



The Town of East Greenbush

225 Columbia Turnpike, Rensselaer, New York 12144

**TOWN BOARD AGENDA
SPECIAL MEETING
March 24, 2021**

**Call to Order 6:00 PM
Pledge of Allegiance
Town Board Meeting:**

Members of Town Board

Present Absent

<input type="checkbox"/>	<input type="checkbox"/>	Supervisor J. Conway
<input type="checkbox"/>	<input type="checkbox"/>	Councilor T. Tierney
<input type="checkbox"/>	<input type="checkbox"/>	Councilor H. Kennedy
<input type="checkbox"/>	<input type="checkbox"/>	Councilor R. Matters
<input type="checkbox"/>	<input type="checkbox"/>	Councilor B. Fritz

Schedule of Meeting:

Open Public Privilege: NOTE – Each speaker may choose to state name and address prior to addressing the Board and shall be granted the floor for up to five minutes. The Board thanks everyone in attendance for their understanding and also for their desire to actively participate in the decision making process. All speakers must conduct themselves in a civil manner. Personal attacks will not be tolerated.

79-2021 A Resolution to Adopt the Police Reform and Reinvention Collaborative Final Plan and Authorize the Supervisor to Complete and Submit the Plan Certification Form

WHEREAS, pursuant to Executive Order No. 203 issued by Governor Cuomo, each local government entity which has a police agency must perform a comprehensive review of current police force deployments, strategies, policies, procedures, and practices, and develop a plan for improvement to address the particular needs of the community, promote community engagement, foster trust, fairness, and legitimacy, and to address any racial bias and disproportionate policing of communities of color; and

WHEREAS, the Governor’s Executive Order required that the Chief Operating Officer of a municipality convene, in consultation with the Chief of Police, a group of stakeholders from the community to conduct the review and prepare the Plan: and

WHEREAS, in response to the Executive Order, the Town Board convened a committee of community stakeholders to develop such plan (the "Plan"); the committee has performed

a comprehensive review of current police force deployments, strategies, policies, procedures, and practices; and the committee has developed a draft Plan to improve such deployments, strategies, policies, procedures, and practices; and

WHEREAS, the committee also designed and solicited responses to two surveys, one for the community to measure their perception of the job done by the East Greenbush Police Department, and one for employees of the Police Department to understand their perception of the issues under review; and

WHEREAS, the community survey garnered 404 responses and the Police Department survey was completed by 28 employees of the department; and

WHEREAS, the committee that produced the Plan consisted of Maria Barrington, Robin Cole, Jack Conway, Roger Johnson, Aaron Matthews, Assistant Police Chief Jonathan Reickert, Police Chief Elaine Rudzinski, Tina Tierney and Ingrid Werge; and

WHEREAS, the committee held a series of meetings over a three-month period and performed a comprehensive review of police force deployments, strategies, policies, procedures and practices in order to create the Final Plan, reviewed numerous drafts of the Plan and agreed to its final contents; and

WHEREAS, a public hearing was duly scheduled and held on March 17, 2021 offering the Plan in draft form for public comment and everyone who wished to be heard was heard; and

WHEREAS, the Town Comptroller confirms that this resolution will not have a material impact on the Town's finances;

now, therefore, be it

RESOLVED, that the Town Board of the Town of East Greenbush adopts the Police Reform and Reinvention Collaborative Final Plan as submitted, effective immediately;

and be it further

RESOLVED, that the Town Board hereby authorizes the Supervisor to complete the New York State Police Reform and Reinvention Collaborative Plan Certification form and submit the completed form to the Director of the New York State Division of the Budget;

and be it further

RESOLVED, that the Town Board thanks the committee that produced the Plan for their diligence and professionalism.

The foregoing resolution was duly moved by Councilor Tierney and seconded by Supervisor Conway and brought to a vote resulting as follows:

Councilor T. Tierney	VOTED:
Supervisor J. Conway	VOTED:
Councilor H. Kennedy	VOTED:
Councilor R. Matters	VOTED:
Councilor B. Fritz	VOTED:

80-2021 A Resolution Designating Jennifer Dean as Chairperson of the East Greenbush Conservation Advisory Council

WHEREAS, on October 21, 2020, the Town Board appointed Jennifer Dean to the East Greenbush Conservation Advisory Council (CAC) for a term not to exceed one (1) full year; and

WHEREAS, Local Law 2 of 2020, which established the CAC, provides that the Town Board shall designate a member of the Council to act as Chairperson for the length of that member's appointment; and

WHEREAS, Jennifer Dean, Ph. D., is a member of the CAC, is a Town resident; served as a Member of the Natural Resources Work Group (NRWG); holds a Ph. D. in entomology from Penn State University and a BS in plant Biology from Ohio University; brings specific and related knowledge, skills, and experience from her current position as Invasive Species Biologist with the New York Natural Heritage Program; and

WHEREAS, Jennifer Dean’s knowledge, skills, training, professional background, and experience as a member of the NRWG which helped draft Local Law 2 of 2020 uniquely qualify her for the position of Chairperson; and

WHEREAS, the Town Comptroller has confirmed that this proposed Board action will not have a material impact on the Town’s finances;
now, therefore, be it

RESOLVED, that the Town Board hereby appoints Jennifer Dean as Chairperson of the East Greenbush Conservation Advisory Council for a term to run coterminous with the Town Board’s above-mentioned appointment of Jennifer Dean as a member of the CAC;
and be it further

RESOLVED, that this resolution will take effect immediately.

