

The October 4, 2023, meeting was called to order at 7:00 pm by Town Supervisor Tollisen in the A. James Bold Meeting Room with the following members present:

Kevin J. Tollisen, Supervisor - Excused  
Paul L. Hotaling, Councilman  
John P. Wasielewski, Councilman  
Jeremy W. Connors, Councilman  
Eric A. Catricala, Councilman - Excused  
Lyn A. Murphy, Town Attorney  
Cathy L. Drobny, Deputy Town Attorney  
Lynda A. Bryan, Town Clerk

#### 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](http://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, learn about upcoming meetings, review draft documents, get added to email announcements and to share your own comments about the future of Halfmoon.

**ERIE CANAL TRAIL WALK AND PICNIC:** Saturday October 7<sup>th</sup>, 10:30am to 1:00 pm

Arrive at the Halfmoon Historical Building by 10:30 am. A shuttle will transport participants to the Erie Canal Towpath Community Connector to begin the walk at 11:00 am. Trail walk should take about 30-45 minutes to complete. A free lunch will be provided back at the Historical Building. Golf carts will be available for those unable to walk.

**SONS of the AMERICAN LEGION SQUADRON 1450:** will be holding a Breakfast Buffet on Sunday, October 15<sup>th</sup>, from 8 am -11:30 am. Cost for Adults \$10.00, and Children under 12 \$3.00. Buffet includes Scrambled Eggs, Home Fries, Pancakes, Bacon, Sausage, Toast, Coffee, and Orange Juice. For more information call 518-371-4463

**2024 BUDGET WORKSHOP:** Wednesday, October 18, 2023, at 6:15 PM in the A. James Bold Meeting Room

#### VETERANS MEMORIAL BRICK CEREMONY and LUNCHEON:

Saturday, October 28<sup>th</sup> at 10am Please RSVP by Wednesday October 25<sup>th</sup> to the Supervisor's Office at 518-371-7410 Ext. 2200.

**THANKSGIVING FOOD DRIVE:** The Town of Halfmoon will be accepting food donations for baskets to be delivered to local seniors and families in need. Items needed are Instant Potatoes, Stuffing Mix; Dessert Mix; Canned Cranberries; Gravy/Gravy Mix; canned vegetables. If you need a holiday food basket, please contact the Supervisor's Office at 518-371-7410 Ext.2200.

**TRUNK OR TREAT:** Saturday, October 28<sup>th</sup> from 5:00-7:00 at the Halfmoon Town Park. The "Trick or Treaters" will stay in the car and drive around the decorated

I have no report this evening, thank you.

**Dana Cunniff (Receiver of Taxes):** (1) Chair of Committee on Residents Relations

**Lyn Murphy, Esq., (Town Attorney** I have nothing this evening.)

**Cathy Drobny, Esq. (Deputy Town Attorney)** I have nothing this evening.

**PUBLIC COMMENT (for discussion of agenda topics)**

**Deputy Supervisor Hotaling:** I would like to ask Rich Harris from the Planning Department to explain a few things that are on the agenda.

**Mr. Harris:** Thank you Deputy Supervisor. There are two agenda items that are requesting public hearings to be set.

- Amendment relating to the key lock box law that is already statured by the town. We met with Mark Freiberger from the Clifton Park – Halfmoon EMS and discussed an amendment to the Town Code to require lock boxes at multi-family dwellings for the common areas for the ambulance companies to have direct access. He has met with area developers and has had a positive response but would like an actual Town Code amendment (Rich handed out copies of the proposed amendment).
- Amendments to the Town Zoning map (Rich handed out copies of the proposed amendments) None of them are changes in zoning that exist today. Out of the 30 changes, 9 of them were already approved on 4/6/22. They involve mistakes in the Zoning Map, with a couple of zoning changes that were approved by the Board. They went through the process and the next step after that in April 2022 was to look at the Zoning Map and what needed to be amended. It was a much more involved than anticipated and also the Board enacted more PDD's during that timeframe. Myself and MJ Engineering discovered mistakes on the Zoning Map, some going back 10-15-20 years. It's basically a cleanup.
- The other item relating to the above amendment is for the town to establish themselves as Lead Agency under the State Environmental Quality Review Act (SEQRA). It's a requires step in the process to ensure that we comply with the state laws.

