

**PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
CONTRACT No. C004305**

**REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION (on behalf of the)
NEW YORK METROPOLITAN TRANSPORTATION COUNCIL
PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
CONTRACT No. C004305
RFP Release Date: June 21, 2022**

A. RFP Schedule

The New York Metropolitan Transportation Council (NYMTC) and the New York State Department of Transportation (NYSDOT) will attempt to adhere to the following schedule to progress this solicitation:

NYS Contract Reporter Announcement:	June 17, 2022
RFP Release Date:	June 21, 2022
Pre-Proposal Webinar	June 27, 2022 at 2 PM EDT
Question Submittal Due:	July 11, 2022
Answers Due/RFP Mod #1 Due:	July 18, 2022
Proposals Due:	August 12, 2022 at 2 PM EDT
Proposal Evaluation:	August 15 - September 22, 2022
Technical Interviews	September 12 – September 16, 2022
Recommendation & Designation:	October 2022
Final Contract:	Late October 2022
Contract Award:	December 2022
Estimated Notice to Proceed:	January 2023

- B. To assist potential Proposers in preparing Proposals in response to this solicitation, a pre-Proposal Webinar will be held on June 27, 2022 at 2 PM EDT. A general review of the solicitation will occur and specific questions regarding the solicitation may be answered. However, to assist us in preparing for the meeting, please try to submit any questions you may have, in writing, by close of business on June 23, 2022.
- C. Complete Proposals are to be submitted to the Designated Contacts stipulated in Request For Proposal (RFP) section 1.5 ‘Designated Contacts’.

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Response Form

Please complete the below information and email to the Designated Contacts listed in the RFP's section 1.5 'Designated Contacts' by the earliest possible date.

_____ WE DO INTEND TO SUBMIT A PROPOSAL

_____ WE DO NOT INTEND TO SUBMIT A PROPOSAL FOR THE

FOLLOWING REASONS:

Name and Address of Organization (Include Zip Code):

Signature: _____ Date: _____

Types of Printed Name and Title: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

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Response Form

CONSULTANT TECHNICAL AND MANAGEMENT PROPOSAL CHECKLIST

Part I – Technical and Management Proposal (Table 1)

☐	Submit 1 (one) complete electronic copy of the Part I – Technical and Management Proposal, in both Adobe PDF and Microsoft Word format, using the procedure provided in RFP Section 5.5.
☐	Title Page and Signed Cover Letter on official business letterhead
☐	Completed Technical and Management Proposal checklist (Table 1)
☐	Table of Contents identifying each major section and page numbers
☐	Narrative Description
☐	Complete and Submit Attachment 12: Firm Experience
☐	Complete and Submit Attachment 14: Key Personnel Experience
☐	Organization and Staffing
☐	Approach, Scope of Service and Schedule
☐	Relevant Company and Product Literature

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**Response Form
CONSULTANT COST PROPOSAL SUBMISSION CHECKLIST**

Part II – Cost Proposal (Table 2)

☐	Cover Letter and Title Page
☐	Cost Proposal Checklist
☐	Table of Contents
☐	Submit 1 (one) complete electronic copy of the Part II – Cost Proposal, in Adobe PDF format, using the procedure provided in RFP Section 5.5 ‘Proposal Submission’.
☐	Completed Cost Proposal checklist (Table 2)
☐	Required Cost Proposal – Attachment 15: Cost Proposal, in Microsoft Excel

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**Response Form
CONSULTANT ADMINISTRATIVE PROPOSAL CHECKLIST**

Part III –Administrative Proposal (Table 3)

☐	Submit 1 (one) complete electronic copy of the Part III –Administrative Proposal, for each Lot Proposal , in Adobe PDF format, using the procedure provided in RFP Section 5.5.
☐	Completed Administrative Proposal checklist (Table 3)
☐	Complete and submit online certification or electronic copy of Vendor Responsibility Questionnaire
☐	Complete and submit Attachment 4: Form OAR
☐	Complete and submit Attachment 5: Procurement Lobbying Law Compliance Forms
☐	Complete and submit Attachment 6: Prime Consultant Information and Certifications
☐	Complete and submit Attachment 7: Non-Collusive Bidding Certification
☐	Complete and submit Attachment 8: Vendor Assurance of No Conflict of Interest or Detrimental Effect
	Complete and submit Attachment 9: DBE Participation Information
	Complete and submit (if applicable) Attachment 10: DBE Subconsultant Participation Solicitation Log AND Goal Attainment Explanation Letter

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1. INTRODUCTION

1.1. RFP Purpose

NYMTC, through its administrative host, NYSDOT, is releasing this Non-Architectural/Engineering RFP to seek services from a responsive and responsible Consultant (or team of consultants) to develop a feasibility study for an interstate Shared Use Path in Palisades Interstate Park between the George Washington Bridge and the Governor Mario M. Cuomo Bridge.

This federally funded study will be managed by the NYMTC Project Manager and guided by NYMTC's Mid-Hudson South Transportation Coordinating Committee (TCC). The TCC will be responsible to the federal funding agencies for meeting all federal requirements for the implementation and completion of the study. Prior to the commencement of consultant work, members of the TCC and the NYMTC Project Manager will form a Technical Advisory Committee (TAC) comprised of representatives of municipalities and relevant Rockland County, New York State and New Jersey agencies and authorities.

It is expressly understood that this RFP does not commit NYSDOT to award a contract, pay any costs incurred in the preparation of Proposals to this request, or to procure or contract services or supplies. Further, NYSDOT shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to NYSDOT is approved and executed by the vendor and all necessary State officials. All management decisions regarding this RFP shall be made by NYSDOT management in consultation with NYMTC management.

1.2. Background

NYMTC is the officially designated Metropolitan Planning Organization for New York City, Long Island, and the lower Hudson Valley portion of New York State. Comprised of regional governments, NYMTC is a council that provides a collaborative planning forum to address transportation-related issues, develop regional plans and make decisions on the use of federal transportation funds within its planning area, which encompasses an area of 2,440 square miles and a population of 12.4 million, approximately 64 percent of New York State's population, based on the 2010 Census. The region has one of the most extensive transportation networks in the world with 477 route miles of commuter rail, 225 route miles of rail rapid transit, 22,870 centerline miles of roads, streets, and highways, as well as several commercial airports and maritime facilities for the movement of passengers and goods.

NYMTC members are elected officials and heads of transportation and environmental agencies. The council is comprised of nine voting members and seven advisory members. The voting member agencies include NYSDOT, the New York City Department of Transportation, the New York City Department of City Planning, the Metropolitan Transportation Authority, and executives from Nassau County, Suffolk County, Putnam County, Rockland County, and Westchester County. NYMTC's advisory member agencies include the Federal Highway Administration, the Federal Transit Administration, the United States Environmental Protection Agency, the New York State Department of Environmental Conservation, the Port Authority of New York and New Jersey (PANYNJ), the North Jersey Transportation Planning Authority

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(NJTPA), and New Jersey Transit. For more information about NYMTC, please visit:
www.nymtc.org.

1.3. Definitions

Consultant – An individual, business, vendor or other legal entity awarded a contract with a State agency to furnish commodities or services for an agreed-upon price.

Proposal – A bid, quotation, offer or response to a governmental entity’s solicitation relating to a procurement.

Proposer – The individual, business, firm, vendor or other legal entity that submits a Proposal in response to a RFP.

1.4. Minimum RFP Responsiveness

Any Proposer that does not provide all the material identified in RFP Sections 5.2, 5.3, 5.4 by the Proposal submission deadline will be determined to be non-responsive. Any Proposal deemed non-responsive by NYMTC/NYS DOT shall be removed from further consideration (prior to the technical evaluation of Proposals).

1.5. Designated Contacts

Potential Proposers are advised that under New York State Finance Law section 139-j, communication on procurements can be made only to the Designated Contact persons. The designated contacts for this solicitation are:

NYMTC Contact:

Seitu.Allen@dot.ny.gov

New York Metropolitan Transportation Council
(212) 318-1885

NYS DOT Contact:

Patricia.Kappeller@dot.ny.gov

New York State Department of Transportation
(518) 457-2600

The above-named persons, as the Designated Contacts, shall be NYMTC’s and NYSDOT’s only points of contact and sources of information for this solicitation.

1.6. RFP Modifications

NYMTC/NYS DOT will issue at least one modification to this RFP. NYMTC/NYS DOT reserve the right to modify conditions or requirements of this RFP with sufficient notice given to all potentially interested parties. All public information releases regarding this RFP shall be posted to NYMTC’s and NYSDOT’s respective websites:

<https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/>

<https://www.nymtc.org/UTILITY-MENU/Doing-Business/Current-RFPs>

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Firms who express interest in this RFP shall receive an e-mail alerting them to each new RFP information release. Firms are advised to also regularly check for releases of new RFP information. The final RFP Modification will be posted on NYMTC's and NYSDOT's respective websites not later than ten days prior to the Proposal due date – acknowledgement of receipt of any and all RFP modifications is a mandatory requirement. If any additional modification is required within that ten-day window, the Proposal due date shall be revised such that there will be at least seven days from the final Modification to the Proposal due date and all parties shall be notified.

2. CIVIL RIGHTS REQUIREMENTS

2.1. Disadvantaged Business Enterprise Participation Requirements

While not indicative of a Proposer's individual merit (technical excellence, Proposer's ability, experience, etc.), NYMTC/NYS DOT encourage the participation of certified Disadvantaged Business Enterprises (DBEs) in its solicitations. The level of DBE participation will be relevant to the process of selecting Proposals that will achieve the overall goals of the Department. Please visit the New York Certification Program (NYSUCP) DBE Directory for certified Disadvantaged Business Enterprises via <https://nysucp.newnycontracts.com>.

For this specific procurement, NYSDOT has established a DBE participation goal of 12.85%. Meaningful participation by either a prime consultant **who is certified as a NYSUCP DBE** or inclusion of subconsultant(s) **who is/are certified as a NYSUCP DBE** count towards the DBE participation goal. Meaningful participation is defined as providing commercially useful functions or services. These services should:

1. Result in a product or service distinguishable from the Prime Consultant's product or service or be a part of the services provided by the Prime Consultant;
2. Be for scope of service elements which can be and are completely performed, supervised, and managed by the DBE consultant; and/or
3. Perform significant tasks which can be considered commercially marketable.

Interested Proposers should verify their attainment of the above established DBE participation goal by completing Attachment 9: DBE Participation Information. To count towards the Department's DBE goal, a firm offering DBE participation must be currently certified by the NYSUCP DBE Directory. If the Proposal does not meet the 12.85% DBE participation goal, the firm must provide evidence of a good faith effort by completing Attachment 10: DBE Subconsultant Participation Solicitation Log. **Additionally, if the Proposer does not meet the specified goal, the Proposer must provide a Goal Attainment Explanation Letter** explaining why the Proposer was unable to meet the DBE participation goal (in full or if partially), which serves to substantiate the Proposer's good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should, at a minimum, address the following factors: the Proposer's method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, the availability of certified firms for the work to be performed by either a prime consultant or via subcontract.

The above forms and letter must be included in Part III: Administrative Proposal. Firms are advised to refer to RFP section 6 Proposal Evaluation Process in the DBE Goal Attainment/GFE

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Acceptance Review section for the procedure by which NYMTC/NYS DOT will follow in evaluating a firm's proposed DBE participation.

2.2. Minority and Women-Owned Business Enterprise and Service-Disabled Veteran-Owned Business Enterprise Participation Requirements

Not Applicable

2.3. Diversity Practices

Not Applicable

2.4. Title VI Assurance

The New York State Department of Transportation (NYSDOT), in accordance with Title VI of the Civil Rights Act of 1954, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation and Title 23, Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written solicitation, request for Proposal, or invitation for bid, that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for award.

2.5. Equal Employment Opportunity

In accordance with New York State Executive Order 162, issued on January 9, 2017, the Consultant shall provide workforce utilization reports in accordance with RFP Attachment 1, Draft Contract.

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3. PROJECT AND CONTRACT OBJECTIVES

3.1. Project Objectives

Palisades Interstate Park is a linear park and recreation area connecting Bergen County, New Jersey and Rockland County, New York along the Hudson River. It is traversed by U.S. 9W and the Palisades Interstate Parkway. U.S. 9W is a busy corridor for bicycles traveling between the George Washington Bridge and points north through Bergen and Rockland Counties. This corridor is the southern part of New York State Bicycle Route 9 which connects New York City to Rouses Point on the Canadian Border.

The recent completion of the Governor Mario M. Cuomo Bridge shared use path and the pending upgrades to the George Washington Bridge shared use paths are projected to increase bicycle traffic along the U.S. 9W corridor between these two bridges. The Palisades Interstate Park Shared Use Path Feasibility Study will determine the feasibility of a separated shared use path between the two bridges and other enhancements to pedestrian and bicycling (ped/bike) access along the Palisades Interstate Parkway right of way and U.S. 9W corridor through Palisades Interstate Park.

The anticipated study limits are the vicinity of Palisades Interstate Park between the George Washington Bridge in Fort Lee, NJ to the Governor Mario M. Cuomo Bridge in Nyack, NY, primarily along the Palisades Interstate Parkway right-of-way and U.S. 9W corridor through Bergen (NJ) and Rockland (NY) counties, approximately 20 miles in length. This will be broken into two sections: along the Palisades Interstate Parkway between the George Washington Bridge and Exit 4, and along a combination of the Palisades Interstate Parkway right-of-way, U.S. 9W and existing rail trails between Exit 4 on the Palisades Interstate Parkway and the entrance to the Governor Mario M. Cuomo Bridge shared use path in South Nyack, NY.

During this effort, the Consultant shall identify and preserve study data/elements that can be used for Planning and Environmental Linkages purposes.

3.2. Contract Objectives

CONSULTANT SELECTION: The main objective of this solicitation is to select one responsive, responsible and fully qualified consultant, or team of consultants, using NYSDOT's Best Value method based on a fair, equitable and thorough examination of Proposals submitted in response to the RFP. The second objective is to meet the NYSDOT established 12.85% Disadvantaged Business Enterprises (DBE) participation goal for this solicitation. Please see section RFP section 2.1 'Disadvantaged Business Enterprise Participation Requirements' for detail on DBE participation.

DRAFT CONTRACT ACCEPTANCE: The RFP's Draft Contract Terms and Conditions (Attachment 1: Draft Contract) shall be accepted as is, after all interested parties have been given sufficient opportunity to review and ask questions regarding the draft's contract's terms and conditions prior to the submission of Proposals.

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FAIR AND EQUITABLE TREATMENT: All Proposers participating in the competitive selection process will be treated fairly and equitably.

CONTRACT TERM: The base term of each contract awarded under this RFP will be for twenty-four (24) months or two (2) contract years commencing from the contract start date. The contract may be extended for up to one 12-month term extension upon written agreement of NYMTC, NYSDOT, and the Consultant and approval of the New York State Office of the Attorney General, the New York State Office of the State Comptroller and the Federal Highway Administration (FHWA) as applicable. The estimated start is January 2023.

If the contract is extended for the optional year, the Producer Price Index (PPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 2%, whichever is lower, will be used as a basis for adjusting the hourly rates/lump sum deliverable amounts. The rate adjustment will be effective on January 1 and calculated using the previous September Index, using Series ID PCU5413--5413--(Architectural, engineering, and related services: http://data.bls.gov/timeseries/PCU5413--5413--?data_tool=XGtable). If at any time the above Index Series ID is discontinued or becomes unavailable, the State reserves the right to implement a comparable Index.

An example of the rate adjustment calculation is as follows (all numbers and titles used are for illustrative purposes only):

QAT-2 Auditor 1/1/12 - 12/31/12 Billing Rate	\$29.00/Hour
October 2012 PPI Index (PCU5413--5413--)	132.1
October 2011 PPI Index (PCU5413--5413--)	130.0
Index Point Change	2.1
Divided by previous Index	130.0
Percent change, rounded to nearest tenth	1.6%
QAT-2 Auditor 1/1/13 – 12/31/13 Billing Rate (\$29 x 1.016)	\$29.46/Hour

If the actual start of the contract is substantially different than the above estimated date, then the effective date for the rate adjustment will be similarly changed.

The State reserves the right to negotiate a lower rate adjustment than stated above for the one additional one-year extension.

GOOD FAITH: Consultants are expected to work with, communicate with, and negotiate with, NYMTC/NYS DOT in good faith. Consultants shall not knowingly misrepresent any products and services, relevant information, themselves, or their Subconsultants. Consultants are also expected to demonstrate good faith efforts towards the attainment of any identified and applicable civil rights participation goals.

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4. SCOPE OF WORK

The selected Consultant shall undertake and deliver the following required tasks.

4.1. Task 1: Study Outreach Program

The NYMTC Project Manager will identify the relevant requirements and operating procedures and provide a written description to the Consultant for use in developing the study's Outreach Program. The NYMTC Project Manager will provide preliminary parameters for the Outreach Program, including communications channels and methods, outreach and intake techniques, and an initial schedule of outreach activities and locations that have been agreed to by the TAC and members of the TCC.

Consistent with the relevant requirements and operating procedures and preliminary parameters provided by the NYMTC Project Manager, the Consultant shall develop a draft Outreach Program for consideration and adoption by the TAC and members of the TCC. The Consultant shall revise the first and second drafts of the Outreach Program after appropriate review by the TAC and members of the TCC.

