

# Architectural/ Engineering Consultant Agreement

PIN (s) 8763.05

Municipal Agreement No. \_\_\_\_\_

Agreement made this \_\_\_\_ day of \_\_\_\_\_, 2025 by and between the

**Village of Croton-on-Hudson**, a municipal corporation having its principal office at 1 Van Wyck Street, in the Village of Croton-on-Hudson (to be known throughout this document as the "**Sponsor**")

and

**Tectonic Engineering & Surveying** with its office at 118-35 Queens Boulevard, Suite 1000, Forest Hills, New York 11375 (to be known throughout this document as the "**Consultant**")

## WITNESSETH:

WHEREAS, in connection with a federal-aid project funded through the New York State Department of Transportation ("NYSDOT") identified for the purposes of this agreement as Half Moon Bay Bridge Reconstruction Project, as described in detail in Attachment A annexed hereto, the "**Project**". The **Sponsor** has sought to engage the services of a **Consultant** Engineer to perform the scope of services described in Attachment B annexed hereto; and

WHEREAS, in accordance with required consultant selection procedures, including applicable requirements of NYSDOT and/or the Federal Highway Administration ("FHWA"), the **Sponsor** has selected the **Consultant** to perform such services in accordance with the requirements of this Agreement; and

WHEREAS, the **Village Manager Bryan Healy**, is authorized to enter this Agreement on behalf of the **Sponsor**,

NOW, THEREFORE, the parties hereto agree as follows:

## ARTICLE 1. DOCUMENTS FORMING THIS AGREEMENT

This agreement consists of the following:

- **Agreement Form** - this document titled "Architectural/Engineering Consultant Agreement";
- **Attachment "A"** - Project Description and Funding;
- **Attachment "B"** – Scope of Services;
- **Attachment "C"** - as applicable, Staffing Rates, Hours, Reimbursables and Fee.

## **ARTICLE 2. SCOPE OF SERVICES/STANDARD PRACTICES AND REQUIREMENTS**

2.1 The **Consultant** shall render all services and furnish all materials and equipment necessary to provide the **Sponsor** with plans, estimates and other services and deliverables more specifically described in Attachment "B".

2.2 The **Consultant** shall ascertain the applicable practices of the **Sponsor**, NYSDOT and/or FHWA prior to beginning any of the work of this Project. All work required under this Agreement shall be performed in accordance with these practices, sound engineering standards, practices and criteria, and any special requirements, more particularly described in Attachment "B".

2.3 The **Consultant** will commence work no later than ten (10) days after receiving notice to proceed from the **Sponsor**.

## **ARTICLE 3. COMPENSATION METHODS, RATES, AND PAYMENT**

As full compensation for the **Consultant's** work, services and expenses hereunder the **Sponsor** shall pay to the **Consultant**, and the **Consultant** agrees to accept compensation based on the methods designated and described below. Payment of the compensation shall be in accordance with the Interim Payment procedures shown in the table and the final payment procedure in Article 6.

(Continued next page)

3.3 Lump Sum Cost Plus Reimbursables Method			
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE	
ITEM I	A Lump Sum paid to <b>Consultant</b> for the scope of services hereunder, unless this Agreement is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed.	A Lump Sum of <u>\$199,140</u> .	
ITEM II	<ul style="list-style-type: none"> <li>○ Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Agreement; all subject to audit.</li> </ul>	<ul style="list-style-type: none"> <li>○ Actual costs incurred in the performance of this agreement as identified in Attachment C or otherwise approved in writing by the <b>Sponsor</b> or its representative.</li> <li>○ All reimbursement for travel, meals and lodging shall be made at actual cost paid, but such reimbursement shall not exceed the per diem rates established by NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Dept. of Labor.</li> <li>○ For Reimbursable Direct Non-Salary Costs a multiple of <b>One</b> times shall be applied to the</li> </ul>	

<b>3.3 Lump Sum Cost Plus Reimbursables Method</b>			
<b>ITEM</b>	<b>DESCRIPTION OF ITEMS WITHIN METHOD</b>	<b>APPLICABLE RATE/ AMOUNT OR PERCENTAGE</b>	
		expenses incurred by the <b>Consultant</b> , the consultant's employees, or the subconsultant not to exceed <u>\$50,000</u> .	
<b>ITEM III</b>	○ Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of the <b>Sponsor</b> at the completion of the work or at the option of the <b>Sponsor</b> .	Salvage value	

## ARTICLE 4. INSPECTION

The duly authorized representatives of the **Sponsor**, and on Federally aided projects, representatives of the NYSDOT and the FHWA, shall have the right at all times to inspect the work of the **Consultant**.

## ARTICLE 5. AUDITS

5.1 Payment to the **Consultant** is subject to the following audit rights of the **Sponsor**:

- A. For Cost Plus Fixed Fee Method - All costs are subject to audit, i.e. labor, direct non-salary, overhead, and fee.
- B. For Specific Hourly Rate Method - Labor hours and direct non-salary costs are subject to audit. If elements subject to audit are less than \$300,000, an audit may be waived by the **Sponsor**.
- c. For Lump Sum Cost Plus Reimbursables Method - Only direct non-salary costs are subject to audit. If elements subject to audit are less than \$300,000, an audit may be waived by the **Sponsor**.

5.2 In order to enable the **Sponsor** to process the final payment properly and expeditiously, the **Consultant** is advised that all of the following documents and submissions, as the same may be appropriate to this agreement, are considered to be necessary to enable the commencement of the audit.

- II. Records of Direct Non-Salary Costs;
- III. Copies of any sub-agreements relating to said agreement;
- IV. Location where records may be examined; and
- V. Name, address, telephone number of person to contact for production.

The application for final payment is not considered complete until receipt of these documents and information.

## ARTICLE 6. FINAL PAYMENT

6.1 The **Sponsor** will make final payment within sixty (60) calendar days after receipt of an invoice which is properly prepared and submitted, and all appropriate documents and records are received.

6.2 The acceptance by the **Consultant** of the final payment shall operate as and shall be a release to the **Sponsor** from all claims and liability to the **Consultant**, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the **Consultant** under or in connection with this Agreement or for any part thereof except as otherwise provided herein.

## ARTICLE 7. EXTRA WORK

7.1 **Consultant's** performance of this Agreement within the compensation provided shall be continuously reviewed by the **Consultant**. The **Consultant** shall notify the Sponsor of the results of those reviews in writing by submittal of a Cost Control Report. Such Cost Control Report shall be submitted to the **Sponsor** on a monthly basis or such alternative interval as the **Sponsor** directs in writing.

7.2 If the **Consultant** is of the opinion that any work the **Consultant** has been directed to perform is beyond the scope of the Project Agreement and constitutes extra work, the **Consultant** shall promptly notify the **Sponsor**, in writing, of this fact prior to beginning any of the work. The **Sponsor** shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. In the event that the **Sponsor** determines that such work does constitute extra work, the **Sponsor** shall provide extra compensation to the **Consultant** in a fair and equitable manner. If necessary, an amendment to the Project Agreement, providing the compensation and describing the work authorized, shall be prepared and issued by the **Sponsor**. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the **Sponsor** to the **Consultant** for execution after approvals have been obtained from necessary **Sponsor** officials, and, if required from the FHWA.

7.3 In the event of any claims being made or any actions being brought in connection with the Project, the **Consultant** agrees to render to the **Sponsor** all assistance required by the **Sponsor**. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this Agreement for the additional services above described, the **Sponsor's** directions shall be exercised by the issuance of a separate Agreement, if necessary.

## **ARTICLE 8. CONSULTING LIABILITY**

The **Consultant** shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the **Consultant**, his or her subcontractors, agents or employees in the performance of his or her service under this Agreement.

Further, it is expressly understood that the **Consultant** shall indemnify and save harmless the **Sponsor** from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the **Consultant** under this Agreement, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the **Consultant's** failure to meet professional standards and resulting in obvious or patent errors in the progression of his or her work. Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the **Sponsor** beyond such as may legally exist irrespective of this Article or this Agreement.

The **Consultant** shall procure and maintain for the duration of the work for such project(s), Professional Liability Insurance in the amount of One Million Dollars (\$1,000,000) per project, issued to and covering damage for liability imposed on the **Consultant** by this Agreement or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the Agreement. The **Consultant** shall supply any certificates of insurance required by the **Sponsor** and adhere to any additional requirements concerning insurance.

## **ARTICLE 9. WORKER'S COMPENSATION AND LIABILITY INSURANCE**

This agreement shall be void and of no effect unless the **Consultant** shall secure Workman's Compensation Insurance for the benefit of, and keep insured during the life of this agreement, such employees as are necessary to be insured in compliance with the provisions of the Workman's Compensation Law of the State of New York.

The **Consultant** shall secure policies of general and automobile liability insurance, and maintain said policies in force during the life of this agreement. Said policies of insurance shall protect against liability arising from errors and omissions, general liability and automobile liability in the performance of this agreement in the sum of at least \$1,000,000.00 (One Million dollars) each.

The **Consultant** shall furnish a certified copy of said policies to the **Sponsor** at the time of execution of this agreement.

