

**VAN CORTLANDT MANOR ENTRANCE PROJECT (PIN 8760.11)
VILLAGE OF CROTON-ON-HUDSON**

CONSTRUCTION CONTRACT

THIS AGREEMENT (“Contract”), is made by and between the VILLAGE OF CROTON-ON-HUDSON, having an address at 1 Van Wyck Street, Croton-on-Hudson, New York 10520, hereinafter designated as the “Village”, and _____, having an address at _____, hereinafter designated as “Contractor.”

WHEREAS, the Village desires to restore the entrance to Van Cortlandt Manor, a National Historic Landmark owned and operated by Historic Hudson Valley (“HHV”), in accordance with the standards and specifications of the New York State Department of Transportation, among other requirements (the “Project”); and

WHEREAS, Contractor desires to construct and complete the Project.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties enter into this Agreement on the following terms and conditions:

ARTICLE 1. WORK TO BE PERFORMED.

The Contractor shall

(a) furnish all the materials, equipment, appliances, tools and labor of every kind required, and construct and complete in the most substantial and skillful manner, the

construction, improvement or reconstruction of the following Project on or before the completion date of _____, 20__ (the “Date of Completion”), as further described in Article 4, and as generally identified and shown on the contract plan for:

**Restoration of Van Cortlandt Manor Entrance
Village of Croton-on-Hudson
Westchester County, New York, PIN 8760.11**

in accordance with the “Standard Specifications” of the New York Department of Transportation (“NYSDOT”), and

(b) do everything required by this Contract and the Contract Documents which contains, among other things, the information for bidders, proposal form, bonds, Memorandum of Understanding between the Village and HHV and any amendments thereto, and payment terms as defined herein.

The Contractor further agrees its bid proposal is not based upon the assumption that any specifications, traffic restrictions, scheduling or phasing/staging requirements will be waived; an extension of Contract Completion Date will be granted; a labor dispensation will be granted; substitution of non-approved products, alternatives or claimed functional equivalents for specified construction materials and methods will be allowed, or any Value Engineering Change Proposals will be approved.

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT.

This Contract (and Contract Documents) shall be deemed to include the advertisement for proposals; General Information, Bidding Requirements; Contract Execution Documents; Contract Conditions; Technical Requirements; Appendices; the Contract Proposal, including Special Notes and Special Specifications contained therein; the contractor’s proposal;

Memorandum of Understanding; the Equal Employment Opportunity (EEO) participation goals; the Disadvantaged/Minority/ Women's Business Enterprise (D/M/WBE) participation goals; the Contract Agreement; Appendix A *Standard Clauses for all New York State Contracts*; Appendix A-1 *Civil Rights Requirements (Local Projects Chapter 4)*; the Required Contract Provisions for Federal-Aid Construction Contracts (FWHA-1273); the baseline data; the "Standard Specifications" including all addenda thereto identified in the contract proposal; the Standard Sheets; the plans; any amendments issued prior to the date of proposal submission, and all provisions required by law to be inserted in the Contract whether actually inserted or not. Whenever separate publications are referenced in the Contract Documents, it shall mean those, as amended, which are current on the date of advertisement for bids.

ARTICLE 3. DATE OF COMPLETION.

The Contractor further agrees that it will begin the work herein embraced within ten days of the effective date hereof, unless the consent of the Village, in writing, is given to begin at a later date, and that it will prosecute the same so that it shall be entirely completed and performed on or before the Date of Completion shown in Article 1.

The Contractor shall take into account and plan for the "Shut Down Period" during which no work shall be performed, and the site shall be restored and all equipment and material removed for the duration of that period as set forth in Article 13 below.

No extension beyond the Date of Completion fixed by the terms of this Agreement shall be effective unless in writing signed by the Village. Such extension shall be for such time and upon such terms and conditions as shall be fixed by the Village, which may include the assessment of liquidated damages and a charge for engineering and inspection expenses actually incurred.

Notice of application for such extension shall be filed with the Village at least fifteen days prior to the Date of Completion fixed by the terms of this Agreement.

ARTICLE 4. ALTERATIONS AND OMISSIONS.

The said work shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense of any nature whatsoever to the Village other than the consideration named in this Contract. The Village reserves the right, at any time during the progress of the work, to alter the plans or omit any portion of the work as it may deem reasonably necessary for the public interest—making allowances for additions and deductions with compensation made in accordance with the Standard Specifications, for the work without constituting grounds for any claim by the contractor for allowance for damages or for loss of anticipated profits, or for any variations between the approximated quantities and the quantities of the work as done.

ARTICLE 5. CONTRACT PAYMENTS.