Deliverables:

1. First draft of the Outreach Program document;
2. Second draft of the Outreach Program document;
3. Final draft of the Outreach Program document.

4.2. Task 2: Key Study Parameters & Study Area Conditions

The NYMTC Project Manager shall provide the Consultant with agreed-upon key study parameters, including the study's horizon year. These parameters and the horizon year will have been determined beforehand in consultation with the TAC and TCC. The Consultant should expect a study horizon year consistent with NYMTC's Regional Transportation Plan (2050) and no more than two intermediate analysis years.

The Consultant shall collect and compile existing bicycle and pedestrian traffic data along the U.S. 9W corridor and the U.S. 9 and Empire State Trail corridors on the eastern side of the Hudson River between the Mario Cuomo Bridge and the George Washington Bridge. The Consultant shall also compile bicycle and pedestrian traffic data along routes adjacent to Route 9.

The Consultant shall compile current usage data and any projections of future usage, developed by the Port Authority of New York and New Jersey and New York State Thruway Authority, of the George Washington Bridge and Mario Cuomo Bridge multi-use paths to which the study's Shared Use Path will connect. These data shall be included in the study area profiles.

The Consultant shall identify up to five potential rights-of-way, in consultation with the NYMTC Project Manager, whether within the existing right-of-way of the Palisades Interstate Parkway, U.S. 9W, and/or nearby rail trails, including the Joseph B. Clarke Rail Trail and the Old Erie Path (Raymond G. Esposito Trail). These potential rights-of-way will be determined based on feasibility, safety (i.e., accident/collision data involving cyclists and pedestrians along the

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corridor), community input and anticipated demand. The potential rights-of-way will also be determined based on connectivity, including (but not limited to) intermediate access points and major east/west connections such as: County Route 4, County Route 8 and State Route 59 in Rockland County, New York; Palisades Avenue in Englewood, New Jersey; and Clinton Avenue, Madison Avenue and Cloister Doc Road in Tenaflly, New Jersey.

The Consultant shall assemble a visualized profile of local zoning and master plans and safety information to be included in the study area profile.

The NYMTC Project Manager will provide the Consultant with current and future vehicular travel volumes for the study area using data developed using the NYBPM or provided by other agencies such as NJDOT and NJTPA, including trip origins and destinations data, for incorporation into the visualized study area profile. The Consultant may choose to use or incorporate other data sources with approval from the NYMTC Project Manager.

Deliverables:

1. Document identifying up to five (5) potential rights-of-way;
2. Database of existing bicycle and pedestrian traffic volumes along the U.S. 9W corridor and the U.S. 9 and Empire State Trails;
3. Database of current and future bicycle and pedestrian traffic volumes along the George Washington Bridge and Mario Cuomo Bridge multi-use paths;
4. First draft of the visualized study area profile;
5. Second draft of the visualized study area profile;
6. Final draft of the visualized study area profile.

4.3. Task 3: Community Visioning

In consultation with the NYMTC Project Manager, the Consultant shall develop a recommended approach to community visioning for the consideration of the TCC and approval by the NYMTC Project Manager. This shall include developing a virtual workshop itinerary to identify corridor issues and gather input on the right-of-way alternatives that were identified in Task 2.

The Consultant shall present the suite of visualized study area profiles to the TAC and at each of the workshops. The visualized study shall also be made available via the web portal.

Using an online community web portal developed by the Consultant, the Consultant shall plan, organize, advertise and implement up to five virtual public community visioning workshops per the Outreach Program. The consultant shall post each workshop's itinerary in the community web portal at least five (5) business days prior to the relevant workshop.

The Consultant shall organize the input gathered through the workshops and community web portal.

Deliverables:

1. First draft of Technical Memorandum describing the community visioning workshops approach and itinerary;
2. Second draft of Technical Memorandum describing the community visioning workshops' approach and itinerary;

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3. Final draft of Technical Memorandum describing the community visioning workshops' approach and itinerary;
4. First draft of visualized profiles for the workshops;
5. Second draft of visualized profiles for the workshops;
6. Final visualized profiles for the workshops;
7. Implementation and completion of up to five community vision workshops;
8. Document compiling community input and comments received at each community visioning workshop and through the community web portal.

4.4. Task 4: Draft Study Report

In consultation with the NYMTC Project Manager and TAC, the Consultant shall develop recommended alternative development and transportation improvement scenarios for consideration and acceptance by the NYMTC Project Manager which shall incorporate, to the extent possible, input received during the community visioning workshops and give consideration to design cues from nearby trails and shared use paths. The recommended alternatives shall be compliant with current FHWA, NYSDOT, and NJDOT policy and design standards. The Consultant shall organize virtual meetings to present the first and second draft recommend alternative development and transportation improvement scenarios to the TAC.

The Consultant shall prepare a draft study report for review by the members of the TCC and approval by the NYMTC Project Manager. The report will assemble relevant study deliverables and include recommended actions based on the consideration of the alternative scenarios developed. The report shall also include cost estimates and opportunities and constraints analyses for each recommended alternative development and transportation improvement scenario.

Conceptional design options offered shall not preclude potential future extensions beyond the scope of the study area.

Deliverables:

1. First draft of recommended alternative development and transportation improvement scenarios;
2. Second draft of recommended alternative development and transportation improvement scenarios;
3. Final draft of recommended alternative development and transportation improvement scenarios;
4. First draft of draft study report;
5. Second draft of the draft study report.

4.5. Task 5: Planning and Environmental Linkages

The Consultant will identify and preserve study data/elements that can be used for Planning and Environmental Linkages (PEL) purposes. These are elements that could be incorporated into future Design Approval documents such as logical termini, purpose and need, alternatives analysis, documentation of affected environment, environmental constraints and impacts, mitigation measures, and public involvement and agency coordination.

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Deliverables:

1. Study data elements provided in word, PDF, excel format, as appropriate.

4.6. Task 6: Public Review Meetings

The Consultant shall organize and implement up to three public review meetings and gather feedback. The Consultant shall assist the NYMTC Project Manager in developing a study overview for the public meetings. The NYMTC Project Manager shall determine whether the meetings will be held in person, virtually, or hybrid and shall identify a free and publicly accessible site to be used if in-person or hybrid meetings will be held.

1. Organization and implementation of up to three public review meetings;
2. Document compiling all public feedback received during the public review meetings.

4.7. Task 7: Final Study Report

The NYMTC Project Manager shall provide the Consultant with recommended changes to the second draft of the draft study report.

The Consultant shall incorporate the recommended changes into a final study report.

The Consultant shall create a summary brochure and PowerPoint presentation summarizing the final study report and its recommendations for review by the TAC and TCC and approval by the NYMTC Project Manager. The Consultant shall translate the final draft of the summary brochure into Spanish, Korean and up to three additional languages to be determined by the NYMTC Project Manager.

The Consultant shall assist the NYMTC Project Manager in sharing the study results online and assist the NYMTC Project Manager in creating the final PowerPoint presentation to be presented to the TCC.

Deliverables:

1. Final study report;
2. First draft of summary brochure and PowerPoint presentation;
3. Second draft of summary brochure and PowerPoint presentation;
4. Final draft of summary brochure and PowerPoint presentation;
5. Translated summary brochure.

DELIVERABLE FORMAT:

All task-specific deliverables are defined above. All records / reports must be in Microsoft Word, Excel, Adobe PDF or another format acceptable to NYMTC/NYS DOT. Documents must be available to NYMTC/NYS DOT when requested by NYMTC/NYS DOT or automatically shared with NYMTC/NYS DOT in electronic format via e-mail or managed file transfer (for larger documents).

CONSULTANT FILES: Each Consultant shall establish and maintain Contract work files, one for each awarded Lot. The Consultant must make these files available to NYMTC and NYSDOT upon written request from NYMTC or NYSDOT. The files shall contain handwritten notes,

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calculation sheets, records of outside contracts, collected data, and any other pertinent information relative to the implementation of this Contract. This is in addition to accounting books and records, including time sheets, payroll registers, ledgers and other records documenting costs associated with this Contract. NYMTC/NYS DOT has the right to ask for and inspect the Contract files anytime during the term of this Contract and three years after termination of this Contract.

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5. PROPOSAL CONTENT AND FORMAT

5.1. General

Electronic Submission. Proposals shall be electronically submitted to NYMTC and to NYSDOT Contract Management by August 12, 2022 at 2 PM EDT. NYMTC/NYSDOT Contract Management shall utilize a NYS managed file transfer protocol (mySend.ny.gov). Proposers are to electronically submit their **C004305** Proposal files. Proposers shall send one email to (Patricia.Kappeller@dot.ny.gov) and Seitu Allen (seitu.allen@dot.ny.gov) expressing their intent to submit their Proposal electronically at that time. NYSDOT Contract Management will then send the Proposer an invitation to mySend so the Proposer can upload their RFP submission files to the mySend site. Acknowledgement of Proposal receipt via e-mail shall be sent to the Proposer to confirm NYSDOT's successful receipt of electronically-submitted Proposals. Proposers are advised to provide ample time to address any technological errors prior to Proposal deadlines.

Electronic submission file name nomenclature:

- Technical and Management Proposals Word Document: **C004305_TMP_FirmName.docx**
- Technical and Management Proposals PDF Document: **C004305_TMP_FirmName.pdf**
- Cost Proposals PDF Document: **C004305_CP_FirmName.pdf**
- Cost Proposals Attachment 15: Cost Proposal Excel Document: **C004305_Attachment 15_FirmName.xlsx**
- Administrative Proposal PDF Document: **C004305_AP_FirmName.pdf**

where "*FirmName*" will be replaced by the name of the prime firm submitting the proposal.

Proposers may bid on any or all of the Lots presented in Attachment 14. For the purposes of evaluation, separate Proposals for each Lot must be submitted in three (3) parts:

- A. Part I shall consist of the Technical and Management Proposal
- B. Part II shall consist of the Cost Proposal
- C. Part III shall consist of the Administrative Proposal

Note:

- Part I information is NOT to be included in any Part II or any Part III Proposal
- Part II information is NOT to be included in any Part I or any Part III Proposal
- Part III information is NOT to be included in any Part I or any Part II Proposal

NOTE: NYSDOT may protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law ("FOIL"), Article 6 of the Public Officers Law, provided that NYSDOT agrees beforehand to shield the release of proposed information. If an offeror believes information included in their proposal is confidential and proprietary, they shall identify those page(s) of their proposal which contain such information as "confidential and proprietary". Any information identified as "confidential" or "proprietary" shall be identified in your proposal to only identify what specific material to shield from public scrutiny. All offerors

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shall explain the material and substantive reason(s) why this information should be considered exempt from public disclosure under FOIL. The identification of pages and the reasons for exemption should be included in your Cover Letter. In addition, the proposer shall acknowledge in their Cover Letter that any proposed information labelled as confidential will be treated in accordance with Article 6 of the New York State Public Officers Law. NYSDOT reserves the right to only consider those FOIL exemption requests for which public release of such information would truly be injurious to a firm.

5.2. Part I: Technical and Management Proposal

Technical proposals that merely repeat the requirements set forth in the RFP and state that Contractor “will perform the statement of work” or similar verbiage will be considered technically unacceptable and will not receive further consideration.

Part I shall include the following sections:

1. Cover Letter and Title Page

Provide a Title Page which lists name, address and phone number of the Proposer, and the name, title, address, email, and telephone number of person(s) with official authority to negotiate, bind the company to a contract, and who may be contacted during the procurement process. The title page should read:

**PALISADES INTERSTATE PARK SHARED USE PATH
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TECHNICAL AND MANAGEMENT PROPOSAL**

The cover letter shall provide a brief description of the proposed approach, work effort, and resulting product. Confidential and proprietary information should also be identified and addressed in this section.

2. Technical and Management Proposal Checklist

3. Table of Contents

Identify each major section and page numbers

4. Narrative Description

Provide a discussion on the important issues involved in the implementation of this effort. Include enough substantive discussion to demonstrate an understanding of NYMTC’s Project objectives.

5. Experience

NYMTC and NYSDOT requires substantial experience and expertise, and offerors must demonstrate that experience through past and present project attestations and successfully reachable, verifiable references. The qualifications and current/prior experience of the proposer are of great importance to NYMTC and NYSDOT. Direct, relevant, prior experience in project management, public outreach, pedestrian and bicycle planning, and planning studies that incorporated PEL are required. Proposal shall present such experience with projects of similar scale and scope as the one proposed in this RFP.

Provide an Attachment 12: Firm Experience form. Provide a list of projects currently in progress and those completed within the last three years which are relevant to this effort. Indicate proposed key personnel who are, or have worked, on such projects. Include names, addresses and phone numbers of contact points with the listed clients. NYMTC/NYSDOT reserves the right to request information from any source so named.

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Provide a Consultant Key Personnel Resume and Reference Form for each key personnel identified in your proposal. The Key Personnel (Attachment 14: Key Personnel Experience

proposed by the awarded Consultant are an important factor in the evaluation of its proposal. The Key Personnel proposed by the Proposer are an important factor in the evaluation of the Proposal. Thus, NYSDOT expects that the personnel proposed will be available at the start of the contract term. Changes to the personnel proposed must be pre-approved by NYMTC.

6. Organization and Staffing

Provide an organizational chart for the project showing the names of the Consultant's Project Manager and Key Personnel. Include an estimate of total effort hours contributed by each of the key personnel to each task and an estimate of total effort hours for each task. Discuss management plan to ensure effective and efficient delivery of services while meeting the project objectives. If subconsultants are to be used, explain the specific need for the expertise and describe the arrangements. Discuss your plan for phasing project personnel into the effort. The Consultant's Project Manager shall serve as the primary contact with the NYMTC Project Manager. The Consultant's Project Manager is responsible for the performance of all key personnel, production staff and support staff assigned to this Agreement by the Consultant, as well as contractual matters on the Consultant's side. Describe the level and type of interaction with NYMTC.

7. Approach, Scope of Service and Schedule

Describe the approach for implementing the Scope of Services as outlined in Section 4 of this RFP. The approach should be based on the scope of services on these tasks. Describe the approach for managing and delivering the contract's 12.85% DBE goal, including the Commercially Useful Function (CUF) the DBE firm(s) would be providing.

NOTE: The proposer may suggest alternative tasks which could improve the ability of the project to meet its objectives. NYMTC/NYS DOT want to allow maximum flexibility for the inclusion and consideration of ideas, initiative and creativity of the proposer. Alternative tasks and suggestions are encouraged and will be reviewed with interest within the framework of the stated objectives and scope of services for the project. Deviations which meet the RFP's goals and objectives, and which address all Consultant personnel items specified in this RFP shall be evaluated. The proposer must fully explain and justify the approach. The proposer shall also include a schedule for completion of the project tasks showing the duration of each task and all major milestones and include a list of technical assumptions. If a proposer grossly departs from the scope of services in this RFP, without justification and merit, it may be found non-responsive. If a proposer finds the general scope of services requires clarification, they must ask for clarification during the Q&A period which is held prior to the submission due date.

8. Relevant Company and Product Literature: Provide any applicable, relevant brochures, white papers, technical specifications, etc., as supplemental information to help illustrate your company's capabilities, products, and offerings (product/service tiers, licensing options, etc.). Please make sure all additional documentation is referenced in the Proposal's Table of Contents.

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5.3. Part II: Cost Proposal

Part II shall include the following sections:

1. Cover Letter and Title Page

Provide a Title Page which lists name, address and phone number of the Proposer, and the name, title, address, email, and telephone number of person(s) with official authority to negotiate, bind the company to a contract, and who may be contacted during the procurement process. The title page should read:

**PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
CONTRACT No. C004305: Cost Proposal.**

The cover letter shall provide a brief description of the proposed approach, work effort, and resulting product (the same cover letter submitted in your technical proposal can be used in your Cost proposal). Confidential and proprietary information should also be identified and addressed in this section.

2. Cost Proposal Checklist

3. Table of Contents

- a. Identify each major section and page numbers

4. Attachment 15: Cost Proposal which shall set forth the lump sum amount for performing the work in the scope of services.

Section 1, Section 2, and Section 3 shall be compiled and submitted as a single document in both Word format. Section 4 shall be submitted in Excel.

5.4. Part III: Administrative Proposal

Part III shall include all of the following required information or completed RFP attachments:

Administrative Proposal Checklist (Table 3)

Vendor Responsibility: In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to be responsive and responsible. All Proposers of contracts valued at \$100,000 or more, and subconsultants with services valued at \$100,000 or more shall be required to submit a Vendor Responsibility Questionnaire through the office of the State Comptroller at: <http://www.osc.state.ny.us/vendrep/index.htm> and include a copy of the online certification, or include a hard copy of the completed Vendor Responsibility Questionnaire.

Attachment 3 Acknowledgement of Receipt (Form OAR; Mandatory Requirement): Complete and submit Attachment 3 which will be administratively evaluated during the procurement process. It is a mandatory RFP requirement that all Proposers acknowledge receipt of each RFP Modification released. Do not include any released RFP Announcements.

