

TOWN BOARD MEETING AGENDA
September 6, 2023

TOWN BOARD WORKSHOP – Board Room – 6:15 pm

PLEDGE OF ALLEGIANCE and MOMENT OF SILENCE

COMMUNITY EVENTS:

The “BUY A BRICK” program for the Halfmoon Veterans Walk of Honor at the Halfmoon Veterans Memorial in the Town Park is now accepting orders. Create a lasting tribute for your veteran. For more information please call 371-7410 ext. 2200 or visit our website www.townofhalfmoon-ny.gov.

FARMER’S MARKET: Every Wednesday from 3-6 in the Town Hall Foyer. Come visit our local farms, crafters, and vendors that will be on hand every week.

Halfmoon Comprehensive Plan Update page is now live at <https://www.planhalfmoon.com/> . Visit the website to find out more about the Halfmoon Comprehensive Plan Update.

9-11 PATRIOT DAY CEREMONY: Monday, September 11, 2023, at 6:00 pm at the Abele Memorial Park. All are invited to attend.

CLIFTON PARK-HALFMOON LIBRARY ANNUAL BUDGET VOTE and TRUSTEE ELECTION: Thursday, September 14th from 7:00am-9:00pm

CHAMPLAIN CANAL TRAIL WALK & PICNIC IN THE PARK, Saturday, September 16th from 10:30 – Noon. Arrive at the Lighthouse Park & be shuttled to the trailhead for a 2 mile walk & presentation. Picnic lunch will be provided. To participate, please register at halfmoonny.myrec.com.

HARVEST FESTIVAL – September 23rd from 12:00-4:00 at the Town Park. Family Fun for all ages! Vendor space still available. For more information go to www.halfmooncelebrations.org

FALL CLEANUP DATES – September 5, 8, 9,12,15, & 16 for Town Residents.
DAYS OPEN - Tuesday 8-12 Friday 12-5 Saturday 8-3
FEES CHARGED – \$5 Carload, \$10 Truck/Trailer load, UHaul charged accordingly.

HAZARDOUS WASTE DAY – Saturday, September 23rd 8:00am-2:00pm at 22 Ray Road, near the Town of Clifton Park Transfer Station. Register online at www.cliftonpark.org . Call 518-371-6054 for information.

PAPER SHREDDING DAY – SEPT. 30TH from 9:30 – 11:30AM at the Highway Dept. located at 322 Route 146. Max 3 bags/boxes at no cost but residents are asked to bring canned items for the food pantry.

TOWN MEETINGS:

Town Board Meetings: 1st & 3rd Wednesday of month at 7:00 pm. Pre-meeting at 6:15 pm

Zoning Board of Appeals: 1st Monday of month at 7:00 pm. Pre-meeting at 6:45 pm

Planning Board Meeting: 2nd & 4th Monday of the month at 7:00pm. Pre-meeting at 6:15pm. (If the Holiday falls on a Monday, the meeting will be held on the next day, Tuesday).

Trails & Open Space Committee: 3rd Monday of the 3rd month at 7:00 pm unless otherwise announced. The next meeting is 10/16.

REPORTS OF BOARD MEMBERS AND TOWN ATTORNEY

Kevin J. Tollisen (Town Supervisor)

Paul Hotaling (Deputy Town Supervisor): (1) Chair of Personnel Committee (2) Ethics Committee, (3) Chair of Infrastructure & Safety (Water, Highway, Building & Maintenance) (4) Co-Chair for Character Counts, (6) Liaison to Comprehensive Plan Update Committee

John Wasielewski (Town Board Member); (1) Liaison to Planning Board, (2) Chair of Committee of Emergency Services and Public Safety, (3) Liaison to Animal Control and related services.

