

February 4, 2014

SUBJECT: REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL CONCEPTUAL DESIGN AND RELATED ENVIRONMENTAL SERVICES FOR HOWLAND HOOK ROADWAY ACCESS IMPROVEMENTS

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the "Authority") hereby invites your Proposal for providing expert professional conceptual design and related environmental services for Howland Hook Marine Terminal roadway access improvements, as further described in Attachment A to the Authority's Standard Agreement (the "Agreement"), included herewith. You should carefully review this Agreement as it is the form of agreement that the Authority intends that you sign in the event of acceptance of your Proposal and forms the basis for the submission of Proposals.

Services to be performed by the selected Consultant may be funded in part by the United States Department of Transportation Federal Highway Administration (FHWA). If FHWA funding is provided, then FHWA terms and conditions are required as part of the subject agreement and are applicable solely for the performance of such services. (See Exhibit I for a list of regulations required by the FHWA.)

Documents 1 through 4, and 8 listed in Section V.A. of Attachment A will be available to Proposers in CD format by e-mailing a request to Mary Lou Rivera at mlrivera@panynj.gov. The e-mail subject line should state the RFP number. The body of the e-mail should include your firm's full name, address, contact name, and contact phone number.

Documents 9 through 12 listed in Section V.A. of Attachment A will be made available to the selected Consultant.

I. PROPOSER REQUIREMENTS

The Authority will consider only those firms able to demonstrate that they meet the following qualification requirements:

- A. Satisfactorily completed at least one (1) contract/agreement for performance of services of similar size, type, scope, and complexity as the subject project within the past five (5) years.
- B. Satisfactorily completed at least one National Environmental Policy Act ("NEPA") compliant project with the Federal Highways Administration ("FHWA") as the lead federal agency within the five (5) years.
- C. Has principal(s) that are Professional Engineer(s) licensed to practice in the State of New Jersey.

A determination that a Proposer meets the forgoing requirements is no assurance that the Proposer will be selected for performance of the subject services. Firms that do not meet the forgoing requirements will not be considered.

II. PROPOSAL FORMAT REQUIREMENTS:

To respond to this Request to Proposals (RFP), the Proposer shall submit a concise proposal in response to the following basic criteria:

- A. To be acceptable, this Proposal shall be of no more than **40** pages (single-sided) or 20 pages (double-sided) using 12 point or greater font size. The page limit pertains only to Letters C, E, G and H in Section III below. Each resume shall be 2-page maximum, single-sided using 12 point or greater font size. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with “Your Firm Name” and **RFP Number 34649** clearly indicated on the cover.
- B. Each section of the Proposal shall be separated with a tab divider that is labeled in accordance with the letter of the requirements specified below.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, Two Montgomery Street, 3rd Floor, Jersey City, NJ 07302, **Attention: RFP Custodian. Do not address your Proposal to any other name.** You are required to submit one (1) reproducible original and six (6) copies, along with seven (7) compact disc copies, of your Proposal for review. In case of conflict, the reproducible original of the Proposal shall take precedence over material on the compact disc.
- D. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract awards and contract payments, which shall be the responsibility of the Proposer.
- E. Your Proposal should be received by the Authority **no later than 2:00 p.m. on Wednesday, February 26, 2014.** The outermost cover of your submittal must be labeled to include the RFP Number, your full legal name without abbreviations, and title as indicated in the “Subject” above. The Authority assumes no responsibility for delays caused by any delivery services.
- F. If your proposal is to be delivered by messenger, please note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority’s offices. Messengers without proper identification will be turned away and their packages not accepted.

III. SUBMISSION REQUIREMENTS

To respond to this Request for Proposals, provide the following information:

- A. In the front of your Proposal, a copy of Attachment B (Agreement on Terms of Discussion), signed by an officer of your company.
- B. Complete a copy of Attachment C (Company Profile).
- C. Demonstrate your compliance with the prequalification requirements listed in “Proposer Requirements” as noted in Section I above.
- D. Staff Qualifications and Experience
 - 1. Provide a detailed resume for each individual proposed (including subconsultant staff, if any) that includes educational background, chronological history of employment

and any relevant licenses and/or certifications. The resumes should clearly identify the years of experience in the field related to the tasks for which the individual will be responsible.

2. Identify the role(s) and responsibilities of each individual proposed as they relate to the performance of projects included in Paragraph E (Firm Qualifications and Experience).

E. Firm Qualifications and Experience

Demonstrate your firm's qualifications and experience in providing the services contemplated herein by identifying projects your firm has performed. For each project identified, indicate:

1. Description of services;
2. Start and end dates of services performed;
3. Contract value (total value of services performed by you);
4. Indicate whether said projects were completed on schedule and within budget;
5. Hiring entity;
6. Hiring entity contact person (name, title, phone number, email address).

- F. Prepare a staffing analysis for performance of each task in Attachment A, using the Excel spreadsheet available at the following link: [Attachment D \(Staffing Analysis Sheet\)](#). Include names and titles of the individuals proposed to perform each of the tasks identified as well as the number of hours required to complete each task. (DO NOT PROVIDE ANY COST INFORMATION.)

- G. A detailed description of the proposed technical approach to be taken for the performance of the required services for each task in Attachment A, and a schedule for completion of said tasks. Factors addressed in your technical approach shall include, but are not limited to, your proposed methodology and strategy for performing the services in Attachment A as well as any specific software or other technology you may employ in the performance of these services.

- H. A detailed description of the proposed management approach to be taken for performance of the required services. Factors addressed in your management approach shall include, but are not limited to: your proposed organizational structure for delivery of the contemplated services; your proposed approach to ensuring the quality and timeliness of the required work products; and your proposed approach to keeping the Authority apprised of the project status. If the various completion dates contained in Attachment A cannot be adhered to, you may submit revised dates. However, the fact that you were not able to adhere to the original dates and the extent of the delay(s) will be included among the factors that the Authority will consider in evaluating Proposals. Also, identify the efforts made by the Consultant to meet the DBE goals for this project.

I. DBE Participation

Your attention is directed to Paragraph 24 of the Agreement in which the Authority has stated the goals for DBE participation in this project. Provide your DBE Participation Plan by completing Exhibit II, which shall briefly contain, at minimum, the following:

1. Identification of DBEs: Provide the names and addresses of all DBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good-faith goals under the Agreement.
 2. Level of Participation: Indicate the percentage of DBE participation expected to be achieved with the arrangement described in the Plan.
 3. Describe the specific scope of work the DBE(s) will perform.
 4. Previous DBE Participation: Describe any previous or current DBE participation that the Proposer has utilized in the performance of similar services.
- J. In a sealed envelope labeled “Pricing and Compensation Proposal”, complete Exhibit III, which is accessible in Excel format via the following link: [Exhibit III – Pricing and Compensation Proposal](#). After review of all proposals received, the Authority will review the Pricing and Compensation Proposal from the firm whose technical proposal is rated highest.
1. For each billing rate, set forth a breakdown showing salaries and fringe benefits, overhead, profit, and any other component (e.g., vacation, holiday, sick pay, worker's compensation, office rent, insurance, etc.).
 2. An itemized list of all out-of-pocket expenses (see paragraph 10.E. of the attached Authority standard agreement).
- K. A complete list of your firm’s affiliates.
- L. If the Proposer or any employee, agent or subconsultant of the Proposer may have, or may give the appearance of, a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in the Authority’s sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.
- M. The Proposer is expected to agree with the standard agreement and its terms and conditions. You should therefore neither make any changes in this standard agreement nor restate any of its provisions in your Proposal or supporting material. ***However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP.*** The Authority is under no obligation to entertain or accept any such specific exceptions. Exceptions raised at a time subsequent to proposal submission will not be accepted. The scope of the tasks to be performed by the Proposer are set forth in Attachment A to the Authority's standard agreement.

IV. ORAL PRESENTATIONS:

After review of all proposal submissions, an oral presentation to the selection committee and others, as appropriate, may be requested. It should be noted that firms selected to make presentations may be given brief advance notice. The presentation should be limited to 30 minutes and should include the material contained in your proposal. The presentation will be followed by an approximately 30-minute question and answer session. (Proposer’s staff providing the presentation shall be led by the proposed Project Manager, who may be supported by no more than five (5) other senior staff members who are also proposed to work on this project.)

V. SELECTION PROCESS:

The qualifications-based selection shall take into consideration the following technical criteria listed in order of importance, and subsequently cost, as appropriate. After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified, in terms of the forgoing technical criteria, to perform the required services. The Authority's technical criteria are:

- A. qualifications and experience of the proposed staff;
- B. qualifications and experience of the firm, including the quality of similar services provided to others, and the demonstrated ability to complete the services in accordance with the project schedule;
- C. manpower analysis of the contemplated services;
- D. technical approach to performance of the contemplated services; and
- E. management approach for the performance of the contemplated services.

VI. ADDITIONAL INFORMATION:

Proposers are advised that additional vendor information, including, but not limited to, forms, documents and other related information, may be found on the Authority website at <http://www.panynj.gov/business-opportunities/become-vendor.html>, and to monitor <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html?tabnum=6> for RFP updates and addenda. If your firm is selected for performance of the subject services, the agreement you will be asked to sign, at that time, will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees." By submitting a Proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with his Proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your Proposal, clearly marked "CERTIFICATION STATEMENT."

It is Authority policy that its contractors and vendors comply with the legal requirements of the States of New York and New Jersey. Your attention is therefore called to New York State's requirements that certain contractors, affiliates, subcontractors and subcontractors' affiliates register with the New York State Department of Taxation and Finance for the purpose of collection and remittance of sales and use taxes. Similarly, New Jersey requires business organizations to obtain appropriate Business Registration Certificates from the Division of Revenue of the State's Department of the Treasury.

Following selection of a Consultant, the Authority will forward two copies of the Agreement to the selected firm, which must sign and return both copies. The return to you of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact Ms. Mary Lou Rivera, Solicitation Manager, by email at mlrivera@panynj.gov. All such correspondence must have your name, title, company, mailing address, telephone number and state "RFP 34649" in the subject line. The Authority must receive all questions no later than 2:00 P.M., seven (7) calendar days before the RFP due date. Neither Ms. Rivera nor any other employee of the Authority is authorized

to interpret the provisions of this RFP or accompanying documents or to give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate.

Proposal preparation costs are not reimbursable by the Authority, and the Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the unqualified right, in its sole and absolute discretion, to reject all Proposals, to waive defects in proposals, to undertake discussions and modifications with one or more consultants and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely,

Tim Volonakis
Assistant Director
Procurement Department

Attachments

ATTACHMENT A

PERFORMANCE OF EXPERT PROFESSIONAL CONCEPTUAL DESIGN AND RELATED ENVIRONMENTAL SERVICES FOR HOWLAND HOOK ROADWAY ACCESS IMPROVEMENTS

I. BACKGROUND

The Port Authority of New York and New Jersey (the “Authority”) is a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States. It is charged with providing transportation, terminal and other facilities of trade and commerce within the Port District. The Port District comprises an area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States. The Authority manages and/or operates all of the region’s major commercial airports (Newark Liberty International, John F. Kennedy International, Teterboro, LaGuardia and Stewart International Airports), marine terminals in both New Jersey and New York (Port Newark and Elizabeth, Howland Hook and Brooklyn Piers); and its interstate tunnels and bridges (the Lincoln and Holland Tunnels; the George Washington, Bayonne, and Goethals Bridges; and the Outerbridge Crossing), which are vital “Gateways to the Nation.”

The Port Authority Trans-Hudson Corporation (PATH) is a wholly owned subsidiary of the Authority. PATH is a heavy rail rapid transit system, operating 24 hours a day, seven days a week, and serves as a critical link in the New York – New Jersey transportation network. The New York-New Jersey Metropolitan region ranks as the most mass transit-dependent region in the United States. PATH also serves as a catalyst for regional economic development due to the location of its thirteen stations and terminals within the high-density urban commercial and residential cores of Newark, Jersey City, Hoboken and Manhattan.

The Project

The Howland Hook Marine Terminal (HHMT) is a container port facility located in Staten Island, New York, adjacent to the Goethals Bridge (Interstate 278). Currently, trucks entering the facility from the Goethals Bridge must exit at Forest Avenue (Exit 4), negotiate two consecutive left turns at signalized intersections and continue west along Goethals Road North through another signalized intersection to reach the HHMT entry gate. Trucks exiting the facility turn right onto Gulf Avenue, and, if seeking to access Interstate 278 (I-278), either proceed onto a ramp merging with I-278 East or turn left at the same two signalized intersections as the inbound HHMT traffic, and merge onto I-278 West to cross the Goethals Bridge to New Jersey (See Figure 1 for project location).

In recent years, the HHMT has undergone a modernization program of its facilities that includes terminal wharf extensions, berth deepening, and roadway and railroad improvements. Traffic at the HHMT has more than tripled since 1999. One of the factors inhibiting the efficiency of the HHMT’s operations has been poor access to and from the facility via local roads that are not designed to support growing marine terminal traffic

volume. During periods of peak activity at HHMT, the queuing of trucks along the current roadway network has negatively affected HHMT operations, as well as the residents of the nearby community.

In response to increasing terminal access problems, the Authority undertook a preliminary study to identify short and long-term options to alleviate congestion on the local roadway network surrounding the HHMT. The study, completed in April 2007, indicated that the existing roadway network was at capacity during periods of peak activity at HHMT, and that the projected cargo growth would result in significant congestion, negatively affecting both the HHMT and other local traffic. Based on a review of a number of alternatives, the most cost-effective, short-term solution to resolve the immediate traffic congestion issue was to modify local streets at the interchange of I-278 and Forest Avenue in Staten Island (See Figure 2). The Authority has undertaken responsibility to implement this temporary solution in collaboration with the City of New York. This will provide some improvement for access to HHMT and local traffic conditions, but does not provide a permanent solution.

Preliminary studies have identified the construction of a direct exit ramp off the eastbound lanes of the Goethals Bridge, or its proposed replacement, as a feasible long-term improvement. This solution improves travel time and removes trucks and other vehicles bound for HHMT from the local street network, thereby sufficiently relieving congestion in the area. Subsequent conceptual engineering work performed by the Authority established the feasibility of this eastbound ramp concept. Given the proximity of the existing westbound I-278 access to the Goethals Bridge and given the existing westbound off-ramp for Western Avenue, no feasible westbound improvements were identified.

On April 24, 2013, the Authority's Board of Commissioners authorized the Goethals Bridge Replacement Project (GBR). A Final Environmental Impact Statement and a Record of Decision (ROD) was issued on January 31, 2011 by the US Coast Guard (the lead Federal agency of the bridge replacement project). That process identified the New Alignment South as the preferred alternative for the new bridge, with the existing Goethals Bridge to be demolished upon completion of the replacement crossing. The new bridge is expected to be completed in 2018. As an independent project with separate utility that is warranted with or without the GBR, the proposed HHMT Access Improvements Project (AIP) was not included as part of the GBR planning effort, but was referenced in the Goethals Environmental Impact Statement (EIS) documentation along with the interim-improvements project as anticipated future initiatives.

With the GBR alignment now known, the HHMT Access Improvements "study area" (the area within which the work would affect its surroundings) can be determined. Formal review of the HHMT AIP would evaluate concepts for interchange improvements in greater detail consistent with State and federal transportation planning requirements, and include review of the various alternative analyses, development of a Conceptual Design, and creating National Environmental Policy Act (NEPA) required documentation. This planning effort will capitalize on information already developed and on potential construction efficiencies related to the GBR Project.

The NEPA portion of the project will be performed under the auspices of the United States Department of Transportation Federal Highway Administration (FHWA) serving as the federal lead agency (Lead Agency). Scoping the NEPA requirements with New York State Department of Transportation (NYSDOT) and the FHWA is part of the project scope.

However, for estimating purposes, assume an Environmental Assessment (EA), not an EIS, will be the required environmental document to fulfill NEPA requirements.

II. SCOPE OF WORK

The services of the Consultant shall generally consist of:

- A. preparing a Conceptual Design Package (Stage I) based on the previously prepared concepts (see Section V below) and performance of the subsequent services required hereunder;
- B. preparing a Scope Summary Memorandum (SSM) and Access Modification Report (AMR); and
- C. preparing all required NEPA materials necessary for the construction of the Howland Hook Access Improvements. Such materials may include, but are not limited to the preparation of an EA for the HHMT AIP.

All submissions prepared by the Consultant hereunder, as approved by the Authority, may be transmitted to NYSDOT, FHWA, and others as appropriate in performance of the tasks required hereunder.

III. DESCRIPTION OF CONSULTANT'S TASK

Tasks to be performed by the Consultant may include, but are not limited to the following:

TASK A. DOCUMENT REVIEW

Review the referenced documents, as listed in Section V below, and meet with Authority staff and others as required to discuss your findings, prior to performance of field services.

TASK B. MEETINGS

Meet with Authority staff, NYSDOT and FHWA representatives, and others as required in the performance of the services contemplated hereunder.

TASK C. FIELD VERIFICATION AND INSPECTION

- 1. Verify existing field conditions including taking field measurements, as required.
- 2. Conduct a field inspection of the proposed sites and surrounding area as appropriate.
- 3. Perform Topographical Survey of the project area. For wetlands delineation, the contour interval shall be one (1) foot. See Civil Design requirements below.
- 4. Provide all equipment and maintenance of traffic to perform any necessary inspections of the area of study.
- 5. Submit copies of completed field findings on inspection reporting forms (to be provided by the Consultant and approved by the Authority) and meet with Authority staff to discuss those findings.

6. Update Traffic Analysis

- a. Update traffic volumes and forecasts from previous access studies listed herein.
- b. Obtain updated field data (signal timing, intersection inventory, etc.) for the intersections to be analyzed. Include Goethals Road N, Western Avenue, Forest Avenue, and any other roadways to which the project will have an impact.
- c. Complete NYSDOT existing condition VISSIM model created for X096.26 – EB I-278 (SIE) Improvements to Ramps Servicing Richmond Ave. Enter traffic volumes and Origin-Destination trip tables. Data is available from NYSDOT. See Section V.
- d. Expand NYSDOT existing condition VISSIM model created for X096.26 – EB I-278 (SIE) Improvements to Ramps Servicing Richmond Ave. to include the HHMT Access Improvements study area.
- e. Develop traffic volumes for the design year (Estimated Date of Construction plus 30 years) using the NYMTC Best Practice Model, Traffic Demand Model and create a Future No Build VISSIM model.
- f. Develop Build Alternative VISSIM models for the alternative(s) advanced for operational testing.
- g. See the NYSDOT X096.26-EB I-278 (SIE) Improvements scope of services for details on work done to date and modeling requirements (See Section V).
- h. Use the traffic model to demonstrate the comparative benefits of interchange alternatives and the independent utility of the Howland Hook Access Improvement relative to other proposed Staten Island Expressway improvements.
- i. Prepare and submit a draft Executive Summary level report detailing the impact of the Access Improvements on the study area. Incorporate Authority comments as required and resubmit the report as final.

TASK D. PROJECT SCHEDULE AND MONTHLY PROGRESS REPORTS

1. Prepare a Primavera-based Critical Path Method Project Schedule that extends from the date of award of this Agreement to the issuance of a Final NEPA finding, and completion of the Conceptual Design Package required herein. The schedule shall include:
 - a. start and completion dates for each task;
 - b. linkages with the conceptual design activities;
 - c. anticipated final approval dates (from each regulatory agency) as appropriate; and
 - d. staffing and time allocation for each task, including names and titles.
2. Prior to submission of the Monthly Progress Report (MPR), prepare and submit a template for the Authority review. Incorporate comments as required, and submit the revised format to the Authority.
3. Prepare and submit an MPR to the Authority including but not limited to task status, deliverables, issues and concerns, accomplishments, actions required, hours of work expended for each task, total hours worked, percentage complete per task and a cumulative estimate of expenditures through the end of the reporting month including

accruals. The monthly reports shall be updated as appropriate, and submitted on the 15th of each month.

4. Prepare Present-Worth Analysis by task, and update monthly, as appropriate.

Describe the present worth status of each aspect of the work, any problems encountered, and recommendations for modifications to the Project Management Plan as required and as appropriate, and include any changes in personnel, methodology or schedule impacts.

5. In performance of this task, attend Progress Meetings as required. (Estimate two (2) monthly meetings, each four (4) hours in duration, at the Newark offices of the Authority 2 Gateway Center, Newark, NJ) for the term of the Agreement.
6. Prepare meeting minutes of all Progress Meetings. Submit to all parties in attendance for review; revise and resubmit as final.