Attachment 4 PLL Forms (Mandatory Requirement): The Administrative Submission shall include completed Attachment 4 Procurement Lobbying Law (PLL) Compliance Forms (Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) and Offerer's Disclosure of Prior Non-Responsibility Determinations).

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These forms are required with the RFP Response Form or if you do not submit an RFP Response Form then the PLL forms are required with the Proposal. These forms are also available at: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions> (Compliance Procurement Lobbying Law). *Note: Failure to submit the completed PLL forms with your Proposal will result in elimination from consideration for contract award.*

Attachment 5 Prime Consultant Information & Certifications (Mandatory Requirement): Offerors shall complete and submit RFP Attachment 5 which will be administratively evaluated during the procurement process. To indicate consultant's acceptance of all of the terms and conditions contained in the RFP's draft Contract (Attachment 1) and to certify RFP requirements, consultant shall sign Attachment 5 and present requested information about the proposing Prime Consultant, as required by Attachment 5. Attachment 5 also requires the signature of an official authorized to bind the offeror to all of its provisions, a statement certifying that the Proposal shall remain valid for at least 365 days, and a statement that, if awarded the contract, the offeror will comply with all the requirements of the RFP including its attachments. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and may lead to the Proposal being deemed non-responsive and subsequently dismissed. After Proposal submission, no exceptions to any of the RFP's draft contract's terms and conditions will be entertained by NYSDOT. Conditional bids will be deemed non-responsive. Failure to accept the RFP's draft contract is an automatic condition of non-award. Firms are encouraged to fully examine the RFP's draft contract. Firms have the opportunity to submit qualified questions regarding the RFP's draft contract before Proposal submission. NYSDOT will carefully examine questions posed regarding the RFP's draft contract, with the notion of entertaining only those changes to the RFP's draft contract which are in the State's best interest.

Attachment 5A Subconsultant Information: Offerors shall complete and submit RFP Attachment 5A (one for each proposed Sub-Consultant) which will present requested information about proposed Subconsultants and will be administratively evaluated during the procurement process.

Attachment 6 Certification of Non-Collusive Bidding (Mandatory Requirement): Offerors shall complete and submit Attachment 6 which will be administratively evaluated during the procurement process. All Bidders must submit an attestation that there was no collusion with other bidders. Firms shall also identify any partnerships or corporations to which they belong.

Attachment 7 Vendor Assurance of No Conflict of Interest or Detrimental Effect (Mandatory Requirement): Offerors shall complete and submit Attachment 7 which will be administratively evaluated during the procurement process.

Complete and submit **Attachment 9: DBE Participation Information** and, if applicable, **Attachment 10: DBE Subconsultant Participation Solicitation Log** and Goal Attainment Letter. Provide the legal names of all certified DBE consultants (prime and/or subconsultant).

Use Contract Number **C004305** wherever requested in the forms. Please email the Designated Contacts identified in the RFP's section 1.5 'Designated Contacts' section if you have any questions regarding how to complete these required forms.

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5.5. Proposal Submission

The Proposal shall be signed by an official authorized to bind the Proposer. . Proposers shall submit one (1) complete electronic copy of the Part I – Technical and Management Proposal, one (1) complete electronic copy of the Part II – Cost Proposal, and one (1) complete electronic copy of the Part III - Administrative Proposal in each of the required formats.

NYMTC and NYSDOT will acknowledge receipt of proposals that have been successfully uploaded to the mySend site and received by NYMTC and NYSDOT. Proposers are advised to provide ample time to address any technological errors prior to Proposal deadlines.

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6. PROPOSAL EVALUATION PROCESS

Proposal Due Date

All Proposals must be electronically received by NYMTC and by NYSDOT Contract Management by August 12, 2022 at 2 PM EDT. Any Proposals received after that time/date shall not be evaluated further but shall become NYSDOT property.

Proposal Opening, Log-in and Certification

Proposals received on or prior to the Proposal due date and time will be opened, certified as received, and inventoried for completeness and responsiveness. For Proposals received before/on the due date, firms may receive clarification questions/requests based upon the response completeness checks, with any requested clarification information due back to NYMTC/NYSDOT by COB that same day.

Pre-screening

Once logged in, NYMTC/NYSDOT shall pre-screened proposals to determine if all received proposals pass the RFP's mandatory requirements. Proposals passing all mandatory requirements shall be screened to determine if all proposals meet all minimum RFP responsiveness, referenced in Section 1.4, and detailed in Table 1, Table 2, and Table 3. Proposals which do not meet all mandatory requirements shall be deemed non-responsive; proposals which fail to meet all minimum responsiveness requirements may be deemed non-responsive. Any proposal deemed to be non-responsive shall be removed from further consideration. NYMTC/NYSDOT will conduct a pre-screening of each Proposal received by the Proposal due date. It is NYMTC's/NYSDOT's sole discretionary determination as to whether a Proposal is complete.

Proposals passing pre-screening shall then be evaluated using a best value method which considers a combination of technical and cost criteria as described below. Technical considerations are of greater importance than cost considerations; however, cost is a significant factor in the evaluation of Proposals.

DBE Goal Attainment/GFE Acceptance Review

As part of the pre-screening process, the proposed DBE participation percentages offered for NYSUCP certified prime consultants and/or NYSUCP certified sub-consultants will be reviewed (**Attachment 9: DBE Participation Information**). To count towards the Department's DBE participation goal, each firm must be currently listed in the NYSUCP Directory at the time of proposal submission (no exceptions) and be proposed to provide meaningful and useful services (commercial useful function). If the proposed DBE participation is less than the established 12.85% goal, the firm's evidence of a Good Faith Effort (Attachment 10: DBE Subconsultant Participation Solicitation Log) to achieve the goal will be reviewed, along with the firm's letter of explanation (Goal Attainment Explanation Letter) as to why it was unable to meet the goal. During the review process, which will include verification of a firm's Good Faith Effort evidence, if it is determined by the Department that the firm did not provide an acceptable Good Faith Effort, then the proposal may be deemed non-responsive. Any proposal deemed non-

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responsive shall be removed from further consideration. A prime consultant's participation for a prime who is certified as a DBE shall not count towards the 12.85% DBE subcontracting goal.

Proposers with non-certified DBEs will receive a clarification response and be given one opportunity to clarify their proposal (per USDOT/FHWA's Administrative reconsideration process). Offered clarifications will be considered by Contract Management. Offerors with non-certified DBEs will receive a clarification request to submit a good faith effort log. Offerors with acceptable DBE sub-consultant participation goal attainment plans will receive a recommendation to have their full proposals proceed further in the evaluation process.

If a proposer submits a proposal which does not meet the 12.85% DBE goal for C004305, then the submitted good faith log will be reviewed for robustness and acceptability with verification of the robustness of effort. Blank, missing, incomplete or otherwise unacceptable good faith efforts may be deemed non-responsive and have their proposal removed from further consideration. Such proposers will be contacted to request clarification of their submitted good faith effort log. Offered clarifications will be considered by NYSDOT Contract Management. Offerors with acceptable good faith effort logs will have their full proposals proceed further in the proposal evaluation process.

6.1. Evaluation Category Weight Distribution

Proposals will be evaluated using a best value method based upon a 100 total point scale. The written Technical and Management Proposal will be evaluated and point scored against a maximum perfect score of 65 best value points. The Cost Proposal will be evaluated for RFP instruction compliance and reasonableness, with the total lowest Cost Proposal receiving a perfect best value score of 25 points. The Technical Interview will be evaluated and point scored against a maximum perfect score of 10 best value points. **This RFP features shortlisting.** The Administrative Proposal will not be point scored but will be evaluated for compliance with the RFP's mandatory and minimum Proposal submission requirements as cited in RFP's Part III: Administrative Proposal section. A more detailed breakdown of the RFP's technical and Cost Proposal factors follows.

6.2. Technical and Management Proposal Evaluation

6.2.1. General

Technical evaluation of Proposals will be accomplished by the members of a Technical Evaluation Committee (TEC) comprised of appropriate technical, program and management subject matter experts. An evaluator package shall be prepared and submitted to members of the TEC; this package shall contain evaluator instructions, evaluation instruments and shall become part of the procurement record. The TEC shall be briefed on the Proposal evaluation process prior to distribution of Proposals. Members of the TEC agree to sign confidential non-disclosure agreements and conflict of interest statements.

Members of the TEC will evaluate and score each proposal separately and individually. Each evaluator shall measure the degree of responsiveness of each proposal against the RFP's specifications and requirements using the RFP's evaluation factors. Members of the TEC shall document their responsiveness findings and record a whole number numerical score. TEC evaluation shall result in average weighted Technical and Management Proposal scores by firm.

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6.2.2. Technical and Management Proposal Evaluation (Up to 65 Points)

Technical proposals shall not be compared to each other. Instead, the TEC shall independently measure responsiveness of each proposal against the RFP's technical requirements and specifications.

The technical evaluation criteria listed below, in descending order of importance, shall be used by the TEC to measure proposed technical responsiveness:

- 1. Quality of Proposal**
 - a. Degree to which proposal reflects understanding and comprehension of project scope and objectives.
 - b. Quality of proposer's resources relative to the needs of the project.
- 2. Experience and Approach**
 - a. Quality, extent and relevance of experience, education and training of key personnel.
 - b. Quality, extent and relevance of current and prior experience of the firm.
- 3. Organization and Staffing**
 - a. Quality of project organization; reasonableness of staff/task allocations for each task and total effort.
 - b. Quality of plan for phasing key personnel into project.
 - c. Extent and quality of interaction with key participants
- 4. Public Participation Expertise**
 - a. Quality, extent and relevance of Public Involvement Expertise.

Reference Checks: To verify offered experience, reference checks shall be evaluated to complete the evaluation of technical Proposals. All offered references for Key Personnel shall be contacted via a standard reference check questionnaire and offered references shall have three business days to respond. Reference check feedback shall be forwarded to the TEC for further experience evaluation consideration.

Clarification Questions: NYMTC and NYSDOT reserve the right to seek written clarification responses from firms submitting Proposals in order to assure a full understanding of their responsiveness to the solicitation's technical requirements throughout the entire Proposal evaluation process. If written clarifications, based upon Proposal review, are requested by the Technical Evaluation Committee (TEC), all firms submitting proposals shall receive written clarification questions via e-mail, with three business days to respond. Evaluators will be allowed to revise their technical evaluation scores based on receipt and consideration of this additional clarifying information, and group discussions if such are deemed necessary. Reasons for any score changes shall be documented.

6.2.3. Cost Proposal Evaluation (Up to 25 Points)

The Cost Proposal shall be evaluated and point scored and will represent 25 points of the total best value score for a proposal. The calculation of a cost score will be determined by comparing the proposed total lump sum cost for each proposer. The proposer with the lowest proposed total lump sum cost will receive a perfected cost score of 25. Higher priced cost proposals will receive proportionally lower cost scores.

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6.2.4. Initial Best Value Determination

Perfected cost scoring results will be added to the initial, average written technical proposal scores, generating an initial best value score by firm. Firms shall be ranked in initial best value score order (highest to lowest).

Should any firm withdraw their proposal during the proposal evaluation process, NYSDOT will remove that firm's technical and cost information from the Best Value evaluation documentation and shall recalculate the remaining field's technical and cost scores (without the withdrawn firm's information).

6.2.5. Proposal Shortlisting

The shortlisting rule for this solicitation shall be any proposal within 10 points of the top initial Best Value ranked proposal. Cost evaluation results shall be considered along with the initial average raw after-group discussion written technical proposal score results to determine initial offered Best Value, which shall lead to an initial Best Value-determined shortlisting of firms (determined to be mathematically susceptible for contract award). Should less than three firms make the shortlist, NYSDOT shall refrain from publicly announcing the list of firms who made the shortlist; should three or more firms make the shortlist, NYSDOT shall publicly announce the list of firms who made the shortlist. Shortlisted firms shall be invited to attend technical interviews.

6.2.6. Technical Interview Evaluation (up to 10 points; for shortlisted firms only)

The Technical Interview portion of the Technical and Management proposal evaluation process will occur only for those proposals which survived the shortlisting step. Short-listed firms shall receive a Technical Interview invitation package, which shall include instructions, areas in which NYMTC/NYSDOT is seeking further clarifications and may include additional clarification questions from the Technical Evaluation Committee (TEC). The technical interviews will be held via webinar, at a date and time to be determined by NYMTC (all qualifying firms will be notified).

Short-listed firms shall receive a Technical Interview invitation package, which shall include instructions, RFP requirements which NYMTC/NYSDOT is seeking further clarifications (without changing your original proposal) and may include additional clarification questions from the Technical Evaluation Committee (TEC). Firms invited to attend Technical Interviews shall present a brief overview of key personnel present, make brief opening presentation (limited to 10 minutes), and respond to TEC member questions.

The technical interviews shall present the TEC with a re-score opportunity to reconsider their earlier determined findings and scores. TEC members will evaluate Technical Interviews using the RFP's evaluation criteria and weights listed in Section 6.1 Evaluation Category Weight Distribution. A separate score sheet shall be used to record TEC Technical Interview findings and scores. TEC members shall score the technical interview independently first, then meet as a group to discuss their findings and scores. Members of the TEC may revise their technical interview scores as a result of group discussions. Reasons for score changes shall be recorded on the applicable TEC member's scoresheet and on Contract Management's electronic composite scoresheet. Once scoring of each Technical Interview has concluded, TEC members shall sign/date and surrender their scoresheets to NYMTC/NYSDOT Contract Management.

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Technical Evaluation Committee members may change their initial written technical proposal scores based on consideration of additional clarifying information provided during the Technical Interview. Should this lead to a new firm becoming eligible for the shortlist, this new firm shall go through the Technical Interview process.

Technical Interview Evaluation

1. Further insight and understanding of the consultant's proposed experience (firm and all key personnel); Clarity and quality of presentation; team chemistry.
2. Further insight and understanding of the consultant's proposed approach and scope of services; adequacy of the tasks/roles the Consultant will undertake as part of the project team to deliver contract; were all Key Personnel in attendance with an adequate short introductions and discussion of their capabilities, experience/expertise and proposed project roles and articulated and demonstrated knowledge of the proposal.
3. Responsiveness to questions and concerns raised by the TEC; ability to satisfactorily answer all TEC clarification questions.

6.2.7. Final Written Technical Proposal Evaluation (Re-Scoring)

Scoring of written technical proposals shall remain open until after conclusion of evaluating and scoring the Technical Interviews. Members of the TEC shall be given the opportunity to revise (re-score) their earlier technical proposal scores/findings based upon the additional clarification information garnered from the Technical Interviews. TEC members shall revisit their original score sheets and should any after-Technical Interview changes be in order, may revise their after-group discussion, written technical proposal scores as a result of further group discussions. Reasons for all score changes shall be recorded on the applicable TEC member's score sheet as well as in Contract Management's electronic composite score sheet. Once the re-scoring of written technical proposals has concluded, TEC members shall sign/date and surrender their score sheets to Contract Management.

6.2.8. Best & Final Offer (BAFO; Optional) & Proposal Withdrawal

The Department reserves the right to request Best and Final Offers from firms which make the shortlist. Any Best and Final Offer request may ask additional further clarifying technical and/or cost proposal questions of firms to further clarify their submitted proposals. NYSDOT also may request a cost only BAFO. Should NYSDOT opt to request BAFOs, all shortlisted firms will receive a BAFO request. Responding firms will be allowed to submit a Best and Final Offer (technical and/or cost); firms may opt to not submit a BAFO. Evaluators will be allowed to revise their technical scores for the written proposal based on their consideration of any new or changed Technical Proposal information contained in any Best and Final Offer (will re-sign/re-date the applicable hardcopy score sheets). If changes to a firm's Technical Proposal lead to corresponding, necessary revisions to their Cost Proposal (or should a firm opt to clarify their cost proposal) or should the Department opt to request cost-only BAFOs, the Department's Contract Management representative shall make the necessary, appropriate adjustments to that firm's cost proposal evaluation.

Should any firm withdraw their proposal after a possible BAFO request, NYSDOT will remove that firm's technical and cost information from the Best Value evaluation documentation and shall recalculate the remaining field's technical and cost scores (without the withdrawn firm's information).

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6.2.9. Final Best Value Evaluation

After evaluation of all technical information submitted by competing consultant (i.e., initial written proposals, written clarifications, and possible Best and Final Offers), NYMTC/NYS DOT will add the final average weighted Technical Interview Score to derive a firm's final Technical Proposal Score. Cost proposals have previously been evaluation and the resulting scores perfected by cost proposal scoring rule (lowest total cost gets 25 points). Perfected cost scoring results will be added to the average weighted Technical Written and Management scores.

Tie-Breaking Rule: Should any of the tentative final Best Value scores of one or more proposals competing for the contract award lie within one and one-half points of each other, then State Finance Law Section 163(10)(a) shall be used to settle any ties.,

Once all possible score ties have cleared, NYMTC/NYS DOT will determine the Final Best Value Score, where after the proposal with the highest Final Best Value score shall be recommended to NYMTC/NYS DOT Executive Management for contract award for contract #C004305.