Jeremy Connors (Town Board Member): (1) Liaison to Zoning Board; (2) Chair of Business and Economic Development Committee (3) Chair for Not-for-Profit Organizations, (4) Liaison to Comprehensive Plan Update Committee

Eric Catricala: (1) Co-Liaison to Planning Board, (2) Co- Chair of Business and Economic Development Committee (3) Chair for Parks and Athletic Organizations, (4) Chair for Recreation (5) Co-Chair for Character Counts, (6) Liaison to Trails and Open Space Committee

Lynda Bryan (Town Clerk): (1) Chair of Senior Programs, (2) Chair of Committee on Historical Archives

Dana Cunniff (Receiver of Taxes): Chair of Committee on Resident Relations

Lyn Murphy, Esq., (Town Attorney)

Cathy Drobny, Esq. (Deputy Town Attorney)

PUBLIC COMMENT (for discussion of agenda topics)

DEPARTMENT REPORTS –

1. Town Clerk – Total Fees Submitted to the Supervisor - \$10,239.22
2. Senior Express – Total # Meals – 595 Total # Rides – 595
3. Building Permits
Total # Permits – 866 Total Fees Submitted to the Supervisor - \$28,916.50
4. Fire Inspections
Total # Inspections – 5 Total Fees Submitted to the Supervisor - \$750.00

DEPARTMENT MANAGER MONTHLY REPORTS – (Can be viewed at the Town Clerk's Office) Receiver of Taxes, Town Clerk, Highway Department, Water Department, Animal Control, Assessor's Office

CORRESPONDENCE

1. Received from the Town Planning Board Resolutions approved at the August 14, 2023, meeting.
2. Received from the Town Planning Board, notification that they are in receipt of a Special Use Permit application for Main Street Barber, 10 Johnson Road – Home Occupation & Sign.
3. Received from the U.S. Army Corps of Engineers, a copy of the letter to Bruce Tanski in response to their June 22, 2023, request for the discharge of fill materials to facilitate the construction of a senior apartment facility on Prunyn Hill Road, stating that they may proceed with the proposed activities.
4. Received from the Capital District Planning Commission, their 2022 Annual Report that can be viewed in the Town Clerk's Office.
5. Received from Matthew Ayotte, his letter of resignation as MEO in the Highway Department effective September 7, 2023.

OLD BUSINESS

237. Resolution that the Town Board of the Town of Halfmoon hereby awards the bid for the purchase of water distribution valves and hydrants, based upon the recommendation of the Town Engineer, to the apparent low bidder for the project to Blair Supply Corp. with a total bid of \$110,027.00 and authorizes the Supervisor to execute any and all necessary documents to proceed with this project, subject to the review and approval of the Town Attorney.

Resolution Introduced by Director of Water Tironi

NEW BUSINESS

238. Resolution to approve minutes of Town Board Meeting of August 16, 2023, as presented.

Resolution Introduced by Town Clerk Bryan

239. Resolution that the Town Board authorizes the Supervisor to accept the Town of Halfmoon's share of the 2024 Sales Tax Revenues in cash from Saratoga County Real Property Tax Services and to sign the 2024 County Tax Levy – Sales Tax Application, subject to the review and approval of the Town Attorney.

Resolution Introduced by the Assessor Zarelli

240. Resolution that the Town Board hereby amends of the Town of Halfmoon Employee Manual as it relates to discrimination and harassment, the accident policy and expressing of breast milk, subject to the review and approval of the Town Attorney.

Resolution Introduced by Comptroller Hatter

241. Resolution that the Town Board hereby honors Rosalie Alexander, a Halfmoon resident on the milestone of her 100th Birthday.

Resolution Introduced by Supervisor Tollisen

242. Resolution that the Town Board hereby appoints Derek Messier as a Parks and Town Property Department MEO at Grade 5 Base Pay \$24.24/hr., effective September 9, 2023.

Resolution Introduced by Superintendent of Buildings & Grounds Maiello

243. Resolution that the Town Board authorizes the Supervisor to enter into an Agreement with Bruce Tanski Construction to provide potable water to the Tribley Active Adult Planned Development District and to authorize the Supervisor to execute any documents necessary to enter into the Agreement, subject to the review and approval of the Town Attorney.

Resolution Introduced by Director of Water Tironi

244. Resolution that the Town Board authorizes the Supervisor to sign Change Order #4 for the Outdoor Recreation Pavilion to modify the substantial completion

date from September 15, 2023, to October 20, 2023, due to supply chain issues with no additional cost to the Town of Halfmoon, subject to the review and approval of the Town Attorney.