The foregoing resolution was duly moved by Supervisor Conway and seconded by Councilor Tierney and brought to a vote resulting as follows:

Supervisor J. Conway	VOTED:
Councilor T. Tierney	VOTED:
Councilor H. Kennedy	VOTED:
Councilor R. Matters	VOTED:
Councilor B. Fritz	VOTED:

81-2021 A Resolution Authorizing the Implementation and Funding of a Federal-Aid Transportation Project to Fund the Local Share of Federal- and State-Aid Eligible and Ineligible Project Costs and Obtaining Funds Therefor as Set Forth Below.

WHEREAS, a Project known as the US Route 4/I-90 Intersection Safety Enhancements and US Route 4 and State Route 151 Various Intersection Improvements P.I.N. 1089.79 (the Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs of such program to be borne at the ratio of 55 % Federal funds and 45% non-federal funds; and

WHEREAS, the Town of East Greenbush desires to advance the Project by making a commitment of 100% of the non-federal share of the costs of Construction for Intersection Improvements of US Route 4/Hampton Inn Entrance, US Route 4/State Route 151, and State Route 151/Tempel Lane using funds provided to the Town by Regeneron Pharmaceuticals, Inc. (Regeneron); and

WHEREAS, the Town of East Greenbush Town Board has required that certain traffic mitigation measures be undertaken by Regeneron as a part of the NYS Environmental Quality Review Act process for Regeneron’s projects on the Tempel Lane Campus located in the Town of East Greenbush; and

WHEREAS, the Town of East Greenbush understands that NYSDOT has determined that those certain traffic mitigation measures which intersect with NYSDOT improvements to NYS Route 4 corridor, are equivalent in cost to the non-federal share of the Project; and

WHEREAS, the Town is entering into a Betterment Agreement with NYSDOT using the developer mitigation fees provided by Regeneron to the Town for the non-federal share of the Project; and

WHEREAS, the Town has agreed to do so subject to the execution and funding of an Escrow Agreement between the Town Board and Regeneron such that Regeneron provides all of the funding of the non-federal share of the project to the Town of East Greenbush with the Town transferring the funds to the NYSDOT in the manner provided for in the Betterment Agreement; and

WHEREAS, the Town Comptroller confirms this resolution will not have a material impact on the Town's finances; and

WHEREAS, the Town Board is adopting this resolution to correct an error in the resolution adopted on March 17 as resolution 72-2021; now, therefore, be it

RESOLVED, that the Town Board hereby approves the Betterment Agreement attached as Exhibit A and the Escrow Agreement attached as Exhibit B finding that the Betterment Agreement can only be executed by the Town Supervisor upon the Escrow Agreement being fully executed and payment to the Town by Regeneron of the sum of \$2,360,913.00 for the Town to provide to NYSDOT, as identified in the Betterment Agreement Schedule A; and be it further

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to the Betterment Agreement in connection with the Project;

and be it further

RESOLVED, that this Resolution shall take effect immediately.

The foregoing resolution was duly moved by Supervisor Conway and seconded by Councilor Fritz and brought to a vote resulting as follows:

Supervisor J. Conway	VOTED:
Councilor B. Fritz	VOTED:
Councilor T. Tierney	VOTED:
Councilor H. Kennedy	VOTED:
Councilor R. Matters	VOTED:

ADJOURNMENT

Motion to adjourn by Supervisor Conway and seconded by Councilor Kennedy and brought to a vote as follows:

Supervisor J. Conway	VOTED:
Councilor H. Kennedy	VOTED:
Councilor T. Tierney	VOTED:
Councilor R. Matters	VOTED:
Councilor B. Fritz	VOTED:

REGENERON PHARMACEUTICALS, INC.
ESCROW AGREEMENT

This Agreement made as of this ____ day of _____, 2021 (the “Agreement”) is made by and between the Regeneron Pharmaceuticals, Inc. (the “Developer”), and the Town Board of the Town of East Greenbush, a municipal corporation located in Rensselaer County with offices at 225 Columbia Turnpike, Rensselaer, New York 12144 (the “Town”).

WHEREAS, the Developer has submitted to the Town applications for major site plan approval for phases of the Tempel Lane Campus of Regeneron Pharmaceuticals, Inc. (the “Project”); and

WHEREAS, the Town, as lead agency under the State Environmental Quality Review Act (“SEQRA”), adopted an Amended Findings Statement for the Project on November 19, 2018 (the “Amended Findings”); and

WHEREAS, the Town approved the major site plan approval for the Project on November 19, 2018, conditioned, among other things, upon the Developer’s satisfaction of the mitigation measures and conditions set forth in the Amended Findings; and

WHEREAS, the Town and the Developer entered into that certain Agreement Between The Town Of East Greenbush And Regeneron Pharmaceuticals, Inc., dated June 24, 2020, regarding the Project (the “Development Agreement”); and

WHEREAS, part of the Project involves improvements to the intersection of US Route 4 and State Route 151; State Route 151 and Tempel Lane; and US Route 4 and the Hampton Inn Entrance (the “NYSDOT Work”) by the New York State Department of Transportation (“NYSDOT”) and, pursuant to the Development Agreement, the Developer is responsible for the costs of such NYSDOT work; and

WHEREAS, the Town and NYSDOT will be entering into that certain Betterment Agreement for the NYSDOT Work dated on or about March 17,2021, an unexecuted copy of which is attached hereto as Exhibit A (the “Betterment Agreement”); and

WHEREAS, the purpose of this Agreement is to enable the Developer to deposit certain funds with the Town in escrow (hereinafter, the “Escrow Funds”) to be used by the Town to fund the NYSDOT Work in accordance with the Betterment Agreement.