6.2.10. Consultant Selection Recommendation & Tentative Contract Award

A consultant selection and designation memo shall be prepared and forwarded to the applicable NYSDOT Executive Manager(s) with an accompanying proposal evaluation process results report. The memo shall recommend selection of the top-ranked Best Value Consultant for tentative contract award of C004305 to NYSDOT Executive Management. The Executive Manager will be asked to concur with the final conclusion of the proposal evaluation process - a recommendation for the tentative contract awards for the Department - and designate the top-Best Value rated consultant based upon the above results.

Should negotiations with the top-ranked Best Value Consultant fail to produce agreed-upon contracts, then NYSDOT Executive Management will designate and award contract #C004305 to the next highest-ranked Best Value Consultant. The Department will then enter into negotiations with the second-highest rated Consultant. This process may repeat itself until acceptable contracts are consummated. The consultant designation becomes final after the NYS Office of the State Comptroller approves Contract #C004305.

The designation shall be publicly posted. Once the public has been notified of the solicitation's results, negotiations with the selected Consultant can commence. The final contract is subject to approval by NYSDOT, the Attorney General, and the Office of the State Comptroller, and is not binding until such approval is received.

At the conclusion of the proposal evaluation process, an announcement of NYSDOT's designation(s) will be posted the 'Consulting Services' listing on NYSDOT's website via: <https://www.dot.ny.gov/business>. All proposers will be notified in writing regarding the results from the solicitation. **All non-designated firms will be offered an opportunity to request a debriefing.**

It is expressly understood that this RFP does not commit NYSDOT to award a contract, to pay any costs incurred in the preparation of a proposal to this request, or to procure or contract services or supplies. Further, NYSDOT shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation, unless and until a contract satisfactory to NYSDOT is approved and executed by the vendor and all necessary State officials.

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6.2.11. NYSDOT Protest Procedure

NYSDOT has established a protest procedure to be utilized when an interested party challenges a Non-Engineering Consultant designation by NYSDOT. The complete procedure can be accessed via: <https://www.dot.ny.gov/main/business-center/consultants/general-info>.

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7. ADMINISTRATIVE SPECIFICATIONS

7.1. State's Rights

All Proposals, upon submission to the Department, shall become its property for use as deemed appropriate. By submitting a Proposal, the Proposer covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. The Department attests to the following prerogatives with regard to Proposals submitted:

- a. To accept or reject any or all Proposals;
- b. To correct any arithmetic errors in any or all Proposals;
- c. To change the Proposal's due date upon appropriate notification to interested firms;
- d. To eliminate any mandatory RFP requirement(s) or specification(s) unmet by all Proposers in the evaluation of received Proposals;
- e. To adopt any or all of a successful Proposer's Proposal;
- f. To negotiate modifications to the scope, milestone payments schedule and total cost, and contract terms and conditions with the selected Proposer prior to contract award only if it is in the best interest of the State to do so;
- g. To disqualify a Proposer from receiving the award if such Proposer, or anyone in the Proposer's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
- h. To revise/amend any provision of this RFP by written notification to Proposer's, prior to Proposal submission;
- i. To make inquiries, by means it may choose, into the Proposer's background or statements made in the Proposal to determine the truth and accuracy of all statements made therein;
- j. To select and award the contract to the Proposer whose Proposal represents the best value to NYSDOT; and
- k. Conduct contract negotiations with the next responsible Proposer, should NYSDOT be unsuccessful in negotiating with the selected Proposer.

7.2. Consultant Responsibility When Proposing Former NYSDOT Employees

It is the Consultant's responsibility to ensure they propose staff that is eligible to work on the proposed project. It is an individual's responsibility to comply with the Public Officer's Law.

The following procedure applies if either of the following criteria is met:

- a. It is two years or less between the date that the individual is proposed and the individual's date of separation from the State.
- b. The individual proposed has worked on the project while employed by NYSDOT regardless of how long ago they left NYSDOT.

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Procedure

- a. Before the Consultant proposes an individual, the individual must obtain an opinion from the New York State Joint Commission on Public Ethics (<http://www.jcope.ny.gov>) that approves their participation in the project as they are proposed.
- b. A copy of this opinion must be on file in the Consultant's office and available for review by NYSDOT if requested.
- c. Failure to obtain New York State Joint Commission on Public Ethics approval for an individual's participation in a project may jeopardize the firm's designation for that project.

7.3. Method of Payment

Payment for services provided under the agreement resulting from this RFP shall be fixed for the duration of the agreement unless changed by an executed supplemental agreement. Based on the total proposed lump sum cost, provide a milestone payment schedule which sets forth a proposed percentage/dollar amounts of the lump sum for each key deliverable for which payment would be requested. Specify any annual fees, which are due or payable during the first month of each contract year. Partial deliverables, where appropriate, are allowed. Any 'Extra Work' payments added to the contract after award via negotiated time and material requirements shall be added as fixed lump sum milestone payments.

The Consultant will designate a Billing Representative who will be responsible for resolving any invoicing issues during the term of the Contract. The cost for any additional services shall be negotiated and agreed upon by both parties using the Agreement's fixed labor rates.

Payment will be based on the acceptance of completed deliverables by phase or by month as identified in RFP Section 4 Scope of Work and as codified by Schedule B of the RFP's draft contract. A proposed payment schedule is included in Attachment 14: Key Personnel Experience. Any Extra Work added to the contract after award shall be paid for via the agreed-upon, not-to-exceed labor rates negotiated via the rates proposed in Attachment 15: Cost Proposal, with reasonable reimbursement for agreed-upon out-of-pocket expenses (subject to New York State reimbursement limitations).

Requests for progress payments and final payments shall be made by the designated consultant on standard payment request forms (FIN-421). Use proper procedures for billing each deliverable. Submit a draft billing to NYMTC's assigned Project Manager via the following sample electronic billing: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>.

The sample spreadsheet contains all of the proper, required billing forms, as well as a sample billing. The Project Manager will respond via email either with comments/corrections or with an approval to submit the final billing via signed electronic copy. The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and standard NYS FIN 421 payment request form.

7.4. Information for Selected Consultant(s)

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Registration with NYSDOT

Consultant firms entering into contracts with the New York State Department of Transportation (NYSDOT) as prime consultants, joint venture partners, or subconsultants, are required to electronically register their firm using the Consultant Selection System web application (CSSWeb) by creating and registering an account to: 1) create and assign Consultant Identification Numbers (CINs) for each office registered by the firm; 2) provide general firm information including, but not limited to, legal name, Federal Identification Number (FEIN), ownership type, DBE/MBE/WBE status, firm principals, and office(s) address information. All consultant firms participating in a potential Contract must be registered electronically with NYSDOT prior to that Contract being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the Contract.

Consultant Firm Registration instructions are available at:

<https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>

Questions regarding the CSSWeb application and firm registration should be directed to the CSSWeb administrator at css@dot.ny.gov or by telephone at (518) 457-2600.

Registration with Statewide Financial System (SFS)

Should this solicitation lead to a designation, the Prime consultant(s) will be required to electronically register with the Statewide Financial System (SFS) – if not already registered. NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The result of this process is an established SFS vendor number assigned to the Prime Consultant. If a firm has already registered in SFS in conjunction with another procurement, it will not likely need to be registered for this opportunity. However, a SFS vendor number is firm name specific. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity that NYSDOT is doing business with.

Consultant Employment Disclosure Requirements

Prime consultants should become familiar with the Consultant Employment Disclosure requirements, which went into effect June 19, 2006 at https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/contractor_instr_forms_a_b.pdf. The Consultant selected for this solicitation shall be required to complete “State Consultant Services – Contractor’s Planned Employment” (Form A, Attachment 16) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Attachment 16) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect.

Insurance Requirements

Please carefully read the terms and conditions of the draft contract appended as Attachment 1 of this RFP. Your attention is drawn to the insurance requirements for this project that are

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contained in Article 12 of the draft contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

Contractor Tax Certification

Per section 5-a of the NYS Tax Law, all vendors selected for contracts in excess of \$100,000 for the sale of goods or services must complete and submit Forms ST-220-CA and ST-220-TD (Contractor Certifications). The forms and instructions are available at:
http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA) and
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD).

Certification Form EO-177

In accordance with Executive Order No. 177, the successful Proposer will be required to certify that it does not have institutional practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. Certification Form EO-177 will be provided with the contract documents. The completed and signed certification must be returned with the firm's executed contract.

Certification Form EO-16

In accordance with Executive Order No. 16, the successful Proposer will be required to certify they: (1) are not an Entity conducting business operations in Russia; (2) are not conducting, will not conduct, and will not engage any such company that conducts, commercial activity with (a) the Russian Government, and (b) commercial entities headquartered in Russia or with their principal place of business in Russia, in the form of contracting, sales, purchasing, investment, or any business partnership. Certification Form EO-16 will be provided with the contract documents. The completed and signed certification must be returned with the firm's executed contract.

7.5. Inquiries and Information

All questions concerning this solicitation must be directed only to the individual(s) specified in the RFP's section 1.5 'Designated Contacts'. The last date to submit questions for this solicitation is stated. Responses to all questions of a substantive nature, as well as copies of the questions, will be posted to the respective NYMTC and NYSDOT website.

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7.6.

8. ATTACHMENTS

8.1. Attachment 1: Draft Contract

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

F.A. No.: _____

PIN: _____

COMPTROLLER'S CONTRACT NO.: C004305

**PROJECT TITLE: PALISADES INTERSTATE PARK SHARED USE PATH
FEASIBILITY STUDY**

This Contract made pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the Department of Transportation (hereinafter referred to as the "DEPARTMENT" or "NYSDOT") whose office is at 50 Wolf Rd, Albany, NY 12232, and

Consultant Firm Name

Consultant Firm Address

Consultant Firm Address

(hereinafter referred to as the "Consultant")

WITNESSETH:

WHEREAS, the DEPARTMENT desires the CONSULTANT because of its ability and reputation, to perform the services hereinafter mentioned upon the PROJECT which is fully described in SCHEDULE A and the CONSULTANT agrees to provide these services.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

ARTICLE 1 – PERFORMANCE OF WORK

The CONSULTANT shall perform all of the work described in SCHEDULE A and cause such work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this CONTRACT. The CONSULTANT shall perform the work in accordance with professional standards and with the diligence and skill expected of a company with extensive experience in the performance of work of the type described in SCHEDULE A. The CONSULTANT shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the work in accordance with this CONTRACT. The CONSULTANT'S Project Manager shall have the responsibility for the overall supervision and conduct the work on behalf of the CONSULTANT and that the persons described in SCHEDULE A shall serve in the capacities described herein. Any change of key personnel by the CONSULTANT shall be subject to the prior written approval of the STATE. The STATE reserves the option to extend

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the terms and conditions of this CONTRACT to any other state agency in New York subject to the approval of all necessary state officials.

The CONSULTANT shall commence work no later than ten (10) calendar days after receiving notice to proceed from the DEPARTMENT.

ARTICLE 2 – DOCUMENTS FORMING THE CONTRACT

The CONTRACT documents shall be deemed to include this AGREEMENT (including Exhibits), the provisions required by state and federal law to be inserted in the CONTRACT as set forth in Appendix A, Appendix A-1, Appendix B, Appendix C, Schedule A (including Exhibits), Schedule B (including Exhibits), the DEPARTMENT’S Request for Proposals (RFP, dated December 6, 2021, including any modifications) incorporated by reference, and the CONSULTANT’S Proposal (dated _____, including any clarifications) incorporated by reference.

ARTICLE 3 – ORDER OF PRECEDENCE

In the event of any inconsistencies between or among the provisions and contents of this CONTRACT, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:

1. APPENDIX A;
2. The provisions required by state and federal law to be inserted in the CONTRACT as set forth in APPENDIX A-1, APPENDIX B, and APPENDIX C;
3. This CONTRACT, including Signature Page, Notary Page, and Exhibits;
4. SCHEDULE A (including Exhibits);
5. SCHEDULE B (including Exhibits);
6. The STATE’S Request for Proposals (including any modifications); and
7. The CONSULTANT’S Proposal.

ARTICLE 4 – TERM OF THE CONTRACT

The CONSULTANT agrees to complete all work of this CONTRACT as required within a two-year base term, which shall commence on **MONTH DD, 2023** and end on **MONTH DD, 202** . The CONTRACT may be extended for one additional year as may be agreed by the parties to the CONTRACT and as approved by the Office of the State Comptroller (OSC).

ARTICLE 5 – MAXIMUM AMOUNT PAYABLE

Item I – The maximum aggregate amount payable by the STATE to the CONSULTANT hereunder for the performance and completion of the work under this agreement is **\$** unless increased by an awarded supplemental agreement. It is understood and agreed that the STATE will only reimburse the CONSULTANT for approved costs incurred in the performance of authorized project tasks.

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Item II – The CONSULTANT specifically agrees that the CONTRACT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose.

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ARTICLE 6 – CONTRACT PAYMENT

The CONSULTANT shall provide complete and accurate billing invoices to the DEPARTMENT to receive payment. Billing invoices submitted to the DEPARTMENT must contain all information and supporting documentation required by the CONTRACT, the DEPARTMENT and OSC. Payment for invoices submitted by the CONSULTANT shall only be rendered electronically unless payment by paper check is expressly authorized by the New York State Department of Transportation Commissioner (hereinafter referred to as the “COMMISSIONER”), in the COMMISSIONER’S sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices.

The CONSULTANT must enroll in the State Comptroller’s ePayments system to authorize electronic payments and acknowledges that it will not receive payment on any invoices submitted under this CONTRACT if it does not comply with the State Comptroller’s electronic payment procedures. Authorization instructions are provided on the State Comptroller’s website at: <https://www.osc.state.ny.us/vendors/epayments.htm>. For assistance, email ePayments@osc.state.ny.us.

ARTICLE 7. PROVISION FOR PAYMENT.

Item I The STATE shall pay to the CONSULTANT and the CONSULTANT agrees to accept as full compensation for its services under this Agreement, a price of _____ unless revised by a Supplemental Agreement.

Item II The CONSULTANT specifically agrees that the AGREEMENT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose. In no event, however, will monies be deleted from this Agreement except pursuant to ARTICLE 17 hereof, entitled Termination.

Item III If the AGREEMENT is extended beyond 24 months then any and all salary rates shown in SCHEDULE B, EXHIBIT ____ may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413-5413--) for the most recent 12 month period as calculated by the U.S. Department of Labor – Bureau of Labor Statistics, or 2.0 percent, all depending upon current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

ARTICLE 8 – FINAL PAYMENT

Section 179 of the State Finance Law required the STATE to make final payment within thirty (30) calendar days after receipt of an invoice which is properly prepared and submitted. The STATE in accordance with the provisions of State Finance Law has determined that the STATE will require a sixty (60) calendar day audit period for final payments at which time the 30-calendar day interest-free period will commence. The CONSULTANT is required to make final payment to all subcontractors/subconsultants within ten (10) calendar days of receipt of final payment from the State.

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The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the STATE 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 CONTRACT or for any part thereof except as otherwise provided in the paragraph below.

The CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and make such materials available at its office at all reasonable times during the term of this CONTRACT and for the period of time specified in Clause No. 10., "Records" of APPENDIX A, for inspection by the STATE, Federal Highway Administration (FHWA), or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested.

ARTICLE 9 – INSPECTION

The duly authorized representatives of the STATE, and on Federally aided projects, representatives of the Federal Highway Administration (FHWA), shall have the right, at all times, to inspect the work of the CONSULTANT.

ARTICLE 10 – EXTRA WORK

If the CONSULTANT believes that any work is, or may be, beyond the scope of the CONTRACT (extra work), or that additional work is necessary, the CONSULTANT shall notify the STATE, in writing of this fact prior to beginning any work. The notification shall include all information required by the DEPARTMENT. The STATE shall be the sole judge as to whether or not such work is in fact beyond the scope of this CONTRACT and constitutes extra work. No extra or additional work shall be started prior to written authorization from the STATE. The STATE shall be under no obligation to reimburse the CONSULTANT for any extra or additional work performed without the prescribed notification and authorization. The STATE will not allow fixed fee for any extra work undertaken without prescribed notification and authorization. In the event that the STATE determines that such work does constitute extra work, the STATE shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the STATE to the CONSULTANT for execution after approval have been obtained from necessary STATE officials, and if required, from the Federal Highway Administration.

In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render the STATE all assistance required by the STATE. 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 CONTRACT for the additional services above described, the STATE's directions shall be exercised by the issuance of a separate contract, if necessary.

ARTICLE 11 – CONSULTANT LIABILITY

To the fullest extent permissible by law, the CONSUTLANT shall indemnify and save harmless the STATE, and any municipality, public benefit corporation, railroad, and/or public utility whose property or facilities are affected by the work, from suites, claims, actions, damages and

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costs, of every name and description arising from the work under its contract during its prosecution and until the final acceptance thereof. The CONSULTANT and any assigns, heirs, or successors in interest shall also indemnify and save harmless, to the fullest extent permitted by law, the inspecting engineer or inspector working for the STATE relative to the PROJECT from suits, claims, actions, damages and costs involving personal injury and property damage arising from the CONSULTANT'S work under the CONTRACT during its prosecution and until the final acceptance thereof. The STATE may retain such monies from the amount due the CONSULTANT as may be necessary to satisfy any claim for damages recovered against the STATE, any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the work or consultant inspecting engineers or inspectors working for the STATE relative to the PROJECT. The CONSULTANT'S obligation under this paragraph shall not be deemed waived by the failure of the STATE to retain the whole or any part of such monies due the CONSULTANT, nor where such suit, action, damages and/or costs have not been resolved or determined prior to release of any monies to the CONSULTANT under the CONTRACT, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the CONSULTANT, Subconsultant or any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, or for any consultants working for the STATE. It is understood by the STATE and the CONSULTANT that the CONSULTANT'S Professional Liability/Errors and Omissions Policy required in the Article 12 -Insurance of this CONTRACT shall be utilized for claims involving the CONSULTANT'S professional negligence.

