

NEW YORK STATE THRUWAY AUTHORITY
DEPARTMENT OF ENGINEERING

ALBANY, NY
DECEMBER 18, 2024

AMENDMENT NO. 1
TO

CONTRACT TANE 25-1B
D215000
MAINTENANCE BRIDGE WASHING OF THE
52 BRIDGES ON I-95 NEW ENGLAND THRUWAY
BETWEEN MP NE 0.23 AND MP NE 14.93
IN THE NEW YORK DIVISION
OF THE NEW YORK STATE THRUWAY
IN BRONX AND WESTCHESTER COUNTIES

IN THE LETTING OF
JANUARY 15, 2025

NOTE: This amendment shall be attached to and become a part of the Proposal for Contract **TANE 25-1B**.

NOTICE

For Electronic Bidders, the Project's amended EBSX file will automatically account for any necessary item changes (deletions, changes in quantities, or additions) that this Amendment may describe as being required regarding the project's estimated cost. Instructions to make physical changes to the Project Proposal's bid sheets are intended for "paper" Bidders who choose to submit bids via paper.

PROPOSAL

1. **ADD** the attached Contract Proposal page **61A-A1**. A special note for Embodied Carbon Reporting and Environmental Product Declarations (EPDs) is now available.
2. **DELETE** Contract Proposal page **96** and **SUBSTITUTE** with the attached pages **96-A1** and **96A-A1**. A revised special note for State Prevailing Wage Rates is now available with an updated link to the NYSDOL website. Also, the Authority is also herein informing prospective bidders of the new Public Work Contractor and Subcontractor Registry requirement recently enacted by New York State.
3. **DELETE** Contract Proposal pages **111** thru **142** and **SUBSTITUTE** with the attached pages **111-A1** thru **142-A1**. An updated portion of the Agreement is now available, and it includes the addition of Article 31 – Environmental Review, as specifically shown on page 129-A1. The TAP-326 portion of the Agreement, as shown on pages 143 to 147 shall remain the same.

The Bidder **MUST** complete Page **165** of the Proposal acknowledging receipt of this amendment. If the Bidder fails to complete the "Amendment Acknowledgement" sheet, his bid could be declared informal thereby delaying award of the contract.

PLEASE BE GOVERNED ACCORDINGLY WHEN SUBMITTING BIDS.

Brent E. Howard, P.E.
Chief Engineer

SPECIAL NOTE**EMBODIED CARBON REPORTING and ENVIRONMENTAL PRODUCT DECLARATIONS (EPDs)**

Projects must comply with all applicable New York State (NYS) laws and policies to reduce the embodied carbon in building and infrastructure projects, including New York State Executive Order 22 (2022).

These laws and policies require Contractors to submit Environmental Product Declarations (EPDs) for certain building and construction materials supplied to State contracts. EPDs must be Product-specific Type III (Third Party Reviewed), in adherence with ISO 14025 *Environmental Labels and Declarations*, ISO 14044 *Environmental Management – Life Cycle Assessment*, and ISO 21930 *Core Rules for Environmental Product Declarations of Construction Products and Services*. Supply Chain-specific data should be used when available.

For permanently incorporated and temporary use construction materials manufactured and supplied for projects let after December 18, 2024, the Contractor shall ensure that all available EPDs are collected and submitted for asphalt mixtures, concrete mixtures (excluding precast), glass, and steel items when the quantity supplied to the project exceeds the values listed below. Units that are given in this document may differ from units listed in pay items and therefore, the Contractor must perform the necessary quantity conversion(s).

Construction Material	Minimum Quantity for Reporting
Concrete mixes	50 cubic yards or more
Asphalt mixes	16,854 pounds (or 10 cubic yards) or more
Steel i. Rebar ii. Hollow Structural Sections iii. Fabricated Steel Plate iv. Hot-Rolled Sections v. Cold-Formed & Galvanized	20,000 pounds or more for rebar (category i) 5,000 pounds or more, for all others (categories ii – vi)
Glass i. Flat Glass ii. Processed Glass iii. Insulated Glazing Units	2,000 square feet or more

The Contractor is not required to develop an EPD if one has not been developed by or for the manufacturer or supplier.

For projects that are active during the State Fiscal Year (April 1 - March 31) and are expected or known to meet the minimum quantities for reporting over the duration of the entire project, the Contractor shall complete and submit a “Contractor EPD Material Reporting Form” (Excel .xlsx format). The form is available on the Thruway Authority website at <https://www.thruway.ny.gov/business/contractors/forms/index.html#contractor>. The Contractor must submit the Contractor EPD Material Reporting form and all EPD(s) collected for the project to the Authority by emailing them to CarbonReports@thruway.ny.gov, with the Contract D number in the subject line of all e-mails. Questions about completing the form can be directed to the same e-mail address.

SPECIAL NOTE
STATE PREVAILING WAGE RATES

The Contractor shall ensure that workers are paid the appropriate wages and supplemental (fringe) benefits. Throughout the contract, the Contractor shall obtain and pay workers in accordance with periodic wage rate schedule updates from the NYS Department of Labor (NYSDOL). Wage rate amendments and supplements are available on the NYSDOL web site at <https://dol.ny.gov/bureau-public-work-and-prevailing-wage-enforcement>. All changes or clarification of labor classification(s) and applicability of prevailing wage rates shall be obtained in writing from the Office of the Director, NYSDOL Bureau of Public Work.

The NYSDOL prevailing wage rate schedule for this contract has been determined and is available on the internet. The prevailing wage rate schedule is accessed by visiting the NYSDOL web site, navigating to the appropriate web page, and entering the Prevailing Rate Case No. (PRC#). The PRC# is provided on NYSDOL Form PW-200 included in this contract Proposal.

A copy of the project specific prevailing wage rate schedule will be provided to the successful bidder upon award of the contract. Upon written request, the schedule will be provided by the Thruway Authority to prospective bidders without internet access.

The Thruway Authority is providing information regarding the new Public Work Contractor and Subcontractor Registry requirement recently enacted by New York State.

Starting December 30, 2024, all contractors and subcontractors submitting bids or performing construction work on public work projects or private projects covered by [Article 8 of the Labor Law](#) are required to register with the New York State Department of Labor (NYSDOL) under [Labor Law Section 220-i](#).

Private projects subject to Article 8 of the Labor Law include those covered by Labor Law Sections 224-a (public subsidy funded projects), 224-d (renewable energy systems), 224-e (broadband projects), 224-f (climate risk-related and energy transition projects and roadway excavations.)

The law defines a “contractor” as any entity entering into a contract to perform construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration or custom fabrication. The law defines “subcontractor” as any entity subcontracting with a contractor to perform construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration or custom fabrication, which is subject to Article 8 of the Labor Law. Contractors are responsible for verifying that any subcontractors they work with are registered.

Contractors need to register before submitting any new bids or commencing new work on a covered project on or after December 30, 2024. Subcontractors also need to register before commencing new work on a covered project on or after December 30, 2024. The Thruway Authority encourages all contractors and subcontractors to register as soon as possible and obtain a Certificate of Registration to avoid negatively impacting a bidding period or project schedule.

Information required to register from the New York State Department of Labor's website for this process can be found here: <https://dol.ny.gov/contractor-and-subcontractor-landing>. For any further questions you can also contact the Bureau of Public Work and Prevailing Wage at 518-457-5589.