Resolution Introduced by Highway Superintendent Bryans

245. Resolution that the Town Board hereby authorizes the Supervisor to enter into a Consultant Agreement with Creighton Manning Engineering, LLP, to provide engineering services as it relates to the 236/Guideboard Road design phase, in the not to exceed amount of \$500,000.00, to be paid through General Fund, advanced prior to receipt of grant funds, upon receipt of which the General Fund will be reimbursed, and hereby authorizes the Supervisor to execute any documents necessary to effectuate said agreement and proceed with the design phase of the project, subject to the review and approval of the Town Attorney.

Resolution Introduced by Highway Superintendent Bryans

246. Resolution that the Town Board hereby hires Kyle McAlonie as a full time Parks Laborer at Grade 1, Base Pay \$19.91/hr., subject to successful completion of all pre-employment testing.

Resolution Introduced by Superintendent of Buildings & Grounds Maiello

246. Resolution that the Town Board authorizes the Comptroller to make the attached Creation of Appropriations.

Resolution Introduced by Comptroller Hatter

A resolution is necessary to create the following budget amendment of appropriations and revenues in the Special Revenue Fund for engineering fees for on-site quality inspections. These funds are developer's monies held in escrow by the Town in a regular checking account and used for the payment of costs for that particular project. This resolution is necessary to comply with proper accounting procedures as set forth by NYS Department of Audit and Control.

DEBIT:	Revenues	25-980	\$7,735.00
	Subsidiary: Home & Community Services		
	25-4-2189.00		\$7,735.00
CREDIT:	Appropriations	25-960	\$7,735.00
	Subsidiary: Engineering Contractors Inspections		
	25-5-1440.40		\$7,735.00

Information Only: The above was derived from the following breakdown of charges to be paid on September 14, 2023, Abstract for engineering and related fees.

NAME	AMOUNT
Alexandria FKA Princeton Heights	\$1,275.00
Betts Farm	\$1,000.00

Brookwood Farm Ph II	\$5,460.00
Total	\$7,735.00

The following creation is necessary in the Landfill Post-Closure Care Capital Fund per Resolution #229-2023 approved on 08/16/2023, authorizing MJ Engineering and Land Surveying, P.C. to perform annual Environmental Monitoring Services at the Town Landfill site in accordance with NYSDEC approved Post-Closure Monitoring & Maintenance per the operations manual in the not to exceed of \$8,500. This creation will set up one year of funding in Post-Closure Care Capital Fund. Monies from the Post-Closure Care Reserve Fund will fund these expenditures.

DEBIT:	Appropriated Reserves	40-511	\$8,500
CREDIT:	Appropriations	40-960	\$8,500
	Subsidiary: PC Landfill Capital Outlay		
	40-5-8160.20		\$8,500

PUBLIC COMMENT (for discussion of non-agenda items)

ADJOURN

Change Order No. 004

Date of Issuance: 09/01/2023
 Owner: Town of Halfmoon, New York
 Contractor: Gallo Construction Corp.
 Engineer: Weston & Sampson, PE, LS, LA, Architects PC
 Project: Construction of Outdoor Recreation Pavilion

Effective Date: 09/06/2023
 Owner's Contract No.:
 Contractor's Project No.:
 Engineer's Project No.: ENG22-0624
 Contract Name: Construction of Outdoor Recreation Pavilion

The Contract is modified as follows upon execution of this Change Order:

Description:

Extension of substantial completion date from September 15th, 2023 to October 20th, 2023.