NOW, THEREFORE, it is hereby agreed as follows:

1. Funding of Escrow. Within ten (10) days after this Agreement is fully executed, the Developer shall deposit escrow funds in the total amount of Two Million Three Hundred Thousand and Sixty Thousand Nine Hundred and Thirteen Dollars (\$,2,360,913.00.00) with the Town to be held in escrow by the Town subject to the terms and conditions of this Agreement (the “Escrow Funds”). The foregoing amount represents the estimated cost of the Town’s share of the NYSDOT Work as set forth in the Betterment Agreement.

2. Purpose of Expenditures. The Town shall use the Escrow Funds to pay for the costs of the NYSDOT Work. In accordance with the Betterment Agreement, the Town shall deposit the Escrow Funds with the New York State Comptroller (the “State Comptroller”) and NYSDOT shall draw upon the Escrow Funds deposited with the State Comptroller to pay for the NYSDOT Work.

4. Notice and Payment of Expenditures. To ensure that the Escrow Funds are utilized by the Town for the purposes stated in Paragraph 2 of this Agreement, the Town will provide the Developer written notice of the deposit of the Escrow Funds with the State Comptroller in accordance with the Betterment Agreement. Further, the Town will use its best efforts to obtain

all expenditure and contractual records related to the NYSDOT Work from the NYSDOT and forward same to the Developer upon the Town's receipt of such records.

5. Excess Escrow Funds. Upon the completion of the NYSDOT Work, any excess Escrow Funds not required to pay for the NYSDOT Work shall be refunded by the State Comptroller to the Town in accordance with the Betterment Agreement. Within thirty (30) days of the Town's receipt of such excess funds, the Town shall refund such excess funds to the Developer. Also, to the extent NYSDOT determines any contractor's work is deficient and does not pay contractor for some or all of the work undertaken, any funds not expended on the Town's share of the work, i.e. the non-federal work, will be returned to the Town and from the Town to the Developer.

6. Additional Funds. If, during the course of the completion of the NYSDOT Work, it is determined that the cost of the NYSDOT Work exceeds the Escrow Funds, the Town shall provide written notice to the Developer of such deficiency and the Developer shall deposit additional funds with the Town to cover such deficiency (the "Additional Funds") within thirty (30) days of such notice. The Town shall deposit the Additional Funds with the State Comptroller in accordance with the terms and conditions of the Betterment Agreement. Notwithstanding the foregoing, the Town will use its best efforts to limit the total amount of Additional Funds demanded by NYSDOT to no more than ten percent (10%) of the original amount of the Escrow Funds.

7. Termination. This Agreement shall terminate upon the completion of the NYSDOT Work and the final close out of the project pursuant to the Betterment Agreement.

8. Choice of Law. In the event of a dispute between the parties, New York law, with regard to its conflict of laws principles, shall govern this Agreement.

9. Amendments. Any amendment or modification of this Agreement shall be in writing and acknowledged by the parties to this Agreement.

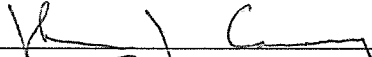
10. Notices. Any notices provided for under this Agreement shall be in writing delivered to the address set forth above unless the parties are provided written notification of a change of address. If a notice is mailed or delivered by another form of delivery service (e.g. FedEx or UPS), such notice shall be deemed given under this Agreement within five days after mailing or receipt by such delivery services. If a notice is delivered electronically, such notice shall be deemed given on the day transmitted provided the transmission is confirmed sent on that day.

11. Severability. If any covenant, condition or provision of this Agreement, or the application thereof to any person or entity or circumstance, shall be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such covenant condition or provision to any other person or entity any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have set their hands hereto as of the date first written above.

TOWN OF EAST GREENBUSH

By: 
Name: John J. Conway
Title: Town Supervisor

REGENERON PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

EXHIBIT A
COPY OF BETTERMENT AGREEMENT

[TO BE ATTACHED]

MUNICIPALITY/SPONSOR:
PROJECT ID NUMBER:1089.79 BIN:
CFDA NUMBER: 20.205
PHASE: PER SCHEDULES A

Betterment Project Agreement

COMPTROLLERS CONTRACT NO. D040245

This Agreement, effective this / / between:

the New York State Department of Transportation ("NYSDOT"), having its principal office at 50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State");

and,

the Town of East Greenbush, (the "Municipality/Sponsor")
acting by and through the Town Supervisor
with its office at 225 Columbia Turnpike, Rensselaer, NY 12144.