111-A1

CONTRACT NO:

COUNTY:

**NEW YORK STATE
THRUWAY AUTHORITY**

A G R E E M E N T

NEW YORK STATE THRUWAY AUTHORITY

AGREEMENT

CONTRACT NO:

This AGREEMENT, entered into this day of , by the NEW YORK STATE THRUWAY AUTHORITY (hereinafter referred to as the "AUTHORITY")having its principal office at 200 Southern Blvd. (P. O. Box 189, Albany, NY 12201) in the County of Albany and State of New York and hereinafter called the"CONTRACTOR",

- a corporation organized and existing under the laws of the State of
- a partnership, consisting of
- an individual conducting business as

the location of whose principal office is

WITNESSETH: That the Authority and the Contractor for the consideration hereinafter named agree as follows:

ARTICLE 1. WORK TO BE DONE.

The Contractor shall (a) furnish all the materials, appliances, tools and labor of every kind required, and construct and complete in the most substantial and skillful manner, the construction, improvement or reconstruction of the project on or before the completion date of the as further described in ARTICLE 4, and as generally identified and shown on the plans entitled:

in accordance with the "Standard Specifications" of the New York State Department of Transportation, which contain the information for bidders; form of proposal, agreement, and bonds; general specifications and conditions or contract; materials of construction; and payment items; and (b) do everything required by the Contract (Contract Documents) as defined herein.

The Contractor agrees that its proposal contained herein is based upon performing all the work of the Contract in accordance with a schedule that will result in the completion of the total works by the Date of Completion of the Contract and all intermediate stage and phase completion requirements of the contract, while adhering to all restrictions set forth in the Schedule and Suspension of Work, the Thruway Traffic Plan, and the General and Special Notes, and that the work will be performed at the unit bid prices, as shown on the contract documents and as detailed in the specifications and notes, utilizing the Labor Force, Qualified Disadvantaged, Women Owned and Minority Owned Subcontractor Entrepreneurs and Methods and Materials of Construction as described in the Contract Documents and any incorporated Addenda thereto, and conduct its operations in accordance with the Vehicle and Traffic Law, the Rules and Regulations of the NYS Thruway Authority, and the Thruway Operating Rules and General and Special Notes that are part of this proposal. The Contractor further agrees its proposal is not based upon the assumption that any specifications, traffic restrictions, scheduling or phasing/staging requirements will be waived, an extension of Contract Completion Date will be granted, a labor dispensation will be granted, substitution of non-approved products, alternatives or claimed functional equivalents for Specified Construction Materials and Methods will be allowed, or any Value Engineering Proposals will be entertained and approved by the New York State Thruway Authority, and any requests for a substitution, equivalent or alternate, which it proposes, will be accompanied by an agreed price analysis establishing an applicable credit or illustrating cost equal to or greater than the bid amount.

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT.

The Contract (and Contract Documents) shall be deemed to include the advertisement for proposals; the contractor's proposal; the Schedule for Participation By Disadvantaged Business Enterprise Participation goals; the agreement; the "Standard Specifications" including all addenda thereto referred to above; the plans; any addenda and/or amendments to specifications if the same are issued prior to date of receipt of proposal and all provisions required by law to be inserted in the contract whether actually inserted or not. Appendix A, standard clauses for all N.Y State contracts, is attached hereto and is hereby made a part of this agreement as if set forth fully herein.

ARTICLE 3. EXAMINATION OF DOCUMENTS AND SITE.

The Contractor agrees that before making its proposal it carefully examined the contract documents, together with the site of the proposed work, as well as its surrounding territory, and is informed regarding all of the conditions affecting the work to be done and labor and materials to be furnished for the completion of this contract, including the existence of poles, wires, pipes, and other facilities and structures of municipal and other public service corporations on, over or under the site, except latent conditions that meet the requirements of §104-04 and §109-05, and that its information was secured by personal investigation and research.

ARTICLE 4. DATE OF COMPLETION.

The Contractor further agrees that it will begin the work herein embraced within ten days of the effective date hereof, unless the consent of the Authority, in writing, is given to begin at a later date, and that it will prosecute the same so that it shall be entirely completed and performed on or before the completion date shown in Article 1.

No extension beyond the date of completion fixed by the terms of this contract shall be effective unless in writing signed by the Authority. Such extension shall be for such time and upon such terms and conditions as shall be fixed by the Authority, which may include the assessment of liquidated damages and a charge for engineering and inspection expenses actually incurred upon the work, including engineering and inspection expenses incurred upon the work by railroad companies on contracts for grade crossing elimination. Notice of application for such extension shall be filed with the Chief Engineer, Department of Engineering of the Authority at least fifteen days prior to the date of completion fixed by the terms of this agreement.

ARTICLE 5. ALTERATIONS AND OMISSIONS.

The said work shall be performed in accordance with the true intent and meaning of the contract documents without any further expense of any nature whatsoever to the Authority other than the consideration named in this agreement.

The Authority reserves the right at any time during the progress of the work, to alter the plans or omit any portion of the work as it may deem reasonably necessary for the public interest; making allowances for additions and deductions with compensation made in accordance with the Standard Specifications, for this work without constituting grounds for any claim by the contractor for allowance for damages or for loss of anticipated profits, or for any variations between the approximate quantities and the quantities of the work as done.

ARTICLE 6. NO COLLUSION OR FRAUD.

The Contractor hereby agrees that the only person or persons interested as principal or principals in the bid or proposal submitted by the Contractor for this contract are named therein, and that no person other than those mentioned therein has any interest in the above-mentioned proposal or in securing of the award, and that this contract has been secured without any connection with any person or persons other than those named, and that the proposal is in all respects fair and was prepared and the contract was secured without collusion or fraud and that neither any officer nor employee of the New York State Thruway Authority or the State Department of Transportation or either of them has or shall have a financial interest in the performance of the contract or in the supplies, work or business to which it relates, or in any portion of the profits thereof. (See also Section 139-a and 139-b of the State Finance Law referred to in the Standard Specifications, which are made a part of this contract.)

ARTICLE 7. CONTRACT PAYMENTS.

As the work progresses in accordance with the contract and in a manner that is satisfactory to the Authority, the Authority hereby agrees to make payments to the Contractor therefore, based upon the proposal attached hereto and made a part hereof, as follows: The Authority shall, once in each month and on such days as it may fix, make an estimate of the quantity of work done and of material which has actually been put in place in accordance with the terms and conditions of the contract, during the preceding month, and compute the value thereof and pay to the Contractor the moneys due in accordance with Public Authorities Law Section 2880, as detailed in 21 NYCRR Part 109 (Prompt Payment). No monthly estimate shall be rendered unless the Contractor has provided acceptable documentation with regard to actions taken to comply with the M/WBE goals of the contract (see also §109-06 Contract Payments) and the value of the work done equals 5% of the contract amount or \$1,000, whichever is the lesser. Semi-monthly estimates may be rendered provided (a) the value of the work performed in two successive weeks is more than \$100,000 or (b) the Chairman of

the Authority deems it to be for the best interest of the Authority to do so.

Contractor understands and agrees that payments will only be rendered electronically unless payment by paper check is expressly authorized by the Authority, in its sole discretion, due to extenuating circumstances. Contractor shall comply with the Authority's procedures to authorize electronic payments. Authorization forms are available at <http://www.thruway.ny.gov/business/purchasing/epayments/index.html>, by e-mail at suppliermgmt@thruway.ny.gov, or by telephone at (518) 436-2859. Contractor acknowledges that it will not receive payment of any estimates submitted under this Agreement if it does not comply with the Authority's electronic payment procedures, except where the Authority has expressly authorized payment by paper check as set forth above.