TASK E. DESIGN CRITERIA SUMMARY

1. Prepare a summary of all criteria to be used in the design including loads (dead, live, wind, snow, vehicular, wheel, impact, or other loads as appropriate), material grades, codes and assumptions. Said criteria shall include, but not be limited to, all applicable codes and standards as well as:
 - a. NEPA and applicable implementing regulations (e.g., those of the Council on Environmental Quality and the FHWA, and all other applicable federal, state and local environmental laws and requirements);
 - b. Federal, state, regional, and local government programs, plans, policies, initiatives, and all applicable public law and regulations which must be considered in support of the comprehensive review and assessment of the NEPA process. Reference applicable programs, plans, policies, initiatives, laws and regulations in the appropriate deliverables.
 - c. Identification of all federal, state and local permits, licenses and other approvals that must be obtained to implement the project (required for the construction of the Howland Hook Access Improvements). (See Appendix B – Potential Permits/Approvals, included herewith and made a part hereof.)
 - d. Prepare and submit draft regulatory consultation documents and/or Memoranda of Agreements as appropriate, including supporting documents to the Authority for approval and execution by the respective regulatory agencies as warranted.
 - e. Port Authority of New York and New Jersey (PANYNJ) Standards and Guidelines, including but not limited to the following:
 - 1) Engineering Department Standard Specifications
 - 2) Engineering Department's Engineering/Architecture Design Division CAD/BIM Standards (www.panynj-cadstandards.com)
 - 3) Engineering Department Engineering/Architectural Design Division Civil Engineering Standard Details and Civil Engineering Design Guidelines
 - 4) Engineering Department Engineering/Architecture Design Division Traffic Engineering Standard Details

- 5) Engineering Department Engineering/Architecture Design Division Electrical Engineering Standard Details
 - 6) PANYNJ Sustainable Design Project Manual (8/2007) and PANYNJ Sustainable Infrastructure Guidelines (3/28/11)
 - 7) Interim Design Criteria for Adaptation to Climate Change
 - 8) Engineering Department's Project Delivery Manual
 - 9) Construction Estimating Guide
- f. American Society for Testing & Materials (ASTM) Standards.
 - g. American National Standards Institute (ANSI) Standards
 - h. Underwriters Laboratories, Inc. (UL)
 - i. National Institute for Occupational Safety & Health (NIOSH) Guidelines (www.cdc.gov)
 - j. Occupational Safety and Health Administration (OSHA) - relevant standards and guidelines including but not limited to the following: 29 CFR (Code of Federal Regulations) Part 1926.1101, U.S. OSHA – Asbestos Standard for the Construction Industry (www.osha.gov)
 - k. American Society of Civil Engineers (ASCE) 7-05 Minimum Design Loads for Buildings and Other Structures (www.ascelibrary.aip.org)
 - l. American Institute of Steel Construction (AISC) (www.aisc.org) - relevant standards and guidelines including but not limited to Steel Construction Manual - Allowable Stress Design
 - m. American Association of State Highway and Transportation Officials (AASHTO) (www.transportation.org) - relevant standards and guidelines including but not limited to the following:
 - 1) A Policy on Geometric Design of Highways and Streets; 2011, Sixth Edition.
 - 2) Roadside Design Guide (3rd Edition) 2006, with Updated Chapter 6
 - 3) LRFD Bridge Design Specifications, Latest Edition.
 - 4) Standard Specifications for Structural Supports for Highway Signs, Luminaries and Traffic Signals, Latest Edition.
 - 5) Guide Specifications and Commentary for Vessel Collision Design of Highway Bridges
 - 6) Guide Specifications for Fracture Critical Non-Redundant Steel Bridge Members
 - 7) Guide Specification for Fatigue Design of Steel Bridges
 - 8) Guide Specifications for Seismic Isolation Design
 - n. Federal Highway Administration (FHWA) (www.fhwa.dot.gov) - relevant standards and guidelines including but not limited to the following:
 - 1) Manual on Uniform Traffic Control Devices, 2009 Edition.
 - 2) Standard Highway Signs, 2004 Edition

- o. Transportation Research Board (TRB) (www.trb.org) – Highway Capacity Manual 2010 (HCM2010)
 - p. American Welding Society (AWS) (www.aws.org) - relevant standards and guidelines including but not limited to the following:
 - 1. Structural Welding Code Steel AWS D1.1 – Latest Edition.
 - 2. Bridge Welding Code AWS D1.5 – Latest Edition.
 - q. Illuminating Engineering Society of North America (IESNA)
 - r. NYSDOT Standard Specifications
 - s. Analysis and Design of Reinforced and Prestressed Concrete Guideway Structures, ACI 358.1R
 - t. NYSDOT Bridge Manual
 - u. CEB/FIP Model Code for Concrete Structures
 - v. American Concrete Institute (ACI) Building Code Requirements for Reinforced Concrete
2. Submit the Design Criteria Summary to the Authority for review. Incorporate changes as required and resubmit the Summary as final.

TASK F. ALTERNATIVE ACTIONS AND SCREENING

Based upon the work performed in the above tasks, prepare a list of alternatives to be considered in developing the Conceptual Design for approval by the Authority.

- 1. Prior to performance of this task, submit your proposed methodology for screening alternatives including, but not limited to:
 - a. criteria to be applied (transportation performance Level of Service (LOS), design limitations, environmental impacts, Right of Way/community impacts, cost, etc.);
 - b. a comparative evaluation (screening) of alternatives;
 - c. objective basis for conclusions/recommendations and reasons therefor.
- 2. Establish baseline conditions from existing information in sufficient detail to identify the no action alternative.
- 3. For each alternative, as approved by the Authority:
 - a. prepare maps or other geographical information based graphics that show all potential areas of impact (including reasonable direct, indirect, and cumulative impacts);
 - b. prepare drawings, plans, design and construction durations, and estimates as required to convey a clear understanding of the location, costs, project concept, and to demonstrate potential impacts/risks. The drawings/plans must at a minimum identify station centerlines, geometries, major environmental features, construction and right-of-way limits, profiles, and vertical and horizontal clearances. The locations of right-of-way boundaries will be provided by the Authority.

- c. include recommendations and findings in draft Final Alternatives Action and Screening Report and submit to the Authority for review. Incorporate Authority comments and submit to NYSDOT and FHWA for comments.

For estimating purposes, assume four (4) alternative screening meetings with the Authority and others, two (2) in Newark, and two (2) in Manhattan and/or Long Island City to discuss selected alternatives.

4. Upon completion of the foregoing, prepare and present a draft Alternatives Report, to include but not be limited to:
 - a. alternatives evaluated and alternatives eliminated from further study, alternative(s) recommended, and the reason(s) for inclusion or elimination;
 - b. initial screening results;
 - c. final screening results; and
 - d. incorporate Authority comments as required, and resubmit the Alternatives Report as final.
5. Prepare a Concept Development Report, compliant with FHWA requirements. This Report shall convey information required for the performance of the Conceptual Design task below.

TASK G. SCOPE SUMMARY MEMORANDUM

Initiate the FHWA approval process for the modification of access to an Interstate Highway. The interchange modification must comply with FHWA's Interstate Access Guidelines. The FHWA – New York Division's Standard Operating Procedure for New or Revised Access Point Approvals is included in Appendix A. The first step is the preparation of a Scope Summary Memorandum (SSM):

1. Prepare an SSM for submission from NYSDOT to FHWA. The SSM includes the purpose and need for the project, project schedule, project location, considered alternatives, anticipated area of influence, cost estimate, and screening criteria to eliminate alternatives. The SSM shall also include relevant initial traffic, safety, and operational analyses.
2. After review by and comment from the Authority, present the draft SSM to NYSDOT for its review and subsequent submittal to FHWA and impacted municipalities as required to make recommendations for the alternative(s) best suited for the NEPA process.
3. Incorporate NYSDOT, FHWA and municipality comments, and submit to the Authority for review. Incorporate Authority comments and submit as proposed final SSM to NYSDOT.

TASK H. NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

1. NEPA Process/Identify Permits and Regulatory Approvals
 - a. Identify all Federal, State and Local agencies involved in the NEPA process and in regulatory review processes for obtaining permits.
 - b. Identify areas of impacts within NEPA purview. Appendix 1 of NYSDOT's Project Development Manual contains a list of relevant environmental requirements and

- regulations. In addition, an overview of pertinent environmental issues can be found in previous alternative analyses. (See Section V.)
- c. Develop strategy for completing the NEPA process expeditiously.
 - d. Consult with lead agency on requirements for addressing NEPA.
 - e. Determine environmental permits and approvals needed for the project and evaluate the environmental regulations and their potential impacts on demolition, construction and cost.
 - f. Coordinate with all disciplines based on conceptual design to determine the type of permits required.
2. Review and determine City Environmental Quality Review and State Environmental Quality Review requirements and their impacts on the project.

TASK I. NEPA PUBLIC SCOPING MEETINGS

1. Prepare for, conduct and attend all scoping meetings and provide administrative support, such as but not limited to: ensure space is set up, materials are available for review, provide a sign-in sheet and comment sheet for attendees, and return the facility to its original condition at the end of the scoping meeting.
2. Make and distribute digital, video and audio recordings of each scoping meeting. All meetings, meeting materials, lists of participants, etc. as prepared by the Consultant shall be as approved by the Authority prior to performance of any scoping meetings.
3. As required to identify significant issues (actions, alternatives and impacts to be considered), and in compliance with the requirements of NEPA:
 - a. Develop, produce and distribute notice(s) of meeting/hearing(s); arrange and prepare the locations and facilities including making provisions for hearing officers, stenographers, and note takers.
 - b. Conduct presentations of the proposed project on behalf of the Authority and others, as required; develop draft and final minutes of the meetings, and make recommendations for addressing issues raised during the meetings.
 - c. Meet with the involved agencies and the public as required to develop a Draft Scoping Package Outline (SPO). Submit a Draft SPO to the Authority for review. Incorporate Authority comments, as required, and resubmit as final.
 - d. Based upon the approved SPO, develop scoping presentation materials necessary to solicit input from interested agencies, organizations and individuals. These materials shall include, but not be limited to, scoping: meeting agenda(s), presentation(s), and document(s).
 - e. Establish dates and locations for a minimum of two (2) meetings related to this task: one all-agency meeting (open to the public) and one public meeting. Set the same agenda for each of the meetings, as approved by the Authority. Determine appropriate mailing lists for meeting notifications and distribution of scoping materials.
 - f. Prepare a matrix as well as a summary highlighting significant issues raised at scoping meetings and propose a course of action to address them.

- g. Prepare draft outline of the scoping package. Submit to Authority for review. Incorporate Authority comments as required, and resubmit as Final.

TASK J. PUBLIC OUTREACH AND STAKEHOLDER PARTICIPATION

1. Design, conduct and manage all aspects of a public and community outreach program throughout the NEPA process that informs, educates, and directly engages all those with an interest in the Project. The outreach program must meet the public participation requirements of NEPA. For all Public Outreach Meetings:
 - a. Provide digital video and audio recording and a court stenographer for all public meetings (as warranted). Assume two public hearings.
 - b. Prepare draft public hearings minutes for the Draft NEPA documents and submit to the Authority for review. Incorporate Authority comments as required and resubmit as Final.
2. Develop and implement a Public Participation Program (PPP) which draws on multi-media approaches, workgroups and other tools and activities, including, but not limited to: establishing an outreach office; scheduling stakeholders meetings and public information sessions; preparing materials, handouts, periodic updates and displays for ongoing public involvement; and developing and maintaining a project website.
3. Prepare and submit a draft technical memorandum, outlining the proposed PPP. Incorporate Authority comments as directed and resubmit the draft as final.
4. Prepare and maintain a database of all interested persons and organizations participating in the NEPA process. The database shall include all stakeholders and shall be updated as appropriate.
5. Create and submit draft monthly summaries of public participation efforts and outcomes. Incorporate Authority comments as directed and resubmit drafts as final.

TASK K. INTERAGENCY MEETINGS

1. Establish and coordinate the activities of the following as they relate to the subject project:
 - a. An Inter-Agency Technical Advisory Committee (TAC) including the Authority, the New York State Department of Transportation, the NYC Department of Transportation, the NYC Economic Development Corporation, the NYC Department of City Planning, the New York Metropolitan Transportation Council, and other federal, state, and local agencies as required.
 - b. An Environmental Committee/Task Force including the NYC Department of Environmental Protection, the NY State Department of Environmental Conservation, and other federal, state, and local agencies as required.
2. Prepare presentation materials and evaluate comments and recommend courses of action as appropriate, preparing draft and final minutes of all interagency meetings.
3. As approved in advance by the Authority, provide access to data compiled hereunder and used in developing the NEPA material, including, but not limited to, field reports, subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in the draft or final NEPA document.

4. Notify participating agencies of any scheduled meetings and their purpose, and provide an opportunity for others to attend said meetings if requested by said agencies.
5. Prepare a summary of all matters relating to NEPA documentation discussed in any meetings or communications between the Consultant and involved agencies. The summary shall be included in each formal monthly report submitted by the Consultant to the Authority, NYSDOT, and FHWA.

TASK L. ACCESS MODIFICATION REPORT

1. Prepare an Access Modification Report (AMR) for NYSDOT submission to FHWA. The AMR shall include appropriate analysis to ensure the proposed access modification will allow the interchange to operate better and more safely and/or that the modification will not adversely impact the mainline or adjacent interchanges. The AMR must demonstrate that the proposed interchange meets the policy criteria established by FHWA Interstate Access Guidelines. (Refer to Appendix A for more information on FHWA's Interstate Access Approval Procedures.)
2. After review by and comment from the Authority, present the AMR to NYSDOT, FHWA, and impacted municipalities as required to make recommendations for the alternative(s) best suited for the NEPA process.
3. Incorporate NYSDOT, FHWA and municipality comments, and submit to the Authority for review. Incorporate Authority comments and submit as proposed final AMR to NYSDOT.

TASK M. CONCEPTUAL (STAGE I) DESIGN

In preparation of the Conceptual Design of the Howland Hook Access Improvements, the Consultant shall coordinate its work with the selected Developer and Authority project team for the replacement Goethals Bridge as required, in performance of the following:

1. Traffic Requirements
 - a. Prepare preliminary designs for Traffic items, including: roadway signage systems; tolling, roadway pavement markings; and roadside hazard protection including guide rail, median barriers and impact attenuators.
 - b. Prepare preliminary design drawings for the modification of the traffic signal at Goethals Road North and Western Avenue.
 - c. Identify sign structures to be removed or replaced, as well as newly proposed sign structures.
 - d. Prepare conceptual construction staging drawings which show functional traffic plans for each stage, including the impact on tolling.
2. Environmental Requirements
 - a. Property Acquisition
 - 1) Review previous work on acquisition to identify property owners, easements and current costs of properties that would need to be acquired.
 - 2) Conduct a Phase 1 Assessment of properties to be acquired.

- b. For the conceptual cost estimate for the work outlined above, the environmental scope shall also include soil disposal/reuse, soil erosion measures and, if applicable, dewatering effluent treatment and/or disposal.

3. Civil Requirements

- a. Develop/update base maps of the project study area showing site features, major utilities, topography and right-of-way/property/lease line/jurisdictional boundaries, within the project area.
- b. Prepare detailed design criteria.
- c. Prepare a plan showing limits and specific areas where supplemental surveys are needed.
- d. Identify the utility agencies that have facilities along the project area.
- e. Develop conceptual drawings showing roadway baseline, horizontal and vertical alignments for all proposed roadways.
- f. Develop roadway pavement design based on assumptions for projected vehicular traffic flow and loads.
- g. Develop conceptual drawings showing removals and paving work required for roadway construction.
- h. Develop conceptual drawings showing typical roadway sections.
- i. Identify major utility relocations.
- j. Identify existing utility systems that require additional capacity evaluations.
- k. Prepare preliminary concepts, layout and report for stormwater management plan for complying with NYSDEC stormwater regulations.
- l. Prepare preliminary concepts for utility design for complying with NYCDEP regulations.
- m. For conceptual cost estimates outlined above, civil engineering site and utility design elements shall include quantities for roadway work reflecting the removal and new construction areas shown on conceptual drawings. Include cost for removal/relocation/construction of major utilities, as well as costs for complying with NYSDEC and NYCDEP regulations.
- n. All mapping, horizontal and vertical alignments shall be prepared in the following datum:
 - 1) Horizontal Control: Coordinates shall be referenced to the North American Datum of 1983, (NAD83) and the New York State Plane Coordinate System, East Zone (NYSPCS East).
 - 2) Vertical Control: Elevations shall be referenced to the North American Vertical Datum of 1988 (NAVD88).

4. Structural Requirements

- a. Include conceptual design of all pertinent structural components included in the superstructure, substructure, connections, bearings, and foundations for the

- ramp/bridge. In general, the structural engineering effort shall consist of the design of:
- 1) Elevated Ramp Structures
 - 2) Extend existing Travis Spur Railroad Bridge over Old Place Creek for Eastbound Ramp
 - 3) Ramp/Bridge Abutment and Wingwall Structures
 - 4) Approach Ramp Structures
 - 5) Pier Protection Structures
 - 6) Miscellaneous Structures (e.g. lighting supports, etc.)
 - 7) Sign Structures
 - 8) Construction Methodology, Sequence and Staging
- b. The Load and Resistance Factor Design (LRFD) method shall be used in accordance with the current edition of the AASHTO LRFD Bridge Design Specifications, supplemented by the AASHTO LRFD NJDOT Design Manual for Bridge and Structures.
- c. Perform the following structural engineering design services:
- 1) Prepare and submit preliminary structural design criteria.
 - 2) Search, retrieve and review drawings and data.
 - 3) Coordinate with interdependent disciplines (Civil, Traffic, Geotechnical, Environmental, etc.), facility department, utility companies, railroads, etc., for setting of Ramp/Bridge piers and abutments locations.
 - 4) Perform and submit:
 - a) alternative evaluations of structural systems for the Ramp/Bridge structures listing advantages/disadvantages for each type. Propose recommended structural system for review prior to start of conceptual design.
 - b) conceptual design and feasibility study of the Ramp/Bridge superstructure components, such as the deck slab, curved girder, cross bracing, and bearings. Submit calculations.
 - c) conceptual lateral analysis of the Ramp/Bridge structures including seismic, wind and temperature analysis. Submit computer analysis input/output and calculations.
 - d) conceptual design and feasibility study of substructure components, such as the pier columns, abutments, approach ramps, and foundations. Submit calculations.
 - e) conceptual design and feasibility study of sign structures and foundations. Submit calculations.
 - f) constructability review.

- 5) Prepare and submit:
 - a) conceptual design drawings. Drawings shall be done in accordance with the Authority Engineering Architectural Design Division CAD Standards, (December 2013) – found at www.panynj-cadstandards.com.
 - b) preliminary list of specifications.
 - c) order of magnitude construction cost estimate.
 - 6) Provide structural input for the Stage I Design Report.
 - 7) Review and respond to Authority comments on submittals. Review and provide comments on other disciplines' submittals.
 - 8) Submit a detailed schedule of all submittals.
 - 9) Computations and computer printouts shall be organized, legible, bear the initials of the designers and checkers, and show clarifying diagrams. (User documentation shall be provided as necessary to assist in review/audit of computer analysis).
5. Electrical Requirements
- a. Submit load letter and other pertinent data as required by the utility company for the electric service.
 - b. Develop the power distribution system concept design. Prepare one line diagram indicating size of all major electrical equipment, panels and feeders.
 - c. Prepare preliminary layout plans of the electrical equipment.
 - d. Prepare lighting design for the ramps and roadways utilizing energy efficient luminaries. Prepare typical lighting control scheme. Analyze at least three (3) options of the ramps and roadway illumination utilizing a computer model, taking into consideration the contribution made by the lighting in the vicinity.
 - e. Develop the security and traffic signal power requirements and design.
6. Geotechnical Requirements
- a. Foundation design and geotechnical tasks to be performed by the Consultant shall include the following:
 - 1) The location and loading of all pile and shaft caps and all footings; loading for foundation design to be provided for service load condition.
 - 2) Identify the most cost effective foundation systems for the bridge piers and abutments and recommend the type of foundations as appropriate, based on constructability and economic analyses. The allowable capacities of various foundation elements will be provided by Authority geotechnical unit (See Sub-Section 6.b.11 below)
 - 3) The number and spacing of foundation elements at each pier and footing size.
 - 4) Perform preliminary design for temporary structures, if required, for the construction of piers and abutment foundations.

