Multi-Modal Program #1, 2, 3 or 4 & other State Funding & Federal Aid

PROJECT TYPE (Check only one box below):

- Rail Port Aviation State System Highway/Bridge Local Highway/Bridge Fixed Ferry Facility

PROJECT ID NUMBER: 9ME045.30A

MULTI-MODAL ID NUMBER: 9ME045.30A

Project: Reconstruction of Concord Road (formerly County Road 182) from NYS Route 42, North 1.3 miles to County Road 109 (Kiamesha Lake Road) and reconstruction of County Road 109 (Kiamesha Lake Road) from NYS Route 42, East 0.5 mile to Concord Road (formerly County Road 182).

Location: Town of Thompson, Sullivan County

Project Owner/Operating & Maintenance Responsibility: Sullivan County

Type of Organization:

- Municipality Public Authority Not-for-Profit Corporation Tax-exempt
 Railroad Corporation Transportation Corporation Educational Corporation
 Business Corporation Partnership Proprietorship Other (list):

Check Project Phases Covered by this Agreement:

- P.E./Design ROW Incidentals Acquisition Construction, C/I, & C/S

List all APPLICABLE 6 or 9-digit PIN Fiscal Shares eligible for Multi-Modal funding (e.g., 123456.121; 123456.122):

Work Type(s): Highway Reconstruction

A. Legislatively Approved Multi-Modal Funding in Memorandum of Understanding

Reference or, if applicable, List Project Identification Number	DESCRIPTION	Maximum Authorized Multi-Modal Funding Amount
PIN 9ME045.30A	Traffic Flow Improvements, Rehab/Recon of Concord Road (formerly CR 182) and CR 109 (Kiamesha Lake Road), at intersection of NY 42 and Concord Road and CR 109, and Road Appurt. (signs, storm drainage, lighting, guiderail and sidewalks)	\$6,000,000
TOTAL		\$6,000,000

B. Summary of Approved Multi-Modal & Other Eligible Costs UNDER THIS CONTRACT Number

List Eligible Funding Share(s) by applicable Project ID Number or PIN	FEDERAL AID Funding (If Applicable)	STATE MULTI-MODAL Funds	OTHER STATE Funding (If Applicable)	LOCAL Funding (If Applicable)	TOTALS
PIN 9ME045.30A	\$0	\$6,000,000	\$0	\$0	\$6,000,000
TOTAL ELIGIBLE COSTS	\$0	\$6,000,000	\$0	\$0	\$6,000,000

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C. Summary of Project Costs NOT Under this Contract #, if any (For Information Purposes Only)

List any other Funding or Fiscal Share(s) by Project ID Number or PIN (if applicable)	List Name of Fund SOURCE Type (e.g., Other MM1, MM2, MM3, MM4, 100% Local Expenditure, Other State Source (e.g. Member Item, CHIPS, etc.), Public Authority, Private, Utility, Other Federal Aid Category?)	List any other STATE Funding Amounts	List any other FEDERAL or NON-STATE (Local) Funding Amounts	TOTALS
			\$	\$
		TOTAL Other Costs:	\$	\$

D. TOTAL PROJECT COST SUMMARY (all Section "B" + "C" funding listed above)

TOTAL FEDERAL AID (if applicable)	TOTAL MULTI-MODAL STATE SHARE(S)	TOTAL LOCAL SHARE	TOTAL OTHER AID (including any other State Aid)	TOTAL FUNDING (all sources)
\$0	\$6,000,000	\$0	\$0	\$6,000,000

Footnotes:

For Airport/aviation projects, attach Project Location Map. Project is:

- part of an approved airport layout plan, OR
- consistent with an approved airport layout plan

SCHEDULE B

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SCHEDULE B: Construction Project Type Phases, Subphases/Tasks, and Allocation of Responsibility Page 1 of 4
Instructions: Enter an "X" to indicate the appropriate Phase, then assign the responsibility for *each applicable Subphase task* by entering an "X" in either the NYSDOT column to allocate the task to State Labor Forces or a State Contract, or enter an "X" in the other appropriate column to indicate a task allocated to Non-State Labor Forces or a Locally Administered Contract.