ARTICLE 8. PAYMENT DUE TO CONTRACTOR'S NON-COMPLIANCE.

It is further agreed that so long as any lawful or proper direction concerning the work or material given by the Chief Engineer, Department of Engineering of the New York State Thruway Authority, or his/her representative, shall remain uncomplied with, the Contractor shall not be entitled to have any estimate made for the purpose of payment, nor shall any estimate be rendered on account of work done or material furnished until such lawful or proper direction aforesaid has been fully and satisfactorily complied with.

ARTICLE 9. FINAL ACCEPTANCE OF WORK.

When in the opinion of the Thruway Division Director, a Contractor has fully performed the work under the contract, the Thruway Division Director shall recommend to the Chief Engineer, Department of Engineering of the New York State Thruway Authority, the acceptance of the work so completed. If the Chief Engineer, Department of Engineering accepts the recommendation of the Thruway Division Director, he/she shall thereupon by letter notify the Contractor of such acceptance. Copies of such acceptance shall be sent to other interested parties. Prior to the final acceptance of the work by the Chief Engineer, Department of Engineering of the New York State Thruway Authority or a designee, the contract work may be inspected, accepted and approved by other agencies and/or municipalities who will have jurisdiction of the work after final acceptance.

Final acceptance shall be final and conclusive except for defects not readily ascertainable by the New York State Thruway Authority, actual or constructive, fraud, gross mistakes amounting to fraud or other errors which the Contractor knew or should have known about as well as the New York State Thruway Authority's rights under any warranty or guarantee. Final acceptance may be revoked by the New York State Thruway Authority at any time prior to the issuance of the final check, upon the New York State Thruway Authority's discovery of such defects, mistakes, fraud or errors in the work.

ARTICLE 10. FINAL PAYMENT.

After the final acceptance of the work, the Engineer shall prepare a final agreement of the work performed and the materials placed and shall compute the value of such work and materials under and according to the terms of the contract.

This agreement shall be certified, as to its correctness, by the Engineer. Upon approval of such final agreement by the Director, Office of Construction Management, it shall be submitted to the Chief Engineer,

Department of Engineering for final approval. The right, however, is hereby reserved to the Chief Engineer, Department of Engineering to reject the whole or any portion of the final agreement, should the said certificate of the Engineer be found or known to be inconsistent with the terms of the agreement or otherwise improperly given. All certificates, upon which partial payments may have been made being merely estimates, shall be subject to correction in the final certificate or final agreement.

ARTICLE 11. RIGHT TO SUSPEND WORK AND CANCEL CONTRACT.

Article 11.1 General Right to Suspend and Cancel Contract.

It is further mutually agreed that if at any time during the prosecution of the work the Authority shall determine that the work is not being performed in accordance with the Contract or for the best interest of the Authority, the Chief Engineer, Department of Engineering, may proceed in any of the following ways:

- 1) Temporarily suspend the execution of the work by the Contractor, and the Chief Engineer of the Authority may then proceed with the work under his/her own direction in such manner as will accord with the Contract Documents and be for the best interests of the Authority; or
- 2) Terminate the Contract while it is in progress, and thereupon proceed with the work by a new contract negotiated or publicly advertised, by the use of his/her own forces, by calling upon the Surety to complete the Work in accordance with the Contract Documents, or by a combination of any such methods; or
- 3) Cancel the Contract and re-advertise and re-procure in accordance with applicable law; or
- 4) Complete the Work under the Authority's direction in such a manner as will accord with the Contract Documents and be for the best interests of the Authority.

Any excess in the cost of completing the Contract beyond the Contract Price for which it was originally awarded shall be charged to and paid by the Contractor failing to perform the Work or its Surety, all pursuant to the provisions of Section 40 of the New York State Highway Law.

In the event of suspension or termination, the Contractor shall be paid its costs, including contract close-out costs, and profit on work satisfactorily performed and project design costs actually incurred up to the time of termination, less an amount necessary to satisfy any claims, liens or judgments against the Contractor. The Contractor shall promptly submit its termination claim. The Contractor will only be paid the contract price for materials delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract, less an amount necessary to satisfy any claims, liens or judgments against the Contractor.

Whenever the Authority determines to suspend or stop Work under this Contract, a written notice sent by mail to the Contractor at its address and to its Sureties at their respective addresses shall be sufficient notice of its action in the premises.

Article 11.2 Termination for Cause.

- A. If at any time during the prosecution of the work the Chief Engineer shall determine that the work under the Contract is not being performed according to the Contract or any

provision of the Contract is violated by the Contractor or by any subcontractor or that an Event of Default (as defined below) has occurred hereunder, the Chief Engineer, in his or her sole and absolute discretion, may proceed in any of the following ways:

- (1) Suspend or stop work by the Contractor, and the Chief Engineer may then complete the Work under his/her own direction in such manner as further described in the Contract Documents and as determined by the Chief Engineer to be in the best interests of the Authority; or
- (2) Terminate the Contract while it is in progress, and thereupon complete the work by: a new contract negotiated or publicly advertised; use of the Authority's own forces; calling upon the Surety to complete the Work in accordance with the Contract; or a combination of any such methods; or
- (3) Terminate the Contract and re-advertise as provided in law or if applicable, demand upon the Surety to complete any and all remaining work pursuant to the terms of the Contract and the Faithful Performance Bond.

As used herein, an "Event of Default" shall mean a material breach of the Contract by the Contractor which, without limitation, the following has occurred: (i) the Contractor has failed to begin the work in accordance with the Contract requirements; (ii) performance of this Contract has been unnecessarily or unreasonably delayed, (iii) the Contractor has willfully violated any of the provisions of the Contract or has not executed the same in good faith and in accordance with this Contract; (iv) the Contractor has abandoned the work; (v) the Contractor has become insolvent (other than as a bankrupt), or has assigned the proceeds of this Contract for the benefit of creditors, or taken advantage of any insolvency statute or debtor or creditor law or if his property or affairs have been put in the hands of a receiver; (vi) the Contractor has failed to obtain an approval required by the Contract; (vii) the Contractor has failed to provide the required insurances; (viii) the Contractor has failed to provide "adequate assurance" as required; or (ix) the Contractor is found to be non-responsible.

- B. Any excess in the cost of completing the Contract beyond the price for which it was originally awarded shall be charged to and paid by the Contractor failing to perform the work or by the Contractor's Surety, pursuant to the terms and conditions of Section 40 of the New York State Highway Law and the Faithful Performance Bond.
- C. Whenever the Authority determines to suspend, stop work, or terminate under this provision of the Contract, the Contractor and Surety shall receive written notice specifying the basis for such default (the "Default Notice"). Contractor shall have fifteen (15) days from the date of the Default Notice to cure such default, except that, at Authority's sole discretion, the Authority may extend such fifteen (15) day period for such additional period as the Authority shall deem appropriate without waiver of any of its rights hereunder. The Default Notice shall specify the date the Contractor is to discontinue all work if such default is not timely cured (the "Termination Date"). If the Event of Default is not cured or arrangements satisfactory to the Authority are not made (as evidenced in writing by the Authority) within the designated cure period, then Contractor shall suspend work and/or the Contract shall terminate, as the case may be, upon the Termination Date.