**Deputy Supervisor Hotaling:** Thank you, sir.

**Deputy Supervisor Hotaling:** I meet with Supervisor Tollisen and the Department heads every month and they provide Department Reports and the monthly Department Manager Reports. They are listed and can be viewed in the Town Clerk's Office. We do ask our Department Managers to provide monthly reports in addition to having Department Manager monthly meetings that we all discuss the important things that go on in each of the offices.

**DEPARTMENT MANAGER MONTHLY REPORTS – (Can be viewed at the Town Clerk's Office) Town Clerk, Highway Department, Water Department**

## CORRESPONDENCE

1. Received from the Clifton Park-Halfmoon Fire District #1 notice of Public Hearing on their Proposed 2024 Budget. A Public Hearing will take place on Wednesday October 18, 2023, at 7 PM.  
*Received & Filed*
2. Received from Halfmoon Fire District #1 notice of Public Hearing on their Proposed 2024 Budget. A Public Hearing will take place on Tuesday October 17, 2023, at 7 PM.  
*Received & Filed*
3. Received West Crescent Fire District, their 2024 Preliminary Budget.  
*Received & Filed*
4. Received from State of New York Unified Court System, decision for the small claims assessment review regarding 45 Tabor Road, Mechanicville, NY 12118.  
*Received & Filed*
5. Received from Bonnie Hatter, Comptroller, the filing of the 2024 Tentative Town of Halfmoon Budget document and transmitted to the Town Board.  
*Received & Filed*
6. Received from the Planning Board Resolutions approved at the September 25, 2023, meeting.  
*Received & Filed*
7. Received from Ross MacNeil, his letter of resignation as Recreation Director effective October 13, 2023.  
*Received & Filed*
8. Received from Heritage Hunters of Saratoga County, their Oct./Nov. Newsletter.  
*Received & Filed*
9. Received from Halfmoon – Waterford Fire District #1 notice of a Public Hearing on their Proposed 2024 Budget taking place at the firehouse located at 315 Middletown Road on Tuesday October 17, 2023, at 7 PM.  
*Received & Filed*
10. Received from the NYS Department of Transportation, notification that the work on the South Main Street culvert repairs were completed and accepted by their office on September 8, 2023, and all maintenance responsibilities have been turned over to the town.  
*Received & Filed*
11. Received from the Planning Board Notification that they are in receipt of a Special Use Permit application for J. Dunn Office/Warehouse, 518 Hudson River Road – Site Plan & Special Use.  
*Received & Filed*

## NEW BUSINESS

### RESOLUTION NO. 259-2023

Offered by Councilman Wasielewski, seconded by Councilman Connors: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors  
Resolution Introduced by Resolution Introduced by Town Clerk Bryan

**RESOLVED**, that the Town Board approves the minutes of Town Board Meeting of September 20, 2023, as presented.

**RESOLUTION NO. 260-2023**

**Offered by Councilman Connors, seconded by Councilman Wasielewski: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors  
Resolution Introduced by Highway Superintendent Bryans**

**RESOLVED**, that the Town Board hereby authorizing the Supervisor to enter into a consultant agreement with MJ Engineering and Land Surveying, P.C. to provide architectural/engineering services associated with the replacement of the Button Road culvert pursuant to the Agreement submitted by MJ Engineering dated September 2023, identified as PIN 1762.71 in the not to exceed amount of \$424,500.00 and to authorize the Supervisor to sign the agreement and any documentation necessary to complete the work, subject to the review and approval of the Town Attorney.

**Deputy Supervisor Hotaling:** I just want to thank everyone. This is going to wind up to be a grant project and a lot of hard work went into it.

**Councilman Connors:** This is a much-needed replacement. The culvert is starting to decay.

**RESOLUTION NO. 261-2023**

**Offered by Councilman Wasielewski, seconded by Councilman Connors: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors  
Resolution Introduced by Sole Assessor Zarelli**

**RESOLVED**, that the Town Board hereby appoints Laura Weeks as permanent Valuation Assistant effective immediately to be paid at current salary, as she has successfully completed her Civil Service Exam.