WITNESSETH:

WHEREAS, pursuant to Highway Law §10(27) the Commissioner of Transportation may (the "Commissioner"), upon the request of a Municipality/Sponsor, perform for and at the expense of such Municipality/Sponsor, any work of construction or reconstruction, including the removal and relocation of facilities, provided the Commissioner deems it practicable to perform such work for such Municipality/Sponsor in connection the performance of any work of construction, reconstruction or improvement under the Highway Law; and

WHEREAS, pursuant to Highway Law §10(27) the Municipality/Sponsor has requested NYSDOT to perform a betterment described in Schedule A annexed to this Agreement (the "**Betterment**" or the "**Project**" hereunder) in connection with the mitigation of the traffic impacts of a Municipality/Sponsor- approved development known as the Regeneron Pharmaceuticals, Inc., Tempel Lane Campus which approval required, pursuant to the NYS Environmental Quality Review Act Statement of Findings, traffic mitigation involving various intersection improvements on US Route 4 and State Route 151 ; and

WHEREAS, there is a substantial public interest in and benefit to the performance of the Betterment, which will be part of the State highway system and will mitigate or improve traffic or safety conditions for the general public; and

WHEREAS, NYSDOT has estimated the cost of the requested Betterment work to the Municipality/Sponsor; and

WHEREAS, in connection with this Agreement and no later than NYSDOT's award of contracts inclusive of the work contemplated by this agreement, the Municipality/Sponsor shall deposit with the State Comptroller, subject to the draft or requisition of the Commissioner, the amount of such cost estimate in a manner set forth in this Agreement (\$2,360,913.00) to be expended on the costs of the project so requested and approved; and

WHEREAS, the Legislative body of the Municipality/Sponsor by Resolution approved the Municipality's/Sponsor's entry into this Agreement (a copy of such Resolution is

attached to this Agreement).

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

ARTICLE 1: DOCUMENTS FORMING THIS AGREEMENT

1. Documents Forming this Agreement. This Agreement consists of the following:

- § Agreement Form - this document titled "Betterment Project Agreement";
- § Schedule "A" - Description of Project, funding and deposit requirements;
- § Schedule "B" - Phases, Subphase/Tasks, and Allocation of Responsibility
- § Appendix "A" - New York State Required Contract Provisions
- § Appendix "A-1" - Supplemental Title VI Provisions (Civil Rights Act)
- § Appendix "B" – U.S. Government Requirements (Only required for agreements with federal funding)
- § Municipal/Sponsor Resolution(s) - duly adopted Municipal/Sponsor resolution(s) authorizing Agreement on behalf of the Municipality/Sponsor.

ARTICLE 2: PROJECT; MUNICIPAL/SPONSOR DEPOSIT

2.1 NYSDOT will construct or cause to be constructed the Betterment work described in Schedule A annexed hereto in accordance with plans and specifications related thereto, as they may be amended or revised, and subject to such change orders as may be approved by NYSDOT in connection with its administration of the work and other work under the contract or contracts to be awarded by NYSDOT for or relating to the work under this Agreement.

2.2 The Municipality/Sponsor will deposit with the State Comptroller in a project escrow account the full amount of the estimate (\$2,360,913.00) for the cost of the Betterment as described in Schedule A for payments by the Comptroller on account of Project costs and the reimbursement to the Municipality/Sponsor of any excess amount of such deposit after project close out.

2.3 Monies in the project account shall be paid on account of Betterment costs on the warrant of the State Comptroller on vouchers or requisitions approved by the Commissioner.

2.4 Upon completion and payment of the Betterment contemplated herein the Commissioner shall determine the costs thereof to be borne by the Municipality/Sponsor, and any excess of the deposit shall be promptly paid to the Municipality/Sponsor on the warrant of the State Comptroller on vouchers approved by the Commissioner; and, in the event such costs exceed the amount of the deposit, the Municipality/Sponsor shall within 90 days of the receipt of notice from the Commissioner pay the amount of such deficiency to the State Comptroller, provided that in no event shall such costs exceed ten percent (10%) of the original funds deposited with the NYSDOT (i.e. \$2,360,913.00) absent the written agreement of the Town.

2.5 The Municipality's/Sponsor's performance of its obligations hereunder is to be financed from *(check applicable source or sources if the Municipal/Sponsor deposit is financed thereby)*:

from an escrow account established by the Municipality Sponsor pursuant to a written escrow agreement between the Municipality/Sponsor and Regeneron Pharmaceuticals, Inc., solely for the purpose of financing Betterment costs, pursuant to the Municipality's/Sponsor's resolution authorizing such escrow Agreement and providing for expenditures therefrom for such purpose.

ARTICLE 3: PROJECT RESPONSIBILITIES

3.1 *General Description of Work.* The work of the Project consists generally of preliminary engineering and/or right-of-way incidental and/or right-of-way acquisition work and/or construction and/or construction supervision and inspection generally described below and contained in the work program attached hereto as **Schedule B**, and any additions or deletions made thereto by NYSDOT subsequent to the execution of this Agreement for the purposes of conforming to New York State requirements. Schedule B identifies the party responsible for the tasks associated with the work of the Project.

3.2 *Design and Construction.* The Project shall be designed and constructed in accordance with NYSDOT's standards and specifications and subject to NYSDOT approval. Design shall be under the supervision of a professional engineer or architect licensed in this State. Construction shall be under the supervision of a professional engineer or architect or other professional as agreed to by NYSDOT. All improvements undertaken pursuant to this Agreement will be designed, with normal maintenance, to render any bridge provided or improved hereunder structurally sound for a minimum period of 30 years, and any highway provided or improved hereunder structurally sound for a minimum period of 20 years, and any appurtenances provided or improved hereunder structurally sound for a minimum period of 10 years.