- D. Upon occurrence of an Event of Default or a termination for cause pursuant to this Article, the Authority has the remedies set forth in the Faithful Performance Bond, the Contract, and all remedies at law or in equity.
- E. In the event the termination for cause is determined to be improper, the termination shall be deemed a Termination for Convenience as identified in Article 11.3.

Article 11.3 Termination for Convenience.

- A. The Authority, at any time, may terminate the Contract in whole or in part. Any such termination shall be effected by delivering to the Contractor a written notice of termination specifying the extent to which performance of work under the Contract is terminated and the date upon which the termination becomes effective. Upon receipt of the notice of termination, the Contractor shall act promptly to minimize the expenses resulting from the termination.
- B. The Authority shall pay the Contractor for work of the contract performed by the Contractor and accepted by the Authority for the period extending from the end of the period covered by the last approved Application for Payment up to the effective date of the termination, an amount determined in accordance with the Contract Documents. In no event shall the Contractor be entitled to compensation in excess of the total consideration of the Contract. In no event shall the Contractor be entitled to overhead or profit on the work not performed.
- C. In the event of such termination, the Authority may take over the work and prosecute the Contract to completion and may take possession of and may utilize such materials, appliances, and equipment on the site and necessary or useful in completing the work. The Authority also has the right to suspend the execution of the Work for convenience and/or to terminate the Contract for convenience.

Whenever the New York State Thruway Authority determines to suspend or stop work under the contract, a written notice sent by mail to the Contractor at its address and to the sureties at their respective addresses, shall be sufficient notice of its action in the premises.

Article 11.4 Termination for Vendor Responsibility.

- A. Contractor shall at all times during the Contract term remain responsible. Contractor agrees, if requested by the Authority, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- B. The Authority, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when it discovers information that calls in to question the responsibility of Contractor. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor shall comply with the terms of the suspension order. Contract activity may resume at such time as the Authority issues a written notice authorizing a resumption of performance under the Contract.
- C. Notwithstanding any other provision of this Contract, if the Authority determines Contractor to be non-responsible, the Authority shall have the right to terminate the Contract for cause pursuant to the terms of Article 11.2 - Termination for Cause herein.

In such event, the Authority shall have all rights and remedies set forth in Article 11.2, including, without limitation, the right to complete Contractor's contractual requirements in any manner the Authority may deem advisable and to pursue available legal or equitable remedies for the breach.

- D. In no event shall termination of the Contract by the Authority for reasons of Contractor's non-responsibility be deemed a breach by the Authority, nor shall the Authority be liable for any damages or lost profits or otherwise that Contractor may incur as a result of such termination.
- E. The Authority may require at any time the removal of a subcontractor to the Contractor that the Authority determines is not responsible.

ARTICLE 12. DETERMINATION AS TO VARIANCES.

In any case of any ambiguity in the plans, specifications or maps, or between any of them, the matter must be immediately submitted to the Chief Engineer, Department of Engineering, who shall adjust the same, and his/her decision in relation thereto shall be final and conclusive upon the parties.

ARTICLE 13. SUCCESSORS AND ASSIGNS.

This Agreement shall bind the successors, assigns and representatives of the parties hereto.

ARTICLE 14. INTERNATIONAL BOYCOTT PROHIBITION.

In accordance with Chapter 406 of the Laws of 1981, the Contractor hereby promises, asserts and represents 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 provisions of the United States Export Administration Act of 1969, as amended, or the United States Export Administration Act of 1979, or the effective Regulations of the United States Department of Commerce promulgated under either act.

It is understood further that the Authority in awarding a contract does so in material reliance upon the promise and representation made by the Contractor in the foregoing paragraph and that such contract shall be rendered forfeit and void by the State Comptroller if subsequent to the bid execution date, the Contractor or such owned or affiliated person, firm, partnership or corporation has been convicted of a violation of the aforesaid Acts or Regulations or has been found upon final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated such Acts or Regulations.

The Contractor agrees to and shall notify the Chief Engineer, Department of Engineering and the Director of the Office of Construction Management and the Director of State Expenditures in the Office of the State Comptroller of any such conviction or final determination of violation within five (5) days thereof.

ARTICLE 15. CERTIFICATION OF STATE FINANCE LAW SECTIONS 139-J AND 139-K.

By execution of this Agreement the Contractor certifies that all information provided with respect to New York State Finance Law Section 139-j and Section 139-k is complete, true and accurate. The Authority shall have a right to terminate this Agreement in the event the Authority finds that the certification made by the Contractor in accordance with New York State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete. This

includes the Authority's right to terminate this Agreement at any time in the event the Authority finds that Contractor is non-responsible or has failed to accurately disclose vendor responsibility information.

ARTICLE 16. WRITTEN NOTICES.

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

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

Such notices shall be addressed to the individuals or titles named in the contract documents, or which are designated by the Contractor or the Authority at the pre-construction meeting, or which are designated by the Authority or the Contractor from time to time during the course of the Contract pursuant to the requirements herein.

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 a new or different address in the United States as their address for the 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.

ARTICLE 17. SUBCONTRACTING.

Contractor agrees not to subcontract any of its services without the prior written approval of the Authority.

Contractor retains ultimate responsibility for all services performed under the Agreement and shall pay any subcontractors promptly for work performed under this Agreement. Contractor shall be fully responsible to the Authority for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, just as Contractor is fully responsible to the Authority for the acts and omissions of persons directly employed by Contractor.

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

subcontractor against the Authority. The Authority shall have the right to withdraw its consent to a subcontractor if, at the sole discretion of the Authority, it appears that the subcontract will delay, prevent, or otherwise impair Contractor's performance of services under this Agreement. Upon request, Contractor shall furnish to the Authority copies of all Contracts between Contractor and its subcontractors used to perform services for this Agreement.

The Authority reserves the right, at any time during the term of the Agreement, to verify that the written subcontract between Contractor and its subcontractors is in compliance with all of the provisions of this Article 17 and any subcontract provisions contained in this Agreement.

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

If at any time during performance under this Agreement total compensation to a subcontractor exceeds or is expected to exceed \$100,000, said subcontractor shall be required to electronically submit and certify a new Vendor Responsibility Questionnaire directly to the Office of the New York State Comptroller, or submit and certify all necessary updated information thereof.

Nothing contained in this Agreement shall create any contractual relationship between a subcontractor and the Authority.

ARTICLE 18. CONFIDENTIALITY AND NON-DISCLOSURE.

- A. "Confidential Information" means any information not generally known to the public, or that the Authority claims is confidential, whether oral, written, or electronic, that the Authority discloses, directly or indirectly, through any means of communication, to Contractor. Confidential Information includes, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, reports, product information and data; business and security processes and procedures; personnel and organizational data; financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Authority deems confidential.
- B. Confidential Information does not include information which, at the time of the Authority's disclosure to Contractor: (1) is already in the public domain or becomes publicly known through no act of Contractor; or (2) is already known by Contractor free of any confidentiality obligations.

If Contractor wants to disclose Confidential Information, it shall notify the Authority and specify the Confidential Information it wants to disclose. Contractor may only disclose such Confidential Information if the Authority approves such disclosure in writing, subject to such other terms and conditions as the Authority may require. Such approval, if given, shall only apply to the particular request and the specific Confidential Information for

which it is given.