## **ARTICLE 10. INTERCHANGE OF DATA**

All technical data in regard to the Project existing in the office of the **Sponsor** or existing in the offices of the **Consultant** shall be made available to the other party to this Agreement without expense to such other party.

## **ARTICLE 11. RECORDS RETENTION**

The **Consultant** shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this agreement (collectively called the "Records"). The Records must be kept for a minimum of six (6) years or three (3) years after final payment is received, whichever is later. The **Sponsor**, State, FHWA, or any authorized representatives of the Federal Government, shall have access to the Records during normal business hours at an office of the **Consultant** within the State of New York or, a mutually agreeable reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

## **ARTICLE 12. DAMAGES AND DELAYS**

The **Consultant** agrees that no charges or claim for damages shall be made by him/her for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the **Sponsor** may decide, it being understood however, that the permitting of the **Consultant** to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the **Sponsor** of any of its rights herein. Nothing in this Article will prevent the **Consultant** from exercising his or her rights under Article 7 of this agreement.

## **ARTICLE 13. TERMINATION**

The **Sponsor** shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of agreement:

14. for convenience of the **Sponsor** – if a termination is brought about for the convenience of the **Sponsor** and not as a result of unsatisfactory performance

on the part of the **Consultant**, final payment shall be made based on the basis of the **Consultant's** compensable work delivered or completed prior to and under any continuing directions of such termination.

14. for cause – if the termination is brought about as a result of the **Sponsor's** determination of unsatisfactory performance or breach of agreement on the part of the **Consultant**, the value of the work performed by the **Consultant** prior to termination shall be established by the percent of the amount of such work satisfactorily delivered or completed by the **Consultant** to the point of termination and acceptable to the **Sponsor**, of the total amount of work contemplated by the Project Agreement.

#### **ARTICLE 14. DEATH OR DISABILITY OF THE CONSULTANT**

In case of the death or disability of one or more but not all the persons herein referred to as **Consultant**, the rights and duties of the **Consultant** shall descend upon the survivor or survivors of them, who shall be obligated to perform the services required under this Agreement, and the **Sponsor** shall make all payments due to him, her or them.

In case of the death or disability of all the persons herein referred to as **Consultant**, all data and records pertaining to the Project shall be delivered within sixty (60) days to the **Sponsor** or his/her duly authorized representative. In case of the failure of the **Consultant's** successors or personal representatives to make such delivery on demand, then in that event the representatives of the **Consultant** shall be liable to the **Sponsor** for any damages it may sustain by reason thereof. Upon the delivery of all such data to the **Sponsor**, the **Sponsor** will pay to the representatives of the **Consultant** all amounts due the **Consultant**, including retained percentages to the date of the death of the last survivor.

#### **ARTICLE 15. CODE OF ETHICS**

The **Consultant** specifically agrees that this Agreement may be canceled or terminated if any work under this Agreement is in conflict with the provisions of any applicable law establishing a Code of Ethics for Federal, State or Municipal officers and employees.

#### **ARTICLE 16. INDEPENDENT CONTRACTOR**

The **Consultant**, in accordance with his or her status as an independent contractor, covenants and agrees that he/she will conduct him/herself consistent with such status, that he/she will neither hold him/herself out as, nor claim to be, an officer or employee of the **Sponsor** by reason hereof, and that he/she 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 **Sponsor**, including but not limited to Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

#### **ARTICLE 17. COVENANT AGAINST CONTINGENT FEES**

The **Consultant** warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the **Consultant**, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other

consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the **Sponsor** shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

#### **ARTICLE 18. TRANSFER OF AGREEMENT**

The **Consultant** specifically agrees that he/she is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the Agreement or of his or her right, title or interest therein, or his or her power to execute such Agreement, to any other person, company or corporation, without the previous consent in writing of the **Sponsor**.

If this provision is violated, the **Sponsor** may revoke and annul the and the **Sponsor** shall be relieved from any and all liability and obligations there under to the person, company or corporation to whom the **Consultant** shall purport to assign, transfer, convey, sublet or otherwise dispose of the Agreement without such consent in writing of the **Sponsor**.

#### **ARTICLE 19. PROPRIETARY RIGHTS**

The **Consultant** agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the **Consultant**. However, the **Consultant** agrees to and does hereby grant to the United States Government and the State of New York and the **Sponsor** a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and states and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

#### **ARTICLE 20. SUBCONTRACTORS/ SUBCONSULTANTS**

All Subcontractors and Subconsultants performing work on this project shall be bound by the same required agreement provisions as the **Consultant**. All agreements between the **Consultant** and a subcontractor or other Subconsultant shall include all standard required agreement provisions, and such agreements shall be subject to review by the **Sponsor**.

**ARTICLE 20.1 PROMPT PAYMENT.** While federal regulation ([49 CFR 26.29](#)) requires payment to subcontractors within 30 days, New York State law is more stringent. NYS General Municipal Law §106-b and NYS Finance Law Article 9, §139-f require prime contractors and prime consultants to pay their vendors within seven (7) calendar days of receipt of payment from the public owner/**Sponsor** and provides for interest on late payments for all public works agreements. Agreement provisions incorporating any other payment schedule will not be allowed. A subcontractor's work is satisfactorily completed when all the tasks called for in the sub-agreement have been accomplished and documented. When the **Sponsor** has made an incremental acceptance of a portion of a prime agreement, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

#### **ARTICLE 21. CERTIFICATION REQUIRED BY 49 CFR, PART 29**

The signatory to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership)

- A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- C. does not have a proposed debarment pending; and
- D. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

## **ARTICLE 22. CERTIFICATION FOR FEDERAL-AID AGREEMENTS**

The prospective participant certifies, by signing this Agreement to the best of his or her knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal agreement, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit the standard "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be, included in all lower tier sub-agreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

## **ARTICLE 23. RESPONSIBILITY OF THE CONSULTANT**

- A. The **Consultant** shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the **Consultant** under this agreement. The **Consultant**

shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. However, the **Sponsor** may in certain circumstances, provide compensation for such work.

- B. Neither the **Sponsor's** review, approval or acceptance of, nor payment for, the services required under this agreement shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement, and the **Consultant** shall be and remain liable to the **Sponsor** in accordance with applicable law for all damages to the **Sponsor** caused by the **Consultant's** negligent performance or breach of agreement of any of the services furnished under this agreement.
- C. The rights and remedies of the **Sponsor** provided for under this agreement are in addition to any other rights and remedies provided by law.
- D. If the **Consultant** is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

#### **ARTICLE 24. NON-DISCRIMINATION REQUIREMENTS**

The **Consultant** agrees to comply with all applicable Federal, State and **Sponsor** Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal Statutory and constitutional non-discrimination provisions, the **Consultant** will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a agreement for the construction, alteration or repair of any public building or public work for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this agreement shall be performed within the State of New York, **Consultant** agrees that neither it nor its Subconsultants 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 Agreement. **Consultant** 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 Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

#### **ARTICLE 25. CERTIFICATION REQUIRED BY 40 CFR 1506.5**

If the work of the Project includes the preparation of an Environmental Impact Statement (EIS), the signator to this Agreement, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

- a. an existing agreement for the Projects ROW incidental work or construction engineering;  
or
- b. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the Project alternatives.

This does not preclude the **Consultant** from being awarded a future agreement covering the work describe in this Article or being awarded Phases V & VI Final Design after the EIS has been approved.

#### **ARTICLE 26. BIDDING OF DIRECT NON-SALARY ITEMS**

For all agreements other than personal services in excess of \$5,000, the consultant shall solicit a number of quotes from qualified subcontractors so that at least three (3) quotes will be received. For all agreements other than personal services in excess of \$20,000 except printing agreements in excess of \$10,000, the consultant shall solicit a number of sealed bids from qualified subcontractors so that at least three (3) bids will be received. The consultant shall then enter into a sub-agreement with the lowest bidder or entity submitting the lowest quotation who is fully responsive to the invitation to submit a quote/bid.

#### **ARTICLE 27. WAGE AND HOURS PROVISIONS**

If this is a public work agreement covered by Article 8 of the Labor Law or a building service agreement covered by Article 9 thereof, neither **Consultant'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, **Consultant** and its subconsultants 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.

#### **ARTICLE 28. INTERNATIONAL BOYCOTT PROHIBITION**

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this agreement exceeds \$5,000, the **Consultant** agrees, as a material condition of the agreement, that neither the **Consultant** 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 **Consultant**, or any of the aforesaid affiliates of **Consultant**, 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 agreement's execution, such agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the **Sponsor** and the New York State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (see 2 NYCRR 105.4).

#### **ARTICLE 29. SERVICE OF PROCESS**

In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), **Consultant** hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon **Consultant's** actual receipt of process or upon the **Sponsor's** receipt of the return thereof by the United State Postal Service as refused or undeliverable. **Consultant** must promptly notify the **Sponsor**, in writing, of each and every change of address to which service of process can be made. Service by the

**Sponsor** to the last known address shall be sufficient. **Consultant** will have thirty (30) calendar days after service hereunder is complete in which to respond.