Attachments: *[List documents supporting change]*

Letter from Gallo Construction Corp. Dated 08/29/2023; Construction Schedule Dated 08/29/2023

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: <u>\$ 1,123,000.00</u>	Original Contract Times: Substantial Completion: <u>September 15, 2023</u> Ready for Final Payment: <u>December 15, 2023</u> days or dates
[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>3</u> : <u>\$ 124,036.00</u>	[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>3</u> : Substantial Completion: - Ready for Final Payment: - days
Contract Price prior to this Change Order: <u>\$ 998,964.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>September 15, 2023</u> Ready for Final Payment: <u>December 15, 2023</u> days or dates
[Increase] [Decrease] of this Change Order: <u>\$ -</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: <u>October 20, 2023</u> Ready for Final Payment: - days or dates
Contract Price incorporating this Change Order: <u>\$ 998,964.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>October 20, 2023</u> Ready for Final Payment: <u>December 15, 2023</u> days or dates

RECOMMENDED:
 By: David P. Biggs
 Engineer (if required)
 Title: Principal-in-Charge
 Date: 08/29/2023

ACCEPTED:
 By: _____
 Owner (Authorized Signature)
 Title _____
 Date _____

ACCEPTED:
 By: Maurice Gallo
 Contractor (Authorized Signature)
 Title: Vice President
 Date: 8/30/2023

Approved by Funding Agency (if applicable)

By: _____
 Title: _____

Date: _____

Intersection Improvements at Route 236 and Guideboard Road

Town of Halfmoon
Saratoga County, New York

NYS DOT PIN 1762.50

Consultant Agreement

Prepared by:



**Creighton
Manning**

2 Winners Circle
Albany, New York 12205
PH: 518.446.0396

in association with:

OSPA Engineering Services, P.C.

August 24, 2023

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 - Staffing Table
 - Direct Non-Salary Costs
 - Summary of Costs
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EXECUTIVE SUMMARY

CONSULTANT AGREEMENT - PRELIMINARY AND FINAL DESIGN PIN 1762.50: Intersection Improvements at Route 236 and Guideboard Road Town of Halfmoon, Saratoga County, NY

This Consultant Agreement covers the completion of Preliminary & Final Design for the Intersection Improvements at Route 236 and Guideboard Road Project. Creighton Manning Engineering, LLP has been designated by the Town of Halfmoon to progress this Locally Administered Federal-Aid project and has prepared the attached Consultant Agreement, Scope of Services and Fee.

Project Description:

This project will improve the flow of traffic by reconstructing the intersection of NY Route 236 and Guideboard Road. A roundabout alternative will be evaluated as part of the project as well as road widening to accommodate a through lane on Guideboard Road between US Route 9 and NY Route 236. The existing signal at US Route 9 and Guideboard Road will also be evaluated to assess the potential needs for upgrades. All proposed facilities will meet applicable Federal and State design standards. The project will require acquisition of right-of-way, however ROW incidentals and acquisitions are not part of the scope of work. ROW acquisition needs will be documented during the design process.

The project scope required to complete the project in accordance with the Procedures for Locally Administered Federal Aid Projects is included in the Scope of Services and Cost Proposal.

Schedule and Construction Cost

It is anticipated the project will be ready for PS&E in the Winter of 2024. The project is currently programmed for \$500,000 on the NYS DOT STIP for Preliminary and Final Engineering. There are currently no funds allocated for construction, construction inspection, or ROW incidental/acquisitions at this time.

This proposal is for Preliminary and Final Design only and is for \$490,000.

Architectural/ Engineering Consultant Contract

PIN: **1762.50** Municipal Contract No. _____

Agreement made this _____ day of _____, 2023 by and between

Town of Halfmoon

(municipal corporation)

having its principal office at **2 Halfmoon Town Plaza**, in the **Town of Halfmoon** (to be known throughout this document as the "**Sponsor**")

and

Creighton Manning Engineering, L.L.P. with its office at **2 Winners Circle, Albany, New York** (to be known throughout this document as the "**Consultant**")

WITNESSETH

WHEREAS, in connection with a federal project funded through the New York State Department of Transportation ("NYSDOT") identified for the purposes of this contract as **Intersection Improvements at Route 236 and Guideboard Road Project** (as described in detail in Attachment A annexed hereto, the "Project") the Sponsor has sought to engage the services of a Consultant Engineer to perform the scope of services described in Attachment B annexed hereto; and

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

WHEREAS, the **Supervisor Kevin Tollisen**, is authorized to enter this Contract on behalf of the Sponsor,

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. DOCUMENTS FORMING THIS CONTRACT

This contract consists of the following:

- **Agreement Form** - this document titled "Architectural/Engineering Consultant Contract";
- **Attachment "A"** - Project Description and Funding;
 - Appendix A – Standard Clauses for New York State Contracts
 - Appendix B – Requirements for Federally-Aided Transportation Contracts
- **Attachment "B"** – Scope of Services
- **Attachment "C"** - as applicable, Staffing Rates, Hours, Reimbursables and Fee.