- 5) Develop seismic criteria and response spectra to be incorporated in Design Basis Report for bridge structure design.
- 6) Develop a basic subsurface investigation and laboratory testing program required for the design of ramp structure foundation and other aspects of the project not limited to tasks listed above. The basic subsurface investigation program will include 10 borings and basic lab testing (i.e., Water Contents of each sample, and a maximum of 15 Grain Size tests, 15 Atterberg Limits, 10 Triaxial UU Tests, and 5 consolidation tests), and will be performed by the Authority's Materials Division unit. The field work and the laboratory testing for the basic subsurface investigation will be done by the Authority, under the constant supervision of Authority staff. Authority staff will provide field data and seek guidance, if necessary from the Consultant during the investigation. If a supplemental subsurface investigation in addition to the basic subsurface investigation is required, develop and implement the supplemental program. The field and laboratory testing services for the supplemental subsurface investigation shall be provided by the Consultant.
- 7) Prepare a Stage I cost estimate for construction of the access improvements. The cost estimate shall also consider the following:
 - a) The need for dewatering to lower the ground water table for construction of foundations for the proposed bridge structure and depressed roadway. The cost of dewatering and duration of dewatering requirement shall be included in project construction cost estimate.
 - b) The number of load tests (compression, tension, lateral load test) required for the type of deep foundation selected shall be evaluated to meet the applicable code requirements. Assume that the Authority's Engineering Materials Division will provide a calibrated load cell and personnel to monitor the load test. The Authority's Central Survey team will be present to take survey readings during the test. The cost of load test program shall be incorporated in the construction cost estimate.
- b. Tasks to be performed by the Authority's Geotechnical Staff in coordination with the Consultant:
 - 1) Review of archived subsurface data in geotechnical file. Provide collected subsurface information to Consultant for preliminary design.
 - 2) Review of the subsurface investigation program developed by the Consultant for bridge structure, traffic sign structures and lighting structures. Authority geotechnical staff will meet with the Consultant to review the field testing and laboratory testing specified by the Consultant to obtain the geotechnical parameters necessary to develop the seismic analysis for the bridge structure. The Authority will prepare a memorandum to the Engineering Materials Division to initiate the subsurface investigation. All laboratory testing will be performed by the Authority's Engineering Materials Division.
 - 3) Provide oversight of the basic subsurface investigation and laboratory testing program. The Engineering Materials Division under the direction of Authority geotechnical staff will perform the basic subsurface investigation program.

- 4) Prepare soil log (SL) drawings for presentation. The SL-Drawings shall contain the results of the basic subsurface exploration program and summary sheets presenting the results of laboratory tests. The Consultant will be provided with the field and laboratory data so it can develop site-specific seismic criteria for design of bridge structure. The Authority's geotechnical staff will review the seismic criteria applicable to bridge foundation design and provide comments and recommendations.
- 5) Provide geotechnical design criteria for incorporation in the project Design Criteria Report.
- 6) Once the vertical profile for the proposed ramps is developed, the Port Authority's geotechnical staff will evaluate, based on the subsurface data compiled, the potential for liquefaction and post construction settlement for the roadway and approaches to bridge abutments.
- 7) Evaluate moments and settlements of foundation elements, based on loadings provided by the Consultant for pile and shaft caps and all individual footings. The Consultant shall provide location of foundations, number of piles, pile types, and pile sizes etc., for proper evaluation of foundation requirements.
- 8) Review and provide comments to dewatering scheme proposed by the Consultant.
- 9) Review the cost estimate including the estimated cost of load testing for various types of deep foundations.
- 10) Prepare active and passive earth pressure diagrams for temporary structures.
- 11) Prepare a geotechnical design memorandum that will be provided to the Consultant and will include:
 - a) Results of all field and laboratory tests.
 - b) Geotechnical criteria for the design of approach roadways, temporary structures, shallow and deep foundations. Geotechnical criteria shall include allowable bearing pressures, allowable capacities for various pile and drilled shaft foundation elements, active and passive earth pressure coefficients and design soil properties.
 - c) Recommendation for mitigation of liquefaction potential and post construction settlement

TASK N. PREPARE ENVIRONMENTAL ASSESSMENT AND NEPA DOCUMENTS

The EA must be prepared in accordance with applicable law(s) and regulations for review by the Authority, NYSDOT, and FHWA. Analyze all comments received from those parties, recommend a course of action, and prepare suitable narratives to address the comments.

1. Develop comparative methodology and prepare and present the Draft EA, the environmental impacts of the proposal (proposed action), and the reasonable alternatives in comparative form, including 40 CFR Section 1502.14.
2. Compile the results of tasks and prepare Draft EA.
3. Include an Executive Summary in the Draft EA.

4. Include a list of preparers and qualifications; a list of agencies, organizations and persons to whom copies of the statement are to be sent; an index and all appendices.
5. Draft necessary NEPA supporting documents, i.e. those necessary to support a NEPA determination by FHWA, addressing all relevant elements including air quality, noise, temporary-construction and permanent impacts, wetlands, Section 4(f), Section 106 compliance, etc. If the project does require a 4(f) evaluation and is Programmatic, it will be combined with the EA for distribution or if the 4(f) is an Individual, it will require a draft that is circulated separately to a smaller audience and would then be combined with the EA for distribution.
6. After the EA is prepared, reviewed by the Authority and approved by FHWA for release:
 - a. Draft a notice of availability of the EA for the FHWA.
 - b. Provide a newspaper notice for one public hearing to take public comment.
 - c. Distribute copies of the EA to appropriate agencies/interested parties and make available at suitable libraries or other facilities (this can include a website) for 15 days prior to the hearing.
 - d. After the comment period closes, usually 30 days after the hearing, commenters are to receive responses. The Lead Agency will determine whether to distribute the EA to the public for comment a second time.
 - e. Provide comments and responses to FHWA along with a transcript of the hearing.

TASK O. COST ESTIMATING, SCHEDULE, AND CONSTRUCTABILITY

1. Develop a staged construction schedule for the project utilizing Oracle Primavera P6 Release 7. The staging effort shall include conceptual construction staging plans showing areas of work and maintained lanes of traffic.
2. Complete a constructability review. Review the conceptual design to ensure that the project elements can be constructed as planned. Prepare a report documenting the findings
3. Provide a comprehensive, coordinated construction cost, scope and schedule for the conceptual design provided under Task M compiling all disciplines' inputs, eliminating redundancies, and filling in any missing areas.
4. Evaluate the cost and schedule impacts of all considered design alternatives.

TASK P. CONCEPTUAL DESIGN EXECUTIVE SUMMARY & REPORT

1. Develop an Executive Summary document describing all of the activities and outcomes of the conceptual design tasks. The summary shall outline the process and methodology by which the tasks were completed and a summary of the results and shall include an index of all documents, designs, and analyses completed under the Planning Conceptual Design effort. The index shall include a narrative of what information is contained in the various documents. The Executive Summary shall include the status of the design and the various package names and shall annotate the next steps in progressing the Program elements.
2. Submit a 50%, and 100% Draft Conceptual Design Report and Final Report as an electronic Microsoft Word document in 11"x17" format. The design report shall include

the drawings, estimates, schedules, and summaries outlined in Tasks L, M and N. Incorporate Authority comments as required for the draft reports and resubmit within ten (10) business days. Submit ten (10) bound color hard copies of the Final Report with cover stock front and back, and spiral binding. Cost estimates shall be included as Excel Workbooks; schedules shall be distributed in PDF and other industry standard format(s) requested by the Authority.

TASK Q. ADDITIONAL AS-NEEDED (TASK-ORDER) SERVICES

Additional services to be performed by the Consultant on an as-needed basis hereunder may include, but shall not be limited to, preparing new wetland delineation in order to obtain an up-to-date Jurisdictional Determination from USACE and a Confirmation of Wetland Boundary from NYSDEC.

IV. SCHEDULE AND SUBMISSIONS

Submit the work identified above for review by the Chief Engineer within the number of calendar days stipulated below after receipt by you of one copy of the Agreement executed by the Authority.

- A. Submit five sets of completed field inspection reporting forms within **30** calendar days after the Award Date. Authority comments will be forwarded to you within **15** calendar days after receipt of said submission.
- B. Submit a design criteria summary within **30** calendar days after the Award Date. Authority comments will be forwarded to you within **15** calendar days after receipt of said submission.
- C. Submit five sets of ozalid prints and one sepia set of the Conceptual Design Package, and present to Authority staff as required, within **130** calendar days after the Award Date. Authority comments will be forwarded to you within **30** calendar days after receipt of said submission.

V. INFORMATION AND MATERIALS PROVIDED BY THE AUTHORITY

The Authority will make available for the Consultant's information certain documents specified below. The documents specified under "A" below were not prepared for the purpose of providing information for the Consultant upon the present work but they were prepared for other purposes, and do not form a part of this Agreement. The Authority makes no representation or guarantee as to, and shall not be responsible for, their accuracy, completeness or pertinence and, in addition, shall not be responsible for the conclusions to be drawn therefrom. They are made available to the Consultant merely for the purpose of providing such information as is in the possession of the Authority, whether or not such information may be accurate, complete or pertinent, or of any value to the Consultant.

The documents specified under "B" below were prepared for the subject work and form a part of this Agreement.

All documents in the possession of the Authority will be available to the Consultant for review at the Authority's offices via appointment during regular business hours.

A. Available Documents include:

1. Howland Hook Parcel C Access Study
2. Howland Hook Marine Terminal Expansion Draft EIS – Transportation Study
3. Howland Hook Marine Terminal Alternative Eastbound Ramp Configurations – Environmental and Cost Benefit Analysis
4. Goethals Bridge Modernization Program – Howland Hook Marine Terminal Long Term Options Cost Estimates
5. Goethals Bridge Modernization Materials – found at www.goethalseis.com.
6. NYSDOT Project Development Manual – found at www.dot.ny.gov/divisions/engineering/design/dqab/pdm
7. FHWA – Interstate Access Guide – found at <http://www.fhwa.dot.gov/design/interstate/pubs/access/access.pdf>
8. NYSDOT X096.26 – EB I-278 (SIE) Improvements to Ramps Servicing Richmond Ave – Scope of Services and Status of Traffic Modeling Tasks
9. Survey Base Map showing site features and topography.
10. Utility Maps
11. Eastbound Ramp roadway alignment
12. HHMT Access Interim Improvement (Forest Ave.) Project plans

B. The documents specified below were prepared for the subject work and form a part of this Agreement.

1. PANYNJ Sustainable Design Project Manual (August 15, 2007) – found at <http://www.panynj.gov/about/pdf/Sustainable-design-Project-Manual.pdf>.
2. PANYNJ Sustainable Infrastructure Guidelines (dated 3/2/11) –found at <http://www.panynj.gov/about/pdf/sustainable-infrastructure-guidelines.pdf>.
3. Authority Engineering Architectural Design Division CAD Standards, (December 2013) – found at www.panynj-cadstandards.com.
4. Other information, material, and/or documentation related to the Project will be made available to the Consultant as needed and as appropriate to assist the Consultant with the performance of requested services.

VI. AUTHORITY DOCUMENTATION SOFTWARE REQUIREMENTS

The design shall be developed using Computer Aided Design (CAD) technology as described in the Authority CAD Standards Manual (to be provided by the Authority). Documents shall be developed consistent with Authority electronic strategy and shall utilize approved hardware and software. The systems presently accepted are:

- A. Microsoft Excel 2007: budgeting, cost monitoring, tables and charts
- B. Microsoft Word 2007; word processing
- C. Microsoft Power Point; graphics and presentations

D. Oracle Primavera P6 Release 7; project schedules.

Authority Engineering Architectural Design Division CAD Standards, (December 2013) – found at www.panynj-cadstandards.com.

VII. CONDITIONS AND PRECAUTIONS

A. General

Immediately inform the Authority of any unsafe condition discovered at any time during the course of this work.

Vehicular traffic on the Goethals Bridge and local Staten Island roadways shall always have priority over any and all of the Consultant's operations.

B. Work Areas

Limit inspection work to the areas necessary for the performance of such inspection and do not interfere with the operation of the facility without first obtaining specific approval from the Authority.

Arrange advance clearance for site visits that include the premises of the Goethals Bridge and the HHMT, including their respective facility management offices.

During all periods of time when the Consultant is not performing operations at the work site, store all equipment being used for the inspection in areas designated by the Authority and provide all security required for such equipment.

Do not permit any objects or pieces of equipment to lie unattended on sidewalks, roadways or structures at any time.

C. Work Hours

Perform work at the site between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday, unless otherwise directed by the Chief Engineer of the Authority.

In any case, no work shall be performed at the site on a legal holiday of either the State of New York or the State of New Jersey.

For site access, the Consultant will be provided a name and telephone of an Authority contact to arrange for any site visits.

VIII. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

A. Commercial Liability Insurance:

1. The Consultant shall take out and maintain at his own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations and Independent Contractors' coverages in limits of not less than \$5,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. And if vehicles are to be used to carry out the performance of this Agreement, then the Consultant shall also take out, maintain and pay the premiums on Automobile Liability Insurance covering all owned, non-owned and hired autos in not less than \$5,000,000 combined single limit per accident for bodily injury and property damage. Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If at any time, the Consultant is directed to perform services airside in absence of an approved escort, the Commercial General Liability Insurance and Automobile Liability Insurance provided by the Consultant must contain limits of not less than \$25,000,000 combined single limit per

occurrence, as provided in item 2) (a) below. In addition, the liability policies (other than Professional Liability) shall include the “Port Authority of New York and New Jersey and its related entities as additional insured and shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days written advance notice to the Project Manager as noted below. Moreover, the Commercial General Liability policy shall not contain any provisions (other than a Professional Liability exclusion, if any) for exclusions from liability other than provisions or exclusions from liability forming part of the most up to date ISO form or its equivalent unendorsed Commercial General Liability Policy. The liability policy (ies) and certificate of insurance shall contain separation of insured condition (cross-liability) and severability of interests provisions so that coverage will respond as if separate policies were in force for each insured.

Further, the certificate of insurance and the liability Policy (ies) shall be specifically endorsed that *“The insurance carrier(s) shall not, without obtaining the express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.”*

2. Additional Coverages: The Consultant shall have the policy endorsed when required by the Chief Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a. Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
- b. Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
- c. Coverage for work within 50 feet of railroad.

B. Workers' Compensation Insurance:

1. The Consultant shall take out and maintain Workers' Compensation Insurance in accordance with the requirements of law and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident. A waiver of subrogation in favor of the Authority and its related entities, as allowed by law, shall be included.

2. Additional Coverages: The Consultant shall have the policy endorsed when required by the Chief Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a. United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
- b. Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
- c. Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

C. Professional Liability Insurance:

Not less than \$5 million each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant, or any person employed by Consultant. All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

D. Compliance:

Prior to commencement of work at the site, the Consultant shall deliver a certificate from its insurer evidencing policies of the above insurance stating the title of this Agreement, the P. A. Agreement number and containing a separate express statement of compliance with each of the requirements above set forth, via e-mail, to the Project Manager.

1. Renewal certificates of insurance or policies shall be delivered to the Facility Contract Administrator, Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Management must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Port Authority, the Consultant shall promptly obtain a new and satisfactory certificate and policy.

2. If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, if the Project Manager shall so direct, the Consultant shall suspend performance of the Agreement at the premises. If the Agreement is so suspended, no extension of time shall be due on account thereof. If the Agreement is not suspended (whether or not because of omission of the Project Manager to order suspension), then the Authority may, at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by the Consultant to the Authority.

3. Upon request of the General Manager, Risk Management/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

4. The requirements for insurance procured by the Consultant shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

5) The Authority may at any time during the term of this Agreement change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Management for the Authority may consider such cost as an out-of-pocket expense.

* * *

Figure 1. Project Location Map

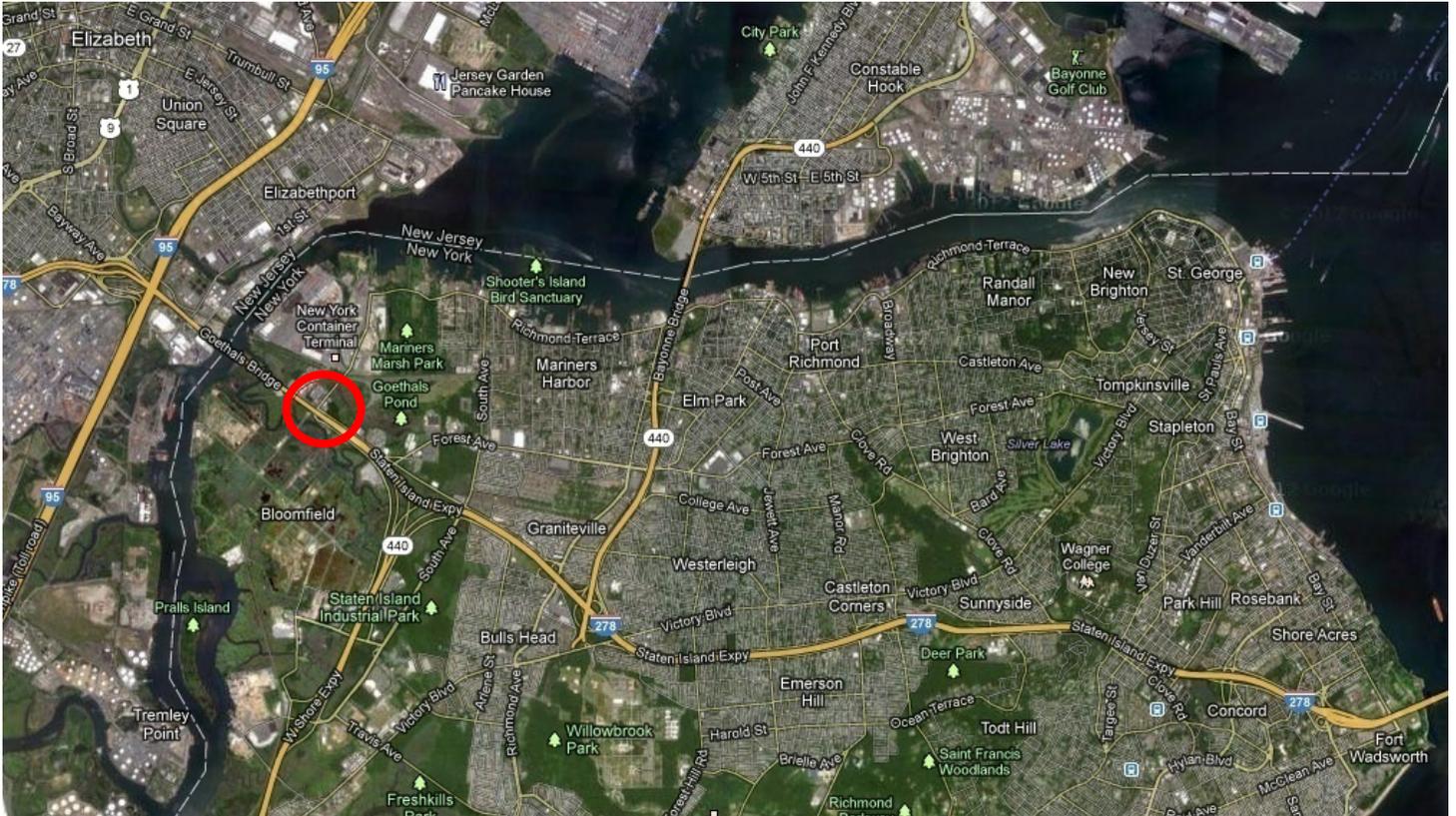
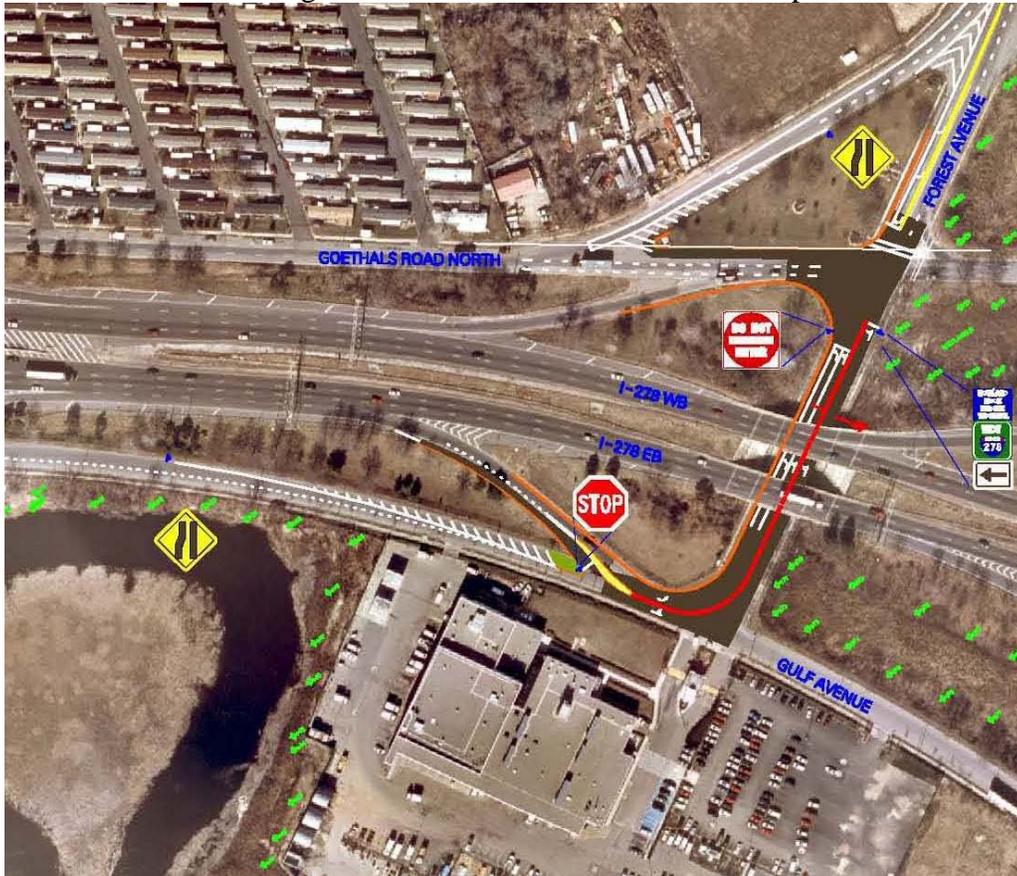


Figure 2. Forest Avenue Short-Term Improvements



APPENDIX A

 U.S. Department of Transportation Federal Highway Administration New York Division		Standard Operating Procedure (SOP)	
		Issued: <u>3/31/11</u> (date)	Updated: _____ (date)
Subject: New or Revised Interstate Access Point Approvals		Approved: <u><i>Robert L. Griffith</i></u> (signature)	
		Robert L. Griffith Acting Assistant Division Administrator (name and title)	

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II. REFERENCES

23 U.S.C. 111, Agreements relating to use of and access to rights-of-way - Interstate System

23 CFR 1.23, Rights-of-way

23 CFR 625, Design Standards for Highways

23 CFR 710, Subpart D, Real Property Management

23 CFR 771, Environmental Impact and Related Procedures

23 CFR 625 Non-regulatory Supplement 03/01/2005

23 CFR 752 Non-regulatory Supplement (Safety Rest Areas) 10/05/1992

23 CFR 630C Non-Regulatory Supplement June 17, 1998

Federal Register: August 27, 2009 (Volume 74, Number 165, Page 43743-43746)

FHWA Policy Memorandum – Operational Analysis of the Access Point to the Interstate System August 21, 2001

FHWA Policy Memorandum - Vertical Clearance, Interstate System Coordination of Design Exceptions, August 15, 1997

FHWA Policy Memorandum - Delegation of Authority, Requests for New or Revised Access Points on Completed Interstate Highways, August 19, 1996

AASHTO publication "A Policy on Design Standards – Interstate System", January 2005

FHWA Interstate System Access Informational Guide

Federal Highway Administration Area Engineer Manual, 2010.