**ARTICLE 30. DISPOSITION OF PLANS, ESTIMATES AND OTHER DATA.** At the time of completion of the work, the **Consultant** shall make available to the **Sponsor** all survey notes, computations, maps, tracings, original aerial film and photo indices if any, and all other documents and data pertaining to the work or to the project which material at all times shall be the property of the **Sponsor**. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the **Consultant** shall make available to the **Sponsor** all the aforementioned engineering data and material. All original tracings of maps and other engineering data furnished to the **Sponsor** by the **Consultant** shall bear thereon the endorsement of the **Consultant**. All plans, estimates and other data prepared in accordance with this Agreement shall be considered confidential and shall be released only to the **Sponsor**.

**ARTICLE 31. MISCELLANEOUS**

31.1 **Executory Agreement.** This Agreement shall be deemed only executory to the extent of the monies available, and no liability shall be incurred by the **Sponsor** beyond the monies legally available for the purposes hereof.

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement effective the day and year first above written.

Reference: Sponsor Agreement # \_\_\_\_\_

Sponsor	Consultant
by: _____	by: _____
Date:	Date:

STATE OF NEW YORK

ss:

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me, the subscriber, personally appeared to me known, who, being by me duly sworn, did depose and say; that he/she resides in the \_\_\_\_\_, New York; that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he/she is the authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of Sponsor.

\_\_\_\_\_

Notary Public, \_\_\_\_\_ County, N.Y.

STATE OF NEW YORK

ss:

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me, the subscriber, personally appeared to me known, who, being by me duly sworn, did depose and say; that he/she resides in the \_\_\_\_\_, New York; that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he/she is the authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of Sponsor.

\_\_\_\_\_

Notary Public, \_\_\_\_\_ County, N.Y.

**Attachment A**  
**Architectural/ Engineering Consultant Agreement**  
**Project Description and Funding**

PIN:8763.05  
BIN: 2270050

*Term of Agreement Ends: 12/31/2028*

- Main Agreement
- Amendment to Agreement [add identifying #]
- Supplement to Agreement [add identifying #]

***Phase of Project Consultant to work on:***

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

Dates or term of Consultant Performance:

*Start Date: 2/7/2024*

*Finish Date: 1/31/2027*

***Project Description:***

In order to address past safety flags and inspections, the Village is moving ahead with the rehabilitation/reconstruction of the Half Moon Bay Bridge. The consultant is expected to perform inspections, prepare a report and present options for this renovation.

***Project Location:***

The project limit to be considered is the entire area around the bridge structure as well as both approaches. The total distance is approximately 240 linear feet from the intersection of Elliot Way to the approach past the eastern abutment.

Consultant Work Type(s): See Attachment B for more detailed Scope of Services.

**MAXIMUM AMOUNT OF FUNDS FOR ALL COMPENSATION PAYABLE UNDER THIS AGREEMENT FOR THE SCOPE OF WORK DESCRIBED IN ATTACHMENT B FOR THE PROJECT DESCRIBED IN THIS ATTACHMENT A, OTHERWISE IN ACCORDANCE WITH THE CHOSEN METHOD OF COMPENSATION AND OTHER TERMS OF THIS AGREEMENT:**

\$249,140.00

**Footnotes:**

**Attachment B**  
**Scope of Services**

# **Scope of Services (SOS)**

## **Section 1 - General**

### **1.01 Project Description and Location**

Project Name: Half Moon Bay Bridge (BIN 2270050) Reconstruction Project  
PIN:8763.05

Project Description: In order to address past safety flags and inspections, the Village is moving ahead with the rehabilitation/reconstruction of the Half Moon Bay Bridge. The consultant is expected to perform inspections, prepare a report and present options for this renovation.

Project Limits: The project limit to be considered is the entire area around the bridge structure as well as both approaches. The total distance is approximately 240 linear feet from the intersection of Elliot Way to the approach past the eastern abutment.

Sponsor: Village of Croton-on-Hudson

Town of Cortlandt

Westchester County

The anticipated start date of preliminary design: February, 2024

The anticipated letting date: November 2024 (dependent on coordination with railroad)

The construction completed date. April 2026

The anticipated design costs. \$ 200,000

The anticipated construction costs \$ 1,500,000 (preliminary estimate only, subject to change)

### **1.02 Project Manager**

The **Sponsor's** Project Manager for this project is Frank Balbi, P.E., Superintendent of Public Works, who can be reached at (914) 271-3775, or [fbalbi@crotononhudson-ny.gov](mailto:fbalbi@crotononhudson-ny.gov).

All correspondence to the **Sponsor** should be addressed to 1 Van Wyck Street, Croton-on-Hudson, NY 10520. The use of email shall be appropriate unless original documents are required.

The Project Manager should receive copies of all project correspondence directed other than to the **Sponsor**.

### **1.03 Project Classification**

This project is assumed to be a Class II action under USDOT Regulations, [23 CFR 771<sup>1</sup>](#). Classification under the New York State Environmental Quality Review Act (SEQRA) Part 617, Title 6 of the Official Compilation of Codes, Rules, and Regulations of New York State (6 NYCRR Part 617) is assumed to be Type II.

### **1.04 Categorization of Work**

Project work is generally divided into the following sections:

Section 1	General
Section 2	Data Collection & Analysis
Section 3	Preliminary Design
Section 4	Environmental

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<sup>1</sup> <http://www.ecfr.gov/cgi-bin/textidx?c=ecfr&SID=d21c8e6f33a02787d9b788103bac7b9d&rgn=div5&view=text&node=23:1.0.1.8.43&idno=23>

Section 5	Right-of-Way
Section 6	Detailed Design
Section 7	Advertising, Bid Opening, and Award
Section 8	Construction Support
Section 9	Construction Inspection
Section 10	Estimating & Technical Assumptions

When specifically authorized in writing to begin work, the **Consultant** will render all services and furnish all materials and equipment necessary to provide the **Sponsor** with reports, plans, estimates, and other data specifically described in Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10. [Note: Retain the list of all sections above and on the last line only select the sections which will be retained in the SOS Document]

## 1.05 Project Familiarization

The **Sponsor** will provide the **Consultant** with the following information:

- Approved project initiation document (Initial Project Proposal or similar documentation) indicating project type, project location, cost estimate, schedule, and fund source(s).
- Transportation needs.
- Accident records and history.
- Most recent bridge inspection and condition report, NYSDOT weighted-average bridge condition rating, FHWA sufficiency rating, and NYSDOT Bridge Management System rating.
- Record plans.
- Anticipated permits and approvals (initial determination).
- Available project studies and reports.
- Other relevant documents pertaining to the project.

The **Consultant** will become familiar with the project before starting any work. This includes a thorough review of all supplied project information and a site visit to become familiar with field conditions.

## 1.06 Meetings

The **Consultant** will prepare for and attend all meetings as directed by the **Sponsor's Project Manager**. Meetings may be held to:

- Present, discuss and receive direction on the progress and scheduling of work in this contract.
- Present, discuss, and receive direction on project specifics.
- Discuss and resolve comments resulting from the review of project documents, advisory agency review, and coordination with other agencies.
- Preview visual aids for public meetings.
- Manage subconsultants and subcontractors.

The **Consultant** will be responsible for the preparation of all meeting minutes; the minutes will be submitted to meeting attendees within one (1) week of the meeting date.

## 1.07 Cost and Progress Reporting

For the duration of this contract, the **Consultant** will prepare and submit to the **Sponsor** on a monthly basis a Progress Report in a format approved by the **Sponsor**. The Progress Report must contain the *Cost Control Report*.<sup>2</sup> The beginning and ending dates defining the reporting period

<sup>2</sup> <https://www.dot.ny.gov/plafap/view-document?id=1598>

must correspond to the beginning and ending dates for billing periods so that this reporting process can also serve to explain billing charges. (In cases where all work under this contract is officially suspended by the **Sponsor**, this task will not be performed during the suspension period.) Generally the Cost Control Report will be submitted as part of the monthly invoicing.

### 1.08 Policy and Procedures

- The design of this project will be progressed in accordance with the current version of the [\*NYSDOT Local Projects Manual \(LPM\)\*](#)<sup>3</sup> including the latest updates.
- If there are conflicts between local policies and procedures and those listed in the *LPM* those listed in the *LPM* take precedence.

### 1.09 Standards & Specifications

The project will be designed and constructed in accordance with the current edition of the NYSDOT Standard Specifications for Construction and Materials, including all applicable revisions.

### 1.10 Subconsultants

The **Consultant** will be responsible for:

- Coordinating and scheduling work, including work to be performed by subconsultants.
- Technical compatibility of a sub-consultant's work with the prime consultant's and other subconsultants' work.

### 1.11 Subcontractors

The procurement of subcontractors must be in accordance with the requirements set forth in the *NYSDOT LPM*.

## Section 2 - Data Collection and Analysis

### 2.01 Design Survey

#### A. Ground Survey

The **Consultant** will provide terrain data required for design by means of a topographic field survey. Boundary Survey is explicitly excluded from the scope of services. Approximately property lines, boundary and right of way lines will be identified from available mapping and shall be considered approximate.