PHASE/SUBPHASE	Allocation of Responsibility	
	NYSDOT	MUNICIPALITY
A1. Preliminary Engineering ("PE") Phase		
1. <u>Scoping</u> : Prepare and distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.		
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, land use and development analysis and forecasts.		
3. <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 subphases or tasks and/or to secure the approval/authorization to proceed.		
4. 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.		
5. Obtain aerial photography and photogrammetric mapping.		
6. Perform all surveys for mapping and design.		
7. <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 <i>Highway Design Manual</i> , all Highway Design (including pavement evaluations, taking and analyzing cores; design of pavement mixes and applications procedures), preparation of any necessary bridge site data package and all Structural Design (including any necessary hydraulic analyses, foundation design), all design of highway appurtenances and systems (e.g., Signals, IVHS facilities), and maintenance and protection of traffic plans. FRA criteria will apply to rail work.		
8. Perform landscape design (including erosion control).		
9. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need for cultural resources survey.		
10. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance, separately, any portions of the project which may be more appropriately progressed separately and independently.		
11. 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.		
12. Conduct any required soils and other geological investigations.		
13. Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocation plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.		
14. 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.		

PHASE/SUBPHASE

Allocation of Responsibility

NYS DOT

MUNICIPALITY

15. Prepare and execute any required agreements, including:
- Railroad force account
 - Maintenance agreements for sidewalks, lighting, signals, betterments.
 - Betterment Agreements
 - Utility Work Agreements for any necessary Utility Relocations of Privately-owned Utilities.

16. Provide overall supervision/oversight of design to assure conformity with Federal and State design standards or conditions, including final approval of PS&E by NYSDOT

A2. Right-of-Way (ROW) Incidentals

1. Prepare ARM or other mapping, showing preliminary taking lines.
2. Prepare Right-of-Way (ROW) mapping.
3. Obtain abstracts of title and certify those having an interest in right-of-way to be acquired.
4. Secure Appraisals and perform Appraisal Review.
5. Establish an amount representing just compensation.
6. Determine whether any "de minimus" or other exemption from public hearing that would otherwise be required by the Eminent Domain Procedure Law is applicable. **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.**
7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedures Law, and are not exempt from hearing requirements per paragraph A2-6 above, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.
8. Prepare a Table of Right-of-Way Acquisitions for inclusion in the Design Report.
9. Prepare relocation plans, if required.

B. Right of Way (ROW) Acquisition (for a Federal-aided project, eminent domain, condemnation or municipal Right-of-Way acquisition activities must be accomplished in compliance with the Uniform Relocation Assistance and Property Acquisition Policy Act of 1970, as amended. NYSDOT will monitor the right-of-way activities for compliance.)

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. If NYSDOT is to acquire property on behalf of the Municipality, the Municipality agrees to accept delivery of title to any and all permanent property rights acquired for the project (other than any rights of way acquired for a reverse betterment or other project involving an Interstate or state highway) and the Municipality directs its signatory to this agreement to accept delivery of the deed(s) from NYSDOT conveying the acquired property upon completion of the Project or sooner at the mutual agreement of NYSDOT and the municipality.

When the Municipality performs Right-of-Way Acquisition work it shall designate the local responsible official for making key decisions regarding the acquisition process (e.g., adoption of a minimum payment; setting the just compensation amount; approval of administrative or legal settlements; need or conditions for releases of encumbrances; signing the acquisition maps; commencement of condemnation proceedings; signing the right-of-way clearance certificate; and other administrative decisions as necessary).

XXXVIII	PHASE/SUBPHASE	Allocation of Responsibility	
		NYS DOT	MUNICIPALITY
	2. Provide required relocation assistance.		
	3. Conduct condemnation proceedings, court, and any other legal actions required to acquire properties.		
	4. Monitor all ROW Acquisition work and activities, including review and processing of payments to property owners.		
	5. Provide right-of-way Clearance Certificate at appropriate time prior to construction.		
	6. Conduct property management activities, including establishment and collection of occupancy and use permit fees, 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.		
	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.		
	X C. Construction @, Supervision (C/S) and Inspection (C/I) Phase		X
	1. Advertise contract lettings and distribute contract documents to prospective bidders.		X
	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).		X
	3. Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.		X
	4. Compile and submit Contract Award Documentation Package.		X
	5. Review and approve any proposed subcontractors, vendors, or suppliers.		X
	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 insure that the proper materials, equipment, human resources, methods and procedures are used.		X
	7(A). For non-NHS or State Highway System Projects: Test and accept materials, including review and approval for any requests for substitutions.		
	7(B) 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 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.	Inspection by NYSDOT	Contractual reqs. Of contractor and subs.
	8. Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.		X