FHWA Order M1100.1A FHWA Delegations and Organization Manual

FHWA-NYSDOT SAFETEA-LU Stewardship and Oversight Agreement, December 19, 2006

NYSDOT Highway Design Manual

NYSDOT Project Development Manual – Appendix 8

III. PURPOSE/OBJECTIVE

The purpose of this SOP is to establish FHWA review and approval procedures for new or revised Interstate access points in accordance with the August 27, 2009 Interstate Access Policy and related FHWA guidance and policies. This Interstate Access Policy is applicable to new or revised access to existing Interstate facilities regardless of the funding of the original construction or regardless of the funding for the new access points. This includes routes incorporated into the Interstate System under the provisions of 23 U.S.C. 103I(4)(A) or other legislation.

IV. DEFINITIONS

NYSDOT – New York State Department of Transportation

STA – State Transportation Agency

Access Point – Each break in the control of access to the Interstate System right-of-way is considered to be an access point. For the purpose of applying this policy, each entrance or exit point, including “locked gate” access, is considered to be an access point. For example, a diamond interchange configuration has four access points. Ramps providing access to rest areas, information centers, and weigh stations within the Interstate controlled access are not considered access points for the purpose of applying the Interstate Access Policy.

Interstate System Access Change Request – Term used to describe the formal request made to FHWA by a STA. These requests are inclusive of the written documentation that supports the formal request and the documentation of the coordination with other agencies. STAs utilize various terms for the requests submitted to the FHWA, usually in the form of reports such as an Interchange Justification Report (IJR),

FHWA Policy Memorandum - Vertical Clearance, Interstate System Coordination of Design Exceptions, August 15, 1997

FHWA Policy Memorandum - Delegation of Authority, Requests for New or Revised Access Points on Completed Interstate Highways, August 19, 1996

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Interchange Modification Report (IMR), Interstate Access Report (IAR), Interchange Operational Analysis Report (IOAR), Access Modification Report, Access Approval Report, Interstate Access Justification Study, and so forth. Many States refer to these terms within their own written procedures and manuals. Only STAs, as the owners and operators of the Interstate System, are authorized to submit Interstate System Access Change Request for review by the FHWA Division Office.

Change in Interstate Access – A change in access is considered by FHWA as any modification to the control-of-access right-of-way on the Interstate System. This includes locked gate access, access to ramps or collector-distributor roadways or other facilities that are functionally part of the Interstate System. Re-configuration of an interchange that affects the operational characteristics of the Interstate System is also considered as a change in access. Changes in operations, such as conversion of HOV lanes to general purpose use lanes, may affect interchanges and result in a change in access.

Engineering and Operational Acceptability – An FHWA determination that a proposed new or revised access point is acceptable prior to the completion of the NEPA process. To offer maximum flexibility any proposed access points can be submitted for a determination of engineering and operational acceptability prior to completion of the NEPA process. In this manner, the State highway agency can determine if a proposal is acceptable for inclusion as an alternative in the environmental process.

Project Design Approval Document (Design Report) – NYSDOT's document that outlines proposed actions on development of the specific new or revised access request. The document should include the purpose/need for the project, project schedule, project location, considered alternatives, anticipated area of influence, analysis years, travel demand forecasting, and other items as appropriate.

Transportation Management Area (TMA) - an urbanized area with a population over 200,000, as defined by the Bureau of the Census and designated by the Secretary of Transportation, or any additional area where TMA designation is requested by the Governor and the metropolitan planning organization (MPO) and designated by the Secretary of Transportation.

V. SCOPE

The intent of the SOP is to provide guidance for Division personnel reviewing and approving new or modified Interstate access points.

VI. PROCEDURES

The flowchart included in Section VIII outlines the New York Division's oversight and stewardship process for a change in Interstate Access. The main documents utilized in this process are the FHWA Interstate System Access Informational Guide and the August 27, 2009 Interstate Access policy as published in the Federal Register. The Division works closely with the NYSDOT to implement the two step process for most new or revised access points. The two step process includes an initial Determination of Engineering and Operational Acceptability and then a final access modification approval with the completion of NEPA. The Division's District Operations (HDO-NY) leads the

development, review, and approval of all new or revised Interstate access requests¹. However, final approvals are granted in accordance with the controls set forth in Section VII.

The first stage of a new or revised Interstate access point is the development of the proposed scope of work which is outlined in the Design Approval Document (i.e. Design Report, Environmental Assessment, or Environmental Impact Statement). Usually a Scope Summary Memorandum (SSM) is prepared first by NYSDOT. This includes the purpose/need for the project, project schedule, project location, considered alternatives, anticipated area of influence, cost estimates, and screening criteria to eliminate alternatives. The SSM may also include relevant initial traffic, safety, and operational analysis. Then a Design Report (DR) is prepared by NYSDOT following a similar format. Expanded engineering and environmental analysis is conducted and documented in the DR with the intent to select the alternative which meets the agreed upon purpose & need of the project and minimizes harm to the environment. If significant environmental impact is anticipated, an Environmental Impact Statement (EIS) is prepared in lieu of a Design Report.

The documents are developed by NYSDOT in consultation with HDO-NY. In addition to the Design Report, NYSDOT also develops an Access Modification Report, which contains appropriate analysis to ensure the proposed access modification will allow the interchange to operate better and more safely and/or that the modification will not adversely impact the mainline or adjacent interchanges. If additional Interstate interchange(s) are proposed then the Access Modification Report must demonstrate how the proposed new interchange(s) meets the policy criteria established under the August 27, 2009 Interstate Access Policy. The Access Modification Report is typically a stand alone document but can be contained in an Appendix of the project's Design Approval Document. Upon satisfactory development of the Access Modification Report, the Area Engineer will review and recommend approval of the proposed access modification utilizing the Prompt List in Appendix A which is to be maintained as part of the project records. The document is submitted to the Upstate Team Leader (if applicable) for review prior to requesting the District Engineer's review and acceptance of the proposed access modification. In addition, the Area Engineer will coordinate with other parties as appropriate, particularly with HQ when the proposed access requires HQ prior approval (see Table 1). Upon receipt of approval/disapproval from HQ, the Area Engineer prepares the Determination of Engineering and Operational Acceptability decision letter for the Division Administrator's signature. The Division Office Design Specialist is copied on this letter for tracking purposes.

The second step is the final FHWA approval which constitutes a Federal Action, and as such, requires that the NEPA procedures are followed. Compliance with the NEPA procedures need not precede the determination of engineering and operational acceptability; however, final approval of access cannot precede the completion of NEPA. If an accepted change in access has not progressed to construction within 8 years after receiving affirmative determination of the engineering and operational acceptability from FHWA, a re-evaluation is required.

The flowchart in Section VIII provides the review/approval time frames as well as the correspondence required throughout the process. All correspondence is maintained in the appropriate project files and maintained until the proposed access is constructed. Files are archived in accordance with FHWA policy. In addition, the Division Office Design Specialist will maintain a spreadsheet listing of all submitted Interstate System Access Change Requests and the status of each. These are tracked and

¹ For NYC projects in which the Major Project Manager is responsible for the development and review of all new or revised Interstate access requests, the Major Project Manager will take the lead in lieu of HDO-NY

monitored to ensure compliance with FHWA policy and guidance, such as review/approval time frames, expiration of approvals, implementation of any commitments, etc.

VII. CONTROLS

The following Division delegation of authority provides the necessary controls for approval of Interstate System Access Change Requests:

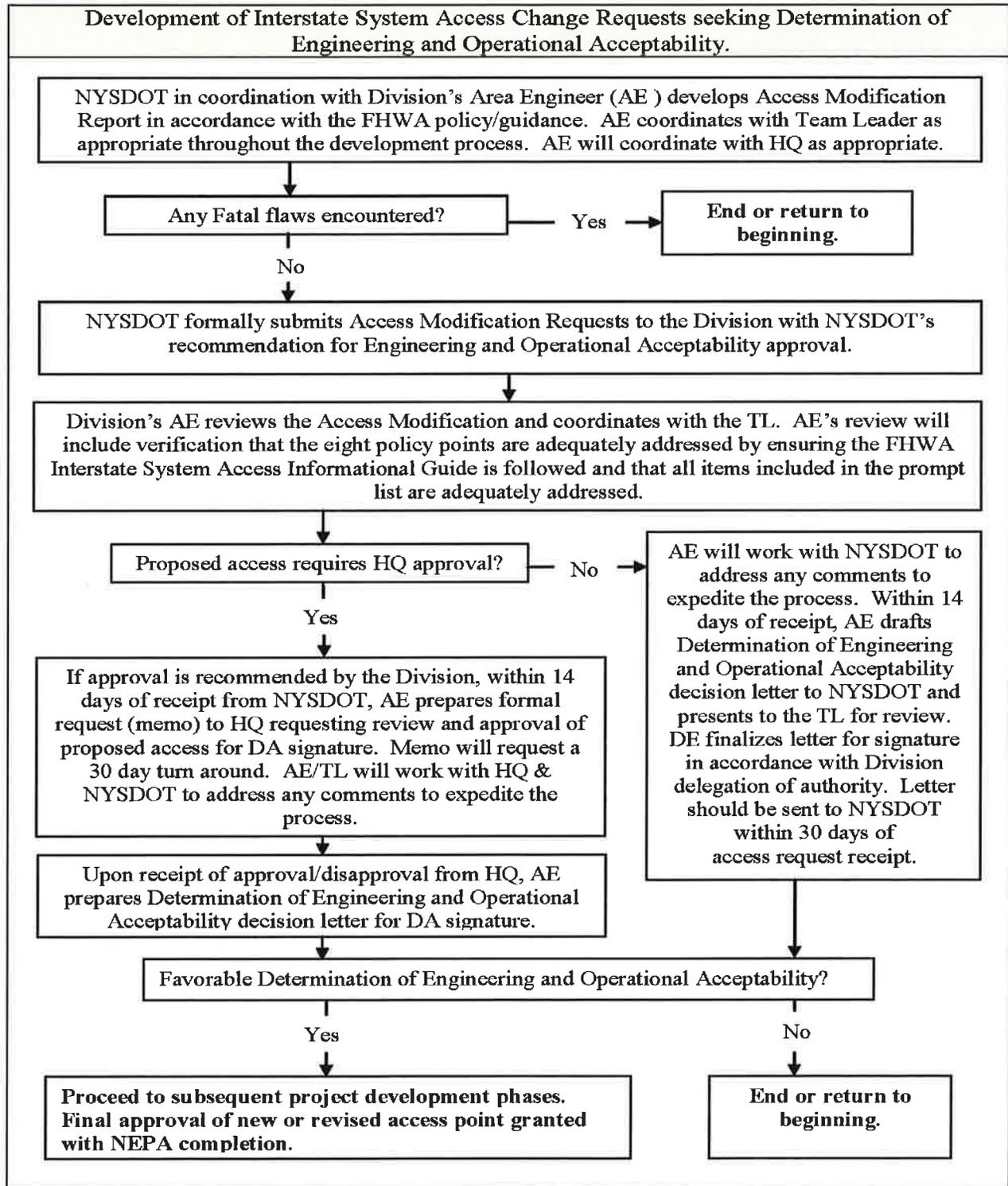
TABLE: 1

Delegation of Approval Within Division Office		
Type of Access Request	In TMA	Not In TMA
New Freeway-to-Freeway Interchange	*DA	*DA
Major Modification of Freeway-to-Freeway Interchange	*DA	*DA
New Partial Interchange	*DA	*DA
New Freeway-to-Crossroad Interchange	*DA	DE
Modification of Existing Freeway-to-Crossroad Interchange	DE ⁽²⁾	DE
*Requires prior approval from HQ	DA – Division Administrator	DE – District Engineer

(2) For NYC projects in which the Major Project Manager is responsible for the development and review of all new or revised Interstate access requests, the Assistant Division Administrator will issue approval instead of the District Engineer.

VIII. FLOWCHART

New or Revised Interstate Access Points



IX. APPENDIX

Appendix A

**Prompt List for Review of
Interstate System Access Change Requests**

**Prompt List for Review of
Interstate System Access Change Requests**

FHWA INTERSTATE ACCESS POLICY POINTS

Policy Point 1: The need being addressed by the request cannot be adequately satisfied by existing Interchanges to the Interstate, and/or local roads and streets in the corridor can neither provide the desired access, nor can they be reasonably improved (such as access control along surface streets, improving traffic control, modifying ramp terminals and intersections, adding turn bays or lengthening storage) to satisfactorily accommodate the design-year traffic demands (23 CFR 625.2(a)).				
Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Does the access request clearly describe the need and purpose of the proposal and identify project goals and objectives that are specific and measurable?	
			Is the proposal in the best interest of the public, or does it merely serve a narrow interest?	
			Is the proposal serving a regional transportation need, or is it merely compensating for deficiencies in the local network of arterials and collectors?	
			In lieu of granting new access, is there any reasonable alternative consisting of improvements to the existing roadway(s) or adjacent access points that could serve the need and purpose?	
			Has the evaluation of existing interchanges and the local road network taken into account all proposed improvements currently identified in the State and/or Regional Long Range Plan?	
			Will the proposed change in access result in needed upgrades or improvements to the cross road for a significant distance away from the interchange?	
YES	NO		Conclusionary Assessment: Is Policy Point #1 Adequately Addressed?	
Policy Point 2: The need being addressed by the request cannot be adequately satisfied by reasonable transportation system management (such as ramp metering, mass transit, and HOV facilities), geometric design, and alternative improvements to the Interstate without the proposed change(s) in access (23 CFR 625.2(a)).				
Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Was FHWA actively involved in preliminary studies and decisions? If not, then more detailed information may be required in support of proposed action.	
			Did the study area cover sufficient area to allow for an evaluation of all reasonable alternatives?	
			Was a No-Build Alternative evaluated?	
			Considering the context of the proposal, is this the best location for the proposed new interchange?	
			Were different interchange configurations (Tight diamond, SPDI, Parclo) considered?	AASHTO Greenbook Chapter 10

Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Were pedestrians and bicyclists considered in the alternative evaluation?	
			Was there an evaluation of different intersection configurations (stop control, signal, roundabout, free right turns, etc?)	
			Have Transportation Systems Management (i.e. HOV, ITS, Ramp Metering, Transit etc.) options been evaluated as an alternative to a new or modification to an existing interchange?	
			Did the report discuss how TSM alternatives were evaluated and eliminated from consideration?	
			Does the proposal consider any future planned TSM strategies and is the design consistent with the ability to implement the future TSM strategies?	
YES	NO		Conclusion Assessment: Is Policy Point #2 Adequately Addressed?	
<p>Policy Point 3: An operational and safety analysis has concluded that the proposed change in access does not have a significant adverse impact on the safety and operation of the Interstate facility (which includes mainline lanes, existing, new, or modified ramps, ramp intersections with crossroad) or on the local street network based on both the current and the planned future traffic projections. The analysis shall, particularly in urbanized areas, include at least the first adjacent existing or proposed interchange on either side of the proposed change in access (23 CFR 625.2(a), 655.603(d) and 771.111(f)). The crossroads and the local street network, to at least the first major intersection on either side of the proposed change in access, shall be included in this analysis to the extent necessary to fully evaluate the safety and operational impacts that the proposed change in access and other transportation improvements may have on the local street network (23 CFR 625.2(a) and 655.603(d)). Requests for a proposed change in access must include a description and assessment of the impacts and ability of the proposed changes to safely and efficiently collect, distribute and accommodate traffic on the Interstate facility, ramps, intersection of ramps with crossroad, and local street network (23 CFR 625.2(a) and 655.603(d)). Each request must also include a conceptual plan of the type and location of the signs proposed to support each design alternative (23 U.S.C. 109(d) and 23 CFR 655.603(d)).</p>				
Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Does the report demonstrate that a proper traffic operational analysis was conducted? The analysis should include the applicable basic freeway segments, freeway weaving segments, freeway ramp segments, ramp junctions and crossroad intersections related to the proposed access point and at least the two adjacent interchanges.	
			Does the report include a safety analysis of the mainline, ramps and intersections of the proposed access point and the nearest adjacent interchange (provided they are near enough that it is reasonable to assume there may be impacts)?	
			Has the design traffic volume been validated?	
			Does the report include verification that the data used in the traffic analysis is consistent with the traffic and air quality models MPOs use to develop their current Transportation Plan (20-year) and Transportation Improvement Program (TIP)?	
			Does the report include a design period of 20 years commencing at the time of project approval (PS&E approval)?	
			Does the report include quantitative analyses and results to identify operational differences between alternatives that are heavily congested?	

Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Has a conceptual signing plan been provided?	
			Is guidance signing (i.e., way-finding or trail blazing signs) clear and simple?	MUTCD Chapter 2E: Guide Signs – Freeways and Expressways
			Do the results of the operational analysis result in a significant adverse impact to existing or future conditions?	
			Will the proposed change in access result in needed upgrades or improvements to the cross road for a significant distance away from the interchange? If so, have impacts to the local network been disclosed and fully evaluated?"	
			Are the cross roads or adjacent surface level roads and intersections affected by the proposed access point analyzed to the extent (length) where impacts caused or affecting the new proposed access point are disclosed to the appropriate managing jurisdiction?	
			Are pedestrian and/or bicycle facilities included (as appropriate) and do these facilities provide for reasonable accommodation?	
			Does the proposed access secure sufficient Limits of Access adjacent to the Interchange ramps?	
			Does the proximity of the nearest crossroad intersections to the ramps contribute to safety or operational problems? Can they be mitigated?	
			In addition to HCS, what analysis tools were employed and were they appropriate?	
			Has the proposal distinguished between nominal safety (i.e. adherence to design policies and standards) and substantive safety (actual and expected safety performance)?	
			Will any individual elements within the recommended alternative be degraded operationally as a result of this action? If yes, are reasons provided to accept them?	
			In evaluating whether the proposal has a "significant adverse impact" on safety, has the State Strategic Highway Safety Plan been used as a benchmark?	
			Are the proposed interchange design configurations able to satisfactorily accommodate the design year traffic volumes?	

Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			If the project is to be built in stages, has the traffic operational and safety analyses considered the interim stages of the proposal?	
YES	NO		Conclusion Assessment: Is Policy Point #3 Adequately Addressed?	
<p>Policy Point 4: "The proposed access connects to a public road only and will provide for all traffic movements. Less than "full interchanges" may be considered on a case-by-case basis for applications requiring special access for managed lanes (e.g., transit, HOVs, HOT lanes) or park and ride lots. The proposed access will be designed to meet or exceed current standards (23 CFR 625.2(a), 625.4(a)(2), and 655.603(d))."</p>				
Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Does the proposed access connect to a public road?	
			Are all traffic movements for full interchange access provided?	
			If not, is the proposed access for special purposes such as transit vehicles, HOVs, and/or a park and ride lot?	
			If a partial interchange is proposed, is there sufficient justification for providing only a partial interchange?	AASHTO Greenbook 2004 Pg. 821-823
			If a partial interchange is proposed; was a full interchange evaluated as an alternative and is there sufficient justification to eliminate or discard it?	
			Is sufficient ROW available (or being acquired) to provide a full interchange at a future date (staged construction)?	
			Are you comfortable with how the missing movements will be accommodated on the surface streets and adjacent interchanges?	
			Does FHWA support the selection of design controls/criteria and desired operational goals?	
			Does the proposed access meet or exceed current design standards for the Interstate System?	AASHTO's Greenbook and A Policy on Design Standards Interstate System, 2005
			If not, have anticipated design exceptions been identified and reviewed (at least conceptually)?	
			If expected design exceptions could have significant operational impacts on the Interstate and/or Crossroad system, are mitigation measures described?	
			Will the length of access control along the crossroad provide for acceptable operations and safety? (100-300' is a minimum. Additional access control is strongly encouraged when needed for safety and operational enhancement)	

SOP - New or Revised Interstate Access Approvals

Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Does FHWA support selection of opening and design years?	
			Have all design criteria (including but not limited to the following) been adequately addressed?	
			<i>a. Sight distance at ramp terminals (Don't overlook signal heads obscured by structures.)</i>	AASHTO Greenbook 2004 Pg. 841
			<i>b. Sufficient storage on ramp to prevent queues from spilling on to the Interstate (based on current and/or future projected traffic demand)</i>	
			<i>c. Vertical clearance</i>	AASHTO "A Policy on Design Standards Interstate System" 2005
			<i>d. Pedestrian access through the interchange</i>	AASHTO Greenbook 2004 Pg. 864
			<i>e. Length of accel/decel lanes</i>	AASHTO Greenbook 2004 Pg. 823, 847
			<i>f. Length of tapers</i>	AASHTO Greenbook 2004 Pg. 849
			<i>g. Spacing between ramps</i>	Greenbook pg 843 & Ex. 10-68 and operational analysis
			<i>h. Lane continuity</i>	AASHTO Greenbook 2004 Pg. 810
			<i>i. Lane balance</i>	AASHTO Greenbook 2004 Pg. 810 AASHTO Greenbook 2004 Pg. 807
			<i>j. Uniformity in interchange design and operational patterns (i.e. right-side ramps, exit design consistent w/adjacent interchanges)</i>	

Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Has each movement of the proposal been "tested" for ease of operation?	AASHTO Greenbook 2004 Pg. 853
YES	NO		Conclusion Assessment: Is Policy Point #4 Adequately Addressed?	
<p>Policy Point 5: "The proposal considers and is consistent with local and regional land use and transportation plans. Prior to receiving final approval, all requests for new or revised access must be included in an adopted Metropolitan Transportation Plan, in the adopted Statewide or Metropolitan Transportation Improvement Program (STIP or TIP), and the Congestion Management Process within transportation management areas, as appropriate, and as specified in 23 CFR part 450, and the transportation conformity requirements of 40 CFR parts 51 and 93."</p>				
Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Does the IJR discuss or include (as appropriate) other project(s), studies or planned actions that may have an effect on the report analysis results?	
			Does the project conform to the local planning, MPO or other related plans?	
			Does the report include an endorsement of land use plans by the appropriate government entity before it is utilized for traffic generation purposes?	
			Is the access request located within a Transportation Management Areas? (TMAs are metropolitan areas of 200,000 or more in population)	http://heggis.fhwa.dot.gov/heggis_v2/Urbanboundaries/Map.aspx
			Is the access request located within a non-attainment area for air quality? (requests for access in a non-attainment or maintenance areas for air quality must be a part of a conforming transportation plan)	
			Is the project included in the TIP/STIP and LRTP?	
			Is the access point covered as a part of an Interstate corridor study or plan? (<i>especially important for areas where the potential exists for construction of future adjacent interchanges</i>)	
YES	NO		Conclusion Assessment: Is Policy Point #5 Adequately Addressed?	
<p>Policy Point 6: "In corridors where the potential exists for future multiple interchange additions, a comprehensive corridor or network study must accompany all requests for new or revised access with recommendations that address all of the proposed and desired access changes within the context of a longer-range system or network plan (23 U.S.C. 109(d), 23 CFR 625.2(a), 655.603(d), and 771.111)."</p>				
Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Is it possible that new interchange(s) not addressed in the IJR could be added within an area of influence to the proposed access point? (If so, could the proposal preclude or otherwise be affected by any future access points?)	

Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Does the IJR report include the traffic volumes generated by any future additional interchanges within a vicinity of influence that are proposed?	
			Does the IJR report fail to include any other proposed interstate access points within a vicinity of influence that are being proposed or are in the current long range construction program?	
YES	NO		Conclusion Assessment: Is Policy Point #6 Adequately Addressed?	
<p>Policy Point 7: "When a new or revised access point is due to a new, expanded, or substantial change in current or planned future development or land use, requests must demonstrate appropriate coordination has occurred between the development and any proposed transportation system improvements (23 CFR 625.2(a) and 655.603(d)). The request must describe the commitments agreed upon to assure adequate collection and dispersion of the traffic resulting from the development with the adjoining local street network and Interstate access point (23 CFR 625.2(a) and 655.603(d))."</p>				
Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Does the access request adequately demonstrate that an appropriate effort of coordination has been made with appropriate proposed developments?	
			Are the proposed improvements compatible with the existing street network or are other improvements needed?	
			Are there any pre-condition contingencies required in regards to the timing of other improvements?	
			Have all commitments to improve the local transportation network been included in a TIP/STIP/LRTP prior to the Interstate access approval (final approval of NEPA document)?	
			If pre-condition contingencies are required, are pertinent parties in agreement with these contingencies and is this documented?	
			If the proposed improvements are founded on the need for providing access to new development, are appropriate commitments in place to ensure that the development will likely occur as planned?	
			If project is privately funded, are appropriate measures in place to ensure improvements will be completed if the developer is unable to meet financial obligations?	
			If the purpose and need to accommodate new development/traffic demands aren't fully known, is a worst case scenario used for future traffic?	

SOP - New or Revised Interstate Access Approvals

Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Does the project require financial or infrastructure commitments from other agencies, organizations, or private entities?	
YES	NO		Conclusion Assessment: Is Policy Point #7 Adequately Addressed?	
<p>Policy Point 8: "The proposal can be expected to be included as an alternative in the required environmental evaluation, review and processing. The proposal should include supporting information and current status of the environmental processing (23 CFR 771.111)."</p>				
Adequately Addressed?			Question	Reference Location
Yes	No	N/A		
			Are there any known social or environmental issues that could affect the proposal?	
			Is the project consistent with the current TIP/STIP and LRTP and/or proposed amendments to the plan?	
			Although NEPA is a separate action, is an environmental overview for the proposed improvements included?	
			Is it appropriate to emphasize to the project stakeholders that the access approval will be handled as a two-step process? (i.e. Step 1: Engineering and Operational Acceptability and Step 2: Environmental Approvals)	
			Are all funding commitments included in a TIP/STIP/LRTP prior to the Interstate access approval (prior to final approval of the NEPA document)?	
YES	NO		Conclusion Assessment: Is Policy Point #8 Adequately Addressed?	

YES	NO	Based on review of the 8 Policy Points, is the proposed Interstate Access Modification Recommended for FHWA Approval?				
<table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 60%;">Reviewed By: _____</td> <td style="border: none; width: 40%;">Date: _____</td> </tr> <tr> <td style="border: none; width: 60%;">Approved By: _____</td> <td style="border: none; width: 40%;">Date: _____</td> </tr> </table>			Reviewed By: _____	Date: _____	Approved By: _____	Date: _____
Reviewed By: _____	Date: _____					
Approved By: _____	Date: _____					

APPENDIX B

Environmental Information

- **NYSDOT LAES Pre-Scoping Report (7 pages)**
- **NEPA Assessment Checklist (7 pages)**
- **Wetland Location Map (1 page)**
- **NYSDEC Threatened and Endangered Species Response Letter Dated 2/3/10 (2 pages)**
- **Federally Listed Endangered and Threatened Species Lists (2 pages)**
- **Asbestos Field Form (1 page)**
- **Hazardous Waste Screening Form (3 pages)**
- **Partial Environmental FirstSearch™ Report (17 pages) (*Full report available upon request)**
- **Finding Documentation For NYSHPO (13 pages)**
- **NYSHPO Response to Finding Documentation (2 pages)**
- **Draft Memorandum of Agreement Among NYSHPO, NYSDOT and FHWA (7 pages)**
- **Correspondence with St. Regis Mohawk Tribe (1 page)**
- **Correspondence with Stockbridge-Munsee Tribe (2 pages)**
- **Correspondence with Delaware Tribe (1 page)**
- **Coast Guard Jurisdiction Checklist (3 pages)**

NYSDOT LAES Pre-Scoping Report

NYS DOT Landscape Architecture / Environmental Services, Region 1

Phase	Prepared by	Date	Phase	Prepared by	Date
<input checked="" type="checkbox"/> LAES Pre-Scoping Report	A. Morgan	1/13/10	<input checked="" type="checkbox"/> LAES Project Resource Report	A. Becker	2/3/11
<input checked="" type="checkbox"/> LAES Draft IPP Report			<input type="checkbox"/> Other:		

PIN: 1460.42.121	FUNDING SOURCE: <input type="checkbox"/> 100% STATE <input checked="" type="checkbox"/> STATE & FEDERAL
DESCRIPTION: Rt. 32 over the Mohawk River	REVISION - SUPERSEDES DATE OF:
COUNTY: ALBANY	COMMENT:

PROJECT TYPE (RESOURCE MANAGEMENT SYSTEM):	
<input checked="" type="checkbox"/> 1. Highway Project	<input type="checkbox"/> 3. Other
<input checked="" type="checkbox"/> 2. Bridge Project	Comment:
	<input type="checkbox"/> 4. Intersection Project

PROJECTED ENVIRONMENTAL PROCESS:				FEDERAL INVOLVEMENT : Yes
NEPA: <input type="checkbox"/> No Federal Funds	<input checked="" type="checkbox"/> Class II, CE <input type="checkbox"/> CE/Auto <input type="checkbox"/> CE/Prog <input checked="" type="checkbox"/> CE/Doc	<input type="checkbox"/> Class III, EA <input type="checkbox"/> SAFETEA-LU Applies	<input type="checkbox"/> Class I, EIS <input type="checkbox"/> SAFETEA-LU Applies	Why: Federal Funding
SEQR: <input type="checkbox"/> Exempt	<input checked="" type="checkbox"/> Type II	<input type="checkbox"/> Non-Type II <input type="checkbox"/> EA -or- <input type="checkbox"/> EIS		Note:
DESIGN BY:				Note: Clough Harbour LLP
<input type="checkbox"/> R1 Design	<input checked="" type="checkbox"/> Consultant	<input type="checkbox"/> MO Design Services	<input type="checkbox"/> Other	

ITEM	ENVIRONMENTAL ISSUE	RESOURCE WITHIN 1/2 MILE	RESOURCE AFFECTED By Project	FURTHER REVIEW REQUIRED	COMMENTS
	PHASE	Pre-Scoping	Scoping	Scoping	
	P = Permit necessary C = Agency coordination necessary (↑T) = Additional Time (↑\$) = Additional Funds (↑R) = Additional ROW (xx) = Pre-scoping list	If Yes →	→	→	
E1	ACOE-SECTION 10 OR 404 Permit <input type="checkbox"/> National Wetlands Inventory quad exists: <input type="checkbox"/> Wetland Delineation Needed (↑T) <input type="checkbox"/> {11} Designated Inland Waterway <input type="checkbox"/> {15} ACOE Navigable Waters <input checked="" type="checkbox"/> Federal Jurisdictional Wetlands: P <input type="checkbox"/> Wetland compensation (↑T) (↑R) (↑\$) Permit Type <input type="checkbox"/> No permit needed P <input checked="" type="checkbox"/> Nationwide permit: # 3 & Section 10 P <input type="checkbox"/> Individual Permit (↑T)	<u>YES</u>	<u>YES</u>	<u>YES</u>	Troy NorthQuad L1UBHh: Lacustrine, limnetic, unconsolidated bottom The wetland is 46sm

ITEM	ENVIRONMENTAL ISSUE	RESOURCE WITHIN ½ MILE	RESOURCE AFFECTED By Project	FURTHER REVIEW REQUIRED	COMMENTS
	PHASE	Pre-Scoping	Scoping	Scoping	
	P = Permit necessary C = Agency coordination necessary (↑T) = Additional Time (↑\$) = Additional Funds (↑R) = Additional ROW (xx) = Pre-scoping list	If Yes →	→	→	
E2	DEC SECTION 401 WATER QUALITY CERTIFICATION <input checked="" type="checkbox"/> {3} Water bodies present: Mohawk River <input checked="" type="checkbox"/> {4} DEC Stream Classification: Standard: C Class: C P <input type="checkbox"/> {5} DEC freshwater wetlands Wetland ID <input type="checkbox"/> {6} DEC unit management plan (UMP) Permit Type <input type="checkbox"/> No permit needed P <input type="checkbox"/> Notice of Intent (NOI) applies P <input type="checkbox"/> General permit applies P <input type="checkbox"/> Blanket Water Quality Certificate (↑T) P <input checked="" type="checkbox"/> Individual Water Quality Certificate (↑T) P <input type="checkbox"/> Wetland compensation required (↑T) (↑R) (↑\$)	<u>YES</u>	<u>YES</u>	<u>YES</u>	More than 25cy of fill is probable to require IWQC
E3 C	DEC REVIEW FOR STREAM DISTURBANCE (DEC/DOT MOU ART. 15/24 coordination)	<u>YES</u>	<u>no</u>	<u>no</u>	Covered under 401
E4	STATE REGULATED TIDAL WETLANDS (Does not apply to Region 1)	<u>no</u>	<u>no</u>	<u>No</u>	Does not apply to Region 1
E5	EXECUTIVE ORDER 11990 Wetlands (for fed. funded projects) (Individual or Programmatic) (↑T)	<u>no</u>	<u>no</u>	<u>no</u>	
E6 C	COASTAL ZONE MANAGEMENT PROGRAM WATERFRONT (DOS) REVITALIZATION AND COASTAL RESOURCE ACT <input type="checkbox"/> {9} Coastal zone management area NOT within Coastal Boundary <input type="checkbox"/> {10} Effects Local Waterfront Revitalization Program (LWRP) Village <input type="checkbox"/> {47} Scenic Areas of Statewide Significance (DOS) <input type="checkbox"/> {48} Hudson River Greenway	<u>no</u>	<u>no</u>	<u>no</u>	
C	SIGNIFICANT COASTAL FISH AND WILDLIFE HABITATS {12}. Significant coastal fish & wildlife habitats	<u>no</u>	<u>no</u>	<u>no</u>	
E7	UNITED STATES COAST GUARD PERMIT <input type="checkbox"/> USCG Navigable waters	<u>no</u>	<u>no</u>	<u>no</u>	Water is not navigable, there are falls to the west and a dam to the east, Historically it was navigable
E8 P C	STATE SCENIC AND RECREATIONAL RIVERS (¼ within APA, ½ all other areas) <input type="checkbox"/> {17} NYS Scenic and Recreational Rivers (↑T) <input type="checkbox"/> {18} Federal Wild and Scenic Rivers	<u>no</u> <u>no</u>	<u>no</u> <u>no</u>	<u>no</u> <u>no</u>	
E9 C	CANAL SYSTEM {19} <input checked="" type="checkbox"/> Erie Canal <input type="checkbox"/> Barge Canal <input checked="" type="checkbox"/> Champlain Canal <input type="checkbox"/> Other canal: <input type="checkbox"/> Early coordination with Canal Corporation required	<u>YES</u>	<u>no</u>	<u>no</u>	Nearby but not apart of the scope of this project.
E10	FLOODPLAINS {20} (100 year floodplain)	<u>YES</u>	<u>YES</u>	<u>YES</u>	Probable for 25cy of fill

ITEM	ENVIRONMENTAL ISSUE	RESOURCE WITHIN ½ MILE	RESOURCE AFFECTED By Project	FURTHER REVIEW REQUIRED	COMMENTS
	<i>PHASE</i>	<i>Pre-Scope</i>	<i>Scoping</i>	<i>Scoping</i>	<i>Scoping/ Design Approval</i>
	P = Permit necessary C = Agency coordination necessary (↑T) = Additional Time (↑\$) = Additional Funds (↑R) = Additional ROW (xx) = Pre-scoping list	If Yes →	→	→	
E11	(SPDES) STATE POLLUTION DISCHARGE ELIMINATION SYSTEM <input type="checkbox"/> Less than One acre P <input checked="" type="checkbox"/> Over one acre, SWPPP needed (↑T) (↑R) (↑\$) <input checked="" type="checkbox"/> MS4: Municipal outfalls <input type="checkbox"/> {13} TMDL Waters (for information only) <input type="checkbox"/> {14} 303D Waters (for information only)	<u>YES</u>	<u>YES</u>	<u>YES</u>	Test detention areas for archeology
E12	INVASIVE SPECIES	<u>no</u>	<u>no</u>	<u>no</u>	
E13 C	NEW YORK CITY WATERSHED coordination	<u>no</u>	<u>no</u>	<u>no</u>	
E14 C	AQUIFERS <input type="checkbox"/> {22} Federal Sole Source Aquifer <input type="checkbox"/> {23} Primary Aquifer <input type="checkbox"/> {24} Municipal Drinking Water Wells: Miles to Wells:	<u>no</u>	<u>no</u>	<u>no</u>	Unconfined Regional Aquifer high yield
E15	CRITICAL ENVIRONMENTAL AREAS (CEA)	<u>no</u>	<u>no</u>	<u>no</u>	
E16	FOREST PRESERVE <input type="checkbox"/> Adirondack Park <input type="checkbox"/> Catskill Park <input type="checkbox"/> Other: P <input type="checkbox"/> Temporary revocable permit required (↑T)	<u>no</u>	<u>no</u>	<u>no</u>	
E17	ENDANGERED & THREATENED SPECIES (ETS)				
C	<input checked="" type="checkbox"/> State	<u>YES</u>	<u>no</u>	<u>YES</u>	Potential species: Alewife Floater, (Anodonta implicata) and Giant Pine-drops, (Pterospora andromedea) Indiana bat (Myotis sodalis); (Historical) bog turtle (Clemmys muhlenbergii); Karner blue butterfly (Lycaeides melissa samuelis) and Shortnose sturgeon (Acipenser brevirostrum)
C	<input checked="" type="checkbox"/> Federal	<u>YES</u>	<u>no</u>	<u>YES</u>	
E18 C	HISTORIC AND ARCHAEOLOGICAL RESOURCES <input checked="" type="checkbox"/> {26} Bridge is 50 years or older Year Built: <input checked="" type="checkbox"/> Nat'l Register Listed or Eligible Historic District, Structure or site: <input type="checkbox"/> Potential historic district, structure or site: <input checked="" type="checkbox"/> Known archaeological site: <input checked="" type="checkbox"/> {29} Cultural Resource Survey (CRS) on file: <input type="checkbox"/> {30} Located in Certified Local Government Jurisdiction: C <input type="checkbox"/> Tribal concerns <input type="checkbox"/> Coordinate w/ <u>S</u> tate <u>H</u> istoric <u>P</u> reservation <u>O</u> ffice (↑T) (SHPO)	<u>YES</u>	<u>YES</u>	<u>YES</u>	Champlain Canal, Extends N from Troy to Whitehall; Northside Historic District, Both sides of Saratoga Ave. (NY 32) from Maple Ave. to Roosevelt Bridge; Peebles (Peoples) Island, Harmony Mill Historic District; Downtown Cohoes Historic District; Olmstead Street Historic District, Silliman Memorial Presbyterian Church, Mohawk and Seneca Sts.; Music Hall, NW corner of Remsen and Oneida Sts. CRS - Henry Lansing House, Rt 32 o/t Mohawk River, Fulton St HAER