**Deputy Supervisor Hotaling:** We thank her for being a great employee!

**RESOLUTION NO. 262-2023**

**Offered by Councilman Wasielewski, seconded by Councilman Connors: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors  
Resolution Introduced by Highway Superintendent Bryans**

**RESOLVED**, that the Town Board hereby authorizes the Superintendent of Highways to enter into an agreement with JGS Recycling & Hauling, Inc. to pick up/reclaim Freon from the Town of Halfmoon Transfer Station and hereby authorizes the Superintendent of Highways to execute any documents necessary to effectuate said agreement, subject to the review and approval of the Town Attorney.

**Deputy Supervisor Hotaling:** This is another project by the Highway group that a lot of hard work went into!

**RESOLUTION NO. 263-2023**

**Offered by Councilman Wasielewski, seconded by Councilman Connors: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors  
Resolution Introduced by Building and Planning Development Coordinator Harris**

**RESOLVED**, that the Town Board authorizes the renewal of the Mobile Home Park License for the 2023-2024 licensing year, per the inspection and approval of the Town Code Enforcement Officer as Follows: Halfmoon Heights.

**RESOLUTION NO. 264-2023**

**Offered** by Councilman Wasielewski, seconded by Councilman Connors: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors  
**Resolution Introduced by Highway Superintendent Bryans**

**RESOLVED**, that the Town Board hereby authorizes an addition to the Transfer Station Fee Schedule authorizing a \$7.00 fee for refrigerators/freezers, \$3.00 for air conditioners, and \$5.00 for dehumidifiers and watercoolers, items that the transfer station previously did not accept, subject to the review and approval of the Town Attorney.

**RESOLUTION NO. 265-2023**

**Offered** by Councilman Connors, seconded by Councilman Wasielewski: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors  
**Resolution Introduced by Building and Planning Development Coordinator Harris**

**RESOLVED**, that the Town Board of the Town of Halfmoon hereby designates itself as Lead Agency for the amendment to the Zoning Map for the Town of Halfmoon pursuant to the State Environmental Quality Review Act (SEQRA) and authorizes the Supervisor to execute any necessary documentation to remain in compliance with SEQRA, subject to the review and approval of the Town Attorney.

**RESOLUTION NO. 266-2023**

**Offered** by Councilman Wasielewski, seconded by Councilman Connors: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors  
**Resolution Introduced by Building and Planning Development Coordinator Harris**

**RESOLVED**, that the Town Board hereby schedules a Public Hearing for the November 1, 2023, Town Board meeting, in the A. James Bold Room, at 7:00 p.m. or as soon thereafter as their agenda allows, to discuss authorizing an amendment to the Zoning Map of the Town of Halfmoon.

**RESOLUTION NO. 267-2023**

**Offered** by Councilman Wasielewski, seconded by Councilman Connors: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors  
**Resolution Introduced by Building and Planning Development Coordinator Harris**

**RESOLVED**, that the Town Board hereby schedules a Public Hearing for the October 18, 2023, Town Board meeting, in the A. James Bold Room, at 7:00 p.m. or as soon thereafter as their agenda allows, to discuss authorizing an amendment to Section 78 of the Town Code of the Town of Halfmoon entitled Emergency Access Systems, subject to the review and approval of the Town Attorney.

**Deputy Supervisor Hotaling:** I just wanted to make note that this was a team effort, and we thank everybody for their support and hard work on this.

**RESOLUTION NO. 268-2023**

**Offered** by Councilman Connors, seconded by Councilman Wasielewski: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors

**Resolution Introduced by Comptroller Hatter**

**RESOLVED**, that the Town Board hereby modifies §VI(H) of the Town of Halfmoon Employee Manual as it relates to the Leave Donation Program to permit donations for immediate family members defined as spouse, domestic partner, mother, father, children and include the mother, father, and children of the employee's spouse or domestic partner in addition to personal illness or disability, subject to the review and approval of the Town Attorney.