3.3 *Access, Control, Operation, Maintenance and Reconstruction of Project.* The party responsible for the performance of the work pursuant to Schedule B shall have such access to and control of the right of way related to the Project as it may require for the performance of any of its work of the Project. The party with responsibility for construction in accordance with Schedule B shall provide for the maintenance of such construction phase Project at all times during such construction phase, until final acceptance thereof by NYSDOT. Thereafter, NYSDOT shall be responsible for maintenance of the Betterment.

ARTICLE 4: MANNER OF PERFORMING WORK

4.1 *Performing Work.* NYSDOT shall accomplish the work of the Betterment either with its own forces or by contract let in accordance with applicable law. NYSDOT may contract with any person, firm, corporation or agency, either governmental or private, to accomplish the Betterment, in accordance with applicable law.

4.2 *Plans and Specifications.* The contract plans and specifications prepared in connection with the Betterment shall be stamped with the seal of a professional engineer or architect licensed in the State and shall be signed by such professional engineer or architect. All plans, specifications and estimates in connection therewith must be submitted to and approved by NYSDOT before any construction is initiated, but field surveys, mapping and the preparation of any other reports or documents as required may take place prior to such approval of plans, specifications and estimates. Approval of plans, specifications, estimates, contracts and change orders, as applicable, should not be construed as confirmation of the appropriateness of every project engineering decision or technical detail represented thereby or contained therein, which are and remain the responsibility of the professional engineer or architect.

4.3 *Public Use.* The Betterment constructed or improved pursuant to this Agreement will be available at all times for use by the public and no signs or physical barriers to the contrary shall be erected by the Municipality/Sponsor.

4.4 *Design and Construction Standards.* NYSDOT shall design and construct the Betterment, or cause it to be designed and constructed, in accordance with NYSDOT standards, and

specifications under the supervision of a professional engineer licensed in this State.

4.5 *State Access.* Construction contracts shall permit and require that contractors permit the NYSDOT to inspect the projects and work sites at any time deemed necessary by NYSDOT.

ARTICLE 5: ASSIGNMENT

5.1 Other than contracting for the performance of its responsibilities as contemplated herein, the Municipality/Sponsor covenants agrees not to assign, transfer, sublet or otherwise dispose of this Agreement or any part thereof, or any of its right, title or interest therein, or its power to execute this Agreement without the prior written consent of the Commissioner of Transportation.

ARTICLE 6: REMEDIES

6.1 In the event that NYSDOT fails to commence the Betterment in accordance with the development timetable identified in Schedule A the Municipality/Sponsor may, with the consent of NYSDOT, elect to proceed with the Project and , if required, pursuant to a NYSDOT Highway Work Permit issued under Highway Law §52. In that event:

(a) Upon the draft or requisition of NYSDOT the deposit, net of any amount required to fund Betterment-related costs for work commenced or performed hereunder including and closeout costs to conclude or transfer performance of the Betterment to the Municipality/Sponsor (or Regeneron Pharmaceuticals, Inc.), shall be returned to the Municipality/Sponsor or, at the Municipality's/Sponsor's direction, to Regeneron Pharmaceuticals, Inc., for the funding of the Betterment pursuant (for a State Highway System project) to such Highway Work Permit; and

(b) This Agreement shall be of no further force or effect except as to Betterment-related work initiated or performed hereunder to such point or required to close out or transfer to the Municipality/Sponsor (or Regeneron Pharmaceuticals, Inc.) the work so initiated.

6.2 In the event that NYSDOT delays, does not proceed with or suspends construction of the Betterment for any reason whatsoever either within or outside its control, the Municipality's/Sponsor's sole remedy or recourse shall be as described in section 6.1 hereof. NYSDOT's decision, action or inaction that results in such delay, deferral or suspension shall not be deemed a breach of this Agreement and shall not be actionable for any reason or under any circumstances.

ARTICLE 7: TERM OF AGREEMENT; EARLY TERMINATION

7.1 *Term of Agreement.* As to the Project and phase(s) described in Schedule(s) A executed herewith, this Agreement takes effect as of the date of this Agreement as first above written. This Agreement takes effect as to the Project and phases(s) established in any duly executed and approved supplemental Schedule(s) A as of the date of such supplemental Schedule(s) A. This Agreement shall remain in effect until final project closeout, or earlier termination of this Agreement in accordance with its terms.

7.2 *Suspension or Termination.*

7.2.1 For Convenience of NYSDOT. NYSDOT may without cause and for its convenience upon not less than seven (7) days written notice to the Municipality/Sponsor suspend NYSDOT's performance under this Agreement or terminate this Agreement.

7.2.2 For Cause. NYSDOT may terminate this Agreement by written notice to the Municipality/Sponsor if, before Project completion, the Municipality/Sponsor discontinues its funding or any work required of it hereunder or if, for any reason, the commencement, prosecution or timely provision of the Project is rendered improbable, impossible, or illegal.

7.3 *Force Majeure*. The obligations of the parties hereunder shall be subject to force majeure (which shall include riots, floods, accidents, acts of God and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for non-performance) but only so long as, and to the extent that, such force majeure shall prevent the performance of the obligation or portion thereof so affected.