If Contractor is required to disclose or make available, directly or indirectly, Confidential Information pursuant to statute, court or administrative order, subpoena, contractual obligation, or otherwise by law, Contractor shall: (1) notify the Authority that it has received such legal demand as soon as practicable, but in all events prior to any disclosure; (2) permit the Authority to take the steps it deems necessary and appropriate to protect the Confidential Information from disclosure; (3) cooperate to the fullest extent possible under the law with the Authority's efforts to protect the Confidential Information from disclosure; and (4) disclose only such Confidential Information, and only such portions thereof, as is required to satisfy the legal demand, and limit any such disclosure of Confidential Information to the fullest extent permissible under the law.

- C. Contractor may use Confidential Information solely for the purposes of providing services to the Authority pursuant to this Agreement. Contractor may make copies of Confidential Information but only to the extent necessary for the disclosures and uses permitted by this Agreement. Contractor will make commercially reasonable efforts to ensure that any copy of Confidential Information that is made is marked to show that it is or contains Confidential Information. Contractor may share Confidential Information with third parties: (i) that are required for Contractor's provision of services to the Authority pursuant to this Agreement (e.g., Contractors and subcontractors); and (ii) that agree in writing to be bound by the confidentiality provisions of this Agreement; however, Contractor may share only that Confidential Information that is necessary to the third party's contribution to Contractor's provision of services to the Authority pursuant to this Agreement and Contractor must first obtain the Authority's prior written consent.

The Authority's disclosure of Confidential Information to Contractor shall not convey to Contractor any right, title, or interest in or to such Confidential Information, and this Agreement does not transfer ownership of Confidential Information or grant a license thereto. The Authority shall retain all right, title, and interest in and to all such Confidential Information at all times.

- D. Contractor shall hold Confidential Information confidential to the maximum extent permitted by law. Contractor shall safeguard Confidential Information with at least the same level of care and security that Contractor uses to maintain and protect from disclosure its own confidential information, using all reasonable and necessary security measures, devices, and procedures that Contractor uses to maintain its own confidential information, but in all events with not less than reasonable care.

Contractor shall take reasonable steps to prevent unauthorized access to, use of, or disclosure of Confidential Information, including without limitation, by protecting its passwords and other log-in information. Contractor shall notify the Authority immediately of any known or suspected misuse or misappropriation of Confidential Information and shall use its best efforts to stop said misuse or misappropriation.

- E. Upon written request of the Authority, or upon expiration or termination of this Agreement, Contractor shall return all Confidential Information to the Authority, or certify in writing that it has been destroyed and no copies exist.

- F. Contractor agrees that breach of this Article 18 would cause the Authority irreparable

injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the Authority will be entitled to injunctive relief against such breach or threatened breach, without proving actual damages or posting a bond or other security.

- G. Without limiting the foregoing, the obligations and assurances involving Confidential Information pursuant to this Agreement shall survive termination or expiration of this Agreement.

ARTICLE 19. NEW YORK STATE HUMAN RIGHTS LAW, ARTICLE 15 OF THE EXECUTIVE LAW.

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination (including to refuse to hire or employ or to bar or to discharge from employment an individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment) and harassment based on age, race, creed, color, national origin, sex, , sexual orientation, gender identity or expression, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics, or because the individual has opposed any practices forbidden under the Human Rights Law or because the individual has filed a complaint, testified or assisted in any proceeding under the Human Rights Law, regardless of whether such harassment would be considered severe or pervasive under precedent applied to harassment claims. Harassment is an unlawful discriminatory practice when it subjects an individual to inferior terms, conditions or privileges of employment because of the individual's membership in one or more of these protected categories.

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

Generally, the Human Rights Law applies to:

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

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

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

ARTICLE 20. DEBARMENT CERTIFICATION.

- A. The Contractor certifies to the best of its knowledge and belief, that it and its principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 2. Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (A)(2) of this certification; and
 4. Have not within a three-year period preceding this application/proposal/contract had one or more public transactions (Federal, State or local) terminated for cause or default.

ARTICLE 21. CONFLICTS OF INTEREST.

- A. Contractor has provided as Exhibit V (attached hereto and made a part of this Agreement), the Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative attesting that Contractor's performance of the services does not and will not create a conflict of interest with, nor position Contractor to breach any other contract currently in force with the Authority or the State of New York, that Contractor will not act in any manner that is detrimental to any Authority or State of New York project for which Contractor is rendering services.
- B. Contractor hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement. Contractor hereby agrees it shall have a continuing affirmative duty and obligation to notify the Authority immediately of any actual or potential conflicts of interest.
- C. In conjunction with any subcontract under this Agreement, Contractor shall obtain and deliver to the Authority, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Authority a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.
- D. The Authority and Contractor recognize that conflicts may occur in the future because

Contractor may have existing, or establish new, relationships. The Authority will review the nature of any relationships and reserves the right to terminate this Agreement for any reason, or for cause, if, in the judgment of the Authority, a real or potential conflict of interest cannot be cured.

ARTICLE 22. ETHICS.

Contractor and subcontractors may hire former State agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the Authority may neither appear nor practice before the Authority, nor receive compensation for services rendered on a matter before the Authority, for a period of two years following their separation from Authority service. In addition, former Authority employees are subject to a "lifetime bar" from appearing before the Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the Authority.

During the term of the Agreement, Contractor and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the Authority or New York State to perform services under the Agreement in violation of: the provisions of the Public Officers Law ("POL"); the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics ("JCOPE Regulations"); and any other laws applicable to the service of current or former Authority or New York State employees ("Other Laws," and, together with POL and JCOPE Regulations, collectively, the "Ethics Provisions"). Contractor certifies that all of its employees and employees of any subcontractor who are former employees of the Authority or New York State and who are assigned to perform services under the Agreement shall be assigned in accordance with all Ethics Provisions. Further, during the term of the Agreement, no person who is employed by Contractor or its subcontractors and who is disqualified from providing services under the Agreement pursuant to any Ethics Provisions may share in any net revenues Contractor or its subcontractors derives from the Agreement.

Contractor shall identify and provide the Authority with notice of those employees of Contractor or its subcontractors who are former employees of the Authority or New York State and who will be assigned to perform services under the Agreement, and shall ensure that such employees comply with all applicable laws and prohibitions. The Authority may, request that Contractor provide it with whatever information the Authority deems appropriate about each such person's engagement, work cooperatively with the Authority to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the Authority, instruct any such person to seek the opinion of the Joint Commission on Public Ethics. The Authority shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The Authority shall have the right to cancel or terminate the Agreement at any time if any work performed under the Agreement is in conflict with any Ethics Provisions.

ARTICLE 23. MINORITY AND WOMEN BUSINESS ENTERPRISE GOALS AND SERVICE DISABLED VETERANS OWNED BUSINESS GOALS.

This Contract is subject to State provisions (including State Executive Law 15-A and 5 NYCRR Parts 140-145) concerning the utilization of Minority-Owned Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) (collectively M/WBE). All State M/WBE requirements are applicable to this Contract. The approved overall combined MBE and WBE participation goal for the project is established in the Contract Documents.

This Contract is subject to State provisions (including State Executive Law 15-A and 5 NYCRR Parts 140-145) concerning the utilization of Service Disabled Veterans Owned Business (SDVOB). All State SDVOB requirements are applicable to this Contract. The approved overall SDVOB participation goal for the project is established in the Contract Documents.

ARTICLE 24. IRAN DIVESTMENT ACT- SECTION 2879-C OF THE PUBLIC AUTHORITIES LAW.