ARTICLE 2. SCOPE OF SERVICES/STANDARD PRACTICES AND REQUIREMENTS

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

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

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

ARTICLE 3. COMPENSATION METHODS, RATES AND PAYMENT

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

(Continued on page)

DRAFT

ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/AMT or %	INTERIM PAYMENTS
<p><input checked="" type="checkbox"/> 3.1 Cost Plus Fixed Fee Method</p>	<p>Item I</p> <ul style="list-style-type: none"> Actual Direct Technical Salaries, regular time plus straight time portion of overtime compensation of all employees assigned to this PROJECT on a full-time basis for all or part of the term of this Contract, plus properly allocable partial salaries of all persons working part-time on this PROJECT. The cost of Principals', Officers' and Professional Staffs' salaries (productive time) included in their comparable Salaries is eligible for reimbursement for their comparable time is also charged directly to all other projects in the same manner. Otherwise, Principals' salaries are not eligible as an overhead cost, subject to the current limitations, generally established therefore by the Sponsor. If, within the term of this Contract, any direct salaries are paid in excess of the maximums shown in Attachment C, the excess amount shall be borne by the CONSULTANT WITHOUT REIMBURSEMENT either as a direct cost or as part of the overhead allowance 	<ul style="list-style-type: none"> Actual cost incurred in the performance of this contract as identified in Attachment C or otherwise approved in writing by the Sponsor or its representative. Not to exceed the maximum allowable hourly rates of pay described in Attachment C of this Contract, all subject to audit. Actual overtime premium portion of Direct Technical Salaries, all subject to audit and prior approval by the Sponsor. 	<ul style="list-style-type: none"> The CONSULTANT shall be paid in Monthly progress payments based on the maximum salary rates and allowable costs incurred during the period as established in Attachment C. Bills are subject to approval of the Sponsor and Sponsor's Representative.
<p>Item II</p>	<p>Actual Direct Non-Salary Project-related Costs incurred in fulfilling the terms of this Contract; all subject to audit.</p>	<p>All reimbursement for travel, meals and lodging shall be made at actual cost paid but such reimbursement shall not exceed the per diem rates established by the NY State Comptroller. All reimbursement shall not exceed prevailing wage rates established by the NYS Department of Labor.</p>	
<p>Item III</p>	<p>Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of the Sponsor at the completion of the work or at the option of the Sponsor.</p>	<p>Salvage value</p>	

CM (02/15)

3.1 Cost Plus Fixed Fee Method		INTERIM PAYMENTS	
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/AMT. or %	
Item IV	<p>Overhead Allowance based on actual allowable expenses incurred during the term of this Agreement subject to audit. Submitted overhead amounts will be based upon the Federal Acquisition Regulations, sub part 1-31.105 ("FAR"), as modified by sub part 1-31.105 ("FAR"), and applicable policies and guidelines of the Municipality, NYSDOT and FHWA.</p> <p>For the purpose of this Agreement, an accounting period shall be the CONSULTANT's fiscal year. An audit of the accounting records of the CONSULTANT shall be made by the Municipality for each accounting period. For monthly billing purposes, the latest available overhead percentage established by such audit shall be applied to the charges made, under Item IA of this subdivision to determine the charge to be made under this item.</p>	<p>The overhead allowance shall be established as a percentage of Item IA only (Actual Direct Technical Salaries) of this ARTICLE, and shall be a FAR compliant rate initially established as 109% for Field, 121% for Office. In all events the above rates shall not exceed 140%.</p>	
Item V	<ul style="list-style-type: none"> o Negotiated Lump Sum Fixed Fee. o Payment of the Fixed Fee for the described scope of services is not subject to pre-audit and is not subject to review or modification based on cost information or unless this Contract is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed. 	<p>Fixed Lump Sum Fee which in this Contract shall equal \$49,193.</p>	
Item VI	<p>The Maximum Amount Payable under this Contract including Fixed Fees unless this contract is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed.</p>	<p>Maximum Amount Payable under this Method shall be \$49,193.</p>	