The CONSULTANT has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation shall include the cost of attorney's fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Such obligation to indemnify in the foregoing paragraph does not extend to those suits, action, damages and costs of every name that arise out of this sole negligence of the STATE, or negligence of any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the contract work, or the negligence of any consultants working for the STATE, their agents or employees, relative to the construction, alteration, or repair or maintenance of a building, highway, or structure or appurtenances and appliances thereof including moving, demolition and excavating connected therewith. Notwithstanding the foregoing, the parties being defended by the CONSULTANT may elect to join any action or tender their own defense, at their sole expense and discretion.

ARTICLE 12 – INSURANCE

The CONSULTANT shall procure, at its own sole cost an expense, and shall maintain in force at all times during the term of the CONTRACT including any extensions or renewals until satisfactory completion of all work under the CONTRACT, the policies of insurance covering all operations under the CONTRACT whether performed by it or its subconsultants as herein below set forth, written by companies authorized by the New York State Department of Financial Services to issue insurance in the State of New York and that have an A.M. Best Company rating of (A-) or better or approved by the DEPARTMENT. The DEPARTMENT may, at its sole discretion permit the placement of policies with a non-authorized carrier or carriers upon request by the CONSULTANT accompanied by the documentation required by 11 NYCRR §20.7 et seq., provided that nothing herein shall be construed to require the DEPARTMENT to accept

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insurance placed with a non-authorized carrier under any circumstances. The CONSULTANT shall deliver to the DEPARTMENT evidence of such policies as the DEPARTMENT deems necessary to verify that the required insurance is in effect. If policies are changed or canceled, the CONSULTANT shall inform the STATE immediately. The STATE will determine whether to issue an order to the CONSULTANT to stop work.

1. Conditions Applicable to Insurance. All policies of insurance required by this CONTRACT must meet the following requirements:
 - A. Coverage Types and Policy Limits. The types of coverage and policy limits required from the CONSULTANT are specified in Section 2, Insurance Requirements, below. General Liability insurance shall apply separately on a per-job or per-project basis.
 - B. Policy Forms. Except as may otherwise specifically provided herein or agreed in writing by the DEPARTMENT, policies must be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at a minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy. Insurance policies that remove or restrict blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f of the ISO-GLC policy) or that remove or modify the “insured contract” exception to the employer’s liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or subconsultants, are not acceptable. Policy forms must be provided to the DEPARTMENT upon request.
 - C. Certificates of Insurance/Notices. CONSULTANT shall provide a Certificate or Certificates of Insurance in a form satisfactory to the COMMISSIONER, before commencing any work under this CONTRACT. Certificates or transmittal correspondence shall reference the NYSDOT CONTRACT Number. CONSULTANT is strongly encouraged to transmit certificates and other materials concerning insurance coverage, reference Contract #C004305 and the name of the CONSULTANT in the Subject Line, by email to: Insur.consult.contr@dot.ny.gov.

New York State Department of Transportation
Office of Contract Management
50 Wolf Rd, 6th Floor
Albany, NY 12232

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (a) canceled, (b) materially changed, or (c) permitted to expire or lapse for any reason except upon ten (10) calendar days prior written notice to the DEPARTMENT by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by the DEPARTMENT, the CONSULTANT shall deliver to the DEPARTMENT within ten (10) business days of such a request a copy of or any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

1. Be in a form satisfactory to the DEPARTMENT. The ACORD 25 Certificate must be accompanied by an ACORD 855 “New York Construction Addendum” completed to indicate information about the liability insurance.
2. Be signed and dated by an authorized representative of the insurance carrier or producer.

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3. Disclose any deductible, self-insured retention, aggregate limit.
4. Refer to this CONTRACT by number on the face of the certificate.

If at any time during the term of this CONTRACT, it shall come to the attention of the DEPARTMENT that required insurance is not in effect or that adequate proof of insurance as not been provided, the DEPARTMENT may, at its option:

1. Direct the CONSULTANT to suspend work and not to re-enter the premises with no additional payment or extension of time due on account thereof, or
 2. May withhold further contract payments in accordance with Partial Payments, Section §109-04 of the Standard Specification, or
 3. Treat such failure as a breach or default of the CONTRACT.
- D. Additional Insureds. All insurance policies required by these specifications, except Workers' Compensation, NYS Disability and Professional Liability shall be endorsed to provide coverage to "The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees" with respect to any claim arising from the CONSULTANT'S activities. The endorsement shall be affected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 for a form(s) that provides equivalent coverage.
- E. Primary Coverage. The liability and protective liability insurance policies shall provide primary and non-contributory coverage to the DEPARTMENT for any claim arising from the CONSULTANT'S work under this CONTRACT, or as a result of the CONSULTANT'S activities.
- F. Waiver of Subrogation. As to every type and form of insurance coverage required from the CONSULTANT, there shall be no right of subrogation against the State of New York/New York State Department of Transportation, its agents or employees. To the extent that any of the CONSULTANT'S policies of insurance prohibit such a waiver of subrogation, CONSULTANT shall secure the necessary permission to make this waiver.
- G. Policy Renewal/Expiration. At least ten (10) calendar days prior to the expiration of any policy required by this CONTRACT, evidence of renewal or replacement policies of such insurance with terms no less favorable to the DEPARTMENT than the expiring policies shall delivered to the DEPARTMENT in the manner required for service of notice in Section C – Certificates of Insurance/Notices above.
- H. Self-Insurance Retention/Deductibles. Consultants utilizing self-insurance programs are required to provide a description of the program for DEPARTMENT approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the CONTRACT documents of a particular project, the CONSULTANT or third-party administered insurance deductible shall be limited to the amount of the bid deposit of \$100,000, whichever is less. Security is not required if it is otherwise provided to an administrator or an approved risk management plan. The DEPARTMENT will not accept self-insured retention programs without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The CONSULTANT shall be solely responsible for all claim expenses and loss payments within any permitted

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deductible or self-insured retention. If the CONSULTANT'S deductible in a self-administered program exceeds the amount of the bid deposit, the CONSULTANT shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by the DEPARTMENT must be issued by a guarantor or surety with an A.M. Best Company rating of (A-) or better. If, at any time during the term of this CONTRACT, the DEPARTMENT, in its sole discretion, determines that the CONSULTANT is not paying its deductible, it may require the CONSULTANT to collateralize all or any part of the deductible or self-insured retention or any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the CONSULTANT.

- I. Waiver of Indemnities. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the DEPARTMENT (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this CONTRACT. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the DEPARTMENT (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.
 - J. Subconsultant's Liability Insurance. In the event any portion of the work described in this CONTRACT is performed by an approved subconsultant, the insurance requirements of this Article shall be incorporated into the subcontract agreement. Subconsultant insurance requirements shall include the requirements for Workers' Compensation, NYS Disability Benefits, Commercial General Liability, and if applicable, Commercial Auto and/or Professional Liability. Excess or umbrella insurance is not required for subconsultants. CONSULTANT shall require that Certificates of Insurance, meeting the requirements of the DEPARTMENT are provided to the DEPARTMENT documenting the insurance coverage for each and every subconsultant employed by them to do work under this CONTRACT.
2. Insurance Requirements. The types of insurance and minimum policy limits shall be as follows:
- a. Workers' Compensation and Disability Insurance. As required by State Finance Law Section 142, the CONSULTANT shall maintain in force Workers' Compensation insurance upon forms required by or acceptable to the Workers' Compensation Board for all of CONSULTANT's employees. CONSULTANT shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.
 - b. Commercial General Liability Insurance. The CONSULTANT shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including tort liability of another assumed in a business contract) occurring on or in any way related to the premises of occasioned by reason of the operations of CONSULTANT. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of no less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:
 - i. Coverage for contractual liability by the CONSULTANT insured under an insured contract (including the tort liability of another assumed in a business contract).

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- ii. All insurance policies required by these specifications except Workers' Compensation, NYS Disability Benefits, and Professional Liability shall be endorsed to provide coverage to "The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees" using ISO Form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.
 - iii. Products – completed Operations Coverage, as provided in the General Liability Policy, or in certain instance through ISO Form CG 26 11 09 99 or suitable equivalent.
 - iv. Where contract work will be performed by unregistered off-road equipment, CONSULTANT shall provide documentation of a blanket Pollution Liability Policy, or an endorsement to cover short-term pollution events, ISO Form CG 04 33 10 01 or equivalent.
 - v. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
 - vi. Explosion, Collapse and Underground Hazards Coverage ("XCU") for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment.
- c. Commercial Automobile Insurance including liability and required coverage for New York. In the event that automobiles are used in connection with CONSULTANT'S business or operations with the DEPARTMENT, the CONSULTANT shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of CONSULTANT'S automobiles (including owned, hired and non-owned vehicles) on and around the project. This may be ISO Form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than \$1,000,000 each accident.
- d. Umbrella or Excess Liability Insurance. The CONSULTANT shall maintain an occurrence form umbrella liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent consultants, project-completed operations, personal injury and advertising injury, and liability insured under an insured contract (including tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of CONSULTANT or arising from automobile liability as described above. Such coverage shall be written on an ISO Occurrence Form CU 00 01 12 07 or a policy form providing equivalent coverage. In the event that umbrella coverage is unavailable, equivalent excess coverage may be substituted. The minimum required limits for the umbrella/excess coverage shall be sufficient to provide a total of not less than \$5,000,000 per occurrence/aggregate.
- e. Consultant's Risks. The CONSULTANT shall be responsible for obtaining any insurance it deems necessary to cover its own risks including without limitation: (1) business interpretation, such as gross earnings, extra expense, or similar coverage, (2) personal property, and/or (3) automobile physical damage and/or theft. In no event shall the

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DEPARTMENT be liable for any damage to, or loss, of personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this CONTRACT, even if such loss is caused by the negligence of the DEPARTMENT.

ARTICLE 13 – INTERCHANGE OF DATA

All technical data in regard to the PROJECT existing in the office of the STATE or existing in the offices of the CONSULTANT shall be made available to the other party to this CONTRACT without expense to such other party.

ARTICLE 14 – DISPOSITION OF DATA

At the time of completion of the work, the CONSULTANT shall make available to the STATE all documents and data pertaining to the work or to the PROJECT which materials at all times shall be the property of the STATE. It is agreed that the CONSULTANT may maintain copies of all documents and data. Or in the event that this CONTRACT is terminated for any reason, then, within ten (10) calendar days after such termination, the CONSULTANT shall make available to the STATE the aforementioned data and material.

ARTICLE 15 – DAMAGES AND DELAYS

The CONSULTANT agrees that no charges or claim for damages shall be made by them for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this CONTRACT. Such delays or hindrances, if any, shall be compensated for by extension of time for such reasonable period as the STATE 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 STATE of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising its right under ARTICLE 8 of this CONTRACT.

ARTICLE 16 – NOTICE OF BANKRUPTCY, VENUE, AUDITS

If, prior to final audit, CONSULTANT files for relief pursuant to Title 11 of the United States Code under Bankruptcy Laws or a successor statute, this CONTRACT shall be treated as an executory contract under 11 USC S365 of the Bankruptcy Laws or successor statute, and subject to assumption or reject by the debtor within the time permitted by law.

The CONSULTANT must immediately send written notice to the Office of Contract Management of the New York State Department of Transportation at its main office in Albany, NY and send all relevant pleading of the voluntary or involuntary filing of a Bankruptcy proceeding by the CONSULTANT, its subsidiary, its principals and officers or a related entity whether or not the CONSULTANT believes that any debt is owed to the STATE by final audit or otherwise.

The determination of any rights under this CONTRACT shall be adjudicated in a State or Federal Court with jurisdiction over the matter, and venue for the determination of such rights shall be in Albany, NY.

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The CONSULTANT agrees that the automatic stay under 11 USC S362 or a successor statute shall be deemed inapplicable or that this agreement shall constitute consent to the lifting of the stay with respect to the State's performance of or completion of any audit pursuant to the terms of this CONTRACT.

ARTICLE 17 – TERMINATION

The STATE shall have the absolute right to terminate this CONTRACT, and such action shall in no event be deemed a breach of CONTRACT:

1. If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the actual work performed by the CONSULTANT prior to termination, including, but not limited to, the number of hours and other authorized costs audited in accordance with the terms of the CONTRACT.
2. If the termination is brought about as a result of the unsatisfactory performance on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the STATE.
3. The STATE reserves the right to terminate this CONTRACT in the event it is found that the certification filed by the CONSULTANT in accordance with the requirements contained in State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONSULTANT in accordance with the written notification terms of the CONTRACT.

ARTICLE 18 – DEATH OR DISABILITY OF THE CONSULTANT

In the case of death or disability of one or more but not all persons herein referred to as the CONSULTANT, the rights and duties of the CONSULTANT shall devolve upon the survivors of the CONSULTANT, who shall be obligated to perform the services required under this CONTRACT, and the STATE shall make all payments due to them.

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

ARTICLE 19 – INDEPENDENT CONTRACTOR

The CONSULTANT, in accordance with their status as an independent contractor, covenants and agrees that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the STATE by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or Retirement membership or credit.

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ARTICLE 20 – COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Contract, and that they have 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 CONTRACT. For breach or violation of this warranty, the STATE shall have the right to annul this CONTRACT without liability, or, in its discretion, to deduct from the CONTRACT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 21– TRANSFER OF AGREEMENT

The CONSULTANT specifically agrees, as required by State Finance Law, Section 138, that they are prohibited by law from assigning, transferring, conveying, subletting or otherwise disposing of the CONTRACT or of their right, title or interest therein, or their power to execute such CONTRACT, to any other person, company or corporation, without the previous consent in writing of the STATE.

If this provision of the law be violated, the STATE shall revoke and annul the CONTRACT and the STATE shall be relieved from any and all liability and obligations thereunder to the person, company or corporation to whom the CONSULTANT shall assign, transfer, convey, sublet or otherwise dispose of the CONTRACT, except so much as may be required to pay his employees.

ARTICLE 22 – PROPRIETARY RIGHTS

The CONSULTANT agrees that if copyrights, patentable discoveries or inventions or rights in data 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 an irrevocable, nonexclusive, nontransferable paid-up license to reproduce, publish, make, use, and sell each subject invention throughout the world and 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, and other applicable Federal laws, rules and regulations.

ARTICLE 23 – SUBCONTRACTORS/SUBCONSULTANTS

The CONSULTANT may arrange for a portion(s) of its responsibilities under this CONTRACT to be subcontracted to qualified, responsible subconsultants/subcontractors, subject to approval of the STATE. If the CONSULTANT determines to subcontract a portion of the services, the subconsultants/subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this CONTRACT must be fully explained by the CONSULTANT to the STATE. As part of this explanation, the subconsultant/subcontractor must submit to the STATE a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONSULTANT prior to execution of this CONTRACT.

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All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this CONTRACT including, but not limited to, the body of this CONTRACT, Appendix A – Standard Clauses for New York State Contracts, and the advertisement for Proposals. Unless waived in writing by the STATE, all subcontracts between the CONSULTANT and subconsultants/subcontractors shall expressly name the STATE, through the DEPARTMENT, as the sole intended third party beneficiary of such subcontract. The STATE reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the STATE a party to any subcontract or create any right, claim, or interest in the subconsultant/subcontractor or proposed subconsultant/subcontractor against the STATE.

The STATE reserves the right, at any time during the term of the CONTRACT, to verify that the written subcontract between the CONSULTANT and subconsultants/subcontractors is in compliance with all provisions of this Section and any subcontract provisions contained in this CONTRACT.

The CONSULTANT shall give the STATE immediate notice of writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subconsultant/subcontractor or which may affect the performance of the CONSULTANT's duties under the CONTRACT. Any subcontract shall not relieve the CONSULTANT in any way of any responsibility, duty, and/or obligation of the CONTRACT.

If at any time during the performance under this CONTRACT total compensation to a subconsultant/subcontractor exceeds or is expected to exceed \$100,000, that subconsultant/subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

ARTICLE 24 – CERTIFICATION REQUIRED BY 49CFR, PART 29

The signator to this CONTRACT, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company, partner, director, officer, or major stockholder (five percent or more ownership):

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
2. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past three (3) years;
3. Does not have a proposed debarment pending; and
4. 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 (3) years.

EXCEPTIONS:

ARTICLE 25 – CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

1. 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

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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 contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriate 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 contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
3. 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 this transaction imposed by Section 1342, 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.
4. 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 shall be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE 26 – RESPONSIBILITY OF THE CONSULTANT

The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the CONSULTANT under this CONTRACT. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its services. However, the STATE may in certain circumstances, provide compensation for such work.