As the work progresses in accordance with the Contract and a manner that is satisfactory to the Village, the Village hereby agrees to make payments to the Contractor therefore, based upon the proposal attached hereto and made a part hereof, as follows: The Village shall once in each month and on such days as it may fix, determine the quantity of work completed and of material which has actually been put in place in accordance with the terms and conditions of the Contract during the preceding month, and compute the value thereof and pay to the Contractor at least 95% of the monies due as provided in § 38(7) of the Highway Law with no more than 5% being retained to ensure faithful performance of the Contract (the “Retainage”). All amounts

withheld as Retainage may be included in the final payment. No monthly payment shall be rendered unless the value of the work completed equals 5% of the contract amount or \$1,000, whichever is lesser. Semimonthly payments may be rendered provided (a) the value of the work performed in two successive weeks is more than \$50,000 or (b) the Village deems it to be in the best interest of the Village to do so. The Contractor shall not hold any retainage from any Subcontractor.

ARTICLE 6. NO PAYMENT DUE TO CONTRACTOR'S NON-COMPLIANCE.

It is further agreed that if the Contractor has not complied with any lawful or proper direction concerning the work or material given by the Project Engineer, or his/her representative, the Contractor shall not be entitled to have said contract payment processed, nor shall any contract payment(s) be processed for work done or material furnished until such lawful direction aforesaid has been fully and satisfactorily complied with.

ARTICLE 7. FINAL ACCEPTANCE OF WORK.

When in the opinion of the Project Engineer the Contractor has fully performed the work under the Contract, the Project Engineer shall recommend to the Village Manager the acceptance of the work so completed. If the Village Manager accepts the recommendation of the Project Engineer, the Contractor shall thereupon be notified by letter of such acceptance. Prior to final acceptance of the work by the Commissioner of the NYSDOT, the work may be inspected, accepted and approved by other agencies who will have jurisdiction of the work after final acceptance. Final acceptance shall be final and conclusive except for defects not readily ascertainable by the Village, actual or constructive fraud, gross mistakes amounting to fraud, or

other errors which the Contractor knows or should have known about as well as the Village's rights under any warranty or guarantee. Final acceptance may be revoked at any time prior to the issuance of the final check by the Village upon the Village's discovery of such defects, mistakes, fraud or errors in the work.

ARTICLE 8. FINAL PAYMENT.

After the final acceptance of the work, the Project Engineer shall prepare a final agreement of the work performed and the materials placed and shall determine the value of such work and materials under and according to the terms of the Contract. This final agreement shall be certified as to its correctness by the Project Engineer. Upon approval of such final agreement by the Village Building Inspector, it shall be submitted to the Village Manager for final approval. The right, however, is hereby reserved to the Village Manager to reject the whole or any portion of the final agreement should the said certificate of the Engineer be found or known to be inconsistent with the terms of the agreement or otherwise improperly given. All certificates upon which partial payments may have been made shall be subject to correction in the final certificate or final agreement. Upon final approval by the Village Manager, the Building Inspector shall issue a Certificate of Compliance and/or Certificate of Occupancy, as the case may be. Under no circumstances will final payment be made to Contractor until the Building Inspector has issued a Certificate of Compliance and/or Certificate of Occupancy.

ARTICLE 9. RIGHT TO SUSPEND WORK AND CANCEL CONTRACT.

It is further mutually agreed that if at any time during the prosecution of the work the Village shall determine that the work upon the Contract is not being performed according to the Contract for the best interest of the Village and HHV, the execution of the work by the

Contractor may be temporarily suspended by the Village who may then proceed with the work under its own direction in such manner as will accord with the contract specifications and be for the best interests of the Village and HHV; or it may terminate the Contractor's employment under the Contract while it is in progress, and thereupon proceed with the work, in affirmance of the contract, by contract negotiated or publicly let, by calling upon the surety to complete the work in accordance with the plans and specifications or by a combination of any such methods; or it may cancel the contract and either readvertise or relet as provided in Section 38 of the Highway Law; any excess in the cost of completing the contract beyond the price for which it was originally awarded shall be charged to and paid by the Contractor failing to perform the work or its surety; all in pursuance of the provisions of Section 38 of the Highway Law.

Whenever the Village determines to suspend or stop work under the contract, a written notice sent by mail to the Contractor at its address and to the sureties at their respective addresses shall be sufficient notice of its action in the premises.

ARTICLE 10. DETERMINATION AS TO VARIANCES.

In any case of ambiguity in the plans, specifications or maps, or between any of them, the matter must be immediately submitted to the Project Engineer, who shall adjust the same, and his/her decision in relation thereto shall be final and conclusive upon the parties.

ARTICLE 11. DUTY OF CARE TO RESPECT HISTORIC PROPERTY.

Contractor acknowledges that HHV is the owner/operator of Van Cortlandt Manor, a National Historic Landmark, granted the highest level of landmark status afforded to historic property by the United States government. All work on the site's buildings and landscapes is

regulated by the NYS Historic Preservation Office and subject to the Secretary of the Interior's Standard for Rehabilitation, as well as oversight by cultural and resources experts from the NYS Department of Transportation and the Federal Highway Administration. Contractor, therefore, agrees to take extraordinary care to protect historic resources at or near the Project site, including but not limited to historic buildings, landscape features such as stone retaining walls and brick pathways, potential archeological resources, trees and plantings. The Village shall be entitled to strictly enforce the provisions of this article and, in the event of Contractor's breach hereof, shall be entitled to pursue any and all legal and equitable remedies against Contractor, including the right to deduct the cost of repair or restoration from any payments due to Contractor under this Contract. The Contractor acknowledges that HHV is a beneficiary of this Contract and, by reason thereof, shall have standing and be entitled to enforce the provisions of this paragraph.