**RESOLUTION NO. 269-2023**

**Offered by Councilman Connors, seconded by Councilman Wasielewski: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors  
Resolution Introduced by Director of Water**

**RESOLVED**, that the Town Board approves the September 2023 Bi-annual Water Report for usage submitted.

**RESOLUTION NO. 270-2023**

**Offered by Councilman Wasielewski, seconded by Councilman Connors: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors  
Resolution Introduced by Building and Planning Development Coordinator Harris**

**WHEREAS**, the developer of Hanks Hollow Residential Subdivision (a/k/a Hank's Hollow Residential Subdivision), a residential project, would like to dedicate certain roads, infrastructure and related easements, to the Town of Halfmoon; and

**WHEREAS**, all roads are public roads and are open to the public 24 hours a day and;

**WHEREAS** the Town of Halfmoon will accept the road, infrastructure and easements with conditions; and

**WHEREAS**, the Town of Halfmoon will accept the legal responsibility; and

**WHEREAS**, the Town of Halfmoon Highway Department will be responsible for all maintenance and repair of the roads designated below;

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

**RESOLVED**, that the duly convened Town Board hereby accepts for road dedication tax map #261.5-3-99 consisting of Island Drive Phase 1 (730 lf), and Seashore Way Phase 1 (1,855 lf), in the Hanks Hollow Residential Subdivision, with condition, and said roads (actual pavement) having a width of 28', right of way is 60' wide; and it is further

**RESOLVED**, that all the other standards as set by the Town of Halfmoon Roadway Dedication Procedure have been satisfied, subject to the review and final approval of the Town Highway Superintendent for road improvements and the Town Attorney for the Deed descriptions, closing papers, title insurance, letters of credit, proof of payment of all taxes due; and it is further

**RESOLVED**, that the Town Attorney be and is hereby authorized to execute all necessary and related documents in connection with the road dedication and easements; and it is further

**RESOLVED**, that the Town of Halfmoon shall not issue more than one (1) certificates of occupancy or maintain, plow or otherwise care for the roads until proof of recording

of all necessary documents with the County Clerk's office are received; and it is further

**RESOLVED**, this Resolution shall take effect immediately.

**RESOLUTION NO. 271-2023**

**Offered by Councilman Wasielewski, seconded by Councilman Connors: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors  
Resolution Introduced by Building & Planning Director Harris**

**RESOLVED**, that the Town Board approves sending a request for a traffic study for Farm to Market Road from Highview Way to Route 146, currently 55 mph, to the Saratoga County Department of Public Works to determine if a speed reduction and/or weight limit restriction, together with any additional signage, is warranted.

**RESOLUTION NO. 272-2023**

**Offered by Councilman Wasielewski, seconded by Councilman Connors: Approved by the vote of the Board: Ayes: Hotaling, Wasielewski, & Connors  
Resolution Introduced by Comptroller Hatter**

**RESOLVED**, that the Town Board authorizes the Comptroller to make the attached Creation of Appropriations.

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	\$40,410.00
	Subsidiary: Home & Community Services		
		25-4-2189.00	\$40,410.00
CREDIT:	Appropriations	25-960	\$40,410.00
	Subsidiary: Engineering Contractors Inspections		
		25-5-1440.40	\$40,410.00

Information Only: The above was derived from the following breakdown of charges to be paid on October 12, 2023, Abstract for engineering and related fees.

NAME	AMOUNT
Farm to Market Storage	\$370.00
Hank's Hollow	\$19,737.50
Brookwood Farm	\$20,302.50
Total	\$40,410.00

**PUBLIC COMMENT (for discussion of non-agenda items)**

**Diane Smeil, Glen Meadows:** Diane inquired about an update on the 6 Hearthstone Drive issue in Glen Meadows and the status of the court date.

**Town Attorney Murphy:** It was my understanding that she obtained an adjournment from the court because she was ill.

**Diane Smeil:** Will there be another court date and are fines being levied against her?

**Town Attorney Murphy:** She is currently facing 6-7 different citations and there are fines associated with those citations but until if/and the court finds her guilty I can't tell you that she is going to be assessed fines. That is our goal as we sit here today.