7.4 *Notices*. Any notice, request, instruction or other document deemed by either party to be necessary or desirable to be given to the other party shall be in writing, and may be given by personal delivery to a representative of the parties, or by mailing the same by registered or certified mail, postage prepaid, or by prepaid express courier to the address first mentioned above.

ARTICLE 8: ADDITIONAL PROVISIONS

8.1 Provisions required by law as contained in **Appendix A; Appendix A-1 and Appendix B** are attached hereto and made a part hereof as if fully set forth herein.

8.2 *Independent Contractor*. For the purposes of this Agreement, the officers and employees of the Parties, in accordance with their status as separate units of government, covenant and agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as nor claim to be an officer or employee of each other by reason hereof, and that they will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the other Party, including, but not limited to, Workers Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit.

8.3 *Entire Agreement*. This Agreement constitutes the entire agreement of the parties and shall not be amended, altered or changed except in writing, duly executed and approved.

9. *Notice Requirements*.

9.1 All notices permitted or required hereunder shall be in writing and shall be transmitted either:

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

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

New York State Department of Transportation (NYSDOT)

Name: Greg Wichser, P.E.
Address: 50 Wolf Road, Suite 1s50, Albany, NY 12232
Telephone Number: 518-485-7324

E-Mail Address: Greg.Wichser@dot.ny.gov

Town of East Greenbush

Name: [Adam Yagelski](#)

Title: [Director of Planning and Zoning](#)

Address: [225 Columbia Turnpike, Rensselaer, NY 12144](#)

Telephone Number: [518-694-4011](#)

E-Mail Address: ayagelski@eastgreenbush.org

9.2 Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States Mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

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

10. *Electronic Contract Payments.* Municipality/Sponsor shall provide complete and accurate supporting documentation of eligible expenditures as required by this contract, NYSDOT and the State Comptroller. Following NYSDOT approval of such supporting documentation, payment for invoices submitted by the Municipality/Sponsor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The contracting Municipality/Sponsor shall comply with the State Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm or by email at epunit@osc.state.ny.us, When applicable to State reimbursement by the State Comptroller, registration forms and instructions can be found at the NYSDOT [Electronic Payment Guidelines](#) website. The Municipality/Sponsor herein acknowledges that it will not receive payment on any invoices submitted under this Contract agreement if it does not comply with the applicable State Comptroller and/or NYS State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above. This Agreement contemplates that the Municipality/Sponsor shall only provide funds to NYSDOT for NYSDOT to undertake the work. The source of the funds is Regeneron Pharmaceuticals, Inc., as set forth above.

11. *Documentation.* NYSDOT agrees to provide Municipality/Sponsor with copies of all expenditure records and contracts related to Project on a monthly basis.

12. Also, to the extent NYSDOT determines any contractor's work is deficient and does not pay contractor for some or all of the work undertaken, any funds not expended on the Town's share of the work, i.e. the non-federal work, will be returned to the Town and from the Town to the Developer.

MUNICIPALITY/SPONSOR:

MUNICIPALITY/SPONSOR ATTORNEY:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officials as of the date first above written.

STATE OF NEW YORK)
)ss.:
COUNTY OF **RENSSELAER**)

On this _____ day of _____, 20____ before me personally came _____ to me known, who, being by me duly sworn did depose and say that he/she resides at _____; that he/she is the _____ of the Municipal/Sponsor Corporation described in and which executed the above instrument; (except New York City) that it was executed by order of the _____ of said Municipal/Sponsor Corporation pursuant to a resolution which was duly adopted on _____ and which a certified copy is attached and made a part hereof; and that he/she signed his name thereto by like order.

APPROVED FOR NYSDOT:

**APPROVED AS TO FORM:
STATE OF NEW YORK ATTORNEY GENERAL**

By: _____
For Commissioner of Transportation

By: _____
Assistant Attorney General

Agency Certification: In addition to the acceptance of this contract I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

COMPTROLLER'S APPROVAL:

Date: _____

By: _____
For the New York State Comptroller
Pursuant to State Finance Law ' 112

Notary Public

NYSDOT/State-Local Agreement – Schedule A

B. Summary of Other (including Non-allocated MARCHISELLI) Participating Costs FOR ALL PHASES For each PIN Fiscal Share, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." All totals will calculate automatically.

Other PIN Fiscal Shares	'Current' or 'Old' entry indicator	Funding Source	TOTAL	Other FEDERAL	Other STATE	Other LOCAL
1089.79.LOC	Current	100% Local	\$2,360,913.00	\$0.00	\$0.00	\$2,360,913.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
TOTAL CURRENT COSTS:			\$2,360,913.00	\$ 0.00	\$ 0.00	\$2,360,913.00

C. Local Deposit(s) from Section A:	\$ 0.00
Additional Local Deposit(s)	\$
Total Local Deposit(s)	\$ 0.00

D. Total Project Costs All totals will calculate automatically.

Total FEDERAL Cost	Total STATE MARCHISELLI Cost	Total OTHER STATE Cost	Total LOCAL Cost	Total ALL SOURCES Cost
\$ 0.00	\$ 0.00	\$ 0.00	\$2,360,913.00	\$2,360,913.00

E. Point of Contact for Questions Regarding this Schedule A (Must be completed)

Name: Deborah Lolik
Phone No: 518-485-9410

See Agreement (or Supplemental Agreement Cover) for required contract signatures.