#### B. Photogrammetric Survey Intentionally Left Blank

#### C. Stream Survey Intentionally Left Blank

#### D. Survey of Wetland Boundaries Intentionally Left Blank

#### E. Supplemental Survey

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<sup>3</sup> <https://www.dot.ny.gov/plafap>

<sup>9</sup> [https://www.dot.ny.gov/portal/pls/portal/MEXIS\\_APP.EI\\_EB\\_DOC\\_DETAILS.show?p\\_arg\\_names=doc\\_id&p\\_arg\\_values=10618](https://www.dot.ny.gov/portal/pls/portal/MEXIS_APP.EI_EB_DOC_DETAILS.show?p_arg_names=doc_id&p_arg_values=10618)

The **Consultant** will provide supplemental surveys when needed for design purposes and to keep the survey and mapping current.

F. Standards

The survey will be done in accordance with the standards set forth in the [\*NYS DOT Land Surveying Standards and Procedures Manual\*](#)<sup>4</sup> and in accordance with local standards described in Section 10 of the SOS.

## 2.02 Design Mapping

The **Consultant** will provide the following design mapping:

- 1:2500 scale mapping (large-scale projects only).
- 1:250 scale mapping with 0.5 meters or 2-foot contour intervals.

The **Consultant** will provide supplemental mapping when needed for design purposes and keep the mapping current for the duration of the project.

## 2.03 Determination of Existing Conditions

The **Consultant** will determine, obtain or provide all information needed to accurately describe in pertinent project documents the existing conditions within and adjacent to the project limits.

## 2.04 Accident Data and Analysis

The **Sponsor** will provide accident records for the last three years for roads within the project limits plus one-tenth of a mile immediately outside of the project limits. The **Consultant** will prepare collision diagrams and associated summary sheets and note any clusters of accidents or patterns implying inadequate geometrics, or other safety problems, within the project limits. A formal accident analysis is not required.

## 2.05 Traffic Counts

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## 2.06 Capacity Analysis

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## 2.07 Future Plans for Roadway and Coordination with Other Projects

Intentionally Left Blank.

## 2.08 Soil Investigations

Intentionally Left Blank

## 2.09 Hydraulic Analysis

Intentionally Left Blank

## 2.10 Bridges to be rehabilitated

A. Inspection

The **Consultant** will perform an in depth field inspection of each bridge to determine its condition, to establish the rehabilitation work necessary, and to prepare a Level I load rating. The intent is to supplement the inspection done as part of NYS DOT's

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<sup>4</sup> <https://www.dot.ny.gov/divisions/engineering/design/design-services/land-survey/repository/LSSPM09.pdf>

on-going bridge inspection program, not to duplicate it.

The **Consultant** will perform and document the findings of in-depth inspection of each bridge in accordance with the current AASHTO “Manual for Condition Evaluation of Bridges.”

#### B. Bridge Deck Evaluation

For Bridges in which the deck will be rehabilitated, the Consultant will perform a bridge deck evaluation in accordance with [NYSDOT Bridge Deck Evaluation Manual](#)<sup>5</sup> and [NYSDOT Bridge Inspection Manual](#).<sup>6</sup>

The existing deck has an asphalt overlay which limits information that can be gathered. Sounding and potential evaluation techniques will not be used on the top of the deck. The evaluation of the top will be visual only.

#### C. Load Rating of Existing Bridge

The **Consultant** will perform a Level 1 load rating of each existing bridge in accordance with NYSDOT’s *Uniform Code of Bridge Inspection*. Immediately upon completion, the **Consultant** will transmit two copies of the load rating calculations and summary sheets to the **Sponsor** and the Regional Local Projects Liaison for filing.

#### D. Fatigue Evaluation

The **Consultant** will analyze, in accordance with the current AASHTO *Guide Specification for Fatigue Evaluation of Existing Bridges*, those metal structural elements which will or may be retained in the rehabilitated bridge. Where this guide specification does not apply (e.g., severe corrosion, mechanical damage, repaired fatigue damage, wrought iron instead of steel, etc.), the **Consultant** will develop an appropriate approach for comprehensive fatigue evaluation while maintaining close coordination with the **Sponsor** for guidance and input. The **Consultant** will then conduct the evaluation accordingly.

For situations where the calculated remaining safe life is less than the planned remaining service life, the **Consultant** will develop various conceptual strategies to improve fatigue performance and/or safely manage the risk. The **Consultant** will prepare and submit to the **Sponsor** a technical memorandum documenting the relative advantages, disadvantages, and approximate costs of each strategy along with specific recommendations.

The **Sponsor** will determine the strategy to be adopted.

For situations where the calculated remaining safe life is equal to or greater than the planned remaining service life, the **Consultant** will prepare and submit to the **Sponsor** a technical memorandum documenting the results of the fatigue evaluation.

### 2.11 Pavement Evaluation

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## Section 3 - Preliminary Design

### 3.01 Design Criteria

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<sup>5</sup> [https://www.dot.ny.gov/divisions/engineering/structures/repository/manuals/br\\_deck\\_manual/bridge\\_deck\\_eval\\_manual\\_1992.pdf](https://www.dot.ny.gov/divisions/engineering/structures/repository/manuals/br_deck_manual/bridge_deck_eval_manual_1992.pdf)

<sup>6</sup> <https://www.dot.ny.gov/divisions/engineering/structures/manuals/bridge-inspection>

The **Consultant** will identify the applicable design standards to be used for this project and will establish project-specific design criteria in accordance with the [NYSDOT Project Development Manual](#)<sup>7</sup>

The **Sponsor** will approve the selected project design criteria and will obtain NYSDOT concurrence (either by written submission or at a meeting).

Based on the selected design criteria, the **Consultant** will identify all existing non-standard features that are within and immediately adjacent to the project limits. Non-standard features that correlate with a high accident rate will be noted.

### 3.02 Development of Alternatives

#### A. Selection of Design Alternative(s)

The **Consultant** will identify and make rudimentary evaluations of potential design alternative concepts that would meet the **Sponsor's** defined project objectives. These evaluations are not to be carried beyond the point of establishing the feasibility of each concept as a design alternative; only those significant environmental and geometric design constraints that bear on the feasibility should be identified.

For each concept the **Consultant** will prepare rudimentary sketches of plan, profile, and typical section views which show:

- **On plan:** proposed centerlines; pavement edges; curve radii and termini; and existing approximate ROW limits.
- **On profile:** theoretical grade lines; critical clearances; vertical curve data; grades; and touchdown points.
- **On typical section:** lane, median, and shoulder widths; ditches; gutters; curbs; and side slopes.
- **Where necessary:** important existing features.
- **Where pertaining to feasibility:** significant environmental and geometric design constraints, labeled as such.

These sketches will include only the minimum information needed to select design alternatives to be studied in further detail.

The **Consultant** will meet with the **Sponsor** to discuss the concepts, using the sketches as discussion aids to describe the relative order-of-magnitude costs, advantages, disadvantages, and problem areas of each. From these concepts, the **Sponsor** will select one or in some cases more, design alternative(s) for further development.

#### B. Detailed Evaluations of Alternative(s)

The **Consultant** will further evaluate the selected design alternative and the null alternative with specific engineering analyses and considerations. Analyses will be conceptual and limited to determining the relative suitability of each design alternative, and will include:

- Design geometry, including the identification and comparison of alignment constraints and (where applicable) justification for retaining nonstandard design features, per the [NYSDOT Highway Design Manual](#).<sup>8</sup>
- Environmental constraints and potential environmental impact mitigation measures (identified under Section 4 tasks).

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<sup>7</sup> <https://www.dot.ny.gov/divisions/engineering/design/dqab/pdm>

<sup>8</sup> <https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm>

- Traffic flow and safety considerations, including signs, signals, and level of service analysis for intersections.
- Pavement.
- Structures, including bridges, retaining walls, major culverts, and building alterations (limited to establishing basic concepts, accommodating clearances and streamflow, and estimating costs). Bridge investigative work (inspection, deck coring, etc.) is covered under Section 2.
- Drainage.
- Maintenance responsibility.
- Maintenance and protection of traffic during construction.
- Soil and foundation considerations.
- Utilities.
- Railroads.
- Right-of-way acquisition requirements.
- Conceptual landscaping (performed by a Registered Landscape Architect).
- Accessibility for pedestrians, bicyclists and the disabled.
- Lighting.
- Construction cost factors.

The **Consultant** will prepare the following drawings for each design alternative analyzed:

- 1:250 plans showing (as a minimum) stationed centerlines; roadway geometrics; major drainage features; construction limits; cut and fill limits; and proposed right-of-way acquisition lines.
- Profiles, at a scale of 1:250 horizontal and 1:50 (maximum) vertical, showing (as a minimum) the vertical datum reference; significant elevations; existing ground line; theoretical grade line; grades; vertical curve data including sight distances; critical clearances at structures; centerline stations and equalities; construction limits; and superelevation data.
- Typical sections showing (as a minimum) lane, median, and shoulder widths; ditches; gutters; curbs; and side slopes.