ITEM	ENVIRONMENTAL ISSUE	RESOURCE WITHIN ½ MILE	RESOURCE AFFECTED By Project	FURTHER REVIEW REQUIRED	COMMENTS
	<i>PHASE</i>	<i>Pre-Scope</i>	<i>Scoping</i>	<i>Scoping</i>	<i>Scoping/ Design Approval</i>
	P = Permit necessary C = Agency coordination necessary (↑T) = Additional Time (↑\$) = Additional Funds (↑R) = Additional ROW (xx) = Pre-scoping list	If Yes →	→	→	
E20 C	PARKLANDS <input type="checkbox"/> {35} National Parks (Saratoga National Battlefield)	<u>YES</u>	<u>no</u>	<u>no</u>	Nearby Peebles Island State Park (undeveloped)
	<input checked="" type="checkbox"/> State Park <input type="checkbox"/> {43} Local Parks and Recreational Areas <input type="checkbox"/> Coordination/ agreement needed (↑T)				
E21	BOUNDARY LANDS <input type="checkbox"/> {40} Catskill Park (<input type="checkbox"/> Within Kaaterskill Clove, Rt23A SHPO) <input type="checkbox"/> {41} Lake George Park Commission Boundary <input type="checkbox"/> {42} Albany Pine Bush Preserve	<u>no</u>	<u>no</u>	<u>no</u>	
E22 C	NATIONWIDE 4(F) PROGRAMMATIC EVALUATIONS <input type="checkbox"/> Parkland (↑T) <input checked="" type="checkbox"/> Historic sites (↑T) <input type="checkbox"/> Wildlife/Waterfowl Refuge (↑T)	<u>no</u>	<u>no</u>	<u>no</u>	—
E23 C	SECTION 6(F) AND SECTION 110 EVALUATIONS FOR RECREATIONAL AREAS (↑T) (↑\$)	<u>no</u>	<u>no</u>	<u>no</u>	
E24	NATIONAL HISTORIC LANDMARKS	<u>no</u>	<u>no</u>	<u>no</u>	
E25	{34} NATURAL LANDMARKS (Two in Region 1) Applies only to EIS <input type="checkbox"/> Bear Swamp, Albany County <input type="checkbox"/> Petrified Sea Gardens, Saratoga County	<u>no</u>	<u>no</u>	<u>no</u>	
E26 C	{26} SCENIC BYWAYS <input checked="" type="checkbox"/> Designated: <input type="checkbox"/> Proposed:	<u>YES</u>	<u>YES</u>	<u>YES</u>	State Scenic Byway, Mohawk Towpath Trail
E27	ADIRONDACK PARK Project is within the Adirondack Park boundary P <input type="checkbox"/> 814 New land use or change in appearance (↑T) P <input type="checkbox"/> {7} APA freshwater wetlands Class: (↑T) P <input type="checkbox"/> General permit applies <input type="checkbox"/> Wetland compensation (↑T) (↑R) APA Jurisdiction <input type="checkbox"/> Project is non-Jurisdictional, No permit <input type="checkbox"/> Project is Jurisdictional, Permit (↑T)	<u>no</u>	<u>no</u>	<u>no</u>	
E28 C C	{53} FARMLANDS <input checked="" type="checkbox"/> Federal <input type="checkbox"/> State(Agricultural District)	<u>YES</u> <u>no</u>	<u>no</u> <u>no</u>	<u>no</u> <u>no</u>	Rhinebeck Siltloam on northeast shore. Classified as Primefarmland based on soil type. Location is NOT farm land
E29	AIR QUALITY ANALYSIS (↑T)	<u>no</u>	<u>no</u>	<u>YES</u>	Needs review

ITEM	ENVIRONMENTAL ISSUE	RESOURCE WITHIN ½ MILE	RESOURCE AFFECTED By Project	FURTHER REVIEW REQUIRED	COMMENTS
E30	NOISE ANALYSIS (↑T)	<u>no</u>	<u>no</u>	<u>YES</u>	Needs review
	<i>PHASE</i>	<i>Pre-Scope</i>	<i>Scoping</i>	<i>Scoping</i>	<i>Scoping/ Design Approval</i>
	P = Permit necessary C = Agency coordination necessary (↑T) = Additional Time (↑\$) = Additional Funds (↑R) = Additional ROW (xx) = Pre-scoping list	If Yes →	→	→	
E31	ENERGY IMPACT ANALYSIS (EIS ONLY)	<u>no</u>	<u>no</u>	<u>no</u>	
E32	ASBESTOS ASSESSMENT <input checked="" type="checkbox"/> screening necessary <input type="checkbox"/> Paint <input type="checkbox"/> Bridge element <input type="checkbox"/> Building <input type="checkbox"/> Remediation necessary (↑\$)	<u>YES</u>	<u>YES</u>	<u>YES</u>	Regional LAES Unit will do screening and testing
E33	HAZARDOUS WASTE AND CONTAMINATED MATERIALS ASSESSMENT <input checked="" type="checkbox"/> screening necessary <input type="checkbox"/> {54} National Priority Listing (NPL) <input type="checkbox"/> {55} Inactive Hazardous Waste Site <input type="checkbox"/> {56} Spill Site <input type="checkbox"/> PCB contamination, Hudson River <input type="checkbox"/> Remediation necessary (↑\$)	<u>no</u>	<u>no</u>	<u>no</u>	unknown
E34	POTENTIAL WASTE AREAS DURING CONSTRUCTION <input type="checkbox"/> {57} On Potential Waste/Wetland Compensation Area list <input type="checkbox"/> {58} Mine/Quarry within 5 miles (potential waste area)	<u>no</u>	<u>no</u>	<u>no</u>	No room for on site
E 36	ADDITIONAL ENVIRONMENTAL CONCERNS				

ITEM	LANDSCAPE ARCHITECTURAL ISSUE PHASE P = Permit necessary C = Agency coordination necessary (↑T) = Additional Time (↑\$) = Additional Funds (↑R) = Additional ROW	RESOURCE WITHIN ½ MILE	RESOURCE AFFECTED By Project	FURTHER REVIEW REQUIRED	COMMENTS Scoping/ Design Approval
		Pre-Scope If Yes →	Scoping →	Scoping →	
L1	CONTEXT SENSITIVE SOLUTIONS <input checked="" type="checkbox"/> Community Outreach (↑T) <input type="checkbox"/> Community Workshop (↑T)	<u>YES</u>	<u>YES</u>	<u>YES</u>	
L2	LANDSCAPE DESIGN <input checked="" type="checkbox"/> Pedestrian circulation <input type="checkbox"/> Drifting & blowing snow <input type="checkbox"/> Headlight glare control <input checked="" type="checkbox"/> City / Village aesthetics <input type="checkbox"/> Negative view screening <input type="checkbox"/> Plant material re-establishment / replacement <input type="checkbox"/> Hazardous vegetation evaluation necessary	<u>YES</u>	<u>YES</u>	<u>YES</u>	
L3	DISTRICT LAND USE <input checked="" type="checkbox"/> Historic district <input checked="" type="checkbox"/> Commercial district <input type="checkbox"/> Tourism district <input type="checkbox"/> Manufacturing district <input checked="" type="checkbox"/> Industrial district <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Rural	<u>YES</u>	<u>YES</u>	<u>YES</u>	
L4	{32} HERITAGE AREA : <input checked="" type="checkbox"/> Federal <input checked="" type="checkbox"/> State	<u>YES</u> <u>YES</u>	<u>YES</u> <u>YES</u>	<u>YES</u> <u>YES</u>	<u>Erie Canalway National Heritage Corridor</u> <u>Troy Cohoes Colonie Green I. Waterfrd. Watervliet</u>
L4a	{33} PRIORITY NATURAL STATE HERITAGE SITE:	<u>no</u>	<u>no</u>	<u>no</u>	—
L5	EROSION AND SEDIMENT CONTROL <input checked="" type="checkbox"/> Small scale design <input type="checkbox"/> Large scale or complex design (↑\$)	<u>YES</u>	<u>YES</u>	<u>YES</u>	
L6 C	BICYCLE ACCOMMODATIONS <input type="checkbox"/> {49} Designated Bicycle Facilities –State <input checked="" type="checkbox"/> {50} CDTC Bike/Pedestrian Priority Network <input type="checkbox"/> Bicycle path <input checked="" type="checkbox"/> {51} New Visions (CDTC) <input type="checkbox"/> ANCA review	<u>YES</u>	<u>YES</u>	<u>YES</u>	Saratoga County: Rt 32 Albany County Line to US Rt. 4
L7	PEDESTRIAN ACCOMMODATIONS <input checked="" type="checkbox"/> Pedestrian path <input checked="" type="checkbox"/> Sidewalk warrants <input checked="" type="checkbox"/> Pedestrian detour considerations <input type="checkbox"/> Safe Routes to School funding	<u>YES</u>	<u>YES</u>	<u>YES</u>	New crosswalk configurations
L8	MULTI-MODAL INTERFACE DESIGN <input checked="" type="checkbox"/> Pedestrian <input checked="" type="checkbox"/> Bus (including bus stops) <input type="checkbox"/> Parking Lot <input type="checkbox"/> Airport <input type="checkbox"/> Train <input type="checkbox"/> Taxi	<u>YES</u>	<u>YES</u>	<u>YES</u>	Check for bus stop locations and proposed improvement plans

ITEM	LANDSCAPE ARCHITECTURAL ISSUE	RESOURCE WITHIN ½ MILE	RESOURCE AFFECTED By Project	FURTHER REVIEW REQUIRED	COMMENTS
	<i>PHASE</i>	<i>Pre-Scope</i>	<i>Scoping</i>	<i>Scoping</i>	<i>Scoping/ Design Approval</i>
L9	AMERICANS WITH DISABILITIES ACT <input checked="" type="checkbox"/> Review for general compliance with ADA <input type="checkbox"/> Store entrances <input checked="" type="checkbox"/> Handicap ramps <input type="checkbox"/> Stairs to ramp needed <input type="checkbox"/> ADA compliant parking (parallel & lot) <input type="checkbox"/> Other:	<u>YES</u>	<u>YES</u>	<u>YES</u>	
L10	SCENIC BY-WAY COORDINATION <input checked="" type="checkbox"/> Signage	<u>YES</u>	<u>YES</u>	<u>YES</u>	Coordination needed
L11	VISUAL RESOURCES <input type="checkbox"/> Controversial/ Complex project (↑T) <input type="checkbox"/> {39} Visually Significant Resource (Adirondack Park) <input type="checkbox"/> Catskill Park/ Adirondack Park <input checked="" type="checkbox"/> {44} Rest area / Scenic Overlook <input type="checkbox"/> Visual Resource Assessment report needed <input checked="" type="checkbox"/> Visual Simulations needed (↑T)	<u>YES</u>	<u>YES</u>	<u>YES</u>	Falls view
L12	DETOURS <input checked="" type="checkbox"/> On site (↑R) <input type="checkbox"/> Off site	<u>YES</u>	<u>YES</u>	<u>YES</u>	
L13	ENVIRONMENTAL JUSTICE AREA {59} (fed. funded projects and EIS)	<u>YES</u>	<u>???</u>	<u>YES</u>	360010129002
L14	ADDITIONAL LANDSCAPE CONCERNS				

Shell current as of: 11/5/09 Editor: A. Morgan / J. Farina File: O:\Design\ENVIRON\Shells\Draft IPP Process\REV_LAES_1_PIN XXXXXX_PreScope_Draft IPP_DR_Checklst .docx

NEPA Assessment Checklist

NEPA ASSESSMENT CHECKLIST

This checklist complies with FHWA regulations that implement NEPA, 23 CFR §771(1987), and was approved by the FHWA on July 15, 1996.

I. GENERAL DEFINITION OF CATEGORICAL EXCLUSIONS

Before answering the questions on the NEPA Checklist, the preparer must be familiar with the general definition of Categorical Exclusions. Section 7.4 describes the general criteria for Categorical Exclusions according to 23 CFR 771. Sections 7.4.1.1 through 7.4 also define the Automatic Categorical Exclusions, Programmatic Categorical Exclusions and Categorical Exclusions with Documentation to which this NEPA Assessment Checklist applies.

NEPA ASSESSMENT CHECKLIST

Answer the following questions by checking YES or NO.

- | I. THRESHOLD QUESTION | YES | NO |
|---|------------|----------------------|
| 1. Does the project involve unusual circumstances as described in 23 CFR §771.117(b)? | _____ | _____ <u>X</u> _____ |
| ▪ If YES, the project does not qualify as a Categorical Exclusion and an EA or EIS is required. You may STOP COMPLETING THE CHECKLIST. | | |
| ▪ If NO, go on. | | |
| II. AUTOMATIC CATEGORICAL EXCLUSION | YES | NO |
| 2. Is the project an action listed as an Automatic Categorical Exclusion in 23 CFR §771.117(c) (C List) and/or is the project an element-specific project classified by FHWA as a Categorical Exclusion on July 22, 1996? | _____ | _____ <u>X</u> _____ |
| ▪ If YES to question 2, the project qualifies for a C List Categorical Exclusion. You may STOP COMPLETING THE CHECKLIST. | | |
| <p>(Note - Even if YES to question 2, there may be specific environmental issues that still require an action such as an EO 11990 Wetland Finding or a determination of effect on cultural resources. The project is still an Automatic Categorical Exclusion but the necessary action must be taken, such as obtaining FHWA's signature on the wetland finding. Refer to the appropriate section of the Environmental Procedures Manual for guidance.)</p> | | |
| ▪ If NO to question 2, go on. | | |

III. PROGRAMMATIC CATEGORICAL EXCLUSION

YES NO

- | | | |
|---|--------------|--------------|
| 3. Is the project on new location or does it involve a change in the functional classification or added mainline capacity (add through-traffic lanes)? | _____ | <u> X </u> |
| 4. Is this a Type I project under 23 CFR 772, "Procedures for Abatement of Highway Traffic Noise and Construction"? | _____ | <u> X </u> |
| 5. If the project is located within the limits of a designated sole source aquifer area or the associated stream flow source area, is the drainage pattern altered? | _____ | <u> X </u> |
| 6. Does the project involve changes in travel patterns? | _____ | <u> X </u> |
| 7. Does the project involve the acquisition of more than minor amounts of temporary or permanent right-of-way (a minor amount of right-of-way is defined as not more than 10 percent of a parcel for parcels under 4 ha (10 acres) in size, 0.4 ha (1 acre) of a parcel 4 ha to 40.5 ha (10 to 100 acres) in size and 1 percent of a parcel for parcels greater than 40.5 ha (100 acres) in size? | <u> X </u> | _____ |
| 8. Does the project require a Section 4(f) evaluation and determination in accordance with the FHWA guidance? | <u> X </u> | _____ |
| 9. Does the project involve commercial or residential displacement? | _____ | <u> X </u> |
| 10. If Section 106 applies, does FHWA's determination indicate an opinion of adverse effect? | <u> X </u> | _____ |
| 11. Does the project involve any work in wetlands requiring a Nationwide Wetland Permit #23? | <u> X </u> | _____ |
| 12. Does the project involve any work in wetlands requiring an individual Executive Order 11990 Wetland Finding? | <u> X </u> | _____ |

- | | YES | NO |
|--|-------------|--------------------|
| 13. Has it been determined that the project will significantly encroach upon a flood plain based on preliminary hydraulic analysis and consideration of EO 11988 criteria as appropriate? | _____ | _____X_____ |
| 14. Does the project involve construction in, across or adjacent to a river designated as a component proposed for or included in the National System of Wild and Scenic Rivers? | _____ | _____X_____ |
| 15. Does the project involve any change in access control? | _____ | _____X_____ |
| 16. Does the project involve any known hazardous materials sites or previous land uses with potential for hazardous material remains within the right-of-way? | _____X_____ | _____ |
| 17. Does the project occur in an area where there are Federally listed endangered or threatened species or critical habitat? | _____X_____ | _____ |
| 18. Is the project, pursuant to EPM Chapter 1A and Table 2 and Table 3 of 40 CFR Parts 51 and 93, non-exempt or does it exceed any ambient air quality standard? | _____ | _____X_____ |
| 19. Does the project lack consistency with the New York State Coastal Zone Management Plan and policies of the Department of State, Office of Coastal Zone Management? | _____ | _____X_____ |
| 20. Does the project impact or acquire any Prime or Unique Farmland as defined in 7 CFR Part 657 of the Federal Farmland Protection Policy Act <u>and</u> are there outstanding compliance activities necessary? (<u>Note:</u> Interpret compliance activity to mean completion of Form AD 1006.) | _____ | _____X_____ |
| <ul style="list-style-type: none"> ■ If NO for questions, 3-20, go on to answer question 21. ■ If YES to any question 3-20, project will not qualify as a Programmatic Categorical Exclusion. Answer questions 21 and 22 for documentation only and go on to question 23. | | |
| 21. Does the project involve the use of a temporary road, detour or ramp closure? | | _____X(Alt 8)_____ |
| <ul style="list-style-type: none"> ■ If NO to questions 3-20 and NO to question 21, the project qualifies as a Programmatic Categorical Exclusion. You may STOP COMPLETING THE CHECKLIST. Refer to Section 8.6.2 of Chapter 8 of this manual for next steps. | | |

- If YES to question 21, preparer should complete question 22 (i-v). If questions 3-20 are NO and 21 is YES, the project will still qualify as a Programmatic Categorical Exclusion if questions 22 (i-v) are YES.

	YES	NO
22. Since the project involves the use of temporary road, detour or ramp closure, will all of the following conditions be met:	<u>X(Alt 8)</u>	_____
i. Provisions will be made for pedestrian access, where warranted, and access by local traffic and so posted.	<u>X(Alt 8)</u>	_____
ii. Through-traffic dependent business will not be adversely affected.	<u>X(Alt 8)</u>	_____
iii. The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival.	<u>X(Alt 8)</u>	_____
iv. The temporary road, detour or ramp closure does not substantially change the environmental consequences of the action.	<u>X(Alt 8)</u>	_____
v. There is no substantial controversy associated with the temporary road, detour or ramp closure.	<u>X(Alt 8)</u>	_____
■ If questions 3-20 are NO, 21 is YES and 22 (i-v) are YES, the project qualifies for a Programmatic Categorical Exclusion. You may STOP COMPLETING THE CHECKLIST. Refer to Section 8.6.2 of Chapter 8 of this manual for next steps.		
■ If questions 3-20 are NO, 21 is YES and any part of 22 is NO, go on to question 23.		
23. Is the project section listed in 23 CFR §771.117(d) (D List) or is the project an action similar to those listed in 23 CFR §771.117(d)?	<u>X(Alt 8)</u>	_____

For those questions which precluded a Programmatic Categorical Exclusion, documentation should be provided for any YES response to questions 3-20 or for a NO response to any part of questions 22 (i-v). This documentation, as well as the checklist, should be included in the Design Approval Document, i.e., Final Design Report, to be submitted to the Regional Local Projects Liaison for submission to the FHWA Division for classification of the project as a D List Categorical Exclusion. Refer to Section 8.6.2 of Chapter 8 of this manual for next steps.

Documentation:

7. Both preferred alternatives will result in either Fee acquisitions or Temporary Easements of more than 10% of properties. The properties impacted are currently vacant and all associated buildings have been demolished. One property is vacant and not in use, the other two properties with impacts are vacant, but utilized as truck trailer parking for Shelter Enterprises. Shelter Enterprises (SEI) is a stakeholder in this project and has been involved in alternative development.
- 8, 10. This project anticipates an “adverse effect” on the National Register Eligible Route 32 Bridge over the Mohawk. FHWA will be notified that a Section 4f evaluation is anticipated in the Finding Document submission to SHPO and FHWA. A Draft Programmatic Section 4f evaluation for Historic Bridges will be written and provided to the Area Engineer at FHWA. After coordination with FHWA a Final Section 4f Programmatic Evaluation will be sent and an approval letter from FHWA would be issued to NYSDOT.
11. A small fringe wetland 46 m² (495 sf) occurs along the bank of the Mohawk River adjacent to the bridge footings at the southeast extent of the bridge. The entire wetland will be impacted with either of the proposed alternatives. All appropriate measures were taken to address avoiding and minimizing impacts to the Federal wetland; however, impacting this entire small wetland was unavoidable. Due to the small amount of proposed wetland impact (less than a tenth of an acre), it is assumed that compensatory wetland mitigation will not be required for the proposed impacts to the Federal wetland.
12. A programmatic Executive Order 11990 applies to this project, based on its classification as a Categorical Exclusion under 23 CFR 771.117 and its qualification for U.S. Army Corps of Engineers Section 404/Section 10 Nationwide Permit(s). The project satisfies the requirements of EO 11990. It is noted that projects using a Nationwide Permit #23 are excluded from applicability for a Programmatic Wetland Finding. An Individual Wetland Finding will be required, unless FHWA determines that a Programmatic Finding will be allowed.
16. Based upon the observations made during the site visit/project walkover and the review of historical and regulatory information, a list of properties were identified as potential areas of environmental impact to the project corridor. When the scope of the project was narrowed down to just a bridge replacement in 2009, that list was shortened to only the following two properties:
 - 39 Saratoga Street, Cohoes – Former Star Textile/Universal Needlecraft manufacturing facility. The building has been demolished, but the foundation and some ruins remain on the property.
 - 15-19 Saratoga Street, Cohoes – Former Barclay Home Products manufacturing facility.

It is recommended that a Hazardous Waste Assessment be completed relative to the areas listed above in order to evaluate subsurface conditions prior to the initiation of

construction activities. The Assessment should consist of the installation of a series of soil borings in the potential areas of concern. Soil samples should be analyzed for volatile organic compounds, semi-volatile organic compounds, PCB's, and the eight RCRA metals (arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver). The potential areas of concern will be determined once a preferred alternative is selected. If necessary, a Remediation Plan will be developed after a complete review of the Hazardous Waste/Contaminated Materials Site Assessment.