PHASE/SUBPHASE	Allocation of Responsibility	
	NYS DOT	MUNICIPALITY
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.		X
10. Review and approve all shop drawings, fabrications details, and other details of structural work.		X
11. Administer all construction contract claims, disputes or litigation.		X
12. Perform final inspection of the completed 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.		X

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EXHIBIT A

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EXHIBIT B

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EXHIBIT B
Record Keeping Guidelines

The following are the record keeping requirements for State reimbursement of Multi-Modal Funding-eligible Project costs:

1. *Project Account Cost Classifications.* **Sponsor** shall establish and maintain, in accordance with requirements established by **NYS DOT** and approved by the State Comptroller, separate accounts within its existing accounting system or set up independently, to be known as the Project Account. **Sponsor** will segregate and group Project costs so that **Sponsor** can furnish on reasonable notice, cost information in the following cost classifications:
 - (a) Purchase price or value of land;
 - (b) Incidental costs of land acquisition;
 - (c) Costs of contract construction;
 - (d) Engineering costs of plans and designs;
 - (e) Engineering costs of supervision and inspection;
 - (f) Other administrative costs;
 - (g) Costs of equipment acquisition;
 - (h) Miscellaneous cost not otherwise included.
2. *Project Account Ledger.* For audit purposes, the Project Account Ledger will record and accumulate all cost transactions applicable to the Project. All costs recorded in the Project Account should be for 100% of such costs without reduction for the non-Federal share, and for any applicable Federal share.

Every transaction listed on the Project Account Ledger will be recorded in the same level of detail as the total from each supporting source document (no summarization of source documents amounts). All transactions listed on the detail ledger will identify the source document for the transaction by referencing contract/estimate numbers, vendor or payee numbers for vouchers, etc. The applicable accounting system record date will also be included for each transactions

The ledgers for the Project will include totals for all transactions recorded during: 1) each accounting month, (2) the fiscal year of the Sponsor, and (3) for the Project life to date.
3. *Eligible Project Costs.* Eligible Project Costs shall consist of costs within the Project Account Cost Classifications that are approved by **NYS DOT** within a Project Budget. The Project Account shall be charged all Eligible Project Costs actually paid for the Project. All costs charged to the Project Account, including any approved services contributed by the **Sponsor** or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail that nature and propriety of the charges, in accordance with the requirements of **NYS DOT** as approved by the State Comptroller.
4. *Source Documents.* The Sponsor will retain an official copy of all original source documents for transactions listed on the Project Detail Ledger. These will be systematically filed in an order that will facilitate retrieval. All expenditure vouchers or other cost documents must also be traceable through the Sponsor's disbursement process to copies of warrants or checks issued and to corresponding documentation maintained in the official accounting records of the Sponsor's central finance office.
5. *Checks, Orders and Vouchers.* Any check or order drawn by the **Sponsor** with respect to any item which is or will be chargeable against the Project Account will be drawn only in accordance with a properly signed voucher then on file in the office of the **Sponsor** stating in proper detail the purpose for which such check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or part to the Project shall be clearly identified, readily accessible and, to the extent feasible, kept separate and apart from all other such documents.
6. *Audit/Disallowances.* Project Costs claimed or previously reimbursed that cannot be supported as outlined herein, are subject to audit disallowance by **NYS DOT**, the State Comptroller or Officer of the Inspector General. Amounts paid to the Sponsor by **NYS DOT** that are subsequently disallowed are subject to recovery by **NYS DOT** from the Sponsor, or at the option of the State, will be offset or reduced against current or future reimbursement claims on the same or other projects.

EXHIBIT C

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EXHIBIT C
Consultant Selection Procedures

Unless alternative procedures are approved by NYS DOT, the municipality/Sponsor will employ the following procedures for the selection of any consultant to perform work on their project.

The procedures listed below apply to the procurement of professional services. As shown, differentiations are made at certain stages between architectural/engineering/land surveying (collectively referred to as "A/E") services, and other ("non-A/E") professional services. In addition, the procedures outlined for A/E services only apply to those services with a total dollar value greater than \$25,000. For A/E services valued less than \$25,000, the non-A/E procedures may be followed. If there is a question as to which procedure is applicable for a given project, the municipality/Sponsor should contact the Local Consultant Selection Coordinator, Contract Management Bureau, NYS DOT, for guidance prior to the initiation of procurement activities.