### 3.03 Cost Estimates

The **Consultant** will develop, provide and maintain a cost estimate for each design alternative.

The **Consultant** will update the estimate periodically and as necessary to incorporate significant design changes.

### 3.04 Preparation of Draft Design Approval Document

For this project, the Design Approval Document (DAD) will be a Design Report.

The **Sponsor** will make all determinations not specifically assigned to the **Consultant** which are needed to prepare the Draft DAD.

The **Consultant** will prepare a Draft DAD, which will include the results of analyses and/or studies performed in other Sections of this document. The DAD will be formatted as specified in the NYSDOT [Project Development Manual \(PDM\)](https://www.dot.ny.gov/divisions/engineering/design/dqab/pdm).<sup>9</sup>

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<sup>9</sup> <https://www.dot.ny.gov/divisions/engineering/design/dqab/pdm>

The **Consultant** will submit three copies of the Draft DAD to the **Sponsor** for review. The **Sponsor** will review the Draft DAD and provide the **Consultant** with review comments. The **Consultant** will revise the Draft DAD to incorporate the comments.

The **Consultant** will revise the DAD to reflect NYSDOT and/or FHWA comments. The **Sponsor** will sign the cover sheet and submit 3 copies of the revised report to the NYSDOT for signature by the FHWA.

### 3.05 **Advisory Agency Review**

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### 3.06 **Public Information Meeting(s) and/or Public Hearing(s)**

#### A Public Information Meeting(s)

The **Consultant** will assist the **Sponsor** at three public information meeting(s) with advisory agencies, local officials, and citizens, at which the **Consultant** will provide visual aids and present a technical discussion of the alternatives.

The **Sponsor** will arrange for the location of public information meeting(s). The **Consultant** will assist the **Sponsor** with appropriate notification.

#### B. Public Hearing(s)

Intentionally Left Blank.

### 3.07 **Preparation of Final Design Approval Document (DAD)**

The **Sponsor** will obtain all necessary approvals and concurrences and will publish all applicable legal notices.

The **Consultant** will prepare the Design Recommendation, and will modify the DAD to include the Design Recommendation, re-title the DAD in accordance with the *PDM* Manual, and update existing conditions and costs as necessary. The **Consultant** will incorporate changes resulting from the advisory agency review and all public information meetings and public hearings.

The **Consultant** will submit three copies of the Final DAD to the **Sponsor** for review. The **Sponsor** will review the Final DAD and provide the **Consultant** with review comments. The **Consultant** will revise the Final DAD to incorporate the comments.

The **Sponsor** will submit three copies of the Final DAD to NYSDOT for a Final Environmental Determination. NYSDOT will make the determination or obtain FHWA's determination. If necessary, NYSDOT will transmit the Final DAD to FHWA for final review and concurrence. The **Consultant** will again revise the Final DAD to incorporate changes (assumed minor) resulting from the NYSDOT and/or FHWA review.

The **Sponsor** will grant or obtain, from or through NYSDOT, Design Approval.

## **Section 4 – Environmental**

**Tectonic shall perform all work in accordance with the [NYSDOT Project Development Manual \(PDM\)](#), and the NYSDOT [The Environmental Manual](#) (TEM)<sup>10</sup> and Chapter 7 of the LPM. S**

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<sup>10</sup> <https://www.dot.ny.gov/divisions/engineering/environmental-analysis/manuals-and-guidance/epm>

Specifically for Lead-based paint (LBP) and asbestos, Tectonic shall refer to the following: TEM 4.4.20: Contaminated Materials and Hazardous Substances and 4.4.19: Asbestos Management.

#### **4.01 Asbestos Material Assessment & Report**

Tectonic has reviewed the asbestos survey report prepared by QuES&T on October 26, 2016 for the upper bridge deck, along the roadway of Half Moon Bay Dr., and has determined an additional survey for the remaining areas of the bridge is required. All asbestos work, including reporting and obtaining variances, shall be performed in accordance with the DOT Specifications 4.4.19: ASBESTOS MANAGEMENT. Tectonic shall provide a track-trained, asbestos inspector certified by the New York State Department of Labor (NYSDOL), to perform all bulk sampling and inspection services in accordance with the following regulations:

- USEPA Guidance for Controlling Asbestos-Containing Materials in Bridges (EPA Purple Book);
- USEPA Guidance effective June 4, 2013 titled, “Bulk Sampling for Asbestos”;
- USEPA, 40 Code of Federal Regulations (CFR), Part 763, Asbestos; and
- Part 56 of Title 12 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (CR 56).

To the extent feasible, prior to mobilizing to the site, Tectonic personnel shall review available plans or drawings and any existing documentation to identify any materials specified as asbestos-containing and/or any suspect materials that may be present.

The asbestos survey will be conducted in all areas of the existing structure, starting at the lowest level and entering all accessible spaces. The Client will supply a means, in accordance with Occupational Safety and Health Administration (OSHA), for accessing the sampling locations (including ladders or aerial lifts to access the underside of the bridge span). Destructive sampling, to determine if suspect materials are present will be performed as needed. The patching of sampling locations will not be performed. As such, bulk samples will be collected from inconspicuous locations when possible.

Suspect materials will be categorized into homogeneous materials based on color, texture and if ascertainable date of installation. Representative samples from each homogenous group within the impacted area(s) shall be collected according to recognized protocols. The inspection process will focus on identifying the locations and quantities of the following types of materials: (1) surfacing materials, (2) thermal system insulation (TSI) and (3) miscellaneous materials. The number of samples collected for each type of material and the analytical procedure shall be in accordance with EPA 40 CFR Part 763.86, Asbestos – Sampling, EPA Guidance document, and CR 56.

For all suspected materials sampled, a sketch of each homogeneous sampling area will be drawn. A unique sample ID number will be assigned to each sample collected and recorded on the COC form. Samples will be shipped via standard COC protocol to a NYSDOH ELAP accredited laboratory for analysis.

If the inspector deems an area inaccessible, such as confined spaces, elevated locations, electrically charged locations, or other areas that may be otherwise unsafe to enter, the areas and any potential suspect ACM typically found in these areas will be recorded by the inspector and noted as presumed ACM.

Analysis will be performed on each of the groups and when a positive result is found, analysis for that group will stop. Bulk samples will be analyzed for asbestos fibers at a NYSDOH ELAP accredited laboratory by polarized light microscopy (PLM) according to the "Interim Method for the Determination of Asbestos in Bulk Insulation Samples" issued by the USEPA/EMSL, Research Triangle Park, North Carolina.

In the event Non-Friable Organically Bound (NOB) materials are sampled, (i.e., mastics, caulks, flashing, etc.) the organic material will be reduced by gravimetric reduction and read via PLM. Should the PLM analysis show <1 % asbestos by weight, confirmation analysis via Transmission Electron Microscopy (TEM) will be performed.

If the laboratory determines that vermiculite is present in any of the surfacing material samples (i.e. sprayed-on fireproofing, plaster, etc.), the samples will be subjected to the NYSDOH approved analysis method for Sprayed on Fireproofing / Surfacing Material containing Vermiculite (SOF-V/SM-V).

Tectonic has assumed the sampling shall occur outside of normal business hours (weekends and/or nights) by one (1) inspector and Staff Geologist, as needed, in (1) day. Additionally, Tectonic will invoice the Client for the actual number of samples collected and analyzed by the laboratory.

#### *Asbestos Survey Report*

Based on the results of our asbestos survey, our certified personnel will prepare site specific documents that detail the methods and procedures to be followed to complete the asbestos abatement. This will include plans of ACM locations and will also include the preparation of Work Practice Applications for submittal to the Client.

#### **4.02 Lead Based Paint (LBP) – Assessment & Report**

Tectonic has reviewed the Limited XRF Lead Testing survey report prepared by QuES&T on September 22, 2016 for the upper bridge deck, along the roadway of Half Moon Bay Dr., and has determined an additional survey for the remaining areas of the bridge is required. Tectonic will provide a track-trained, United States Environmental Protection Agency (USEPA) certified risk assessor to conduct a lead-based paint (LBP) survey and a surface-by-surface inspection utilizing a X-ray fluorescence (XRF) spectrum analyzer. The LBP survey will be performed in accordance with the USEPA regulation 40 CFR Part 745 and all state and local regulations.

Prior to analyzing bridge components with the XRF equipment, a three-point calibration will be performed in accordance with the National Institute of Standards and Technology (NIST) standard 2573. The following painted surfaces will be tested for the presence of lead (if present):

- Accessible bridge components (superstructure and substructure).
- Utilities and supports to be impacted during construction.
- Any other painted surfaces within the project limits as directed by the Client.

Locations of each XRF reading will be identified with cardinal direction. All sample locations will be sketched on a sampling map and be identified with a unique sample ID number. Photographs of sampling locations will be taken.

Tectonic's inspection team will assess the current conditions of all tested surfaces to determine paint condition in accordance with EPA guidelines. All inspection work will be based on either Client direction, or regulatory protocol. Based on the data results, Tectonic will determine which bridge components tested are to be considered actionable for lead based paint based on the criteria below or other criteria specified by the Client, if communicated prior to the inspection services.