17. An information request was sent to the NYS NHP requesting updated information on January 20, 2010. Their February 3, 2010 response letter indicated documented occurrences of two state-listed species in the project vicinity:

- Alewife floater (*Anodonta implicata*) – unlisted
- Giant pine-drops (*Pterospora andromedea*) – endangered

According to the NHP, the Alewife floater is a clam species that lives in the strong currents in larger rivers and among cobbles in smaller tributaries (Strayer and Jirka 1997). Associated ecological communities in New York include deepwater rivers. According to the NYSDEC response letter, this species could be found in the Mohawk River at Waterford. Species related to Alewife Floater clams can also be found at the project site, particularly the on the piers of the bridge. The Alewife floater species is now unlisted and impacts to the species are highly unlikely and would be very difficult to evaluate being that the Alewife floater is mixed in with other mollusk species.

The Giant pine-drop, a plant, will not be impacted by the project because optimal habitat for this species does not occur within the project area. The forested areas of the project area are composed of deciduous trees with minimal to no conifers present. The leaf litter on the forest floor is dominated by leaves of deciduous trees and a well developed needle duff is not present.

Due to current USFWS procedures, the USFWS website was referenced on January 20, 2010 for current lists of federally-listed species known to occur in Albany and Saratoga Counties. Those lists indicated that the following species are known to occur in Albany and Saratoga Counties:

Common Name	Scientific Name	Federally Listed Endangered	State Listed Endangered	County Listed Endangered	State Listed Threatened	Project area supports habitat	More review needed
Alewife floater	<i>Anodonta implicata</i>	✓				yes	No Unlisted
Giant pine-drops	<i>Pterospora andromedea</i>	✓				no	no
Bald eagle	(<i>Haliaeetus leucocephalus</i>)			✓		yes	No Unlisted
Bog turtle	(<i>Clemmys Glyptemys] mühlenbergii</i>)				✓	no	no
Indiana bat	(<i>Myotis sodalis</i>)	✓		✓		no	no
Karner blue butterfly	(<i>Lycaeides melissa samuelis</i>)			✓		no	no
Shortnose sturgeon	(<i>Acipenser brevirostrum</i>)			✓		no	no

On County lists, the USFWS indicates that:

The bald eagle was delisted on August 8, 2007. While there are no ESA requirements for bald eagles after this date, the eagles continue to receive protection under the Bald and Golden Eagle Protection Act (BGEPA). Please follow the Service's May 2007 Bald Eagle Management Guidelines to determine whether you can avoid impacts under the BGEPA for your projects. If you have any questions please contact the endangered species branch in our office.

While Indiana bats were known to winter in Albany County, we now believe that they are likely extirpated or in such small numbers that it is unlikely that they would be present and impacted by any specific proposed projects in Albany, Rensselaer, Saratoga, Schenectady and Schoharie Counties. This determination may change as we receive new information.

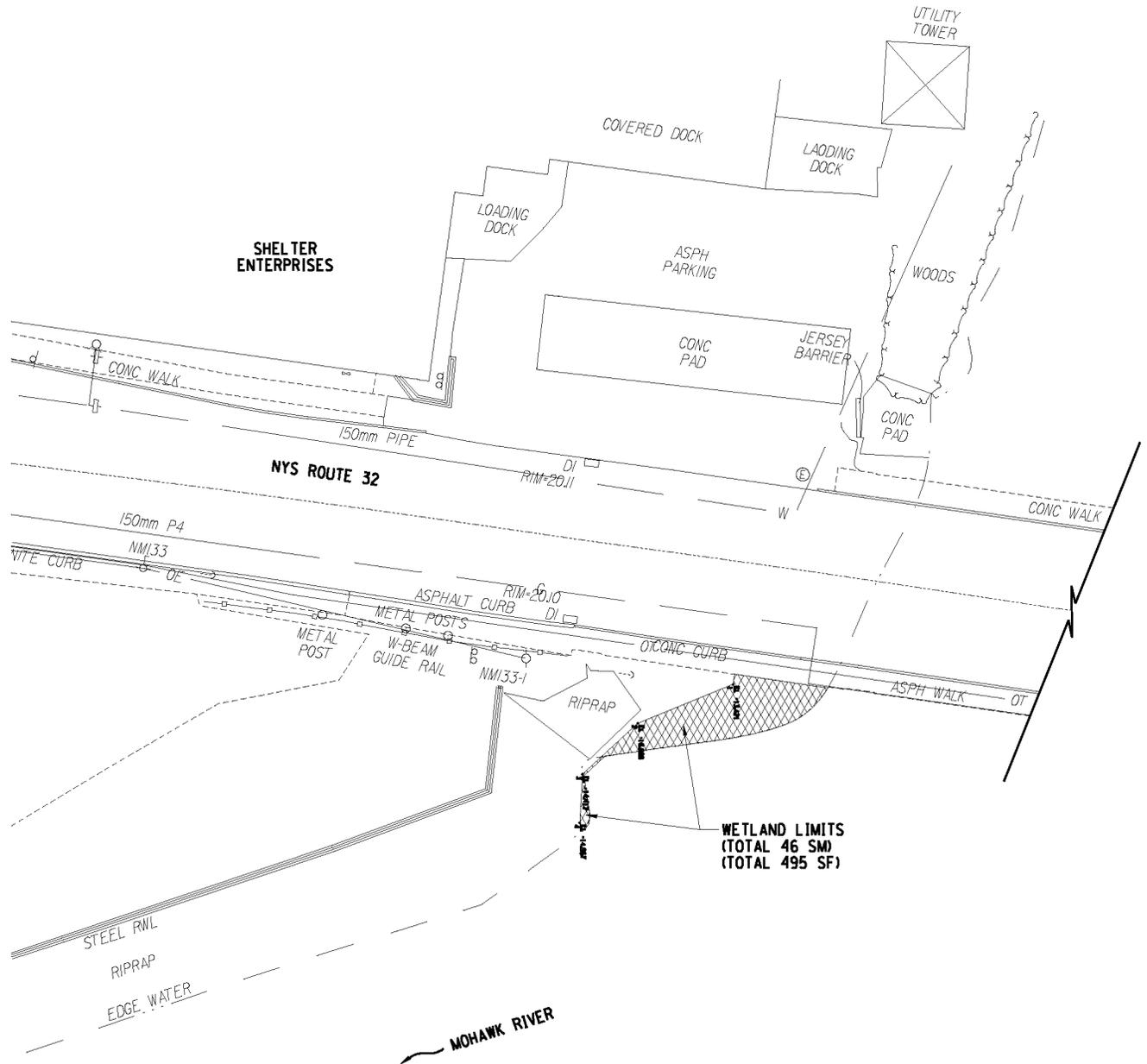
Shortnose sturgeon primarily occurs in Hudson River. Principal responsibility for this species is vested with the National Oceanic and Atmospheric Administration/Fisheries. Shortnose sturgeon will not be impacted by the project because its habitat does not occur within the project area. This species is not likely to occur upstream of the Troy Dam.

Bald eagle will not be impacted by the project because of the limited amount of tree removal required and because suitable nesting habitat is not present within or in close proximity to the project area. The trees that are present could be used as roost trees for foraging. However the minor level of tree removal, in a heavily developed area, is unlikely to result in an impact to bald eagles. The proposed development abides by the USFWS's May 2007 Bald Eagle Management Guidelines recommendations for avoiding disturbance.

Bog turtle will not be impacted by the project because suitable habitat for the species does not occur within the project area. According to the National Heritage Program in New York, bog turtles occur in open-canopy wet meadows, sedge meadows, and calcareous fens. Therefore bog turtles will not be present.

Karner blue butterfly will not be impacted by the project because its habitat does not occur within the project area. According to the NHP, Karner blue butterflies can be found in extensive pine barrens, oak savannas or openings in oak woodlands, and unnatural openings such as airports and right-of-ways that contain lupine (*Lupinus perennis*), the sole larval food source. Some recent populations have occurred in sandy old fields.

Wetland Location Map



FILE NAME = U:\12703\CADD\MSTV\SURVEY\146020_wet.mep.dgn
 DATE/TIME = 1/24/2011
 USER = 3170

Drawing Copyright © 2010



111 Winners Circle, PO Box 5269 • Albany, NY 12205-0269
 Main: (518) 453-4500 • www.chacompanies.com

WETLAND LOCATION MAP

ROUTE 32 OVER THE MOHAWK RIVER

FIGURE

2.1

DATE: 6/10

**NYSDEC Threatened and Endangered
Species Response Letter Dated 2/3/10**

New York State Department of Environmental Conservation
Division of Fish, Wildlife & Marine Resources
New York Natural Heritage Program
625 Broadway, Albany, New York 12233-4757
Phone: (518) 402-8935 • **FAX:** (518) 402-8925
www.dec.state.ny.us



February 3, 2010

John Greaves
Clough Harbour Associates
111 Winners Circle
Albany, NY 12205

Dear Mr. Greaves:

In response to your recent request, we have reviewed the New York Natural Heritage Program database with respect to an Environmental Assessment for the proposed Bridge Replacement and Roadway Improvements, Project 12703, Route 32 over the Mohawk River, site as indicated on the map you provided, located in the City of Cohoes and Village of Waterford, Counties of Albany and Saratoga.

Enclosed is a report of rare or state-listed animals and plants, significant natural communities, and other significant habitats, which our databases indicate occur, or may occur, on your site or in the immediate vicinity of your site. The information contained in this report is considered sensitive and should not be released to the public without permission from the New York Natural Heritage Program.

PLEASE NOTE: This Project is NEAR the NY Peebles Island State Park.

The presence of the plants and animals identified in the enclosed report may result in this project requiring additional review or permit conditions. For further guidance, and for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the appropriate NYS DEC Regional Office, Division of Environmental Permits, at the enclosed address.

For most sites, comprehensive field surveys have not been conducted; the enclosed report only includes records from our databases. We cannot provide a definitive statement on the presence or absence of all rare or state-listed species or significant natural communities. This information should not be substituted for on-site surveys that may be required for environment impact assessment.

Our databases are continually growing as records are added and updated. If this proposed project is still under development one year from now, we recommend that you contact us again so that we may update this response with the most current information.

Sincerely,


Tara Salerno, Information Services
New York Natural Heritage Program



Enc.

cc: Reg. 4 and 5, Wildlife Mgr.
Reg. 4 and 5,, Fisheries Mgr.
Lisa Holst, Albany
Tom Lyons, NYS OPRHP, Empire State Pl, Bldg #1, Albany, NY 12238, 17th floor

RECEIVED

FEB 04 2010

Federally Listed Endangered and Threatened Species Lists

Natural Heritage Report on Rare Species and Ecological Communities



NY Natural Heritage Program, NYS DEC, 625 Broadway, 5th Floor,
Albany, NY 12233-4757
(518) 402-8935

HISTORICAL RECORDS

The following plants and animals were documented in the vicinity of the project site at one time, but have not been documented there since 1979 or earlier.

There is no recent information on these plants and animals in the vicinity of the project site and their current status there is unknown. In most cases the precise location of the plant or animal in this vicinity at the time it was last documented is also unknown and therefore location maps are generally not provided.

If appropriate habitat for these plants or animals is present in the vicinity of the project site, it is possible that they may still occur there.

Natural Heritage Report on Rare Species and Ecological Communities



FRESHWATER MUSSELS

Anodonta implicata

Alewife Floater	NY Legal Status: Unlisted	NYS Rank: S1S2 - Critically imperiled	Office Use 11733
	Federal Listing:	Global Rank: G5 - Secure	
	Last Report: 1978-06-30	EO Rank: Historical, no recent information	
	County: Albany, Saratoga		
	Town: Cohoes - City, Colonie, Halfmoon, Waterford		
	Location: Mohawk River		
	Directions: Mussels were found in the Mohawk River at Waterford.		
	General Quality and Habitat: The mussels were found in a river.		

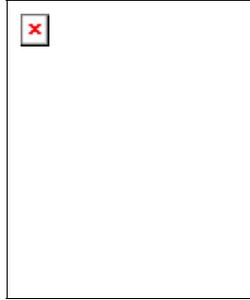
VASCULAR PLANTS

Pterospora andromedea

Giant Pine-drops	NY Legal Status: Endangered	NYS Rank: S1 - Critically imperiled	Office Use 7560
	Federal Listing:	Global Rank: G5 - Secure	
	Last Report: 1835-07	EO Rank: Historical, no recent information	
	County: Albany		
	Town: Cohoes - City, Colonie, Green Island, Watervliet - City		
	Location: Albany		
	Directions: The plant was collected from woods west of Troy in Albany County.		
	General Quality and Habitat: Woods.		

2 Records Processed

More detailed information about many of the rare and listed animals and plants in New York, including biology, identification, habitat, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.acris.nynhp.org, from NatureServe Explorer at <http://www.natureserve.org/explorer>, from NYSDEC at <http://www.dec.ny.gov/animals/7494.html> (for animals), and from USDA's Plants Database at <http://plants.usda.gov/index.html> (for plants).



Albany County

Federally Listed Endangered and Threatened Species and Candidate Species

This list represents the best available information regarding known or likely County occurrences of Federally-listed and candidate species and is subject to change as new information becomes available.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status</u>
Bald eagle ¹	<i>Haliaeetus leucocephalus</i>	D
Bog turtle (<i>historic</i>)	<i>Clemmys [=Glyptemys] muhlenbergii</i>	T
Indiana bat (W/S) ²	<i>Myotis sodalis</i>	E
Karner blue butterfly	<i>Lycaeides melissa samuelis</i>	E
Shortnose sturgeon ³	<i>Acipenser brevirostrum</i>	E

Status Codes: E=Endangered T=Threatened P=Proposed C=Candidate D=Delisted

W=Winter S=Summer

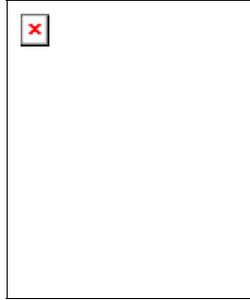
¹ The bald eagle was delisted on August 8, 2007. While there are no ESA requirements for bald eagles after this date, the eagles continue to receive protection under the [Bald and Golden Eagle Protection Act \(BGEPA\)](#). Please follow the [Service's May 2007 Bald Eagle Management Guidelines](#) to determine whether you can avoid impacts under the BGEPA for your projects. If you have any questions, please contact the endangered species branch in our office.

²"While Indiana bats were known to winter in Albany County, we now believe they are likely extirpated or in such small numbers that it is unlikely that they would be present and impacted by any specific proposed projects in Albany, Rensselaer, Saratoga, Schenectady, and Schoharie Counties. This determination may change as we receive new information."

³Primarily occurs in Hudson River. Principal responsibility for this species is vested with the National Oceanic and Atmospheric Administration/Fisheries.

Information current as of: 1/28/2011

Print Species List



Saratoga County

Federally Listed Endangered and Threatened Species and Candidate Species

This list represents the best available information regarding known or likely County occurrences of Federally-listed and candidate species and is subject to change as new information becomes available.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status</u>
Bald eagle ¹	<i>Haliaeetus leucocephalus</i>	D
Indiana bat (S) ²	<i>Myotis sodalis</i>	E
Karner blue butterfly	<i>Lycaeides melissa samuelis</i>	E

Status Codes: E=Endangered T=Threatened P=Proposed C=Candidate D=Delisted

W=Winter S=Summer

¹ The bald eagle was delisted on August 8, 2007. While there are no ESA requirements for bald eagles after this date, the eagles continue to receive protection under the Bald and Golden Eagle Protection Act (BGEPA). Please follow the Service's May 2007 Bald Eagle Management Guidelines to determine whether you can avoid impacts under the BGEPA for your projects. If you have any questions, please contact the endangered species branch in our office.

²"While Indiana bats were known to winter in Albany County, we now believe they are likely extirpated or in such small numbers that it is unlikely that they would be present and impacted by any specific proposed projects in Albany, Rensselaer, Saratoga, Schenectady, and Schoharie Counties. This determination may change as we receive new information."

Information current as of: 1/28/2011

[Print Species List](#)

Asbestos Field Form

Asbestos Field Form

Project Name: Route 32 OVER THE MOHAWK RIVER, CITY OF COHOES, VILLAGE OF WATERFORD

BIN # 1-02250-0

Project # 12703.6000.1102

Inspection Date: 4/6/2004

Homogenous Sample #	Location	Color	Material	Quantity	TSI,SM,MM	friable	damage	Comments
01	concrete spandrel arch bridge	Black	Asphalt sealant	300 lf	MM	no	no	The suspect material is an asphalt sealant located on each vertical column of the bridge. This material was observed to be compressed between the vertical column and the individual arches.

Notes: 1. MM = miscellaneous material

Hazardous Waste Screening Form

HAZARDOUS WASTE SCREENING FORM

FROM: Clough, Harbour & Associates LLP Ext. _____ DATE: April 6, 2004
 PIN: 1460.42 COUNTY: Albany/Saratoga
 PROJECT: Route 32 over the Mohawk River CITY/TOWN/VILLAGE: Cohoes/Watford
 DESCRIPTION Highway Design of Route 32 over the Mohawk River between Cohoes and Waterford

NOTE: The Designer completes I and II and coordinates with the Local Municipality on III*.

I. SITE INSPECTION FROM SITE WALK OVER AND/OR AERIAL PHOTOS

- Presence of noxious odors from soil and/or water
- Discoloration of soil, water, and/or foundation
- Site contains dead vegetation and/or little or no vegetation
- Observed leaking pipes, transformers, tanks, barrels
- No potential hazardous waste observed

II. IDENTIFY HAZARDOUS WASTE GENERATORS ON THE PROJECT

CHECK	TYPE	NAME	ROW ACQUISITION (YES OR NO)
X	Auto Body/Repair Shop	See attached listing	Possible
	Chemical Plant/Refinery		
X	Chemical Spill Area	See attached listing	Possible
X	Dry Cleaning Plant	See attached listing	Possible
	Electronics Manufacture		
	Electro-Plating		
	Junk/Scrap Recycling		
X	Metal/Machine Fabricating	See attached listing	Possible
	Municipal Landfill		
	Paint Shop		
	Printing Shop		
	Sludge Management Area		
X	Gasoline Service Station	See attached listing	Possible
	Other	Asbestos	Possible
		Active Underground Storage Tanks and Private Fuel Oil Tanks	Possible
		Groundwater Monitoring Wells	Possible
	Asbestos Consultant Needed (Check with local officials)		

(Demolition of building or structures/bridges, where record plans or visual inspection indicate asbestos present.)

MUNICIPAL REVIEW (Coordinate with local sponsor or Municipality)*

- Project was reviewed by the municipality for possible listing as an Inactive Hazardous Waste Disposal Site and for potential conflict with unknown Hazardous Waste Generators.
- A Hazardous Waste Assessment is required. (Determined by Municipality)
- No further investigation is required (Determined by Municipality)

cc: Designer's File

PIN: 1460.42
PROJECT: Route 32 over the Mohawk River
DESCRIPTION: Highway Design of Route 32 over the Mohawk River between Cohoes and Waterford
CITY: City of Cohoes, Village of Waterford
COUNTY: Albany and Saratoga Counties

TYPE	NAME/LOCATION	COMMENTS
Auto Body/Repair Shop	Berdar Auto Service 114 Saratoga Street, Cohoes	Current location, CD-1994, 1990, 1985, 1980, 1975, 1970, and 1966, 1 spill - closed, Sunoco Gas Station in the past
	City Auto Sales and Auto Repair 56 Saratoga Street, Cohoes	CD-1970
Chemical Spill Area	Berdar Auto Service 114 Saratoga Street, Cohoes	Current location, CD-1994, 1990, 1985, 1980, 1975, 1970, and 1966, 1 spill – closed, Sunoco Gas Station in the past, 1 LUST - closed
	Dunkin Donuts 92 Saratoga Street, Cohoes	Current location, 1 spill - closed
	Sunoco Gas Station 245 Saratoga Street, Cohoes	Current location, CD-1994, 1990, 1985, 1980, 1975, 4 spills – closed, 1 LUST – closed
Dry Cleaning Shop/ Plant	Island Wash Laundromat 30 Saratoga Avenue, Waterford	Current location
Metal/Machine Manufacturing	Universal Needlecraft Manufacturing Quilts 39 Saratoga Street, Cohoes	CD-1980
	Barclay Home Products 15 & 19 Saratoga Street, Cohoes	CD-1985, 1980, 1975, 1970, and 1966
	Star Textile & Research Inc. 39 Saratoga Street, Cohoes	CD-1975, 1970, and 1966
Gasoline Service Station	Stewart’s Gas Station 30 Saratoga Avenue, Waterford	Current location, USTs located north of gasoline pumps
	Sunoco Gas Station 245 Saratoga Street, Cohoes	Current location, groundwater monitoring wells and USTs located north of gasoline pumps
	M & S Mobil Service Center 92 Saratoga Street, Cohoes	CD-1985 and 1980
	Bill’s Gulf Gas Station 48 Saratoga Street, Cohoes	CD-1966
	Former Gas Station	SFIM-1925, Located on southeastern corner of Saratoga St. and Ontario St.
	Former Gas Station	SFIM-1925, Located on southeastern corner of Saratoga St. and Oneida St.