ARTICLE 12. SITE SECURITY.

At all times during construction, except for the Shut Down Period described below, Contractor shall provide on-site security which shall include 24-hour surveillance of the Project Site, and security fencing to prevent unauthorized entry to the buildings at the Project Site.

ARTICLE 13. SHUT DOWN PERIOD.

The Contractor shall not perform any work at the project site between August 1 and December 15 of each year during which the Contract is in effect (the "Shut Down Period"). The Contractor must demobilize all equipment, vehicles and supplies and other non-permanent installations at the site by August 1 of each year, and restore and leave same in its pre-Project condition, less any permanent improvements made, to safely and comfortably accommodate pedestrians and vehicular traffic. Restoration shall include, but not be limited to, 100%

restoration of pathways, roadways, driveways, electric and data service, water and sewer service, fences and gates, security and fire detection systems, exterior lighting, and all buildings and structures. The entire site will be turned back to the Contractor by the Village on, but not before, December 15 of each year. The Contractor shall not be entitled to any separate or additional payment for the annual remobilization of equipment, materials and supplies. The Contractor acknowledges that HHV is a beneficiary of this Contract and, by reason thereof, shall have standing and be entitled to enforce the provisions of this paragraph.

ARTICLE 14. LIQUIDATED DAMAGES FOR FAILING TO COMPLY WITH SHUT DOWN PERIOD PROVISIONS.

HHV hosts the Great Jack O'Lantern Blaze festival each fall at the Van Cortlandt Manor property during the Shut Down Period. Accordingly, the Contractor's failure to comply with Article 13 would interfere with HHV's ability to set up and operate the festival, resulting in a substantial loss of revenue.

CONTRACTOR ACKNOWLEDGES THAT HHV IS A BENEFICIARY OF THIS CONTRACT AND, IN THE EVENT OF CONTRACTOR'S BREACH OF THE PROVISIONS OF ARTICLE 15, THE DAMAGES TO HHV WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN AND, THEREFORE, IN THE EVENT OF A BREACH OF ARTICLE 13, HHV SHALL BE ENTITLED TO RECOVER FROM CONTRACTOR LIQUIDATED DAMAGES IN THE AMOUNT OF \$23,000 FOR EACH DAY OF NONCOMPLIANCE, SAID SUM BEING A REASONABLE ESTIMATE OF THE DAMAGES TO HHV. CONTRACTOR SHALL FURTHER INDEMNIFY AND

HOLD THE VILLAGE HARMLESS FROM ANY DAMAGES RESULTING FROM CONTRACTOR'S FAILURE TO COMPLY WITH ARTICLE 15.

ARTICLE 15. SUCCESSORS AND ASSIGNS.

This Contract shall bind the successors, assigns and representatives of the parties hereto.

ARTICLE 16. WRITTEN NOTICES.

(1) All notices permitted or required hereunder shall be in writing and shall be transmitted either:

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

Such notices shall be addressed to the individuals or titles named in the Contract documents or which are designated by the Contractor or the Village at the pre-construction meeting, or which are designated by the Contractor or the Village from time-to-time during the course of the Contract pursuant to subparagraph (3) herein.

(2) 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 mail 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 or email, upon receipt.

(3) 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 Contract 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 implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

ARTICLE 17. DOCUMENTATION FOR CONTRACT PAYMENTS.

The Contractor shall provide complete and accurate information and supporting documentation required by the Contract, the Village and NYSDOT.

ARTICLE 18. SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT).

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (collectively referred to in this Article as “Contractor”) agree 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 (49 Code of Federal Regulations, Part 21, 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, national origin, sex, age, disability/handicap, or income status 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 21.5, including employment practices when the contract covers a program set forth in 49 CFR 21 Appendix B.

(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 49 CFR 21 relative to nondiscrimination on the grounds of race, color, 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 the Village, NYSDOT or the Federal Highway Administration ("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 the Village, NYSDOT, or the 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, the Village shall impose such contract sanctions as it or NYSDOT 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 these paragraphs (1) through (6) in every subcontract, including procurement 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 the Village,

NYSDOT, or the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event Contactor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the Village to enter into such litigation to protect the interests of the Village; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**See, Contract Documents and Technical Specifications, Chapter 12, Appendix 12-1, CC-1 through CC-48.*

IN WITNESS WHEREOF, this Contract has been executed by the Village and Contractor on the day and year certified and approved by HHV below:

CONTRACTOR:

Company Name

By:

Signature

Name and Title

Company Address

VILLAGE OF CROTON-ON-HUDSON

Approved by: _____

_____ Date

OWNER'S CONSENT:

HISTORIC HUDSON VALLEY

By: _____

Signature

Name

Title