- A. As used in this Article 24, “person” has the meaning set forth in paragraph (e) of subdivision 1 of Section 165-a of the State Finance Law.
- B. As used in this Article 24 “Contract” means this Agreement.
- C. Contractor hereby provides the following certification: By signing this Contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

ARTICLE 25. COVENANT AGAINST CONTINGENT FEES.

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. In the event Contractor violates this warranty, Authority shall have the right to terminate this Agreement without liability, or, in its discretion, to deduct from payments otherwise owed to the Contractor for services provided pursuant to this Agreement the full amount of such fee, commission, percentage, brokerage fee, gift or other consideration.

ARTICLE 26. COMPLIANCE MONITORING.

In the event that the Contractor, its affiliates or any subcontractor is or becomes subject to a compliance monitoring requirement consequent to an agreement with a governmental entity at any time prior to completion of the contract, the Contractor shall promptly notify the Authority of the same. Compliance monitoring means any requirement imposed by a governmental entity arising from an investigation of activities of the Contractor, its affiliates, or any subcontractor concerning alleged compliance violations, pursuant to which the subject entity is obligated to allow an independent third party to review, analyze, investigate or report on that entity’s future compliance with governmental rules and/or contractual requirements arising from governmental rules. Said notice shall be in writing and shall include (i) a copy of the order, settlement or other document setting forth the requirement to implement a monitoring program and (ii) the specific requirements and conditions of the required program. If the order, settlement or other document is subject to confidentiality protection that cannot be unilaterally waived by the Contractor or the entity that is subject to the requirement, the Contractor shall cause the subject entity to confirm that it is subject to a compliance monitoring requirement

and to provide a confidential summary of the terms and conditions of the monitoring requirement to the Contractor, with a copy to the Authority.

The Contractor shall further cause the subject entity to promptly notify the Contractor, with a copy to the Authority, of any violations of the monitoring program by the subject entity and of any other concerns expressed by the monitor regarding compliance with the monitoring program requirements. In such event, the Contractor shall provide to the Authority a detailed written report as to whether and to what extent, if any, the violation or concerns expressed by the monitor are relevant to the Contractor's compliance with its Contract obligations, or to the performance of work by the Contractor. The Authority shall at all times have the right to independently investigate whether any matter raised by the monitor will have any effect upon the Contractor's compliance with its Contract obligations or performance of work by the Contractor and/or subject entity. If any such violation occurs or concerns expressed by the monitor involve compliance requirements that are deemed by the Authority to be relevant to the Contract, the Authority shall have the right to require the Contractor to institute, at Contractor expense, additional data keeping, reporting, and/or other safeguard measures, including permitting independent auditing and access to pertinent records of the Contractor or the subject entity to mitigate risk that a similar violation will occur on the project or be a cause for concern with respect to the Contractor's performance of its obligations under the Contract. The Authority's audit rights under the Contract shall include the right to audit and access pertinent records of the Contractor or the subject entity relating to compliance issues described herein.

The Authority agrees to take all reasonable measures to maintain the confidentiality (to the extent permitted by law) of any information provided by Contractor and/or the subject entity pursuant to this Article 26 which the Contractor has reasonably designated as confidential, and the provisions of Appendix A, Section 9 of the New York State Thruway Authority Addendum to the Standard Specifications, of the Agreement shall apply with respect to disclosure of any such Records under the Statute (as defined in such section). Any intra-agency written materials prepared by the Authority, or any written inter-agency materials that are in the possession or control of the Authority, to the extent based on information or records designated as confidential or exempt from disclosure under the Statute as provided in the preceding sentence, shall also be designated and treated as such by the Authority to the fullest extent permitted by law. The Authority may disclose any of the aforementioned information, records and materials to the New York State Department of Transportation, provided that the Department agrees to treat such information, records and material in the same manner as required of the Authority under this paragraph.

The rights and remedies granted to the Authority under this Article 26 are in addition to, and not to the exclusion of, any and all of its rights and remedies under the Contract or at law or in equity.

ARTICLE 27. INDEMNIFICATION.

The Contractor shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of the Contractor in connection with its services under the Contract Documents. To the fullest extent permitted by law: (a) the Contractor shall indemnify, hold harmless, and release the Authority, the State of New York, any municipality in which the Work is being performed; and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the Work from suits, claims, actions, damages, and costs of every name and description resulting from the Work under this Contract and until the Final Acceptance thereof; (b) with respect to personal injury or property damage occurring after Final Acceptance and not covered by the indemnity in clause Article 27 (a), the Contractor shall indemnify, hold harmless, and release the Authority, the State of New York, any municipality in which the Work is being performed;

and/or any public benefit corporation, railroad or public utility from suits, claims, actions, damages, and costs of every name and description resulting from negligent or otherwise tortious acts, errors or omissions of the Contractor in connection with its services under the Contract Documents; and (c) the Contractor shall indemnify, hold harmless, and release the Authority's Inspector from suits, claims, actions, damages, and costs involving personal injury and property damage resulting from the Contractor's Work under the Contract during its prosecution and until the Final Acceptance thereof. The Authority may retain such monies from the amount due the Contractor as may be necessary to satisfy any claim for damages recovered against the Authority, the State of New York, any municipality in which the Work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the Work, or the Authority's Inspectors. The Contractor's obligation under this paragraph shall not be deemed waived by the failure of the Authority to retain the whole or any part of such monies due the Contractor, or where such suit, action, damages, and/or costs have not been resolved or determined prior to release of any monies to the Contractor under the Contract. Such obligation shall not be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Contractor, Subcontractors, the Authority, the State, any municipality in which the Work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the Work, or any Department consultants or contractors working relative to the Project.

The Contractor has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Article. This obligation shall include the cost of attorney fees, disbursements, costs, and other expenses incurred in connection with such action or proceeding. The provisions of this Article shall survive the expiration or termination of the Contract.

Without limiting the generality of the foregoing, Contractor's obligation to indemnify, save harmless and release the Persons identified in this article specifically includes any suits, claims, actions, damages, and costs of every name and description resulting from any spill or release or threatened spill or release of a Hazardous Material (i) attributable to the negligence, willful misconduct or breach of contract by Contractor, its Subcontractors or agents, or (ii) which was brought onto the Site by Contractor or any of its Subcontractors or agents.

Notwithstanding the foregoing, the Authority reserves the right to join such action, at its sole expense, when it determines there is an issue involving a significant public interest. Such obligation does not extend to those suits, actions, damages, and costs of every name which arise out of the sole negligence of the Authority, the State of New York, any municipality in which the Work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the Work of the Project, or any Authority consultants or Contractors working relative to the Project, their agents, or their employees.

ARTICLE 28. NOTICES REGARDING CLAIMS, LITIGATION AND RULINGS.

The Contractor shall promptly provide written notice to the Authority of all claims, litigation and governmental rulings pertaining to the work where such claims, litigation or rulings could subject the Authority to liability or substantially impair the completion of the Contract work. With such notice, the Contractor shall include a brief summary of the issue involved and the Contractor's position on such issue. Such written notice is additional to and not in place of any other notices required by the Contract Documents. The Contractor shall cooperate and provide, and shall require all subcontractors to cooperate and provide, such information or

records as may be reasonably requested by the Authority concerning such claims, litigation or rulings.

ARTICLE 29. COOPERATION AND FURTHER ASSURANCES.