<input type="checkbox"/> 3.2 Specific Hourly Rate Method		
ITEM	DESCRIPTION OF ITEMS AND METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE
Item I	Specific Hourly rates of pay shown in Attachment C for employees assigned to this PROJECT. The Specific Hourly rates and all components of those rates are not subject to audit. The number of hours charged are subject to audit.	Rates in Attachment C
Item II	Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Contract; all subject to audit.	<ul style="list-style-type: none"> o Actual costs incurred in the performance of this contract as identified in Attachment C or otherwise approved in writing by the Sponsor or its representative. o All reimbursement for travel, meals and lodging shall be reimbursed at the actual cost paid but such reimbursement shall not exceed the per diem rates established by NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Dept. of Labor. o For Reimbursement of Direct Non-Salary Costs a multiple of One times shall be allowed to the expenses incurred by the Consultant, the Consultant's employees, or the subconsultant not to exceed \$
Item III	Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of the Sponsor at the completion of the work or at the option of the Sponsor.	Salvage value

CM (12/16)

<input type="checkbox"/> 3.2 Specific Hourly Rate Method		APPLICABLE RATE/ AMOUNT OR PERCENTAGE
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	
ITEM IV	Maximum Amount Payable under the Method unless this Contract is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed.	The Maximum Amount Payable under this Method shall be \$_____.

<input type="checkbox"/> 3.3 Lump Sum Cost Plus Reimbursables Method		APPLICABLE RATE/ AMOUNT OR PERCENTAGE
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	
ITEM I	A Lump Sum paid to Consultant for the scope of services hereunder, unless this Contract is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed.	A Lump Sum of \$_____. <input type="radio"/> The CONSULTANT shall be paid in Monthly progress payments based on the maximum salary rates and allowable costs incurred during the period as established in Attachment C. <input type="radio"/> Bills are subject to approval of the Sponsor and Sponsor's Representative.
ITEM II	Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Contract; all subject to audit.	<input type="radio"/> Actual costs incurred in the performance of this contract as identified in Attachment C or otherwise approved in writing by the Sponsor or its representative. <input type="radio"/> All reimbursement for travel, meals and lodging shall be made at actual cost paid but such reimbursement shall not exceed the per diem rates established by NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Dept. of Labor. <input type="radio"/> For Reimbursable Direct Non-Salary Costs multiple of One times shall be applied to the expenses incurred by the Consultant, the

<input type="checkbox"/> 3.3 Lump Sum Cost Plus Reimbursement Method			
ITEM	DESCRIPTION OF ITEM AND UNIT METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE	
ITEM III	Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of the Sponsor at the completion of the work under the option of the Sponsor.	consultant's employees, or the subcontractant not to exceed \$ _____	Salvage value

D R A W I N G

ARTICLE 4. INSPECTION

The duly authorized representatives of the Sponsor, and on Federally aided projects, representatives of the NEW YORK STATE DEPARTMENT OF TRANSPORTATION and the FEDERAL HIGHWAY ADMINISTRATION, shall have the right at all times to inspect the work of the CONSULTANT.

ARTICLE 5. AUDITS

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

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

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

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

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

ARTICLE 6. FINAL PAYMENT

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

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

ARTICLE 7. EXTRA WORK

7.1 Consultant's performance of this Contract within the compensation provided shall be continuously reviewed by the CONSULTANT. The CONSULTANT shall notify the Sponsor of the results of those reviews

in writing by submittal of a Cost Control Report. Such Cost Control Report shall be submitted to the Sponsor on a monthly basis or such alternative interval as the Sponsor directs in writing.