For illustrative purposes, the procedures below assign functional responsibilities and titles for the various steps. The municipality/Sponsor may substitute their own functional equivalents for these titles, but no substantive changes in the procedure may be made without prior written approval from NYS DOT.

ACTION/TASK PERFORMED BY	ACTION/TASK
Municipality/Sponsor Requiring Consultant	1. Assign a Project Manager (PM) to coordinate and oversee all procurement and consultant activities.
Project Manager	2. Prepare a service contract requirement package. The package should include the following: (a) a scope of services describing in detail the services to be performed; (b) a schedule for completion of critical tasks in the project; (c) an estimate of the value of the services to be provided, including anticipated staff hours, overhead, profit, and non-salary costs; (d) all other technical data that may be included in the solicitation for professional services, such as minimum qualifications or requirements, maps, plans, etc.
	3. Designate at least three (3) individuals to serve on a consultant selection committee. Committee members should be familiar with the project and/or knowledgeable in the field of professional services being solicited.
	4. Assign a contract number to the assigned contract, (if available, this can be the Project Identification Number (PIN) assigned to the project by NYS DOT).

- Project Manager
5. Contact NYSDOT to discuss proposed procurement methodology to insure that proper procedures are understood for the type of services to be procured.
- Project Manager and Selection Committee
6. Discuss desirable qualifications of consultant, and establish selection criteria to be utilized in the evaluation of consultant proposals or Expressions of Interest (EOI's). Establish relative weights for each criteria based upon its relative importance to the committee. Examples of commonly used selection criteria include: experience of firm with similar projects; experience of proposed staff with similar projects; experience with municipality/Sponsor; reasonableness of proposed approach and schedule; familiarity with area, etc. COST AND PRICING IS NOT ALLOWED AS A SELECTION CONSIDERATION FOR A/E PROCUREMENTS WITH A VALUE OVER \$25,000. COST AND PRICING INFORMATION CAN BE UTILIZED FOR NON-A/E PROCUREMENTS AND FOR A/E PROCUREMENTS WITH A CONTRACT VALUE LESS THAN \$25,000.
- Project Manager
7. Establish Disadvantaged Business Enterprise (DBE) participation goals, if appropriate.

8. FOR A/E PROJECTS

Prepare a Request for Qualifications (RFQ) package to be sent to all prospective consultants. The RFQ must include the following: (a) a project identification number and indication that the project is federally funded; (b) a statement of the work to be performed; (c) the anticipated project schedule; (d) an estimate of the total project cost; (e) selection criteria, listed in order of decreasing importance (do NOT include criteria weights); (f) DBE requirements, if any; (g) material to be submitted in the Expression of Interest and desired format of submission; (h) number of copies of EOI to be sent, EOI due date, and address where EOI's should be mailed; (i) name, address, and phone number of contact person; (j) any additional project information that may be useful to the consultants in their EOI preparation (ie: availability of plans or maps for inspection, time and date of any planned site tours, etc.); (k) a statement indicating that responding firms must be licensed to practice engineering in New York State. **THERE MUST NOT BE ANY REQUEST FOR COST OR PRICING INFORMATION IN THE RFQ.**

8. FOR NON-A/E PROJECTS

Prepare a Request for Proposals (RFP) package to be sent to all prospective consultants. The RFP must include the following: (a) a project identification number and indication that the project is federally funded; (b) a statement of the work to be performed; (c) the anticipated project schedule; (d) an estimate of the total project cost; (e) selection criteria, listed in order of decreasing importance (do NOT include criteria weights); (f) DBE requirements, if any; (g) material to be submitted in the proposal and desired format of submission; (h) number of copies of proposals to be sent, proposal due date, and address where EOI's should be mailed; (i) name, address, and phone number of contact person; (j) any additional project information that may be useful to the consultants in their proposal preparation (ie: availability of plans or maps for inspection, time and date of any planned site tours, etc.); (k) a cost proposal consisting of a lump sum/specific hourly rate for performing the work as outlined in the RFP. Each cost proposal should contain the following elements: (1) Salaries - A salary schedule listing descriptive job titles for the staff to be assigned to

the project and their present hourly rates; (2) Non-Salary Costs - A direct non-salary cost schedule shall list all out-of-pocket expenses expected to be incurred during the performance of the project. Travel, meals, and lodging shall be limited to the prevailing maximum rates as established by the NYS Comptroller, (available from NYSDOT Contract Management Bureau); (3) Cost Summary - A final schedule that summarizes the direct labor, overhead rate, fixed fee (profit), and direct non-salary costs for the project.