Neither the STATE's review, approval, or acceptance of, nor payment for, the services required under this CONTRACT shall be construed to operate as a waiver of any rights under this CONTRACT or of any case of action arising out of the performance of this CONTRACT, and the CONSULTANT shall be and remain liable to the STATE in accordance with applicable law for all damages to the STATE caused by the CONSULTANT's negligent performance or breach of contract of any of the services furnished under the CONTRACT.

The rights and remedies of the STATE provided for under this CONTRACT are in addition to any other rights and remedies provided by law.

If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint ventures associated for the purposes of undertaking this CONTRACT, each such entity acknowledges and hereby affirmatively represents and agrees that each has the power to bind the CONSULTANT and each of the others hereunder, and as such, each acts both as principals and agent of the CONSULTANT and of each of the others hereunder. Each further acknowledges and agrees that all such entities, partners or joint ventures associated for the purposes of undertaking this CONTRACT shall be jointly and severally liable to third parties, including, but not limited to the STATE, for acts or omissions of the CONSULTANT, or any other entity, partner or joint venture hereunder.

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If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint ventures associated for the purposes of undertaking this CONTRACT, each such entity acknowledges and hereby affirmatively represents and agrees that the respective rights, duties and liabilities of each hereunder shall be governed by the laws of the State of New York, including, but not limited to the New York Partnership Law.

ARTICLE 27 – SECURITY AND CONFIDENTIALITY OF INFORMATION

Information received as part of this CONTRACT shall be considered Confidential Information. The CONSULTANT warrants that it will take the appropriate steps as to its personnel, agents, officers, and any subcontractors/subconsultants regarding the obligations arising under this clause to insure such confidentiality. The CONSULTANT shall have written policies and/or business procedures in place which will protect Confidential Information from unauthorized disclosure, use, access, loss, alteration, or destruction. The CONSULTANT may disclose to other parties, as authorized by the NYSDOT Project Manager, or as described in the Lots, only the information necessary to perform services under this CONTRACT. However, the CONSULTANT shall in no circumstance, communicate with the public or news media without prior authorization from the State’s designee. Neither shall the CONSULTANT disclose information deemed confidential by the STATE nor shall the CONSULTANT disclose any other information obtained or developed in the performance of services under this CONTRACT without written authorization of the STATE. This warranty shall survive termination of this CONTRACT.

The CONSULTANT shall comply with the provisions of the New York State Information Security Breach and Notification Act, including General Business Law Section §89-aa and State Technology Law §208 as enacted by such Act or subsequently amended. In the event of an information security breach resulting in the unauthorized disclosure of personal information, the CONSULTANT shall be liable for the costs associated with such breach if caused by the CONSULTANT’s negligence or willful acts or omissions, or the negligent or willful acts or omissions of the CONSULTANT’s agents, officers, employees or subconsultants.

ARTICLE 28 – VENDOR RESPONSIBILITY

The Department of Transportation has undertaken an affirmative review of the CONSULTANT’s responsibility in accordance with the applicable standards outlined in Comptroller’s “Guide to Financial Operations”, and based upon such review, reasonable assurance that the CONSULTANT is responsible has been determined.

General Responsibility: The CONSULTANT shall, at all times during the CONTRACT, remain responsible. The CONSULTANT agrees, if requested by the Commissioner of NYSDOT (or his or her designee), to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organization and financial capacity.

Suspension of Work (for Non-Responsibility): The Commissioner of NYSDOT (or his or her designee) in his or her sole discretion, reserves the right to suspend any or all activities under this CONTRACT at any time when he or she discovers information that calls into question the responsibility of the CONSULTANT. In the event of such suspension, the CONSULTANT will be given written notice outlining the particulars of such suspension order. Upon issuance of such notice, the CONSULTANT shall comply with the terms of the suspension order. CONTRACT

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activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the CONTRACT.

Termination (for Non-Responsibility): Upon written notice to the CONSULTANT, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the CONTRACT may be terminated by the Commissioner of NYSDOT (or his or her designee) at the CONSULTANT's expense where the CONSULTANT is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue legal or equitable remedies for such breach.

ARTICLE 29 – NOTICES

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
 - a. Via certified or registered United States mail, return receipt requested;
 - b. By facsimile transmission;
 - c. By personal delivery;
 - d. By expedited delivery service; or
 - e. By email.

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

New York State Department of Transportation:

Contact Person's Name: Matt Bromirski, Contract #C004305
Title: Deputy Assistant Commissioner, Office of Contract Management
Address: NYSDOT, Office of Contract Management, 50 Wolf Rd, 6th Floor,
Albany, NY 12232
Telephone Number: (518) 457-2600
Facsimile Number: (518) 457-2875
Email: Matt.Bromirski@dot.ny.gov

New York Metropolitan Transportation Council:

Contact Person's Name: Seitu Allen, Contract #C004305
Title: Contracts Liaison
Address: 25 Beaver St, Suite 201, New York, NY 10004
Telephone Number: 212-383-1885
Email: Seitu.Allen@dot.ny.gov

Consultant's Name: Enter Prime Consultant Name

Contact Person's Name:
Title:
Address:
Telephone Number:
Facsimile Number:
Email:

2. Any such notice shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or certified registered United States mail, as of

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the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

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

ARTICLE 30 – TITLE VI ASSURANCE

During the performance of this CONTRACT, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the “CONSULTANT”) agrees as follows:

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

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- b. Cancellation, termination, or suspension of the CONTRACT in whole or in part.
6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

ARTICLE 31 – CONSULTANT DISCLOSURE LEGISLATION

In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Exhibit A) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the CONTRACT is in effect. The CONSULTANT shall provide information regarding all employees providing service under this CONTRACT, whether employed by the CONSULTANT or any subcontractor or subconsultant. Form B will capture historical information, detailing actual employment data for the most recently completed State fiscal year (April 1st to March 31st). Annual employment reports should be submitted to the following three agencies. It is recommended, however, that consultants check the agency websites annually to confirm the address:

By Mail:

NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
ATT: Consultant Reporting

NYS Department of Civil Service
Alfred E. Smith Building
Albany, NY 12239
ATT: Chapter 10 Counsel’s Office

By Email:

NYS Department of Transportation

Reports that are submitted to the NYS Department of Transportation must be submitted electronically, preferably as a Word, Excel, or PDF file via email to:
consultantdisclosure@dot.ny.gov.

**ARTICLE 32 – ENSURING PAY EQUITY BY STATE CONSULTANTS/
CONTRACTORS**

In accordance with Executive Order 162, issued on January 9, 2017, the CONSULTANT shall provide detailed workforce utilization reports of the CONSULTANT and each

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subconsultant/subcontractor that include, in addition to equal employment opportunity information, the job title and salary of each employee directly performing work on a STATE contract.

If the CONSULTANT cannot identify the individuals working directly on a STATE contract, then the CONSULTANT and each subconsultant/subcontractor shall provide such information of each employee in the CONSULTANT's entire workforce. Such information shall be reported to NYSDOT at quarterly intervals.

The reporting period shall be on a quarterly basis (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31). The reporting requirement shall begin on the effective date of the CONTRACT and continue for the duration of the CONTRACT term. Reports shall be submitted within 15 calendar days from the end of each reporting period.

Detailed workforce utilization reports, as required above, shall be submitted in such form and in such manner as shall be required by NYSDOT and as in accordance with Consultant Instruction 17-02.

The CONSULTANT shall include this provision in every subcontract so that such provisions shall be binding upon each subconsultant/subcontractor, of the subcontract is in excess of \$25,000.

ARTICLE 33 – CONFLICTS OF INTEREST

The CONSULTANT has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONSULTANT's performance of the services does not and will not create a conflict of interest with, nor position the CONSULTANT to breach any other contract currently in force with the State of New York, that the CONSULTANT will not act in any manner that is detrimental to any STATE project on which the CONSULTANT is rendering services.

The CONSULTANT hereby affirms the attestations made in its Proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONSULTANT's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this CONTRACT. The CONSULTANT shall have a duty to notify the STATE immediately of any actual or potential conflicts of interest.

In conjunction with any subcontract under this CONTRACT, the CONSULTANT shall obtain and deliver to the STATE, prior to entering a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subconsultant/subcontractor. The CONSULTANT shall also require in any subcontracting agreement that the subconsultant/subcontractor, in conjunction with any further subconsulting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subconsultants/subcontractors prior to entering into a subcontract.

The STATE and the CONSULTANT recognize that conflicts may occur in the future because the CONSULTANT may have existing, or established new, relationships. The STATE will

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review the nature of any relationship and reserves the right to terminate this CONTRACT for any reason, or for cause, if, in the judgement of the STATE, a real or potential conflict of interest cannot be cured.

ARTICLE 34 – ETHICS REQUIREMENTS

The CONSULTANT and its subconsultants/subcontractors shall not engage any person who is, or has been at any time, in the employ of the STATE to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of STATE employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively the “Ethics Requirements”). The CONSULTANT certifies that all of its employees and those of its subconsultants/subcontractors who are former employees of the STATE who are assigned to perform services under this CONTRACT shall be assigned in accordance with all Ethics Requirements. During the term, no person who is employed by the CONSULTANT or its subconsultants/subcontractors and who is disqualified from providing services under this CONTRACT pursuant to any Ethics Requirements may share in any net revenues of the CONSULTANT or its subconsultants/subcontractors derived from this CONTRACT. The CONSULTANT shall identify and provide the STATE with notice of those employees of the CONSULTANT and its subconsultants/subcontractors who are former employees of the STATE that will be assigned to perform services under this CONTRACT, and make sure that such employees comply with all applicable laws and prohibitions. The STATE may request that the CONSULTANT provide it with whatever information the STATE deems appropriate about each such person’s engagement, work cooperatively with the STATE to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the STATE, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The STATE shall have the right to withdraw or withhold approval of any subconsultant/subcontractor if utilizing such subconsultant/subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The STATE shall have the right to terminate this CONTRACT at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

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Acknowledgment for Contract #C004305

For contracts signed in New York State

State of New York)

County of) ss.:

On the ____ day of _____ in the year 20__, before me the undersigned personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

My Commission Expires:

For contracts signed outside of New York State

State of)

County of) ss.:

On the ____ day of _____ in the year 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual(s) made such appearance before the undersigned in

_____ (insert the city or other political subdivision and the state or county or other place the acknowledgment was taken).

Notary Public

(Signature and office of individual taking acknowledgment)

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My Commission Expires: _____

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$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 is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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, 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

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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.

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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

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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

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Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.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 October 2019, 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 State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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.

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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/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-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.

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OCTOBER 2019

APPENDIX A-1

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

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

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

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

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APPENDIX B
REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS
(June 2016)

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its Procedures for Locally Administered Federal-Aid Projects Manual (available through NYSDOT's web site at: <http://www.dot.ny.gov/plafap>). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: <http://www.fhwa.dot.gov/programadmin/contracts/1273.htm>).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION.** No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with the execution of this Agreement, the Municipality/Sponsors contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
3. **DISADVANTAGED BUSINESS ENTERPRISES.** In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may

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impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under [18 U.S.C. 1001](#) and/or the Program Fraud Civil Remedies Act of 1986 ([31 U.S.C. 3801](#) et seq.).

FEDERAL SINGLE AUDIT REQUIREMENTS

Non-Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency¹ the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance ([CFDA](#)2), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

THE CFDA IDENTIFICATION NUMBER

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205. Additional CFDA numbers for other transportation and non-transportation related programs are:

20.215 Highway Training and Education
20.219 Recreational Trails Program
20.XXX Highway Planning and Construction - Highways for LIFE;
20.XXX Surface Transportation Research and Development;
20.500 Federal Transit-Capital Investment Grants
20.505 Federal Transit-Metropolitan Planning Grants
20.507 Federal Transit-Formula Grants
20.509 Formula Grants for Other Than Urbanized Areas
20.600 State and Community Highway Safety
23.003 Appalachian Development Highway System
23.008 Appalachian Local Access Roads

PROMPT PAYMENT MECHANISMS

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

- (a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.
- (b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

¹ The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

² <http://www.cfda.gov/>

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- (1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
 - (2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.
 - (3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.
- (c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- (d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.
- (e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:
- (1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.
 - (2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
 - (3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS

In accordance with 46 CFR 381, the contractor agrees:

- (a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (c) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

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**APPENDIX C
SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS**

Specific Equal Employment Opportunity Responsibilities

1. GENERAL (a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive, NYS Executive Law Article 15, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, by Executive Order 162, issued on January 9, 2017 and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

(b) The CONSULTANT will work with the STATE and the Federal Government in carrying out equal employment opportunity obligations and in their review of their activities under this contract.

(c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of \$10,000 or more will comply with the following minimum specific requirements of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to contractors and sub-contractors.) The CONSULTANT will include these requirements in every sub-contract with such modification of language as is necessary to make them binding on the sub-contractor.

(d) The CONSULTANT and all their sub-consultants and/or subcontractors shall comply with Executive Order 162, issued on January 9, 2017, requiring quarterly workforce utilization reports, detailing reports of the Consultant and all of their subconsultants, which includes in addition to equal opportunity information, the job and salary of each employee directly performing work on a State contract.

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the contract.
- B. In performing the contract, the Consultant shall:
 - 1. Ensure that each Consultant and subconsultant – or subcontractor – performing work on the contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - 2. The Consultant shall submit an EEO policy statement to the New York State Department of Transportation (NYSDOT) after the date of the notice by the NYSDOT to award the contract to the Consultant as determined by the Department.
 - 3. If the Consultant or any of its subconsultants, does not have an existing EEO policy statement, the NYSDOT may require the Consultant or subconsultant to adopt a model statement consistent with item B.4.a through d of this section.
 - 4. The Consultant's EEO policy statement shall include the following language:
 - a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce.
 - b. The Consultant shall state in all solicitations or advertisements for employees that in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, natural origin, sex, age, disability or marital status.
 - c. The Consultant 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 the implementation of the Consultant's obligation herein.

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- d. The Consultant will include provisions of Subdivisions (a) through (c) of this subsection 4 and the paragraph appearing immediately below which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractant as to work in connection with the contract.
- e. The Consultant shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Consultant and its subconsultants shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction or prior arrest.

3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER The CONSULTANT will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer and a Minority Business Enterprise officer (hereinafter referred to as the EEO Officer and M.B.E. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.

4. DISSEMINATION OF POLICY (a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:

- (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
- (2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.
- (3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)

(b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

- (1) Notices and posters setting forth the CONSULTANT'S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- (2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this agreement and the Regulations relative to non-discrimination.

5. RECRUITMENT (a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.

(b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration. In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of

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such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.

(c) The CONSULTANT will encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. PERSONNEL ACTIONS Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age, disability or marital status. The following procedures shall be followed:

(a) The CONSULTANT will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(b) The CONSULTANT will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory practices.

(c) The CONSULTANT will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONSULTANT will promptly take corrective action. If the review indicated that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(d) The CONSULTANT will promptly investigate all complaints of alleged discrimination made in connection with obligations under this agreement, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the NYS Department of Transportation Compliance Officer within 7 days after such action has taken place. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONSULTANT will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.

7. TRAINING AND PROMOTION (a) The CONSULTANT will assist in locating, qualifying and increasing the skills of minority group and women employees, and applicants for employment.

(b) Consistent with the CONSULTANT's work force requirements and as permissible under the Federal and State regulations, the CONSULTANT shall make full use of training programs; i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. In the event the Training Special Provision is provided under this contract, this subparagraph is superseded thereby.

(c) The CONSULTANT will advise employees and applicants for employment of available training programs and entrance requirements for each.

(d) The CONSULTANT will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. UNIONS If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT's compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT's association acting as agent, will include the procedures set forth below:

(a) The CONSULTANT will use their best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

(b) The CONSULTANT will use their best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability or marital status.

(c) The CONSULTANT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such

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information to the CONSULTANT. The CONSULTANT shall so certify to the STATE and shall set forth what efforts have been made to obtain such information. Further, if the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiations of this contract, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

(d) In the event the union is unable to provide the CONSULTANT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the CONSULTANT will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability or marital status, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the CONSULTANT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the CONSULTANT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONSULTANT shall immediately notify the New York State Department of Transportation.

9. AFFIRMATIVE ACTION IN SUBCONTRACTING (a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.

(b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action, the CONSULTANT will identify and contact minority business firms and solicit Proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).

(c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time or submittal of a formal Proposal to the State's Contracts Bureau.

(d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting Proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.

(e) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.

10. RECORDS AND REPORTS (a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:

- (1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.
- (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
- (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- (5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

(b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.

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(c) Failure to comply with these Special EEO Provisions may be considered unsatisfactory performance and may subject the agreement to termination under the termination article of this agreement. Non-compliance may result in the CONSULTANT's being declared ineligible for future agreements made by or on behalf of the STATE or a public authority or agency of the STATE, until he satisfies the State Commissioner of Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded them to be heard publicly before the State Commissioner of Human Rights or official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to:

- (1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or
- (2) cancellation, termination or suspensions of the agreement in whole or in part.

11. TRAINING SPECIAL PROVISIONS This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246.

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows:

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.

The number of months of training to be provided under these special provisions is previously stated in the Agreement.