Contractor shall cooperate and provide, and shall cause all subcontractors to cooperate and provide, such information as is necessary or requested by the Authority to assist or facilitate the submission by the Authority of any documentation, reports or analysis required by the State, and/or any other governmental entity with jurisdiction over the work. The Contractor shall promptly execute and deliver to the Authority all such instruments and other documents and assurances as are reasonably requested by the Authority to further evidence the obligations of the Contractor under the Contract.

ARTICLE 30. SEVERABILITY.

If any clause, provision, section, article or part of any of the Contract Documents is ruled invalid by a court having proper jurisdiction, the invalidity or unenforceability of any such clause, provision, section, article or part shall not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section, article or part.

ARTICLE 31. ENVIRONMENTAL REVIEW

Article 31.1 Lead Agency

The Authority reserves the right to be “lead agency” for any compliance with the New York State Environmental Quality Review Act (SEQRA), and the appropriate federal agency shall serve as “lead agency” for the National Environmental Policy Act (NEPA), as may be required for this Agreement or any activity undertaken by Contractor pursuant to this Agreement.

Article 31.2 Executive Order 22

Embodied Carbon Disclosure: For building materials covered by the GreenNY Council Embodied Carbon Guidance, Contractors and designers shall disclose, at regular intervals during the course of the contract period (and no less than once a year), the exact materials/product type and estimated quantities used. For materials for which Environmental Product Declarations (EPDs) exist that comply with the GreenNY Council requirements, Contractors are also required to submit kgCO₂ equivalent estimates by material/product, and quantity used, on the project to date, with a .pdf copy of the EPD or a link to the digital EPD. (Please see the EO22 Special Note contained in the Special Notes section of this proposal).

130-A1

Contract Number:

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.

IN-WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

By: _____
Chief Engineer

: _____
Date

Contractor

Approved as to form

Approved:

Thomas P. DiNapoli
State Comptroller

New York State Attorney General

By: _____
Date: _____

(ACKNOWLEDGMENT BY INDIVIDUAL CONTRACTOR)

STATE OF NEW YORK

COUNTY OF _____ ss.:

On this _____ day of _____, 202_,
before me personally came _____ to me
known and known to me to be the person described in and who executed the foregoing instrument,
and acknowledged that he executed the same.

Notary Public

(ACKNOWLEDGMENT BY CO-PARTNERSHIP CONTRACTOR)

STATE OF NEW YORK

COUNTY OF _____ ss.:

On this _____ day of _____, 202
before me personally came and appeared _____ to me known and known
to me to be the person who executed the above instrument, who, being sworn by me, did for himself
depose and say that he is a member of the firm of _____ consisting of
himself and _____ and that he executed the foregoing instrument in the
firm name of _____ and that he had authority to sign same, and he did duly
acknowledge to me that he executed the same as the act and deed of said firm of
_____, for the uses and purposes mentioned therein.

Notary Public

(ACKNOWLEDGEMENT OF A CORPORATION)

STATE OF NEW YORK }
 }
COUNTY OF }

On this _____ day of _____, 202_,
before me personally came _____, to me known and known to me to
be the person who executed the above instrument, who being duly sworn by me, did depose and
say that he/she resides in _____, that he/she is the
_____ of _____, the corporation
described in and which executed the above instrument, and that he/she signed his/her name thereto
on behalf of said Corporation by order of the Board of Directors of said Corporation.

Notary Public

Exhibit V**Vendor Assurance of No Conflict of Interest or Detrimental Effect**

The undersigned entity (“Contractor”), offering to provide services pursuant to this Agreement, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this Agreement does not and will not create a conflict of interest with nor position the Contractor to breach any other contract currently in force with the New York State Thruway Authority (“Authority”).

Furthermore, the Contractor attests that it will not act in any manner that is detrimental to any Authority project on which the Contractor is rendering services. Specifically, the Contractor attests and certifies that:

1. The fulfillment of obligations by the Contractor does not violate any existing contracts or agreements between the Contractor and the Authority;
2. The fulfillment of obligations by the Contractor does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Contractor has with regard to any existing contracts or agreements between the Contractor and the Authority;
3. The fulfillment of obligations by the Contractor does not and will not compromise the Contractor’s ability to carry out its obligations under any existing contracts between the Contractor and the Authority;
4. The fulfillment of any other contractual obligations that the Contractor has with the Authority will not affect or influence its ability to perform under the Agreement;
5. During the negotiation and execution of any contract, the Contractor will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the Authority as a whole including, but not limited to, any action or decision to divert resources from one Authority project to another;
6. In fulfilling obligations under each of its Authority contracts, including this Agreement, the Contractor will act in accordance with the terms of each of its Authority contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the Authority as a whole including, but not limited to, any action or decision to divert resources from one Authority project to another;
7. No former officer or employee of the Authority or State of New York (“State”) who is now employed by the Contractor, nor any former officer or employee of the Contractor who is now employed by the Authority or State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the New York State Public Officers Law; and
8. The Contractor has not and shall not offer to any employee, member or director of the Authority any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said

employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Contractor agrees that the Authority recognizes that conflicts may occur in the future because a Contractor may have existing or new relationships. The Authority will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

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

Contractor Name

Name of Signatory

Title of Signatory

Signature:

Date:

135-A1

CONTRACT:

COUNTY:

FAITHFUL PERFORMANCE BOND

BOND

Know all men by these presents, that we (hereinafter called the "Principal")

and _____

of _____ (hereinafter called the "Surety") are held and firmly bound unto the New York State Thruway Authority, (hereinafter called the "Authority"), in the full and just sum of _____ good and lawful money of the United States of America for the payment of which said sum of money, well and truly to be made and done, the said Principal binds himself, his heirs, executors, administrators or assignees and the said SURETY binds itself, its successors or assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated this _____ of _____, 202_____,

Whereas, said Principal has entered into a certain written contract bearing date of the _____ day of _____, 202 with the Authority for:

Now, therefore, THE CONDITION OF THIS OBLIGATION IS SUCH that if the said Principal shall well, truly and faithfully perform the work in accordance with the terms of the contract, and with the plans and specifications, and will commence and complete the work within the time prescribed in the contract, on his part to be kept and performed according to the terms and tenor of said contract, and shall protect the said N.Y.S. Thruway Authority against, and pay any excess of cost as provided in said contract, and all amounts, damages, costs and judgments which may be recovered against said N.Y.S. Thruway Authority, N.Y.S. Dept. of Transportation the Commissioner of Transportation and the State of N.Y. or its or any of their officers or agents or which the said aforementioned may be called upon to pay to any person or corporation by reason of any damages, direct or indirect, arising or growing out of the doing of said work, or from the negligence, non-feasance, misfeasance, or malfeasance of any officer, agent or employee of the aforementioned, or suffered or claimed on account of aforesaid work during the time thereof and until the final completion and acceptance of the work, or the manner of doing the same, or the neglect of the said Principal, or his agents, or servants, or the improper performance of the said work by the said Principal, or his agents, or servants, or from any other cause, then this obligation shall be null and void, otherwise to remain in full force and virtue.

In the event of a failure of performance of the contract by the Principal, which shall include, but not be limited to, any breach or default of the contract by the Principal, or in case said contract is forfeited by the Principal in the manner provided for in the contract and the said Surety, for value received, hereby stipulates and agrees, if requested to do so by the Authority, has the option to either remedy the default, or breach or forfeiture of the Principal or take charge and fully perform and complete the work, mentioned and described in said contract and specifications, pursuant to the terms, conditions and covenants thereof and as may be amended, at its own expense. The procedure by which the surety undertakes to discharge its obligations under the bond shall be subject to the advance written approval of the Authority. If the Surety completes the contract, it shall be paid for the actual items of work performed in accordance with the Principal's contract terms and prices. In the event the Surety assumes the rights and obligations of the Principal.