<b>LEAD-BASED PAINT CRITERIA</b>	
<b>Lead Content (mg/cm<sup>2</sup>)</b>	<b>Determination</b>
< 1.0 mg/cm <sup>2</sup>	Negative
≥ 1.0 mg/cm <sup>2</sup>	Positive

Additionally, each XRF reading location will be marked on a Site Sketch and will be identified using the unique sample ID number. A photograph of each sample location will be taken.

As stipulated by HUD guidelines, painted surfaces having an inconclusive XRF reading can be assumed to be positive readings. However, the Client can elect to have paint chip samples collected from inconclusive reading locations in lieu of identifying them as positive. If the Client elects to have paint chip samples submitted for laboratory analysis, a paint-chip sample of approximately four (4) square inches shall be collected. Paint-chip samples, when collected, will contain all layers of paint. For all paint chips sampled, a unique sample ID number will be assigned to each sample collected and recorded on the chain-of-custody (COC) form. Samples will be shipped via standard COC protocol to a New York State Department of Health (NYSDOH) Environmental Laboratory Approval Program (ELAP) accredited laboratory for analysis. Collection and laboratory analysis of paint chip samples are included in this proposal as an optional service.

Tectonic has assumed the sampling shall occur outside of normal business hours (weekends and/or nights) by one (1) inspector in one (1) day.

Additionally, Tectonic shall prepare site specific operation and maintenance plans and/or abatement design documents that detail methods and procedures to be followed for the maintenance and/or abatement of lead.

#### **4.03 Limitations of Service**

The limitations of service shall be as outlined in our contractual agreement upon procurement of the project and the following:

- 4.03.1 Our scope of services is limited to those described above. All permit application fees, Municipal fees, escrow payments, etc. shall be the responsibility of the Client. Making revisions to the documents as requested by the Municipality, regulatory entities, the various stakeholders, or the Client are not included. If documentation not within the scope described above is required during this process, additional fees will be required. The scope of work and estimated fee related to additional work (including TBD fees in the table below) will be discussed and agreed upon with the Client before proceeding.
- 4.03.2 Tectonic assumes all work will be performed during normal business hours (Monday through Friday 7:00 AM – 5:00 PM). A premium of 1.5 times the normal billing rate will be charged for time in excess of 8 hours per day, after hours or on holidays or weekends. Tectonic assumes all work can be performed in OSHA level D PPE. It is not anticipated that respiratory protection will be necessary during routine sampling activities except in the event that damaged asbestos is present. Tectonic ACM Inspectors will be equipped with half-mask respirators equipped with HEPA P-100 filters to be worn whenever potential risk to exposure to airborne asbestos fibers exists.
- 4.03.3 The Client is responsible for supplying a man lift and/or ladder and personnel to stabilize the ladder such that Tectonic personnel can access material sampling points. The Client is

responsible for moving all obstructions associated with access to material sampling locations. Client responsible for providing lockout/tagout in accordance with OSHA requirements for the sampling of electrically charged suspect materials.

- 4.03.4 The Client is responsible for obtaining and providing Tectonic with all necessary clearances, flagging, access and protections. Tectonic shall coordinate the scheduling.
- 4.03.5 Please note, per NYSDOL CR 56, the completed asbestos survey for controlled or pre-demolition asbestos projects should be submitted to the appropriate Asbestos Control Bureau district office by the bridge owner.
- 4.03.6 Regulatory liaison services are not included in our scope of services. Except as specified, revisions to the documents prepared under the scope of work above as requested by the various regulatory agencies or the Client are not included. If documentation not included in Section 4 above is required during the review by these entities, this scope will also constitute additional work. The actual scope of work and associated estimated fee related to the additional work will be discussed and agreed upon with the Client before proceeding.
- 4.03.7 Changes to the project design or scope during the prosecution of the work contained in this proposal after Tectonic receives initial direction from the Client will constitute additional work. A revised scope of work and estimated fee related to additional effort will be discussed and agreed upon with the Client before proceeding.
- 4.03.8 Tectonic will assume no liability for project delays, extra costs, or any and all claims associated with the sample data if such data is obtained in general accordance with applicable regulations or Client direction.
- 4.03.9 Deliverables will be in electronic format (PDF) unless otherwise arranged.
- 4.03.10 Tectonic has provided unit rates/fees for all ACM and Lead work that will be required, based on information provided by the client. The amount invoiced will be based on the actual number of days time the unit rates provided, adjusted for overtime if required. For sampling, the actual amount invoice will be the actual number of samples collected and tested as discussed and approved in advance with client. The total of all actual labor and testing quantities assumed are shown in the attached Environmental Fee Schedule.
- 4.03.11 For the purpose of this proposal, Tectonic has assumed asbestos removal air monitoring will be performed by others. Should removal work require containment within a negative pressure environment such as a tent, air monitoring may be required. Asbestos monitoring services may be provided at the request of the Client for an additional fee.
- 4.03.12 For the purpose of this proposal, Tectonic has assumed lead abatement air monitoring will be performed by others. Lead monitoring services may be provided at the request of the Client for an additional fee.

#### **Section 4.02 – Fees**

Tectonic will provide the above-described scope of work for a pre-abatement work fee of **\$22,110.00**. A breakdown of the charges is included below:

Item No.	Description	Fee	Estimated Quantity	Extended
4.01	Asbestos Survey:			
	NYSDOL Asbestos Inspector (per weekend day/night rate)	\$3,600.00	1	\$3,600.00
	Survey Report & Abatement Design	\$2,500.00	1	\$2,500.00
	Asbestos Samples:			
	PLM Bulk - Non-friable (5-day TAT)	\$25.00	30	\$750.00
	PLM Bulk - Friable (5-day TAT)	\$20.00	30	\$600.00
	TEM (5-day TAT)	\$40.00	20	\$800.00
	Sample Prep. (For Non-Friable Samples Not Analyzed by Laboratory)	\$10.00	30	\$300.00
	MNR Track Training (per person). Assumes max four hours to complete.	\$500.00	2	\$1,000.00
4.02	Lead-based Paint (LBP) Survey:			
	USEPA LBP Inspector (includes use of XRF Spectrum Analyzer & Lead Paint Chip Samples for inconclusive XRF results) (per weekend day/night rate)	\$4,800.00	1	\$4,800.00
	Lead-based Paint Letter Report	\$1,500.00	1	\$1,500.00
	MNR Track Training (per person). Assumes max four hours to complete.	\$500.00	2	\$1,000.00
4.01/ 4.02	ACM & LBP Permits/Variiances ( <i>additional services – if required</i> )	\$2,500.00	1	\$2,500.00
	Geologist / Environmental Scientist (1 personnel–hourly weekend day/night rate)	\$230.00	8	\$1,840.00
	Staff Geologist / Environmental Scientist (hourly office rate)	\$115.00	8	\$920.00
<b>TOTAL ESTIMATED COST FOR ITEMS/QUANTITIES LISTED ABOVE:</b>				\$22,110.00

## Section 5 - Right-of-Way

### 5.01 Abstract Request Map and/or Title Search

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### 5.02 Right-of-Way Survey

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### 5.03 Right-of-Way Mapping

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### 5.04 Right-of-Way Plan

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### 5.05 Right-of-Way Cost Estimates

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### 5.06 Public Hearings/Meetings

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**5.07 Property Appraisals**  
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**5.08 Appraisal Review**  
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**5.09 Negotiations and Acquisition of Property**  
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**5.10 Relocation Assistance**  
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**5.11 Property Management**  
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## **Section 6 - Detailed Design**

### **6.01 Preliminary Bridge Plans**

**A. New and Replacement Bridges**  
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**B. Bridge Rehabilitations**

For each bridge to be rehabilitated, the **Consultant** will prepare and submit to the **Sponsor** for review a Preliminary Bridge Rehabilitation Plan, which will be sufficiently developed to:

- Show basic concepts and major details (including all existing and proposed utilities).
- Acquaint affected parties with the project and project components.
- Serve as an instrument for initial approval.
- Provide a basis for the development of final plans.

The plan should indicate maintenance and protection of traffic provisions and be accompanied by a cost estimate.

**C. Selected Structural Treatment**

The **Consultant** will modify the Structure Justification Report, Preliminary Bridge Plan and/or Preliminary Bridge Rehabilitation Plan to incorporate **Sponsor** review comments.

The **Sponsor** will approve the selected structural treatment and will obtain NYSDOT concurrence (either by a written submission or at a meeting).

### **6.02 Advance Detail Plans (ADP)**

The **Consultant** will develop the approved design alternative to the ADP stage. At this stage, all plans, specifications, estimates and other associated materials will be **90%** complete.

As part of this task, the **Consultant** will prepare templated cross-sections at 50 foot intervals.

Advance Detail Plans will be in accordance with [Chapter 21 of the NYSDOT Highway Design Manual](#).<sup>11</sup>

The **Consultant** will prepare and submit three copies of the ADP's to the **Sponsor** for review. The **Consultant** will modify the design to reflect the review of the ADP package.