Project Manager

9. Make all necessary arrangements for advertisement of the RFQ/RFP. Advertisements must be for one day in the New York State Contract Reporter, except for projects located in the metropolitan New York City area, which must be advertised in the New York State Contract Reporter AND/OR the New York City Record. It is at the municipality/Sponsor's discretion whether to advertise in local newspapers or publications in addition to the required publications.

If the RFQ/RFP is of short length (less than two pages), the entire request can be placed in the advertisement. Proposers will respond directly to the advertisement to the municipality/Sponsor with their EOI's or proposals. If the RFQ/RFP is contains more information than is practical to place in an advertisement, the advertisement should ask for interested firms to submit a one page Letter of Interest (LOI) to the municipality/Sponsor. Firms sending a LOI in response to the advertisement will then be sent a copy of the RFQ/RFP when available. Advertisements requesting LOI's should contain the following information: (a) a project identification number; (b) an indication that the project is federally funded; (c) a brief description of the project scope; (d) an estimate of total project cost; (e) anticipated project start and completion dates; (f) name, address, and phone number of contact person; (g) LOI due date with a statement informing interested firms that those submitting an LOI will receive a copy of the RFQ/RFP when it is available.
10. Issue RFQ/RFP to all responding firms (if requesting Letters of Interest) and any other firms that otherwise request a copy. No copies should be distributed prior to the advertised due date of the LOI's.
11. Respond to questions from prospective proposers regarding clarifications, omissions, etc.
12. If as a result of such questions any part of the RFP/RFQ requires clarification, change, or augmentation, issue an addendum to the RFP/RFQ to ALL respondents and, if necessary, extend the response deadline appropriately.
13. If applicable, coordinate site visits for prospective proposers. Arrange for appropriate safety personnel to be present as necessary (ie: flaggers).
14. Make available any plans, maps, reports, and other written material pertinent to the project referred to in the RFP/RFQ for viewing by all interested proposers.
15. Receive all proposals/EOI's and review for proper format and completeness.

16. Prepare scoresheets for use by selection committee in their evaluation of proposals/EOI's. Scoresheets should list all evaluation criteria and summarize the applicable scoring methodology. Generally, scoring should be on a scale of 0 -10 for each evaluation factor., using whole numbers only.

17. Distribute scoresheets and one copy of each proposal/EOI for each firm to all committee members and establish a date for the selection committee to meet and discuss their reviews and scores.

Selection Committee 18. FOR A/E PROJECTS 18. FOR OTHER PROJECTS

Each committee member individually reviews each Expression of Interest received and assigns scores for each selection factor. Upon completion of all reviews, returns scoresheets to Project Manager for tabulation of rankings.

Each committee member individually reviews each proposal received and assigns scores for each selection factor. Upon completion of all reviews, returns scoresheets to Project Manager for tabulation of rankings

Project Manager 19. Tabulates scores from all committee members (multiplying scores by their factor weights) Summarizes composite scores in rank order and returns a summary of scoring to committee members for discussion at committee meeting.

19. Tabulates scores from all committee members. (multiplying scores by factor weights). Summarizes composite scores in rank order and returns a summary of scores to committee members for discussion at committee meeting. Also, summarizes pricing information for all firms and distributes to committee members

Selection Committee 20. FOR A/E PROJECTS 20. FOR OTHER PROJECTS

Each committee member reviews their scores and the overall rankings. Committee meets to discuss the scores for the top ranked firms. Members should discuss the strengths and weaknesses of each of the top firms, and revise their scores as appropriate as a result of discussions. At the conclusion of the meeting, all final scores are returned to the Project Manager for tabulation.

Each committee member reviews their scores and the overall rankings. Committee meets to identify those firms that are technically qualified to perform project work. Those firms that are determined to be qualified have their cost information reviewed. Discussions should be held amongst the committee members to determine which firm(s) offer the best combination of technical merit and cost. Members have the opportunity to revise their scores as a result of discussions.