In the event that the CONSULTANT subcontracts a portion of the contract work, it shall be determined how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the CONSULTANT shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The CONSULTANT shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their Proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less than 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The CONSULTANT will be reimbursed for the cost of any and all training under the payment terms of this agreement. This can include offsite training cost as discussed above. All offsite training must be defined in the training schedule. All costs claimed or calculated for training must be directly related to the work defined in the scope of this agreement and/or added by supplemental agreement.

The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
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The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

Updated July 2017

8.2. Attachment 2. Executive Order 177 Certification

This Certification must be completed and returned with the executed contract documents.

Executive Order 177 Certification
Contract #C004305

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment; employers with fewer than four employees in all cases involving sexual harassment; and, any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Proposer/Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Vendor: _____
By [signature]: _____
Name [print]: _____
Title: _____
Date: _____, 20__

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8.3. Attachment 3. Executive Order 16

Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia

Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found [here](#).

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with

the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

- ☐ 1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.
- ☐ 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)
- ☐ 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)
- ☐ 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor’s business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Name:
(legal entity) _____
By:
(signature) _____
Name: _____

**PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
CONTRACT No. C004305**

Title: _____

Date: _____

8.4. Attachment 4: Form OAR

**ACKNOWLEDGMENT OF RECEIPT OF
RFP, MODIFICATIONS AND RESPONSES TO QUESTIONS**

NAME OF PROPOSER:

We hereby acknowledge receipt of the Request for Proposals **PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY CONTRACT No. C004305**, dated **June 20, 2022**, and all subsequent RFP Modifications issued by NYSDOT, as listed below. Do not include any RFP Announcements.

Add additional lines below, if needed.

RFP MODIFICATION NUMBER:	DATE ISSUED BY DEPARTMENT:

SIGNED: _____
(Signature)

PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
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DATE: _____

NAME: _____
(Print name)

TITLE: _____

**PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
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8.5. Attachment 5. Procurement Lobbying Law Compliance Forms

**Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and
§139-j (6) (b)**

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contracts as required by State Finance Laws §139-j (3) and §139-j (6) (b).

**PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
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By: _____ Date: _____

Name: _____

Title: _____

Consultant Name: _____

Consultant Address: _____

**PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
CONTRACT No. C004305**

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract: **C004305**

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: **C004305**

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle): No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

 No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle): No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity:

Date of Finding of Non-responsibility:

Basis of Finding of Non-responsibility:

(Add additional pages as necessary.)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

(Please circle): No Yes

If yes, please provide details below.

Governmental Entity:

Date of Finding of Non-responsibility:

Basis of Finding of Non-responsibility:

(Add additional pages as necessary.)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By:

Signature

Date:

Name:

PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
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Title:

**PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
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Attachment 5 (Continued)

Procurement Lobbying Law Compliance Form Information

Required Forms: The consultant shall sign and e-mail/fax the two PLL forms listed below. These forms are part of and due with a submitted Proposal.

1. **Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)**
2. **Offerer Disclosure of Prior Non-Responsibility Determinations**

NYSDOT Guidelines and Procedures: Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through NYSDOT Contract Management. Until a designation is made, communication with any other NYSDOT employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.

Refer to "NYSDOT PROCUREMENT LOBBYING LAW GUIDELINES AND PROCEDURES" – see the Consultant's page at NYSDOT's "Doing Business With DOT" web site: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions> then scroll down to 'Compliance Procurement Lobbying Law'.

Contacts Prior to Designation: Any communications involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons:

1. The Designated NYSDOT Contract Management Specialist
2. The Designated NYMTC Contact Person(s)
3. The NYSDOT Contract Management Specialist's Supervisor
4. A NYSDOT Contract Management Assistant Director
5. The NYSDOT Director of Contract Management

These are some communications exempted from this restriction:

1. Participation in a pre-Proposal conference/webinar
2. Submittal of written questions when written responses will be provided to all offerers
3. Protests, complaints of improper conduct or misrepresentation

If any other NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee. If the Department determines an impermissible contact was made, that offerer cannot be awarded the contract. A second violation would lead to a four-year bar on the award of public contracts to the offerer.

Contacts After Designation: NYSDOT identifies its primary negotiation contacts. The designated contacts include:

1. The Designated NYSDOT Contract Management Specialist
2. The Designated NYMTC Contact Person(s)
3. The NYSDOT Contract Management Specialist's Supervisor
4. A NYSDOT Contract Management Assistant Director
5. The NYSDOT Director of Contract Management
6. The NYSDOT Consultant Job Manager
7. The NYSDOT Consultant Job Manager's Immediate Supervisor
8. Any individual(s) that NYSDOT may identify at or after designation

The law does not limit who may be contacted during the negotiation process. However, if any NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee.

Information Required from Offerers that Contact NYSDOT Staff, Prior to Contract Approval by the Office of the State Comptroller: The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by e-mail or fax as directed by NYSDOT. Person's name, firm person works for,

PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
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address of employer, telephone number, occupation, firm they are representing, and whether owner, employee, retained by or designated by the firm to appear before or contact the NYSDOT.

Applicability to an Executed Contract: Restrictions similar to those described above apply to approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer. The staff noted above as well as the Project Manager and contractor manager are considered designated contact persons. The Department may identify other contact persons for each of these processes.

Rules and Regulations and More Information: If you require more information regarding the rules and regulations pertaining to NYS's Procurement Lobbying Law, please visit: <https://ogs.ny.gov/acpl>, <http://www.jcope.ny.gov/>, or please contact the designated NYSDOT Contact Person:

Ms. Patricia Kappeller, PSA5 RFP
NYSDOT Office of Contract Management
50 Wolf Road, 6th Floor
Albany, New York 12232-0203
E-mail: Patricia.Kappeller@dot.ny.gov
Phone: 518-457-2600

**PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
CONTRACT No. C004305**

8.6. Attachment 6: Prime Consultant Information and Certifications

**PROJECT TITLE: PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY
STUDY CONTRACT No. C004305**

I. CONSULTANT INFORMATION

FIRM NAME:

ADDRESS:

CITY: STATE:

ZIP CODE: _____ - _____

TELEPHONE #: (____) _____ - _____ FAX#: (____) _____ - _____

E-MAIL ADDRESS:

CONTACT PERSON:

Consultant's Federal Identification Number (FIN):

Consultant's Consultant Identification Number (CIN):

Consultant's SFS Vendor Identification Number:

- Please indicate below the name, title, address, and telephone/fax numbers of the person who prepared this Proposal, as well as any other individual(s) with authority to negotiate and contractually bind the offeror and also who may be contacted during the period of Proposal evaluation:

Preparer's Name/Title:

Address:

Telephone #: _____ FAX #: E-Mail

Other Authorized Individual(s):

Name/Title

Address:

Telephone #: _____ FAX #: E-Mail

Add additional pages if necessary.

PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
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II. PRIME CONSULTANT CERTIFICATIONS

By signing below, I, _____, authorized individual
(NAME)

Of _____, make the following certifications
(FIRM)

regarding the subject Proposal:

- **365-Day Firm Offer:** This Proposal is a firm offer for a 365-day (or more) period from the date of submission.
- **Former NYSDOT Employee:** The firm has read and will follow the procedure outlined in **RFP Section 6.2** if it proposes the services of a former NYSDOT employee(s).
- **Vendor Responsibility:** In accordance with New York State law, if selected for contract award, the firm will complete and submit the required Vendor Responsibility questionnaire through the Office of the State Comptroller VendRep system, which is accessible via: <http://www.osc.state.ny.us/vendrep/index.htm>. Vendors must certify the accuracy of the information they provide in the questionnaire and must file their VRQ within 10 days of notification of designation. NYSDOT cannot sign a contract if a firm's vendor responsibility certification is more than 12 months old.
- **ST-220:** If selected for contract award greater than \$100,000, the firm will complete and submit the required Forms ST-220-TD and ST-220-CA during negotiations with NYSDOT. The ST-220 forms with instructions are downloadable from the following websites:
http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA)
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)
- **Warranties and Representations:** The Consultant certifies that:
 1. The Consultant shall perform all services in accordance with high professional standards in the industry.
 2. The Consultant shall use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the services.
 3. The Consultant shall use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State.
 4. The Consultant shall use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance.
 5. The Consultant shall perform the services in a manner that does not infringe the proprietary rights of any third party.
 6. The Consultant shall perform the services in a manner that complies with all applicable laws and regulations.
 7. The Consultant has duly authorized the execution, delivery, and performance of the Contract.
 8. The Consultant has not provided any gifts, payments, or other inducements to any officer, employee, or agent of the State.
 - A. Submission of a Proposal is an affirmation by the Consultant that its organization complies with all requirements and specifications set forth in this RFP and that its organization can deliver the requested project while performing the services required in a

**PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
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manner consistent with the requirements and terms of this RFP and under the resulting contract.

10. 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 agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, 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 contract, grant, loan, or cooperative agreement.
11. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
12. As of January 1, 2019, bidders on New York State procurements subject to competitive bidding are required to submit a Certification on Sexual Harassment in bids. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace, and provides annual sexual harassment prevention training to all its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the Labor Law.
13. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. *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 31 U.S.C. Section 1352 (as amended by the Lobbying Disclosure Act of 1995). 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 undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.*

Signature: _____ **Date:** _____

Name (Spelled Out): _____ **Title:** _____

III. ACCEPTANCE OF AGREEMENT

By signing below, I, _____, authorized individual
(NAME)

of _____ hereby **ACCEPT** all terms and conditions
(FIRM)

contained in the Draft Contract (including Appendix A), which is included as **Attachment 1** to this Request for Proposals.

**PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
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Signature: _____
(NAME OF ACCEPTOR)

Attachment 6A. Sub-Consultant Information

(Please Fill Out One of these Forms for EACH Proposed Sub-Consultant)

PROJECT TITLE: **PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY
STUDY CONTRACT No. C004305**

I. SUBCONSULTANT INFORMATION

FIRM NAME:

ADDRESS:

CITY: STATE:

ZIP CODE: _____ - _____

TELEPHONE #: (____) _____ - _____ FAX#: (____) _____ - _____

E-MAIL ADDRESS:

CONTACT PERSON:

Consultant's Federal Identification Number (FIN):

Consultant's Consultant Identification Number (CIN):

Consultant's SFS Vendor Identification Number:

- Please indicate below the name, title, address, and telephone/fax numbers of the person who prepared this Proposal, as well as any other individual(s) with authority to negotiate and contractually bind the offeror and also who may be contacted during the period of Proposal evaluation:

Preparer's Name/Title:

Address:

Telephone #: _____ FAX #: E-Mail

Other Authorized Individual(s):

Name/Title

Address:

Telephone #: _____ FAX #: E-Mail

Add additional pages if necessary.

**PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
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8.7. Attachment 7: Non-Collusive Bidding Certification

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**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW**

SECTION 139-D, Statement of Non-Collusion in bids to the State:

BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTYTHERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this _____ day of _____, 20____ as the act and deed of said corporation or partnership.

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**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW**

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

<u>NAMES OF PARTNERS OR PRINCIPALS</u>	<u>LEGAL RESIDENCE</u>
_____	_____
_____	_____
_____	_____
_____	_____

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

<u>NAME</u>	<u>LEGAL RESIDENCE</u>
_____ President:	_____
_____ Secretary:	_____
_____ Treasurer:	_____
_____ President:	_____
_____ Secretary:	_____
_____ Treasurer:	_____

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8.8. Attachment 8: Vendor Assurance of No Conflict of Interest or Detrimental Effect

The Firm offering to provide services pursuant to this RFP, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this [RFP/Contract] does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
5. During the negotiation and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.
9. Firms responding to this RFP should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title: _____

Signature: Date: _____

Firm Name: _____

This form must be signed by an authorized executive or legal representative.

**PALISADES INTERSTATE PARK SHARED USE PATH FEASIBILITY STUDY
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8.9. Attachment 9: DBE Participation Information

In accordance with the Code of Federal Regulations (CFR), Title 49, Part 26, NYSDOT is required to encourage Proposers to utilize DBE firms in procurements that receive federal funds.

Please complete the following table for the prime firm and all subconsultants (consultant team composition): please identify each firm's legal name, checking if they are a certified DBE by utilizing the NYSUCP DBE Directory, and indicating each firm's percentage of the total salary for the contract. Please keep in mind that only NYSUCP certified DBEs are eligible to count toward attainment of this federally-funded procurement with a DBE participation goal.

Further, participation by a certified DBE prime consultant will count toward DBE participation goal attainment.

If the combined percentage of total contract value for all proposed, certified DBEs is less than the DBE Participation Goal set for this contract (12.85%), then the proposing prime firm is required to fill out and submit the **Participation Solicitation Log (Attachment 10A)**, and the **Goal Attainment Explanation Letter**. Further, prime consultants certified as a DBE who propose to meet the Department's DBE participation goal via their meaningful participation, are required to fill out and submit the **Participation Solicitation Log (Attachment 10A)** if their outreach efforts result in proposed DBE subconsultant(s).

Exhibit __ DBE Participation

Firm Legal Name	NYSUCP Certified DBE		% of Total Contract Value
	DBE	None	
A. Prime Consultant			
B. Sub-Consultants			
Total			100%

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8.10. Attachment 10: DBE Subconsultant Participation Solicitation Log

(Good Faith Effort Documentation)

CONTRACT NO. C004305		12.85% DBE PARTICIPATION GOAL		PAGE NUMBER ____ OF ____	
PRIME FIRM NAME/ADDRESS/ZIP CODE		CONTACT PERSON		TELEPHONE NUMBER (INCLUDE AREA CODE)	
				E-MAIL	
SOLICITED COMPANY NAME AND CONTACT PERSON	TELEPHONE (WITH AREA CODE)	FEDERAL EMPLOYER ID #	WORK TYPES BEING SOLICITED (enter work types or CUF)	TYPES AND DATES OF CONTACTS	CONTACT RESULT(S) CODE*

*See Solicitation Log Instructions listed in Attachment 12: Solicitation Log Instruction

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8.11. Attachment 11: Solicitation Log Instructions

(Good Faith Effort Documentation)

To be deemed responsive to this solicitation, Consultants whose proposed D/M/WBE/SDVOB participation does not meet the established participation goal must document and report their efforts to solicit participation by certified D/M/WBE in this Non-Architecture/Non-Engineering contract. The **Solicitation Log** is used for this purpose.

PLEASE NOTE: For RFP's with a DBE goal, only participation by NYSUCP certified DBE prime consultants as well as NYSUCP certified DBE subconsultants may count toward goal attainment. For RFP's with MBE, WBE goals and/or SDVOB goals, only consultants or subconsultants certified by New York State Empire State Development and/or New York State Office of General Services SDVOB Program may count toward goal attainment.

Guidance concerning Good Faith Efforts in meeting D/M/WBE/SDVOB participation goals is located at the end of this section.

The log is to be filled out and submitted with the proposing firm's Cost and Contract Proposal. In order for a proposal to be determined as responsive when the D/M/WBE/SDVOB participation goal is not attained at all or only partially attained, then the proposer must complete all sections of this form and submit a **Solicitation Log**, along with a **Goal Attainment Explanation Letter**, documenting the firm's Good Faith Effort. A separate Solicitation Log must be submitted for each Participation Goal established in the RFP.

***** DBE CERTIFICATION IS A FEDERAL PROGRAM CERTIFICATION. *****

IT IS SEPARATE AND DISTINCT FROM THE NEW YORK STATE MBE & WBE or SDVOB PROGRAMs. PLEASE DO NOT CONFUSE THE TWO. FIRMS WITH QUESTIONS REGARDING THESE PROGRAMS ARE ENCOURAGED TO SUBMIT WRITTEN QUESTIONS

CONTRACT NO: Enter NY State DOT contract number (Example: C012345).

PARTICIPATION GOAL: Enter applicable MBE/WBE/DBE/SDVOB participation goal percentage as stated in the proposal.

PAGE NO.: Enter 1 of 1; or 1 of 2 and 2 of 2; etc. Use additional forms as needed.

PRIME NAME/ADDRESS/ZIP CODE: Enter name of the Prime Consultant, its address and zip code.

CONTACT PERSON: Enter the name of the person *your* firm has designated as the authorized contact person for this solicitation.

CONTACT PERSON TELEPHONE AND E-MAIL: Enter area code, phone number and e-mail address for the person *your* firm has designated as the authorized contact person for this solicitation.

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\\MBE/WBE/DBE CONSULTANTS SOLICITED:

SOLICITED COMPANY NAME AND CONTACT PERSON: Enter name of solicited firm and name of the individual associated with the firm to whom the solicitation inquiry was sent.

TELEPHONE (With Area Code): Enter TELEPHONE number of the solicited firm.

FEDERAL EMPLOYER ID #: Enter the Federal Employer Identification Number of the solicited firm.

WORK TYPE(S) BEING SOLICITED: Enter the work type(s) or Commercial Useful Function for which this firm has been solicited in connection with the Scope of Services for this contract. NOTE: Work type codes are provided for every certified firm listed in the DBE Registry. Commodity type codes are provided for every certified firm listed in the ESD M/WBE Registry.