**Diane Smeil:** So, it is not something that is going to be dropped.

**Town Attorney Murphy:** 100% not dropping.

**Mr. Harris:** (Spoke from the audience & was hard to hear) Code Enforcement makes weekly visits, and they actually checked this morning.

**Town Attorney Murphy:** The town can't control the adjournment, that is a court function, and they are separate and apart from the town. We are trying to push things as quickly as possible.

**Diane Smeil:** Thank you.

**Darlene McGraw, 4 North Point:** Darlene agrees with the lower speed limit on Farm to Market Road. She also wanted to make it known that the Pedestrian Rights of Way (PRO Way) assess ability guidelines, the federal government ruled and has published with the federal registrar and is letting all municipalities know. They are the ones who make sure the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA) is enforced. This is a federal law, not a state or municipal law making sure that access to sidewalks, streets, crosswalks, pedestrian signals, on street parking is accessible to everybody especially those with disabilities. Also, it is difficult to walk or ride bikes on the sides of roads when sandwich boards are left out people leave trashcans out. Thank you.

There being no further business to discuss or resolve on a motion by Councilman Connors and seconded by Councilman Wasielewski, the meeting was adjourned at 7:20 pm.

**Respectfully Submitted,**

**Lynda A. Bryan, Town Clerk**



**Architectural/ Engineering  
Consultant Agreement**

PIN 1762.71 Municipal Contract No. N/A

Agreement made this \_\_\_\_\_ day of September 2023 by and between

**Town of Halfmoon**

having its principal office at  
2 Halfmoon Town Plaza, Halfmoon, NY 12065 (to be known throughout this document as the "Town")

and

**M.J. Engineering and Land Surveying, P.C.**

with its office at  
1533 Crescent Road, Clifton Park, NY 12065 (to be known throughout this document as the "Consultant")

**WITNESSETH:**

WHEREAS, in connection with a federal-aid project funded through the New York State Department of Transportation ("NYSDOT") identified for the purposes of this agreement as the

**Replacement of Button Road Culvert**

(as described in detail in Attachment A annexed hereto, the "Project") the **Town** has sought to engage the services of the **Consultant** to perform the scope of services described in Attachment B annexed hereto; and

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

WHEREAS, **Kevin J. Tollisen, Town of Halfmoon Supervisor** is authorized to enter this Agreement on behalf of the Town of Halfmoon.

NOW, THEREFORE, the parties hereto agree as follows:

**ARTICLE 1. DOCUMENTS FORMING THIS AGREEMENT**

This agreement consists of the following:

- o Agreement Form - this document titled "Architectural/Engineering Consultant Agreement"
- o Attachment "A" – Project Description and Funding
- o Attachment "B" – Task List; Scope of Services
- o Attachment "C" Cost Estimate (as applicable, Staffing Rates, Hours, Reimbursable and Fee)