NYSDOT/State-Local Agreement – Schedule A

Footnotes: (See [LPB](#)'s website for link to sample footnotes)

This is a Master Betterment Agreement with the Town of East Greenbush for Various Intersection Improvements along US Route 4 and State Route 151.

This Betterment has three sites and a 10% Contingency as follows;

Sites 1 & 2 –

Site 1 - US Route 4 (Troy Road) & NY 151 (Red Mill Road)

Site 2 - NY 151 (Red Mill Road) and Tempel Lane

Const: \$1,603,320

CI:\$263,600

Site 3 – US Route 4 (Troy Road) & Hampton Inn and Suites

Const: \$239,962

CI:\$39,400

Total Construction: \$1,843,284

Total CI: \$303,000

10% Contingency: \$214,629

Grand Total: \$2,360,913

SCHEDULE B: Phases, Sub-phase/Tasks, and Allocation of Responsibility

Instructions: Identify the responsibility for each applicable Sub-phase task by entering X in either the *NYSDOT* column to allocate the task to State labor forces or a State Contract, or in the *Sponsor* column indicating non-State labor forces or a locally administered contract.

A1. Preliminary Engineering (“PE”) Phase

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u>	<u>Sponsor</u>
1. <u>Scoping</u> : Prepare and distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.	<input type="checkbox"/>	<input type="checkbox"/>
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, Smart Growth checklist, land use and development analysis and forecasts.	<input type="checkbox"/>	<input type="checkbox"/>
3. Smart Growth Attestation (NYSDOT ONLY).	<input type="checkbox"/>	<input type="checkbox"/>
4. <u>Preliminary Design</u> : Prepare and distribute Design Report/Design Approval Document (DAD), including environmental analysis/assessments, and other reports required to demonstrate the completion of specific design sub-phases or tasks and/or to secure the approval/authorization to proceed.	<input type="checkbox"/>	<input type="checkbox"/>
5. Review and Circulate all project reports, plans, and other project data to obtain the necessary review, approval, and/or other input and actions required of other NYSDOT units and external agencies.	<input type="checkbox"/>	<input type="checkbox"/>
6. Obtain aerial photography and photogrammetric mapping.	<input type="checkbox"/>	<input type="checkbox"/>
7. Perform all surveys for mapping and design.	<input type="checkbox"/>	<input type="checkbox"/>
8. <u>Detailed Design</u> : Perform all project design, including preparation of plan sheets, cross-sections, profiles, detail sheets, specialty items, shop drawings, and other items required in accordance with the Highway Design Manual, including all Highway Design, including pavement evaluations, including taking and analyzing cores; design of Pavement mixes and applications procedures; preparation of bridge site data package, if necessary, and all Structural Design, including hydraulic analyses, if necessary, foundation design, and all design of highway appurtenances and systems [e.g., Signals, Intelligent Transportation System (ITS) facilities], and maintenance protection of traffic plans. Federal Railroad Administration (FRA) criteria will apply to rail work.	<input type="checkbox"/>	<input type="checkbox"/>
9. Perform landscape design (including erosion control).	<input type="checkbox"/>	<input type="checkbox"/>
10. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need of cultural resources survey.	<input type="checkbox"/>	<input type="checkbox"/>

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT</u>	<u>Sponsor</u>
11. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance, separate, any portions of the project which may be more appropriately progressed separately and independently.	<input type="checkbox"/>	<input type="checkbox"/>
12. Compile PS&E package, including all plans, proposals, specifications, estimates, notes, special contract requirements, and any other contract documents necessary to advance the project to construction.	<input type="checkbox"/>	<input type="checkbox"/>
13. Conduct any required soils and other geological investigations.	<input type="checkbox"/>	<input type="checkbox"/>
14. Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocations plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.	<input type="checkbox"/>	<input type="checkbox"/>
15. Determine the need and apply for any required permits, including U.S. Coast Guard, U.S. Army Corps of Engineers, Wetlands (including identification and delineation of wetlands), SPDES, NYSDOT Highway Work Permits, and any permits or other approvals required to comply with local laws, such as zoning ordinances, historic districts, tax assessment and special districts.	<input type="checkbox"/>	<input type="checkbox"/>
16. Prepare and execute any required agreements, including: <ul style="list-style-type: none"> - Railroad force account - Maintenance agreements for sidewalks, lighting, signals, betterments - Betterment Agreements - Utility Work Agreements for any necessary Utility Relocations of Privately owned Utilities 	<input type="checkbox"/>	<input type="checkbox"/>
17. Provide overall supervision/oversight of design to assure conformity with Federal and State design standards or conditions, including final approval of PS&E (Contract Bid Documents) by NYSDOT.	<input type="checkbox"/>	<input type="checkbox"/>

A2. Right-of-Way (ROW) Incidentals

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT</u>	<u>Sponsor</u>
1. Prepare ARM or other mapping, showing preliminary taking lines.	<input type="checkbox"/>	<input type="checkbox"/>
2. ROW mapping and any necessary ROW relocation plans.	<input type="checkbox"/>	<input type="checkbox"/>
3. Obtain abstracts of title and certify those having an interest in ROW to be acquired.	<input type="checkbox"/>	<input type="checkbox"/>
4. Secure Appraisals.	<input type="checkbox"/>	<input type="checkbox"/>
5. Perform Appraisal Review and establish an amount representing just compensation.	<input type="checkbox"/>	<input type="checkbox"/>