### 6.03 Contract Documents

The **Consultant** will prepare a complete package of bid-ready contract documents. The package will include:

- Instructions to bidders.
- Bid documents.
- Contract language, including applicable federal provisions and prevailing wage rates.
- Special notes.
- Specifications.
- Plans.
- A list of supplemental information available to bidders (i.e., subsurface exploration logs, record as-built plans, etc.).
- Other pertinent information.

The **Consultant** will submit the contract documents to the **Sponsor** for approval. Upon approval, the **Sponsor** will submit 3 copies of the contract bid documents to NYSDOT as described in the *LPM*.

### 6.04 Cost Estimate

The **Consultant** will develop, provide, and maintain the construction cost estimate for the project. The **Consultant** will update the estimate periodically and as necessary to incorporate significant design changes and will develop and provide the final Engineer's Estimate, including all quantity computations.

### 6.05 Utilities

The **Consultant** will coordinate with affected utility companies to ensure the timely relocation of utility poles and appurtenances. The **Consultant** will assist the **Sponsor** in preparing any necessary agreements with utility companies. Any agreements containing reimbursable relocations must be approved and signed by the Design Support Section of the NYSDOT Design Quality Assurance Bureau (see *LPM* Appendix 10-8).

### 6.06 Railroads

The **Consultant** will coordinate with affected railroads and will assist the **Sponsor** in preparing all necessary Railroad Agreements.

### 6.07 Bridge Inventory and Load Rating Forms

The **Consultant** will complete and provide the **Sponsor** and NYSDOT with:

- Inventory Update forms, per the current NYSDOT Bridge Inventory Manual for Bridge Inventory

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<sup>11</sup> [https://www.dot.ny.gov/divisions/engineering/design/dgab/hdm/hdm-repository/Chapt\\_21.pdf](https://www.dot.ny.gov/divisions/engineering/design/dgab/hdm/hdm-repository/Chapt_21.pdf)

- and Inspection System, reflecting all proposed physical changes resulting from construction.
- Level 2 Load Rating Data Input forms, per NYSDOT User Manual for Structural Rating Program for Bridges and current NYSDOT guidance on the "Procedure for Inventorying, Inspecting, and Level 2 Load Rating, New, Replacement and Reconstructed or Rehabilitated Bridges".

## **6.08 Information Transmittal**

Upon completion of the contract documents, the **Consultant** will transmit to the **Sponsor** all project information, including electronic files. The electronic information will be in the format requested by the **Sponsor**.

## **Section 7 - Advertisement, Bid Opening and Award**

### **7.01 Advertisement**

The **Consultant** will prepare the advertisement for bids to be placed in the NYS Contract Reporter and any other newspaper or publication identified by the **Sponsor**. The **Consultant** will submit the ad(s) to the **Sponsor** for review and will revise the ad(s) to reflect comments generated by that review. Upon approval by the **Sponsor**, the **Consultant** will place the advertisements.

Advertisements must not be placed until authorization is granted to the **Sponsor** by the NYSDOT.

### **7.02 Bid Opening (Letting) and Award**

The **Consultant** will analyze the bid results. The analysis will include:

- Verifying the low bidder mathematical calculations.
- Ensuring receipt of all required bid documents (non-collusive bid certification, debarment history certification, etc.).
- Breaking the low bid into fiscal shares, if necessary.
- Determining whether the low bid is unbalanced.
- For pay items bid more than 25% over the Engineer's Estimate:
  - Check accuracy of quantity calculations.
  - Review the appropriateness of price bid for work in the item.
  - Review the low bidder qualifications to perform the work.
  - Prepare a summary letter.

The **Consultant** will assist the **Sponsor** in preparing and compiling the package of information to be transmitted to the NYSDOT.

The **Sponsor** will award the contract and will transmit the award package to the NYSDOT as described in the Procedures for Locally Administered Federal Aid Projects (LPM).

## ***Section 8 - Construction Support***

The **Consultant** will provide design response to unanticipated or changed field conditions, analyze and participate in proposed design changes, and interpret design plans.

Work under this section will always be in response to a specific assignment from the **Sponsor** under one of the tasks below:

- In response to unanticipated and/or varying field conditions or changes in construction procedures,

the **Consultant** will conduct on-site field reconnaissance and, where required, prepare Field Change Sheets modifying pertinent contract plan sheets.

- The **Consultant** will analyze and make recommendations on the implementation of changes proposed by the **Sponsor** or the construction contractor. This includes the Traffic Control Plan.
- The **Consultant** will interpret and clarify design concepts, plans and specifications.
- The **Consultant** will review and approve shop drawings for construction.

Not reimbursable under this Section are:

- Corrections of design errors and omissions
- Straightforward interpretations of plans and designer intentions

## **Section 9 - Construction Inspection**

### **9.01 Equipment**

The **Contractor** will furnish office space and basic office furnishings for the **Consultant**, as part of the contract.

The **Consultant** will furnish all other office, field and field laboratory supplies and equipment required to properly perform the inspection services listed below.

### **9.02 Inspection**

The **Consultant** must provide, to the satisfaction of the **Sponsor**, contract administration and construction inspection services from such time as directed to proceed until the completion of the final agreement and issuance of final payment for the contract. The **Consultant** must assume responsibility, as appropriate, for the administration of the contract including maintaining complete project records, processing payments, performing detailed inspection work and on-site field tests of all materials and items of work incorporated into the contract consistent with federal policies and the specifications and plans applicable to the project.

### **9.03 Municipal Project Manager**

This Project Manager will be the **Municipality's** official representative on the contract and the **Consultant** must report to and be directly responsible to said Project Manager.

### **9.04 Ethics**

Prior to the start of work, the **Consultant** will submit to the **Sponsor** a statement regarding conflicts of interest.

### **9.05 Health and Safety Requirements**

The **Consultant** must provide all necessary health and safety related training, supervision, equipment and programs for their inspection staff assigned to the project.

### **9.06 Staff Qualifications and Training**

The **Consultant** must provide sufficient trained personnel to adequately and competently perform the requirements of this agreement. The **Consultant** will recommend inspectors to the Sponsor for approval prior to their assignment to the project. Resumes, proof of required certification and the proposed initial salary shall be furnished. The Sponsor may want to interview before approval, and reserves the right to disapprove any application. The employment of all consultant personnel is conditional, subject to satisfactory performance, as determined by the Sponsor.

For all construction inspection agreements, it is mandatory that all technician personnel be identified by the National Institute for Certification in Engineering Technologies (NICET)

certification levels in the staffing tables. In addition, all Transportation Engineering Technicians-Construction assigned to the project at and above level III, Engineering and Senior Engineering Technicians, must be certified by NICET. Transportation Engineering Technicians-Construction below level III assigned to the project must have successfully completed the General Work Element requirements and at least those Special Work Elements which apply to their specific project assignments at the level of their rating.

In lieu of the NICET certification requirements, the Sponsor may accept evidence that the person proposed for employment (1) has satisfactorily performed similar duties as a former NYS Department of Transportation (NYSDOT) employee or (2) has a combination of education and appropriate experience commensurate with the scope of the position in question.

Technicians employed by the **consultant** that perform field inspection of Portland cement concrete shall possess a current certification from the American Concrete Institute (ACI) as a Concrete field-testing Technician-Grade 1, or have completed all of the following NICET work elements, which are equivalent to the ACI certification:

NICET LEVEL	NICET CODE	NICET WORK ELEMENT
I	82019	Sample Fresh Concrete
I	82020	Slump Test
II	84068	Air Content, Pressure
II	84069	Air Content, Gravimetric
II	84070	Air Content, Volumetric
II	84076	Field Prepared Test Specimens

Inspectors designated as the responsible person in charge of work zone traffic control must have sufficient classroom training, or a combination of classroom training and experience, to develop needed knowledge and skills. Acceptable training should consist of a formal course presented by a recognized training program which includes at least two full days of classroom training. A minimum of two days classroom training is normally required, although one day of classroom training plus responsible experience may be considered. Recognized training providers include American Traffic Safety Services Association (ATSSA), National Safety Council (NSC), Federal Highway Administration's National Highway Institute (FHWA-NHI), and accredited colleges and universities with advanced degree programs in Civil/Transportation/Traffic Engineering. Former DOT employees may be considered on the basis of at least one day of formal classroom training combined with responsible M&PT experience.

Technicians employed by the **consultant** who perform field inspection of geotechnical construction (earthwork), including, but not limited to embankment construction, subbase placement, structure and culvert backfill placement, and testing of earthwork items for in-place density and/or gradation, shall possess a current certification and/or proof of training from the following organization:

North East Transportation Technician Certification Program (NETTCP) Soils and Aggregate Inspector Certification. An alternative to the certification/training listed above would be proof of previous training (within the past 5 years) of the NYSDOT Earthwork Inspectors School, given by the Department's Geotechnical Engineering Bureau.

A Licensed Professional Engineer may be qualified to perform any testing based on demonstrated experience.