Project Manager

21. Tabulates final scores. Contacts NYS Department of Transportation for approval of recommended firm (go to step 24) OR invites top ranked firms to prepare oral presentations. Firms should be provided with a list of questions that they will be expected to answer at the oral presentation as well as the factors the committee will be using to evaluate their presentations. *The use of oral presentations is optional for all projects and at the discretion of the locality/Sponsor.*
21. Contacts NYS Department of Transportation for approval of recommended firm (go to step 24) OR invites top ranked firms to prepare oral presentations. Firms should be provided with a list of questions that they will be expected to answer at the oral presentation as well as the factors the committee will be using to evaluate their presentations. *The use of oral presentations is optional for all projects and at the discretion of the locality/Sponsor.*

Selection Committee
(if oral presentations are
to be held)

22. Attends oral presentations and evaluates each firm based on the predetermined factors. Committee members should take written notes for each firm, highlighting the relative strengths and weaknesses of each firm in terms of the evaluation factors.
22. Attends oral presentations and evaluates each firm based on the predetermined factors. Committee members should take written notes for each firm, highlighting the relative strengths and weaknesses of each firm in terms of the evaluation factors and cost considerations.

Project Manager (if oral
presentations
were held)

23. Summarizes committee comments and recommendation.

Project Manager

24. Contacts winning firm to initiate contract negotiations and informs all other proposers that they have not been selected.

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APPENDIX A

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STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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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, licenser, 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 (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), 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 \$10,000, 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 is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

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 because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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 (2NYCRR 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) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, 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 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 section. 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. 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.** 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
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 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) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 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 Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 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 Section 5-a, if the contractor fails to make the certification required by Tax Law Section 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.

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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, color, or national origin, sex, age, and 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 subcontract or 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.

**SAMPLE MUNICIPAL
RESOLUTION**

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SAMPLE RESOLUTION BY MUNICIPALITY
(Multi Modal Program Project)

RESOLUTION NUMBER: _____

Authorizing the implementation, and funding in the first instance of the State Multi-Modal Program-aid (and State administered federal program-aid) eligible costs, of a capital project, and appropriating funds therefor.

WHEREAS, a Project for the reconstruction of Concord Road (formerly County Road 182) and County Road 109 (Kiamesha Lake Road) in the Town of Thompson, Sullivan County, P.I.N. 9ME045.30A (the Project") is eligible for funding (under Title 23 U.S. Code, as amended, and) New York State's Multi-Modal Program administered by the NYS Department of Transportation ("NYSDOT"); and

WHEREAS, the County of Sullivan desires to advance the Project by making a commitment of advance funding of the non-local share and funding of the full local share of the costs of the Project; and

NOW, THEREFORE, the County of Sullivan, duly convened does hereby

RESOLVE, that the County of Sullivan hereby approves the above-subject project; and it is hereby further

RESOLVED, that the Sullivan County Legislature hereby authorizes the County of Sullivan to pay in the first instance 100% of the State share of the cost of Construction and Construction Supervision and Inspection work for the Project or portions thereof; and it is further

RESOLVED, that the sum of \$6,000,000 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 in the event the full State share costs of the project exceeds the amount appropriated above, the Sullivan County Legislature shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the New York State Department of Transportation thereof, and it is further

RESOLVED, that the _____ of the County of Sullivan be and is hereby authorized to execute all necessary Agreements, certifications or reimbursement requests for Federal Aid and/or Multi-Modal Program Funding on behalf of the County of Sullivan with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality's first instance funding of project costs and permanent funding of the local share of federal-aid and all Project costs that are not so eligible, 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, that a Certified Copy of this Resolution be filed with the Commissioner of Transportation of the State of New York by attaching it to any required and/or appropriate Agreements executed in connection with the project between the County of Sullivan and the State of New York; and it is further

RESOLVED, that this Resolution shall take effect immediately.

STATE OF NEW YORK)
) SS:
COUNTY OF SULLIVAN)

I, _____, Clerk of the County of Sullivan, New York, do hereby certify that I have compared the foregoing copy of this Resolution with the original on file in my office, and that the same is a true and correct transcript of said original Resolution and of the whole thereof, as duly adopted by said _____ at a meeting duly called and held at the _____ on _____ by the required and necessary vote of the members to approve the Resolution.

WITNESS My Hand and the Official Seal of the County of Sullivan, New York, this _____ day of _____, 2000.

(Clerk)