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including <i>de minimis</i> determination, as may be applicable. If NYSDOT is responsible for acquiring the right-of-way, this determination may be performed by NYSDOT only if NYSDOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.	<input type="checkbox"/>	<input type="checkbox"/>
7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedures Law, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.	<input type="checkbox"/>	<input type="checkbox"/>

B. Right-of-Way (ROW) Acquisition

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
1. Perform all Right-of-Way (ROW) Acquisition work, including negotiations with property owners, acquisition of properties and accompanying legal work, payments to and/or deposits on behalf of property owners; Prepare, publish, and pay for any required legal notices; and all other actions necessary to secure title to, possession of, and entry to required properties. If NYSDOT is to acquire property, including property described as an uneconomic remainder, on behalf of the Municipality/Sponsor, the Municipality/Sponsor agrees to accept and take title to any and all permanent property rights so acquired which form a part of the completed Project.	<input type="checkbox"/>	<input type="checkbox"/>
2. Provide required relocation assistance, including payment of moving expenses, replacement supplements, mortgage interest differentials, closing costs, mortgage prepayment fees.	<input type="checkbox"/>	<input type="checkbox"/>
3. Conduct eminent domain proceedings, court and any other legal actions required to acquire properties.	<input type="checkbox"/>	<input type="checkbox"/>
4. Monitor all ROW Acquisition work and activities, including review and processing of payments of property owners.	<input type="checkbox"/>	<input type="checkbox"/>
5. Provide official certification that all right-of-way required for the construction has been acquired in compliance with applicable Federal, State or Local requirements and is available for use and/or making projections of when such property(ies) will be available if such properties are not in hand at the time of contract award.	<input type="checkbox"/>	<input type="checkbox"/>
6. Conduct any property management activities, including establishment and collecting rents, building maintenance and repairs, and any other activities necessary to sustain properties and/or tenants until the sites are vacated, demolished, or otherwise used for the construction project.	<input type="checkbox"/>	<input type="checkbox"/>
7. Subsequent to completion of the Project, conduct ongoing property management activities in a manner consistent with applicable Federal, State and Local requirements including, as applicable, the development of any ancillary uses, establishment and collection of rent, property maintenance and any other related activities.	<input type="checkbox"/>	<input type="checkbox"/>

C. Construction, Construction Support (C/S) and Construction Inspection (C/I) Phase

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u>	<u>Sponsor</u>
1. Advertise contract lettings and distribute contract documents to prospective bidders.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Conduct all contract lettings, including receipt, opening, and analysis of bids, evaluation/certification of bidders, notification of rejected bids/bidders, and awarding of the construction contract(s).	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Compile and submit Contract Award Documentation Package.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Review/approve any proposed subcontractors, vendors, or suppliers.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Conduct and control all construction activities in accordance with the plans and proposal for the project. Maintain accurate, up-to-date project records and files, including all diaries and logs, to provide a detailed chronology of project construction activities. Procure or provide all materials, supplies and labor for the performance of the work on the project, and insure that the proper materials, equipment, human resources, methods and procedures are used.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7a. For non-NHS or non-State Highway System Projects: Test and accept materials, including review and approval for any requests for substitutions.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7b. For NHS or State Highway System Projects: Inspection and approval of materials such as bituminous concrete, Portland cement concrete, structural steel, concrete structural elements and/or their components to be used in a federal aid project will be performed by, and according to the requirements of NYSDOT. The Municipality/Sponsor shall make or require provision for such materials inspection in any contract or subcontract that includes materials that are subject to inspection and approval in accordance with the applicable NYSDOT design and construction standards associated with the federal aid project.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7c. For projects that fall under both 7a and 7b above, check boxes for each.		
8. Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Administer construction contract, including the review and approval of all contractor requests for payment, orders-on-contract, force account work, extensions of time, exceptions to the plans and specifications, substitutions or equivalents, and special specifications.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Review and approve all shop drawings, fabrication details, and other details of structural work.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Administer all construction contract claims, disputes or litigation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Phase/Sub-phase/Task

Responsibility: NYSDOT Sponsor

- 12. Perform final inspection of the complete work to determine and verify final quantities, prices, and compliance with plans specifications, and such other construction engineering supervision and inspection work necessary to conform to Municipal, State and FHWA requirements, including the final acceptance of the project by NYSDOT.

- 13. Pursuant to Federal Regulation 49 CFR 18.42(e)(1) The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

APPENDIX A-1 SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

(To be included in all contracts)

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

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

 - a) Withholding of payments to the contractor under the contract until the contractor complies; and/or
 - b) Cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6-7
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

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

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

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

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

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

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

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and

improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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

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

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

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

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

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

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

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

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

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

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

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

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

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

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

1. **NON DISCRIMINATION.** No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with the execution of this Agreement, the Municipality/Sponsors contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3. **DISADVANTAGED BUSINESS ENTERPRISES.** In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

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

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

FEDERAL SINGLE AUDIT REQUIREMENTS

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

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

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

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance ([CFDA²](http://www.cfda.gov/)), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

THE CFDA IDENTIFICATION NUMBER

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

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.

Additional CFDA numbers for other transportation and non-transportation related programs are:

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

PROMPT PAYMENT MECHANISMS

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

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by

² <http://www.cfda.gov/>

prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS

In accordance with 46 CFR 381, the contractor agrees:

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