## 9.07 Scope of Services/Performance Requirements

A. Quality

The Consultant will enforce the specifications and identify in a timely manner to the **Sponsor** local conditions, methods of construction, errors on the plans or defects in the work or materials which would conflict with the quality of work, and conflict with the successful completion of the project.

B. Record Keeping & Payments to the Contractor

- 1) All records must be kept in accordance with the directions of the **Sponsor and must be consistent with the requirements of the [NYSDOT Manual of Uniform Recordkeeping \(MURK\)](#)**.<sup>12</sup> The **Consultant** must take all measurements and collect all other pertinent information necessary to prepare daily inspection reports, monthly and final estimates, survey notes, record plans showing all changes from contract plans, photographs of various phases of construction, and other pertinent data, records and reports for proper completion of records of the contract.
- 2) Any record plans, engineering data, survey notes or other data provided by the Sponsor should be returned to the Sponsor at the completion of the contract. Original tracings of record plans, maps, engineering data, the final estimate and any other engineering data produced by the Consultant will bear the endorsement of the Consultant. Any documents that require an appropriate review and approval of a Professional Engineer (P.E.) licensed and registered to practice in New York State must be signed by the P.E.
- 3) Unless otherwise modified by this agreement, the **Sponsor** will check, and when **acceptable**, approve all structural **shop drawings**.
- 4) The **Consultant** must submit the final estimate of the contract to the **Sponsor** within four (4) weeks after the date of acceptance of the contract. All **project records** must be cataloged, indexed, **packaged**, and delivered to the **Sponsor** within five (5) weeks after the date of the acceptance of the contract.

Health & Safety/Work Zone Traffic Control

- 1) The **Consultant** must ensure that all inspection staff assigned to the project are knowledgeable concerning the health and safety requirements of the contract per **Sponsor** policy, procedures and specifications and adhere to all standards. Individual inspectors must be instructed relative to the safety concerns for construction operations they are assigned to inspect to protect their personal safety and to ensure they are prepared to recognize and address any contractor oversight or disregard of project safety requirements.
- 2) The **Consultant** is responsible for monitoring the Contractor's and Subcontractor's efforts to maintain traffic and protect the public from damage to person and property within the limits of, and for the duration of the contract.

Monitoring Equal Opportunity/Labor Requirements

The **Consultant** must assign to one individual the responsibility of monitoring the Contractor's adherence to Equal Opportunity and Labor requirements contained in the contract. When monitoring the Contractor's Equal Opportunity and Labor compliance, the

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<sup>12</sup> <https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information>

Consultant, will utilize the guidance contained in the contract, standard specifications, and the **Sponsor's** policies. The Consultant is also to input required disadvantaged business enterprise (DBE) information into the NYSDOT maintained [Equitable Business Opportunities \(EBO\) database](#)<sup>13</sup>.

## **Section 10 - Estimating and Technical Assumptions**

### **10.01 Estimating Assumptions**

The following assumptions have been made for estimating purposes:

- Section 1 Estimate six meetings (virtual) during the life of this agreement.  
Estimate 12 cost and progress reporting periods will occur during the life of this agreement.
- Section 2 Estimate topographic survey with approximate boundary information. Survey limits to be approximately 100ft from each end of bridge. One weekend daytime on the railroad tracks to scan the underside of the bridge is assumed. No de-energization of the 3<sup>rd</sup> track is assumed.
- The cost of any flagman, under bridge or Hi-rail inspection vehicle, and MPT set up, when required for survey, inspection, and testing services, are to be borne by the Village.
- Estimate two accidents will require analysis.
- Section 3 Estimate four concepts will be evaluated.
- Estimate three design alternative(s) will be analyzed in addition to the null alternative.
- Estimate three cost estimate(s) plus two updates will be required.
- Section 4 Estimate two permits will be required.
- Section 5 No Rights of Way activities are anticipated. Any work related to this item is extra work.
- Section 6 Detailed Design or Final Design
- Final Design will include but not be limited to:
- Development of highway and bridge plans.
  - Structural rehabilitation design.
  - Roadway design.
  - Development and design for public utilities.
  - Maintenance and protection of traffic during construction.
  - Preparation and submission of final Plans, Specifications, and Estimate (PS&E) for the project.

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<sup>13</sup> <https://www.dot.ny.gov/dotapp/ebo>

Estimate three cost estimates plus three updates will be required.

Estimate one bridge will be rehabilitated.

Estimate three utility companies and two railroad agencies will be affected.

Section 7

Estimate five copies of the final contract bid documents will be needed for prospective bidders.

Estimate advertisements will be placed in publications in addition to the NYS Contract Reporter.

Analysis of bids.

Section 8

Construction Support will include but not be limited to:

- Providing technical support during construction on questions relating to the design.
- Providing assistance in construction bid proceedings.
- Review of shop drawings (if necessary).

Estimate twenty requests that require effort will be made during the construction phase of the project.

Section 9

Construction Inspection will include but not be limited to:

- Providing on-site construction inspection and oversight to ensure the quality of construction and conformity with the final plans and specifications.
- Preparation of as-built plans.

Estimate construction will begin in April 2025, and will be completed by April 2026.

**10.02 Technical Assumptions**

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**Section 11 – Fee Summary**

**11.1 Fee Summary Table**

A summary of the estimated fee is provided below:

<b>DESIGN SERVICES</b>		
<b>Description</b>	<b>Fee Structure</b>	<b>Est. Fee</b>
Section 1 - General	LS	\$14,440.00
Section 2 - Data Collection & Analysis	LS	\$46,740.00
Section 3 - Preliminary Design	LS	\$43,700.00
Section 4 – Environmental	LS	\$22,110.00
Section 5 - Right of Way	LS	

<b>DESIGN SERVICES</b>		
<b>Description</b>	<b>Fee Structure</b>	<b>Est. Fee</b>
Section 6 - Detailed Design	LS	\$51,490.00
Section 7 - Advertising, Bid Opening, and Award	LS	\$7,200.00
Section 8 - Construction Support	LS	\$13,460.00
<b>SUBTOTAL DESIGN FEE</b>		<b>\$199,140.00</b>
Section 9 - Construction Inspection (40 weeks assumed)	LS	\$276,400.00
<b>TOTAL ESTIMATED FEE</b>		<b>\$475,540.00</b>

- 11.2 Five copies of the final contact bid documents and electronic copies (PDF) of all project deliverables are included in the lump sum fees. Out-of-pocket reimbursable expenses for travel, photocopies, additional plan prints, and overnight mailings are not included in the lump sum fees and will be billed at cost. The current schedule of rates for reimbursable expenses is as follows:

<b>Reimbursable Expenses</b>	<b>Rate</b>
Photocopies (Black & White)	\$0.10 per 8 ½" x 11" sheet
Photocopies (Color)	\$0.60 per 8 ½" x 11" sheet
Travel	\$0.655 per mile (or current IRS rate)
Tolls	At cost
Plan Reproduction	\$2.50 per plan sheet
Overnight Mail (e.g. FedEx)	At cost

- 11.3 Amounts invoiced for each lump sum item shall be based on the approximate percent complete for each item. Amounts invoiced for time and materials items shall be based on actual labor and expenses expended to date.
- 11.4 Fees shall be invoiced monthly, with payment due upon receipt.
- 11.5 The cost of any railroad flagman, railroad groundman, under bridge or hi-rail inspection vehicle, police services, and maintenance of protection of traffic set up is not included in the lump sum fees and will be borne by the Village or billed to the Village as direct cost.

**Attachment C**  
**Staffing Rates, Hours, Reimbursable(s), and Fee**

<b>DESIGN SERVICES</b>		
<b>Description</b>	<b>Fee Structure</b>	<b>Est. Fee</b>
Section 1 - General	LS	\$14,440.00
Section 2 - Data Collection & Analysis	LS	\$46,740.00
Section 3 - Preliminary Design	LS	\$43,700.00
Section 4 – Environmental	LS	\$22,110.00
Section 5 - Right of Way	LS	0
Section 6 - Detailed Design	LS	\$51,490.00
Section 7 - Advertising, Bid Opening, and Award	LS	\$7,200.00
Section 8 - Construction Support	LS	\$13,460.00
<b>SUBTOTAL DESIGN FEE</b>		<b>\$199,140.00</b>

<b>Reimbursable Expenses</b>	<b>Rate</b>
Photocopies (Black & White)	\$0.10 per 8 ½" x 11" sheet
Photocopies (Color)	\$0.60 per 8 ½" x 11" sheet
Travel	\$0.655 per mile (or current IRS rate)
Tolls	At cost
Plan Reproduction	\$2.50 per plan sheet
Overnight Mail (e.g. FedEx)	At cost

<b>Direct Costs</b>	<b>Rate</b>
Railroad Entry Permit Fee	Railroad Force Account / At cost
Railroad Track Outage related cost (including but not limited to: Flagman, groundman, railroad inspector, railroad office support personnel, ext.)	Railroad Force Account / At cost
Railroad Protective Liability Insurance	At cost
Under Bridge or Hi-Rail Bridge Inspection Vehicle Cost	At cost
Maintenance and Protection of Traffic (for field work during design phase)	At cost
Permit / Variance fees	At cost

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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