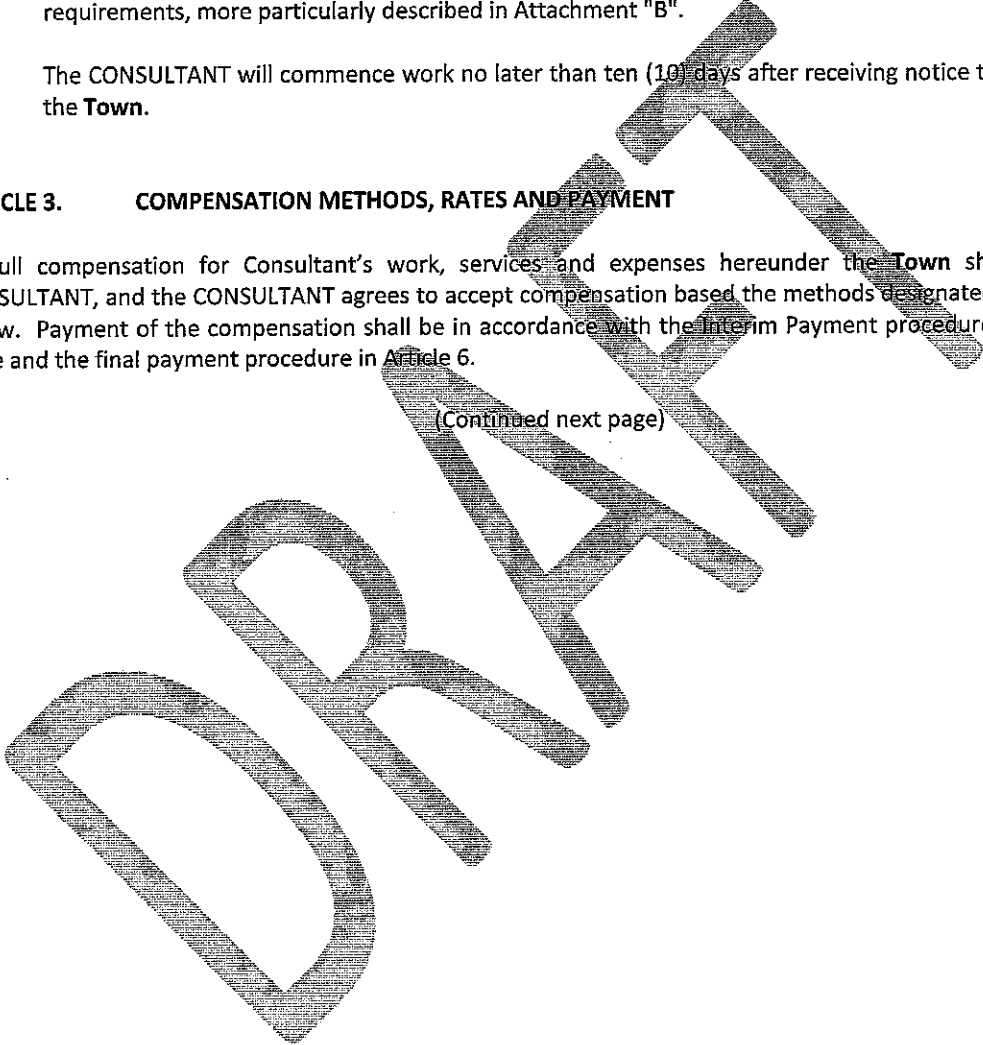
**ARTICLE 2. SCOPE OF SERVICES/STANDARD PRACTICES AND REQUIREMENTS**

- 2.1 The CONSULTANT shall render all services and furnish all materials and equipment necessary to provide the **Town** 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 **Town**, NYSDOT and/or FHWA prior to beginning any of the work of this PROJECT. All work required under this Agreement shall be performed in accordance with these practices, sound engineering standards, practices and criteria, and any special requirements, more particularly described in Attachment "B".
- 2.3 The CONSULTANT will commence work no later than ten (10) days after receiving notice to proceed from the **Town**.

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

As full compensation for Consultant's work, services and expenses hereunder the **Town** 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 6.

(Continued next page)