It shall be the duty of the Surety to give unequivocal notice in writing to the Authority, within forty-five (45) days after receipt of written notice from the Authority to the Surety, of the Surety's election to remedy default(s) or breach(es) or forfeiture(s) promptly or to perform and fully complete the contract promptly as provided herein, time being of the essence of this bond. In said notice of election, the Surety shall state the date on which the remedy or performance shall commence. During the period between the Authority's notice and Surety's performance of the contract or remedy of the default, breach or forfeiture, the Surety shall be liable for and agrees to pay any and all reasonable and necessary costs as determined by the Authority to maintain the project site safe and convenient to the public.

It shall also be the duty of the Surety to give prompt notice in writing to the Authority upon completion of the remedy and/or correction of each breach or default or completion of the contract. The surety shall not assert solvency of its Principal or its Principal's denial of default as justification for its failure to give notice of election or for its failure to promptly remedy the breach or default or to complete the contract.

In the event the Surety shall fail to exercise either option or to act promptly then the Authority shall give ten (10) days notice of such failure, both to the Principal and the Surety, and after the expiration of the 10 days the Authority may cause the work to be completed in accordance with the contract, and the Surety and the Principal shall be jointly and severally liable for the amount of the excess cost of completing the contract work beyond the amounts remaining for this contract adjusted for the work actually performed. When the cost of completion of performance by the Obligee is estimated, the Principal and Surety shall pay, free from all liens and encumbrances, the Authority determined estimated completion costs above funds remaining for this contract, to the Authority within 30 days of receipt of the estimate. Adjustment to the Authority's estimated completion cost will be made upon the Authority's final acceptance of the work and appropriate refunds, if any, will be promptly made to the Surety. Any actual costs in excess of the estimated price shall be paid to the Authority promptly on demand. Additionally, Principal and Surety shall be liable for any applicable liquidated and/or engineering costs or damages.

In addition, the said Principal and Surety further agree, as part of this obligation, to pay all damages of any kind to person or property that may result from a failure in any respect to perform and complete said contract including, but not limited to costs necessary to protect the traveling public or to avoid inconvenience to the traveling public, (liquidated damages as provided above) all repair and replacement costs necessary to rectify construction errors, architectural and engineering costs and fees, all Contractor fees, all testing and laboratory fees, and all interest, legal fees and litigation costs incurred by the Authority.

And the said Surety hereby stipulates and agrees that no change, extension, alteration, deduction of addition in or to the terms of the said contract or the plans or specification accompanying the same shall in any wise affect the obligation of said Surety on its bond.

L.S.

(Corporate seal of _____ L.S. Principal

principal if a corporation.) _____ L.S.

(Corporate seal of _____ L.S.
surety.) _____

_____ L.S. Surety

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

I hereby approve the foregoing contract and bond as to form and manner of execution.

Dated _____

Attorney General

(ACKNOWLEDGMENT BY PRINCIPAL, UNLESS IT BE A CORPORATION)

STATE OF NEW YORK,

COUNTY OF _____ ss.:

On this _____ day of _____, 202_, before me personally came _____ to me known, to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same.

Notary Public

(Notary's seal to be attached.)

(ACKNOWLEDGMENT BY PRINCIPAL, IF A CORPORATION)

STATE OF NEW YORK,

COUNTY OF _____ ss.:

On this _____ day of _____, 202_, before me personally came _____ to me known, who being by me duly sworn, did depose and say that he resides in _____, that he is the _____ of _____, the corporation described in and which executed the foregoing instrument: that he knew the seal of the said corporation: that the seal affixed to said instrument was such corporate seal: that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public

(ACKNOWLEDGED BY SURETY COMPANY)

STATE OF NEW YORK,

COUNTY OF _____ ss.:

On this _____ day of _____, 202_, before me personally came _____ to me known, who being by me duly sworn, did depose and say that he resides in _____, that he is the _____ of _____, the corporation described in and which executed the foregoing instrument: that he knew the seal of the said corporation: that the seal affixed to said instrument was such corporate seal: that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public

(Notary's seal to be attached.)

(The Surety Company must append statement of its financial condition and a copy of the resolution authorizing the execution of Bonds by officers of the Company.)

NEW YORK STATE THRUWAY AUTHORITY

LABOR AND MATERIAL BOND

Know all men by these presents,

That, _____ (Name of Principal)

of _____

(hereinafter called the Principal, and _____ (Name of Surety Company)

a corporation of the State of _____, authorized to do business in the State of New York, as Surety and whose principal office is located in the City of _____, State of _____ (hereinafter called the Surety), are held and firmly bound unto the NEW YORK STATE THRUWAY AUTHORITY, (hereinafter called the Authority), in the full and just sum of

_____ good and lawful money of the United States of America, for the payment of which said sum of money, well and truly to be made and done, the said Principal and Surety bind themselves, their and each of their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

Whereas, said Principal has entered into a certain written contract, with the Authority bearing date _____ day of _____ 202_, with the New York State Thruway Authority for:

Which contract is hereby referred to and made a part here of as fully and to the same extent as if copied at length herein.

Now therefore, the condition of this obligation is such that if the said Principal shall promptly pay all moneys due to all persons furnishing labor and materials to him or his subcontractors in the prosecution of work provided for in said contract. Then this obligation shall be void, otherwise to remain in full force and effect;

Provided, however, that the Comptroller of the State of New York having required the said Principal to furnish this bond in order to comply with the provisions of Section 137 of the State Finance Law, all rights and remedies on this bond shall inure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of said Section to the same extent as if they were copied at length herein; and

Further, provided, that the place of trial of any action on this bond shall be in the county in which the said contract was to be performed, or if said contract was to be performed in more than one county, then in any such county, and not elsewhere.

SIGNED, SEALED AND DELIVERED THIS _____ day of _____, 202_

(Principal(s) Sign Here) (Affix Corporate Seal If a Corporation)

(Surety Signs Here) (Affix Corporate Seal of Surety Co.)

FOR PRINCIPAL'S USE ONLY (Use Only One)

(INDIVIDUAL ACKNOWLEDGMENT)
UNLESS A CORPORATION

STATE OF _____

COUNTY OF _____ ss.:

On this _____ day of _____, 202_, before me personally came _____ to me known and known to me to be the person mentioned and described in and who executed in foregoing instrument and he duly acknowledged to me that he executed the same.

Notary Public

(ACKNOWLEDGEMENT OF A CORPORATION)

STATE OF NEW YORK }
 }
COUNTY OF }

On this _____ day of _____, 202_, before me personally came _____, to me known and known to me to be the person who executed the above instrument, who being duly sworn by me, did depose and say that he/she resides in _____, that he/she is the _____ of _____, the corporation described in and which executed the above instrument, and that he/she signed his/her name thereto on behalf of said Corporation by order of the Board of Directors of said Corporation.

Notary Public

FOR SURETY'S USE ONLY

(SURETY ACKNOWLEDGMENT)

STATE OF _____

COUNTY OF _____ ss.:

On this _____ day of _____, 202_, before me personally came _____ that he is the _____ of the _____ the corporation described in and which executed the above instruments; that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of Said corporation, and that he signed his name thereto by like order.

Notary Public