TYPES AND DATES OF CONTACT: Enter dates on which your firm contacted the solicited firm, either by mail (date solicitation sent), telephone (including date and time of call) or other person-to-person contacts. Identify the type of contact by prefacing each date with ‘M’ if a mail contact; ‘T’ if a telephone call; and ‘D’ if a direct meeting with the firm.

CONTACT RESULT(S): Enter the code(s) which indicates the result(s) of your solicitation.

***** USE ADDITIONAL PAGES AS NEEDED *****

A description of the codes to use is as follows:

CODE DESCRIPTION:

- 1 This firm is unavailable to participate in the contract for the reason(s) stated on the DBE or M/WBE/SDVOB Solicitation Response. (Attach explanation to the Log.)
- 2 This firm is no longer in business. (NOTE: If this action is checked, attach your explanation as to why the solicitation was sent to the firm and how evidence that it was no longer in business was obtained. Attach the returned envelope showing that it was undeliverable, for instance.
- 3 The soliciting Prime Consultant was unable to reach this firm after having a telephone conversation to follow-up on the participation solicitation inquiry. (NOTE: Indicate In the Types and Dates of Contact column the dates and times at which follow-up was attempted.)
- 4 This firm did not respond to repeated telephone messages. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which messages were left).

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Guidance Concerning Good Faith Efforts in Meeting D/M/WBE/SDVOB Participation Goals in Federally-Funded Contracts

The following is a list of types of actions that demonstrate good faith efforts in obtaining D/M/WBE/SDVOB participation. This list is not exclusive or exhaustive. The bidder must show that it took all necessary and reasonable steps to achieve a D/M/WBE/SDVOB goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient D/M/WBE/SDVOB participation, even if they were not fully successful.

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, utilizing the NYSUCP DBE Directory – <http://www.nysucp.net/> or the ESD M/WBE Directory -<http://www.esd.ny.gov/MWBE.html>) the interest of all certified D/M/WBEs , or the NYS Office of General Services list of certified SDVOBs at <http://ogs.ny.gov/core/sdvoba.asp>, who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the D/M/WBE/SDVOBs to respond to the solicitation. The bidder must determine with certainty if the D/M/WBE/SDVOBs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by D/M/WBE/SDVOBs in order to increase the likelihood that the D/W/BBE/SDVOB goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate D/M/WBE/SDVOB participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
- Providing interested D/M/WBE/SDVOBs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested D/M/WBE/SDVOBs – it is the bidder’s responsibility to make a portion of the work available to D/M/WBE/SDVOB subcontractors and suppliers and to select those portions of the work or material needs consistent with the available D/M/WBE/SDVOB subcontractors and suppliers, so as to facilitate D/M/WBE/SDVOB participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of D/M/WBE/SDVOBs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for D/M/WBE/SDVOBs to perform the work.
- A bidder using good business judgment should consider a number of factors in negotiating with subcontractors, including D/M/WBE/SDVOB subcontractors, and would take a firm’s price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding a D/M/WBE/SDVOBs is not in itself sufficient reason for failure to meet the contract D/M/WBE/SDVOB goal. Also, the ability or desire to perform the work of a contract

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with its own organization does not relieve the bidder of the responsibility to make good faith efforts.

- Do not reject D/M/WBE/SDVOBs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union versus non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- Making efforts to assist interested D/M/WBE/SDVOBs in obtaining bonding, lines of credit, or insurance as required by the recipient or contract.
- Making efforts to assist interested D/M/WBE/SDVOBs in obtaining necessary equipment, supplies, materials or related assistance or services.
- Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of D/M/WBE/SDVOBs.

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8.12. Attachment 12: Firm Experience

The qualifications and prior experience of the proposing Consultants are of great importance to NYMTC/NYS DOT. Direct, prior experience regarding the delivery of transportation planning services is highly desirable. Comparable firm experience is allowed only if a direct relevancy is clear. Provide a list of projects currently in progress and those completed within the last three to five years which are relevant to the Lot on which you are bidding. Proposers must demonstrate that experience and expertise through past and current project attestations and reachable, verifiable references. NYMTC/NYS DOT reserves the right to request information from any source so named and to contact additional references (including appropriate references not specifically named by Proposers) to completely verify all offered experience.

Requirement Description: Organizational Overview
The organizational overview should consist of a succinct statement outlining corporate and business history including a general mission statement, the overall number of employees per position, and other general information about the firm. The Proposer must demonstrate that it possesses adequate staffing resources, financial resources and organization to perform the type, magnitude and quality of work specified herein this RFP, and demonstrate that the Proposer has been in continuous operation for at least the past three (3) years. In addition, the Proposer must provide a statement of previous experience that qualifies the Proposer to provide the project Services. Proposer may include information not defined as required in this section but deemed necessary to fully understand the Proposer's company experience and organizational approach.
Consultant's Organizational Overview Response:
Requirement Description: Company Experience
Provide a description of the Proposer's direct, prior experience in delivery of transportation planning services. Describe this experience and related services as well as describing the client in each case, the number of years the Proposer's team has been providing such services, and information documenting the complexity and relative size of previous projects. This should include, but not be limited to: The type of client (government entity, private company, etc.) The number of locations

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The project duration
The number of Proposer Full-time equivalent staff (FTE's) involved in the implementation
The number of client FTE's involved in the implementation
Other information relevant to describing the client organization in the context of the RFP
Consultant's Company Experience Response:
Requirement Description: Company References
Submit relevant project and contact information for reachable references for up to two past relevant company projects. It is preferred that each cited project experience be of similar scale and scope to this RFP. All cited company references must be reachable (i.e., willing to provide a reference on behalf of the Proposer to NYSDOT upon request). The references should be willing to provide information via an emailed reference response form and possibly follow that up with a conference call to speak further on the Proposer's behalf. Fill out the requested information using the provided form. Use one form for each company reference provided, for up to two past project references. Be sure to cover the proposed Prime Consultant and each proposed Subconsultant.

Consultant's Company Reference Response (include as many completed responses as appropriate):

<i>Reference Company Name:</i>	
<i>Reference Main Line of Business:</i>	
<i>Reference Contact Information</i>	
<i>Primary Contact Person's Name:</i>	
<i>Title:</i>	
<i>Affiliation/Company Employed By:</i>	
<i>Phone:</i>	

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<i>Email:</i>	
<i>Project Information</i>	
<i>Project Name:</i>	
<i>Project Start Date:</i>	
<i>Project End Date:</i>	
<i>Project Budget:</i>	
<i>Number of Staff Involved:</i>	
<i>Types of Staff Involved:</i>	
<i>Degree to which offered key personnel were primarily responsible for project delivery:</i>	
<i>Description of all services provided and how they were/are comparable to the size and scope of the services specified in this RFP:</i>	
<i>An explanation of the size and complexity of the project, including how it compares in size to this project:</i>	
<i>A list of all sub-consultants and the duties they performed (if applicable):</i>	
<i>Project results and benefits delivered to the client</i>	

Requirement Description: **Experiences with Subconsultant**

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Information documenting the Proposer's experience working with any proposed sub-contractors (e.g., nature of the relationship, number of engagements worked together, duration of engagements, percent split between firms, etc.).

Consultant's Subconsultant Experience Response:

8.13. **Attachment 13: Contract Job Categories**

Provide Qualifications, Experience and Resume for Consultant Project Manager and Qualifications for Consultant Key Personnel

The RFP provides the following job categories, including Typical Position Titles and role descriptions, to assist proposers in offering qualified candidates.

Any offered key personnel are required to be available to deliver the scope of services. All replacement key personnel, which must be provided to minimize schedule impact, are subject to NYMTC review and approval.

In your Technical Proposal Approach, you should present your ability to reasonably provide qualified consultant personnel and your ability to ensure that all consultant personnel assigned to are available to provide requested support services in a time frame which meets the contract's schedule.

In addition to providing a Consultant Project Manager, the RFP requires the selected Consultant to present qualifications for all other proposed key personnel to perform the scope of services. Present key personnel qualifications in a concise format.

The levels of position are distinguished by the depth and breadth of the knowledge areas of the subject matter. Note: The minimum qualifications and duty descriptions are presented for guidance purposes and are not intended to confine consultants to the specifics of the categories presented. **However, Consultants shall fit key personnel into each presented job category and level of responsibility as accurately as possible.**

Job Category:

8.13.1. Consultant Project Manager

Typical Position Titles: Consultant Project Manager, Consultant Task Assignment Manager, Project Manager

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Typical duties may include: Supervises, directs and coordinates activities of personnel involved in each assignment to ensure assignment progresses on schedule and within prescribed budget. Plans, directs, and coordinates activities of assignment to ensure that goals or objectives are accomplished. Responsible for the performance of all work components and elements; ensures the execution and delivery of the assignment. Primary contact with the NYMTC Project Manager. Submits timely progress reports and invoices.

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8.13.2. Transportation Planner

Typical Position Titles: Transportation Planner, Urban and Regional Planner, Geographer

Typical duties may include: Supports the development and maintenance of transportation planning studies, reports and programs. Designs, directs and conducts transportation systems planning, program planning, and project development. Reviews activities in support of transportation planning products. Works and consults with member agency staff and representatives of state and local governments. Possesses understanding and knowledge of applicable transportation planning programs, regulations, and requirements.

8.13.3. Technical Analyst

Typical Position Titles: Technical Analyst, Transportation Analyst, Transportation Modeler, Data Analyst, Survey Researcher, Economist, Demographer, Operations Research Analyst, Statistics Assistant, IT Specialist

Typical duties may include: Designs, directs and conducts the technical analyses and research to support transportation planning, including surveys, studies, forecasts and modelling. Collects and analyzes transportation data and statistics to support the development of transportation programs and assess transportation system performance and travel behavior. Works and consults with member agency staff and representatives of state and local governments. Has strong technical background to support transportation planning policies, procedures and data analysis.

8.13.4. Landscape Architect

Typical Position Titles: Landscape Architect, Urban Designer, Landscape Designer, Landscape Planner, Professional Landscape Architect (PLA)

Typical duties may include: Plans, designs and reviews landscape development and site improvement projects. Designs, directs and conducts site surveys, inventories and analyses to determine topography, soil and other landscape and aesthetic characteristics. Develops site plans; prepares maps, plans, estimates, project specifications, and contracts. Works and consults with member agency staff and representatives of state and local governments. Possesses understanding and knowledge on integrating existing land features or landscaping into designs.

8.13.5. Geographic Information Systems (GIS) Specialist

Typical Position Titles: GIS Specialist, GIS Analyst, Remote Sensing Technologist, Mapping Technologist, Geographer, Planner

Typical duties may include: Produces data layers, maps, tables, or reports using spatial analysis procedures or Geographic Information Systems (GIS) technology, equipment, or systems. Designs or prepares graphic representation of GIS data using GIS hardware or software

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applications. Performs computer programming, data analysis, or software development of GIS applications. Has specialized technical training in GIS applications to support transportation planning policies, procedures and data analysis.

8.13.6. Public Involvement Specialist

Typical Position Titles: Public Involvement Specialist, Public Information Specialist, Media Relations Specialist, Marketing and Promotions Specialist

Typical duties may include: Prepares, edits and disseminates informational materials related to transportation planning and programs through various media including brochures, reports, media advisories, press releases, public notices, websites, and social media. Coordinates meetings and events, press conferences, interviews, and responses to press inquiries. Works and consults with member agency staff and representatives of state and local governments. Has strong background in public involvement, outreach and engagement, including in-person and virtual approaches.

Staff General Description of Responsibility

Staff Level	General Description of Responsibility (Does not apply to Consultant Project Manager Role)	Years of experience (guidance)
Level I	Under supervision of senior staff, conducts and coordinates studies or analyses; reviews and recommends actions; prepares or assists in preparing and reviewing study designs and reports. Investigates issues and identifies solutions; evaluates the effectiveness of solutions.	Generally 1-3 years' experience
Level II	Performs the most difficult investigations and analyses. Develops study designs or supervises subordinate staff in conducting such tasks. Prepares or reviews the most difficult of such tasks. Prepares or gives close direction to projects involving novel or especially difficult problems or approaches.	Generally 4-7 years' experience
Level III	Principal expert in specialized field. Conducts challenging or unique studies and analyses or may supervise staff in conducting such studies and analyses. Reviews technical reports and study designs. May oversee interaction with member agency staff and representatives.	Generally 8+ years of experience

NOTE: A master's degree in planning, Economics, Demography, Geography, Urban Studies, Landscape Architecture or a Science, Technology, Engineering and Mathematics (STEM) field may be substituted for one year of the required experience. A Ph. D. in Planning, Economics,

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Demography, Geography, Urban Studies, Landscape Architecture or a STEM field may be substituted for two years of the required experience.

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8.14. Attachment 14: Key Personnel Experience

Complete a profile form for each proposed Key Personnel including the Consultant Project Manager.

One form is provided below. Use additional pages as needed.

Profile Form:

<i>Personnel Name and Job Category & Level from Attachment 13: Contract Job Categories:</i>	
<i>Professional Associations, Degrees, and Certifications:</i>	
<i>Number of Years of Relevant Experience in the Proposed Project Role:</i>	
<i>Description of Relevant Experience:</i>	

Provide a resume for each proposed Key Personnel including the Consultant Project Manager.

Consultant Key Personnel Experience and References:

Provide two references per proposed Key Personnel including the Consultant Project Manager .

- A. Can cite more than one project – work needs to be relevant to the RFP.
- B. Use below form, one for each (fill in number blank – i.e., Staff Reference #1; Staff Reference #2, etc.)
- C. Form is expandable – be concise.

<i>Client Name (Reference Company):</i>	
<i>Reference Main Line of Business:</i>	
<i>Project Name:</i>	
<i>Name & Title of Contact:</i>	
<i>Email Address & Telephone Number:</i>	
<i>Provide a Brief Description of Recent, Relevant Project for which they are Serving to Reference</i>	

Staff Reference Check Evaluation Criteria provided below:

- A. Describe the nature of the project and the work that this staff member performed for you.
- B. How would you rate the staff member's experience and qualifications?
- C. How well did the staff member respond to your needs?

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- D. How pleased are you with the work the staff member has performed/is performing for you?
- E. Would you contract with this staff member again?

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8.15. Attachment 15: Cost Proposal

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The Cost Proposal Spreadsheet template is to be downloaded from the NYSDOT or NYMTC Project website:

- <https://www.nymtc.org/Utility-Menu/Doing-Business/Current-RFPs>
- <https://www.nysdot.gov/business>, select ‘Ads’ or ‘Consulting Service Opportunities’.

The Cost Proposal shall be presented as one total fixed cost, with separate rate tables for the two-year base term, and shall include, at a minimum, detailed information defining and explaining the elements and metrics of the Cost Proposal by phase/activity or by task/subtask and by labor. NYSDOT may request a “Best and Final Offer” (BAFO) from any or all proposers during the final stages of proposal evaluation, after conclusion of technical interview.

Attachment 15: Cost Proposal is an Excel spreadsheet/workbook which contains tabs wherein each tab presents a major contributor to the contract’s total estimated cost over the base three-year term. Each tab presents a separate exhibit, which will become the exhibits to populate Schedule B of the resulting contract. These exhibits are as follows:

- Exhibit 1: Cost Proposal Summary
- Exhibit 1A: Milestone Payment Schedule
- Exhibit 2: Staffing Table With Rates/Costs Schedule
- Exhibit 2A: Staffing Table by Task without Rates/Costs
- Exhibit 3: Direct Non-Salary Cost Schedule
- Exhibit 4: Rate Schedule

Cost Proposal Summary (Exhibit 1 & Exhibit 1A). Complete and submit **Exhibit 1** which presents a summary of all proposed costs by cost category by year. Costs for total salary and expenses are automatically carried from each respective portion of the spreadsheet. **C004305’s** two-year base term total value (or contract maximum amount payable) shall be established via Exhibit 1. NYSDOT reserves the right to clarify any aspects of a bidder’s cost proposal, including through a best and final offer request. During contract negotiations with the selected Consultant, NYSDOT reserves the right to petition for revisions to proposed pay rates. Exhibit 1A presents the milestone payment schedule

Cost of Labor (Exhibit 2 and Exhibit 2A). Complete and submit **Exhibits 2 and 2A**. A fixed labor cost estimate by task by year shall be proposed to cover all proposed Scope of Service work for each of the two (2) base term Contract Years.

Prepare and present Exhibit 2A ONLY in your Technical proposal.

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Direct Non-Salary Costs (Exhibit 3). Complete and submit **Exhibit 3**. Estimates of estimated direct non-salary expenses shall be proposed for each of the two (2) base term Contract Years.

Labor Rates (Exhibit 4). Complete and submit **Exhibit 4**. The Department estimates **that the work for the successful Consultant shall commence in** January 2023. The RFP requires all proposers to **submit labor rates for each year of the two-year base term. Year One to Year Two and Year Two rate increases shall be limited to no more than two (2) percent.**

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8.16. Attachment 16: Consultant Disclosure Employment Reports

OSC Use Only:
Reporting Code:
Category Code:
Date Contract Approved:

FORM A

State Consultant Services – Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term			
State Agency Name: Transportation		Agency Code: DOT01	
Contractor Name:		Contract Number: C004305	
Contract Start Date: MONTH DD, 2022		Contract End Date: MONTH DD, YEAR	
O*Net Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

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