**3.1 Cost Plus Fixed Fee Method**

<p><b>ITEM I</b></p>	<ul style="list-style-type: none"> <li>o 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.</li> <li>o The cost of Principals', Officers' and Professional Staffs' salaries (productive time) included in Direct Technical Salaries is eligible for reimbursement if their comparable time is also charged directly to all other projects in the same manner. Otherwise, Principals' salaries are only eligible as an overhead cost, subject to the current limitations, generally established thereto by the Sponsor.</li> <li>o If, within the term of this Contract, any direct salary rates are paid in excess of the maximums shown in Attachment A, the excess amount shall be borne by the CONSULTANT WITHOUT REIMBURSEMENT either as a direct cost or as part of the overhead</li> </ul>	<ul style="list-style-type: none"> <li>o 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.</li> <li>o Not to exceed the maximum allowable hourly rates of pay described in Attachment C of this Contract, all subject to audit.</li> <li>o Actual overtime premium portion of Direct Technical Salaries, all subject to audit and prior approval by the Sponsor.</li> </ul>	<ul style="list-style-type: none"> <li>o 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.</li> <li>o Bills are subject to approval of the Sponsor and Sponsor's Representative.</li> </ul>
<p><b>ITEM II</b></p>	<p>All reimbursement for travel, meals, and lodging shall be made at the actual cost paid but such reimbursement shall not exceed the prevailing rates established by the NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Department of Labor.</p> <p>Salvage value</p>		
<p><b>ITEM III</b></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><b>ITEM IV</b></p>	<ul style="list-style-type: none"> <li>o Overhead Allowance based on actual allowable expenses incurred during the term of this Contract, subject to audit. Submitted overhead amounts will be audited based upon the Federal Acquisition Regulations (FAR), sub-part 1-31.2 as modified by sub-part 1-31.105, and applicable policies and guidelines of the Sponsor, NYSDOT and FHWA.</li> <li>o For the purpose of this Contract, an accounting period shall be the Consultant's fiscal year. An audit of the accounting records of the Consultant shall be made by the Sponsor 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.</li> </ul>	<ul style="list-style-type: none"> <li>o 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 not to exceed 389% office and 139% field, in all events not to exceed 206% and 146%, subject to audit.</li> </ul>	
<p><b>ITEM V</b></p>	<ul style="list-style-type: none"> <li>o Negotiated Lump Sum Fixed Fee.</li> <li>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.</li> </ul>	<p>A negotiated Lump Sum Fee which in this CONTRACT shall equal Thirty-Two Thousand and Eight Hundred Dollars (\$32,357).</p>	
<p><b>ITEM VI</b></p>	<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 Four Hundred Thousand and Five Dollars (\$424,500).</p>	

#### ARTICLE 4. INSPECTION

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

#### ARTICLE 5. AUDITS

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

A. For Cost Plus Fixed Fee Method - All costs are subject to audit, i.e. labor, direct nonsalary, overhead, and fee.

5.2 In order to enable the **Town** 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.

- I. Records of Direct Non-Salary Costs;
- II. Copies of any subcontracts relating to said contract;
- III. Location where records may be examined; and
- IV. 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 **Town** 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 **Town** from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Agreement or for any part thereof except as otherwise provided herein.

#### ARTICLE 7. EXTRA WORK

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

7.2 If the CONSULTANT is of the opinion that any work the CONSULTANT has been directed to perform is beyond the scope of the PROJECT Agreement and constitutes extra work, the CONSULTANT shall promptly notify the **Town**, in writing, of this fact prior to beginning any of the work. The **Town** shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. In the event that the **Town** determines that such work does constitute extra work, the **Town** shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, an amendment to the PROJECT Agreement, providing the compensation and describing the work authorized, shall be prepared and issued by the **Town**. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the **Town** to the CONSULTANT for execution after approvals have been obtained from necessary **Town** 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 **Town** all assistance required by the **Town**. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this Agreement for the additional services above described, the **Town** directions shall be exercised by the issuance of a separate Agreement, if necessary.

#### **ARTICLE 8. CONSULTING LIABILITY**

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

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

The CONSULTANT shall procure and maintain for the duration of the work for such project(s), Professional Liability Insurance in the amount of One Million Dollars (~~\$1,000,000.00~~) per project, issued to and covering damage for liability imposed on the CONSULTANT by this Agreement or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the Agreement. The CONSULTANT shall supply any certificates of insurance required by the **Town** 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 **Town** 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 **Town** or existing in the offices of the CONSULTANT shall be made available to the other party to this Agreement without expense to such other party.

**ARTICLE 11. RECORDS RETENTION**

The CONSULTANT shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this 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 **Town**, 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 Agreement. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the **Town** 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 **Town** of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising his rights under ARTICLE 7 of this agreement.

**ARTICLE 13. TERMINATION**

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

- A. for convenience of the **Town** - if a termination is brought about for the convenience of the **Town** 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 **Town'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 **Town**, of the total amount of work contemplated by the PROJECT Agreement.