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

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

ARTICLE 8. CONSULTING LIABILITY

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

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

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

ARTICLE 9. WORKER'S COMPENSATION AND LIABILITY INSURANCE

This contract shall be void and of no effect unless the CONSULTANT shall secure Workman's Compensation Insurance for the benefit of, and keep insured during the life of this contract, such employees as are

necessary to be insured in compliance with the provisions of the Workman's Compensation Law of the State of New York.

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

The CONSULTANT shall furnish a certified copy of said policies to the Sponsor at the time of execution of this contract.

ARTICLE 10. INTERCHANGE OF DATA

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

ARTICLE 11. RECORDS RETENTION

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

ARTICLE 12. DAMAGES AND DELAYS

The CONSULTANT agrees that no charges or claim for damages shall be made by him 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 an extension of time for such reasonable period as the Sponsor may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the Sponsor of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising his rights under ARTICLE 7 of this contract.

ARTICLE 13. TERMINATION

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

- A. for convenience of the Sponsor - if a termination is brought about for the convenience of the Sponsor and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the basis of the CONSULTANT'S compensable work delivered or completed prior to and under any continuing directions of such termination.

- B. for cause - if the termination is brought about as a result of the Sponsor's determination of unsatisfactory performance or breach of contract on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the percent of the amount of such work satisfactorily delivered or completed by the CONSULTANT to the point of termination and acceptable to the Sponsor, of the total amount of work contemplated by the PROJECT CONTRACT.

ARTICLE 14. DEATH OR DISABILITY OF THE CONSULTANT

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

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

ARTICLE 15. CODE OF ETHICS

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

ARTICLE 16. INDEPENDENT CONTRACTOR

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

ARTICLE 17. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that he has 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 he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the Sponsor 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 18. TRANSFER OF AGREEMENT

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

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

ARTICLE 19. PROPRIETARY RIGHTS

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

ARTICLE 20. SUBCONTRACTORS/ SUBCONSULTANTS

All SUBCONTRACTORS and SUBCONSULTANTS performing work on this project shall be bound by the same required contract provisions as the CONSULTANT. All agreements between the CONSULTANT and a subcontractor or other SUBCONSULTANT shall include all standard required contract provisions, and such agreements shall be subject to review by the Sponsor.

ARTICLE 20.1 PROMPT PAYMENT. While federal regulation (49 CFR 26.29¹) requires payment to subcontractors within 30 days, New York State law is more stringent. NYS General Municipal Law §106-b and NYS Finance Law Article 9, §139-f require prime contractors and prime consultants to pay their vendors within seven (7) calendar days of receipt of payment from the public owner/sponsor, and provides for interest on late payments for all public works contracts. Contract provisions incorporating any other payment schedule will not be allowed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented. When the Sponsor 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.

¹ <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=936406b1c92895795069232a53fb110f&rgn=div8&view=text&node=49:1.0.1.1.20.2.18.5&idno=49>

ARTICLE 21. CERTIFICATION REQUIRED BY 49 CFR, PART 29

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

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

ARTICLE 22. CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

ARTICLE 23. RESPONSIBILITY OF THE CONSULTANT

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. However, the Sponsor may in certain circumstances, provide compensation for such work.
- B. Neither the Sponsor's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to the Sponsor in accordance with applicable law for all damages to the Sponsor caused by the CONSULTANT'S negligent performance or breach of contract of any of the services furnished under this contract.
- C. The rights and remedies of the Sponsor provided for under this contract are in addition to any other rights and remedies provided by law.
- D. If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ARTICLE 24. NON-DISCRIMINATION REQUIREMENTS

The CONSULTANT agrees to comply with all applicable Federal, State and Sponsor Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal Statutory and constitutional non-discrimination provisions, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, CONSULTANT agrees that neither it nor its SUBCONSULTANTS shall, by reason of race, creed, color, disability, sex or national origin; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. CONSULTANT is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

ARTICLE 25. CERTIFICATION REQUIRED BY 40 CFR 111506.5(c)

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

- a. an existing contract for the PROJECT's ROW incidental work or construction engineering; or