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

In case of the death or disability of one or more but not all the persons herein referred to as CONSULTANT, the rights and duties of the CONSULTANT shall descend upon the survivor or survivors of them, who shall be obligated to perform the services required under this Agreement, and the **Town** 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 **Town** 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 **Town** for any damages it may sustain by reason thereof. Upon the delivery of all such data to the **Town**, the **Town** will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of the death of the last survivor.

**ARTICLE 15. CODE OF ETHICS**

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

**ARTICLE 16. INDEPENDENT CONTRACTOR**

The CONSULTANT, in accordance with his 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 **Town** 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 **Town**, 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 Agreement, 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 Agreement. For breach or violation of this warranty, the **Town** shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**ARTICLE 18. TRANSFER OF AGREEMENT**

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

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

**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 **Town** 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 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 Town.

**ARTICLE 20.1 PROMPT PAYMENT.** While federal regulation (49 CFR 26.2925) 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.

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

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

**ARTICLE 22. CERTIFICATION FOR FEDERAL-AID CONTRACTS**

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

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal 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 **Town** may in certain circumstances, provide compensation for such work.
- B. Neither the **Town'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 **Town** in accordance with applicable law for all damages to the **Town** 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 **Town** 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 Municipality 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 Agreement. CONSULTANT is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

#### **ARTICLE 25. CERTIFICATION REQUIRED BY 40 CFR 111506.5©**

If the work of the PROJECT includes the preparation of an Environmental Impact Statement (EIS), the signator to

this Agreement, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

- A. an existing contract for the PROJECTs ROW incidental work or construction engineering; or
- B. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the PROJECT alternatives.

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

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

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

**ARTICLE 27. WAGE AND HOURS PROVISIONS**

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

**ARTICLE 28. INTERNATIONAL BOYCOTT PROHIBITION**

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

**ARTICLE 29. SERVICE OF PROCESS**

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

complete in which to respond.

**ARTICLE 30. DISPOSITION OF PLANS, ESTIMATES AND OTHER DATA.**

At the time of completion of the work, the Consultant shall make available to the Town. all survey notes, computations, maps, tracings, original aerial film and photo indices if any, and all other documents and data pertaining to the work or to the project which material at all times shall be the property of the Town.. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the Consultant shall make available to the Town. all the aforementioned engineering data and material. All original tracings of maps and Chapter 6 Appendices other engineering data furnished to the Town. by the Consultant shall bear thereon the endorsement of the Consultant. All plans, estimates and other data prepared in accordance with this Agreement shall be considered confidential and shall be released only to the Town.

**ARTICLE 31. MISCELLANEOUS**

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

DRAFT

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

Reference: Town Contract # \_\_\_\_\_

Town of Halfmoon by: _____ Kevin J. Tollisen, Town Supervisor Date: _____	M. J. Engineering and Land Surveying, P.C. by: _____ Michael D. Panichelli, President Date: _____
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ACKNOWLEDGEMENT OF THE TOWN OF HALFMOON

STATE OF NEW YORK

ss:

TOWN OF HALFMOON

On this \_\_\_\_ day of **September, 2023** before me, the subscriber personally appeared, **Kevin Tollisen** to me known, who, being by me duly sworn, did depose and say; that he resides in **Saratoga County, New York**; that he is the **Town Supervisor** of the **Town of Halfmoon**, the corporation described in and which executed the foregoing instrument; that he is the authorized with the execution of the matter herein provided for, and that he signed and acknowledged the said instrument in his position as a duly authorized representative of the **Town of Halfmoon**.

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

ACKNOWLEDGEMENT OF THE CONSULTANT

STATE OF NEW YORK

ss:

COUNTY OF SARATOGA

On this \_\_\_\_ day of **September, 2023** before me, the subscriber personally appeared **Michael D. Panichelli** to me known, who, being by me duly sworn, did depose and say; that he resides in the **Town of Clifton Park, New York**; that he is the **President** of **M.J. Engineering and Land Surveying, P.C.**, the corporation described in and which executed the foregoing instrument; that he is the authorized with the execution of the matter herein provided for, and that he signed and acknowledged the said instrument in his position as a duly authorized representative of **M.J. Engineering and Land Surveying, P.C.**

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