TYPE	NAME/LOCATION	COMMENTS
Other	Asbestos	Asphalt sealer located on Route 32 Bridge (BIN 1-02250-0) listed on attached Asbestos Field Form. Any structural takings (buildings) may contain suspect ACM materials and would require ACM surveys prior to demolition. No known ACM associated with water or sewer lines.
	Active UST Sites	Berdar Sunoco Service-114 Saratoga Street Stewart's Gas Station-30 Saratoga Avenue Sunoco Gas Station-245 Saratoga Street
	Private fuel oil tanks (assumed to be basement ASTs, as evidenced by fill/vent pipes in foundation walls)	Leroy Waltz-9 Saratoga Ave, Waterford Clifford Goyette-3 Saratoga Ave, Waterford James Formosa-23 Saratoga Ave, Waterford John Basle-43 Saratoga Ave, Waterford
	Groundwater Monitoring Wells	Sunoco Gas Station-245 Ontario St, Cohoes Groundwater monitoring wells located north of pumps.

Notes:

ACM = asbestos-containing material

CD = city directory

LUST = leaking underground storage tank

UST = underground storage tank

SFIM = sanborn fire insurance mapping

**Partial Environmental FirstSearch™
Report**

FirstSearch Technology Corporation

Environmental FirstSearch™ Report

TARGET PROPERTY:

ROUTE 32 ROAD

COHOES NY 12047

Job Number: 127036000

PREPARED FOR:

Clough, Harbour & Associates, LLP

III Winners Circle

Albany, NY 12205

04-12-04



Tel: (914) 763-0515

Fax: (914) 763-3454

Environmental FirstSearch Search Summary Report

Target Site: ROUTE 32 ROAD
COHOES NY 12047

FirstSearch Summary

Database	Sel	Updated	Radius	Site	1/8	1/4	1/2	1/2>	ZIP	TOTALS
NPL	Y	02-09-04	0.50	0	0	0	0	-	0	0
CERCLIS	Y	02-09-04	0.25	0	0	0	-	-	0	0
NFRAP	Y	02-09-04	0.25	0	0	0	-	-	0	0
RCRA TSD	Y	02-09-04	0.25	0	0	0	-	-	0	0
RCRA COR	Y	02-09-04	0.25	0	0	0	-	-	0	0
RCRA GEN	Y	02-09-04	0.25	0	3	2	-	-	0	5
ERNS	Y	12-31-03	0.25	0	0	0	-	-	0	0
State Sites	Y	01-01-04	0.50	0	0	0	0	-	0	0
Spills-1990	Y	02-09-04	0.50	4	23	15	33	-	9	84
SWL	Y	03-03-02	0.25	0	0	0	-	-	2	2
REG UST/AST	Y	01-01-02	0.25	2	4	5	-	-	0	11
Leaking UST	Y	02-09-04	0.50	1	3	5	5	-	1	15
- TOTALS -				7	33	27	38	0	12	117

Notice of Disclaimer

Due to the limitations, constraints, inaccuracies and incompleteness of government information and computer mapping data currently available to FirstSearch Technology Corp., certain conventions have been utilized in preparing the locations of all federal, state and local agency sites residing in FirstSearch Technology Corp.'s databases. All EPA NPL and state landfill sites are depicted by a rectangle approximating their location and size. The boundaries of the rectangles represent the eastern and western most longitudes; the northern and southern most latitudes. As such, the mapped areas may exceed the actual areas and do not represent the actual boundaries of these properties. All other sites are depicted by a point representing their approximate address location and make no attempt to represent the actual areas of the associated property. Actual boundaries and locations of individual properties can be found in the files residing at the agency responsible for such information.

Waiver of Liability

Although FirstSearch Technology Corp. uses its best efforts to research the actual location of each site, FirstSearch Technology Corp. does not and can not warrant the accuracy of these sites with regard to exact location and size. All authorized users of FirstSearch Technology Corp.'s services proceeding are signifying an understanding of FirstSearch Technology Corp.'s searching and mapping conventions, and agree to waive any and all liability claims associated with search and map results showing incomplete and or inaccurate site locations.

Environmental FirstSearch Federal Databases and Sources

ASTM Databases:

CERCLIS: Comprehensive Environmental Response Compensation and Liability Information System. The EPA's database of current and potential Superfund sites currently or previously under investigation. Source: Environmental Protection Agency.

Updated quarterly.

CERCLIS-NFRAP (Archive): Comprehensive Environmental Response Compensation and Liability Information System Archived Sites. The Archive designation means that, to the best of EPA's knowledge, assessment at a site has been completed and that EPA has determined no further steps will be taken to list this site on the National Priorities List (NPL). This decision does not necessarily mean that there is no hazard associated with a given site; it only means that, based upon available information, the location is not judged to be a potential NPL site.

Updated quarterly.

ERNS: Emergency Response Notification System. The EPA's database of emergency response actions. Source: Environmental Protection Agency. Data since January, 2001, has been received from the National Response Center as the EPA no longer maintains this data.

Updated quarterly.

FINDS: The Facility Index System. The EPA's Index of identification numbers associated with a property or facility which the EPA has investigated or has been made aware of in conjunction with various regulatory programs. Each record indicates the EPA office that may have files on the site or facility. Source: Environmental Protection Agency.

Updated semi-annually.

NPL: National Priority List. The EPA's list of confirmed or proposed Superfund sites. Source: Environmental Protection Agency.

Updated quarterly.

RCRIS: Resource Conservation and Recovery Information System. The EPA's database of registered hazardous waste generators and treatment, storage and disposal facilities. Included are RAATS (RCRA Administrative Action Tracking System) and CMEL (Compliance Monitoring & Enforcement List). Source: Environmental Protection Agency.

RCRA TSD: Resource Conservation and Recovery Information System Treatment, Storage, and Disposal Facilities. The EPA's database of RCRIS sites which treat, store, dispose, or incinerate hazardous waste. This information is also reported in the standard RCRIS detailed data.

ASTM Databases (continued):

RCRA COR: Resource Conservation and Recovery Information System Corrective Action Sites. The EPA's database of RCRIS sites with reported corrective action. This information is also reported in the standard RCRIS detailed data.

RCRA GEN: Resource Conservation and Recovery Information System Large and Small Quantity Generators. The EPA's database of RCRIS sites that create more than 100kg of hazardous waste per month or meet other RCRA requirements. Included are RAATS (RCRA Administrative Action Tracking System) and CMEL (Compliance Monitoring & Enforcement List).

RCRA NLR: Resource Conservation and Recovery Information System sites No Longer Regulated. The EPA's database of RCRIS sites that create less than 100kg of hazardous waste per month or do not meet other RCRA requirements.

All RCRA databases are Updated quarterly

Environmental FirstSearch Federal Databases and Sources

Non-ASTM Databases:

HMIRS: Hazardous Materials Incident Response System. This database contains information from the US Department of Transportation regarding materials, packaging, and a description of events for tracked incidents.

Updated quarterly.

NCDB: National Compliance Database. The National Compliance Data Base System (NCDB) tracks regional compliance and enforcement activity and manages the Pesticides and Toxic Substances Compliance and Enforcement program at a national level. The system tracks all compliance monitoring and enforcement activities from the time an inspector conducts and inspection until the time the inspector closes or the case settles the enforcement action. NCDB is the national repository of the 10 regional and Headquarters FIFRA/TSCA Tracking System (FTTS). Data collected in the regional FTTS is transferred to NCDB to support the need for monitoring national performance of regional programs.

Updated quarterly

NPDES: National Pollution Discharge Elimination System. The EPA's database of all permitted facilities receiving and discharging effluents. Source: Environmental Protection Agency.

Updated semi-annually.

NRDB: National Radon Database. The NRDB was created by the EPA to distribute information regarding the EPA/State Residential Radon Surveys and the National Residential Radon Survey. The data is presented by zipcode in Environmental FirstSearch Reports. Source: National Technical Information Service (NTIS)

Updated Periodically

Nuclear: The Nuclear Regulatory Commission's (NRC) list of permitted nuclear facilities.

Updated Periodically

PADS: PCB Activity Database System

The EPA's database PCB handlers (generators, transporters, storers and/or disposers) that are required to notify the EPA, the rules being similar to RCRA. This database indicates the type of handler and registration number. Also included is the PCB Transformer Registration Database.

Updated semi-annually.

Receptors: 1995 TIGER census listing of schools and hospitals that may house individuals deemed sensitive to environmental discharges due to their fragile immune systems.

Updated Periodically

Non-ASTM Databases (continued):

RELEASES: *Air and Surface Water Releases.* A subset of the EPA's ERNS database which have impacted only air or surface water.

Updated semi-annually.

Soils: This database includes the State Soil Geographic (STATSGO) data for the conterminous United States. It contains information regarding soil characteristics such as water capacity, percent clay, organic material, permeability, thickness of layers, hydrological characteristics, quality of drainage, surface, slope, liquid limit, and the annual frequency of flooding. Source: United States Geographical Survey (USGS).

Updated quarterly

TRIS: *Toxic Release Inventory System.* The EPA's database of all facilities that have had or may be prone to toxic material releases. Source: Environmental Protection Agency.

Updated semi-annually.

Environmental FirstSearch New York Databases and Sources

- 1. State Sites:** The New York State Department of Environmental Conservation's Registry of Inactive Hazardous Waste Disposal Sites. The database contains information on all Class 1, Class 2, Class 2a, Class 3, Class 4, and Class 5 locations maintained by the Division of Hazardous Waste Remediation.

Updated quarterly.

The Hazardous Substance Waste Disposal Site Study list maintained by the New York State Department of Environmental Conservation is also included within the State Sites database.

Updated as available.

- 2. Spills:** The New York State Department of Environmental Conservation's database of emergency response actions and spill releases maintained by the Division of Spills Management.

Updated quarterly.

- 3. Landfills:** The New York State Department of Environmental Conservation's Active Facilities Registry maintained by the Division of Solid and Hazardous Materials.

Updated annually.

- 4. UST:** The New York State Department of Environmental Conservation's database of Petroleum Bulk Storage (PBS) facilities, Major Oil Storage Facilities (MOSF), and Chemical Bulk Storage (CBS) facilities maintained by the Division of Spills Management and delegated Counties (Nassau, Suffolk, Rockland, and Cortland Counties).

Updated quarterly.

- 5. PWS:** The State of New York Department of Health database of Public Water Supply (PWS) wells maintained by the Bureau of Public Water Supply.

Updated annually.

- 6. LUST:** The New York State Department of Environmental Conservation's database of Leaking Underground Storage Tanks (LUSTs) maintained by the Division of Spills Management. The database is derived from the Spills database.

Updated quarterly.

Environmental FirstSearch
Street Name Report for Streets within .25 Mile(s) of Target Property

TARGET SITE: ROUTE 32 ROAD
 COHOES NY 12047

JOB: 127036000
 ROUTE 32 HAZMAT

Street Name	Dist/Dir	Street Name	Dist/Dir
1st Ave	0.05 NW	N Mohawk St	0.24 NW
2nd Ave	0.13 NW	New Cortland St	0.00 --
3rd Ave	0.17 NW	New Courtland St	0.04 NW
Canal St	0.04 NE	New St	0.07 SE
Canvass St	0.07 NW	Newcomb St	0.10 NW
Cayuga St	0.16 NW	NORTH Mohawk St	0.24 NW
Cedar St	0.20 SW	Ogden Mills Plz	0.19 NW
Champlain St	0.04 SE	Olmstead St	0.21 NW
Charles St	0.07 NW	Oneida St	0.00 --
Clark Ave	0.25 SE	Ontario St	0.00 --
Clifton St	0.00 --	Pershing Ave	0.19 SE
Columbia St	0.21 SW	Pine St	0.00 --
Congress St	0.25 NW	Pulaski Ave	0.24 SE
Fulton St	0.01 SE	Remsen St	0.15 SW
Grace St	0.06 NW	River St	0.06 NW
Grove St	0.11 NW	Saratoga Ave	0.00 --
Hart St	0.24 SW	Saratoga St	0.00 --
Hill St	0.17 NE	Seneca St	0.12 NW
Howard St	0.13 SW	Short St	0.08 SE
I-787	0.01 SE	South St	0.15 SW
Kings Canal Hwy	0.21 NE	St Johns St	0.13 NW
Linden St	0.09 SE	Van Rensselaer St	0.05 NW
Main St	0.19 SW	Vanderwerken Ave	0.21 NW
Meadow St	0.17 SE	White St	0.10 SW
Mohawk St	0.10 NW	Whitehall Rd	0.04 SE
Murray Ave	0.25 SW	Whitehall St	0.07 SE
Museum Ln	0.01 SE		

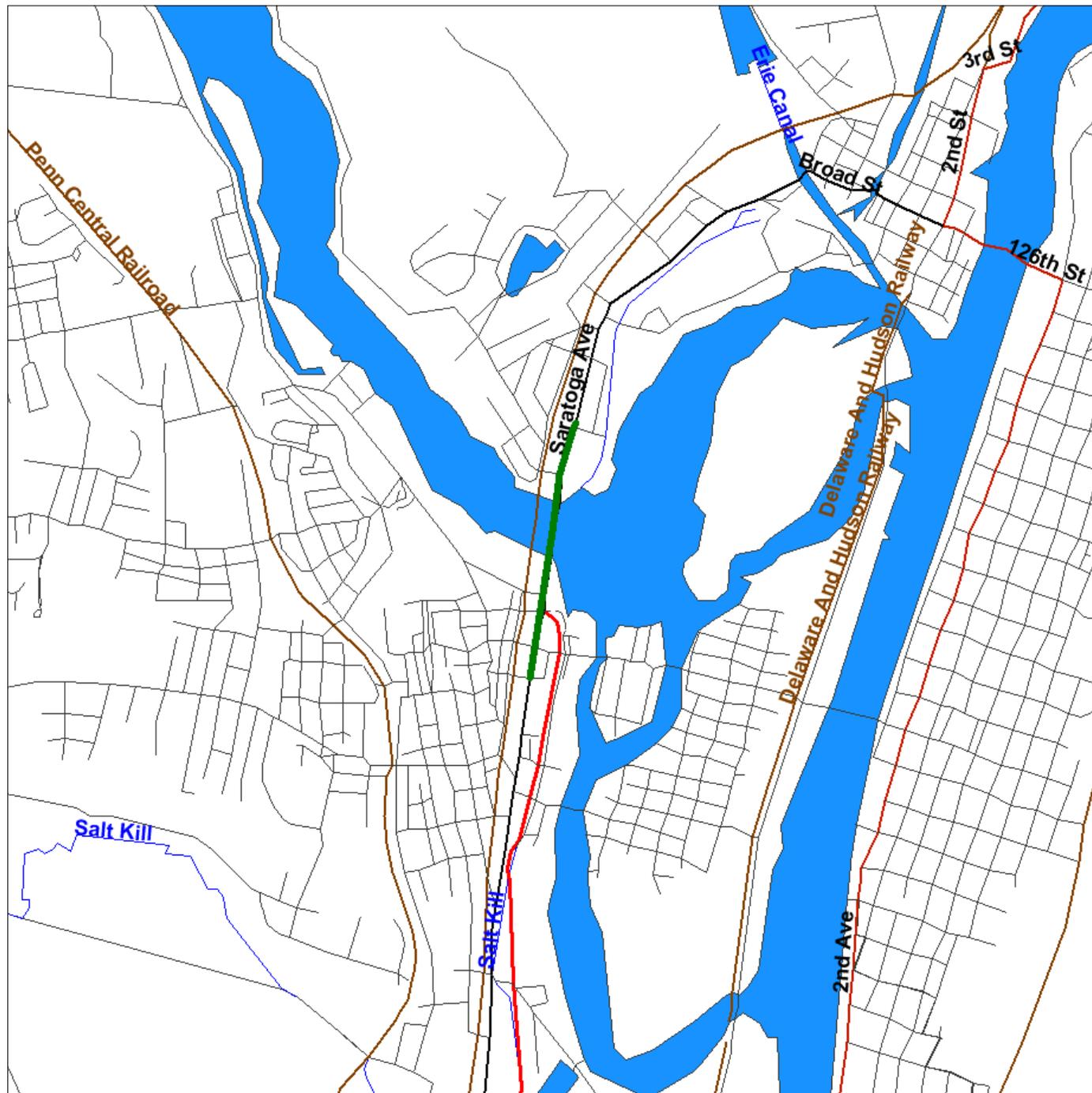


Environmental FirstSearch

1 Mile Radius from Line
ASTM Map: NPL, RCACOR, STATE Sites



ROUTE 32 ROAD, COHOES NY 12047



Source: 1999 U.S. Census TIGER Files

- Linear Search Line
- Identified Site, Multiple Sites, Receptor
- NPL, Solid Waste Landfill (SWL) or Hazardous Waste
- Railroads
- Black Rings Represent 1/4 Mile Radii; Red Ring Represents 500 ft. Radius

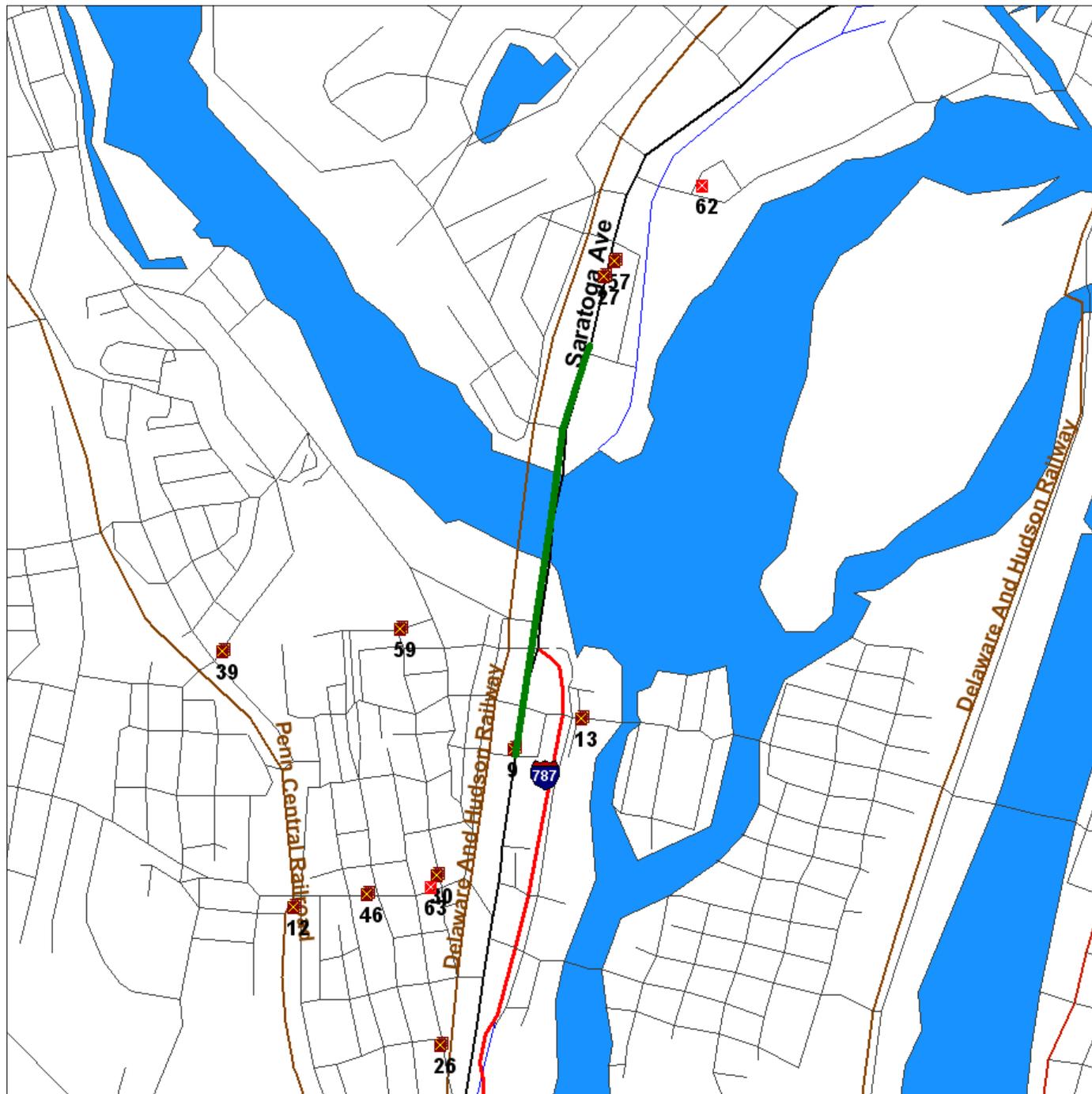


Environmental FirstSearch

.5 Mile Radius from Line
ASTM Map: CERCLIS, RCRATSD, LUST, SWL



ROUTE 32 ROAD, COHOES NY 12047



Source: 1999 U.S. Census TIGER Files

- Linear Search Line
- Identified Site, Multiple Sites, Receptor
- NPL, Solid Waste Landfill (SWL) or Hazardous Waste
- Railroads
- Black Rings Represent 1/4 Mile Radii; Red Ring Represents 500 ft. Radius

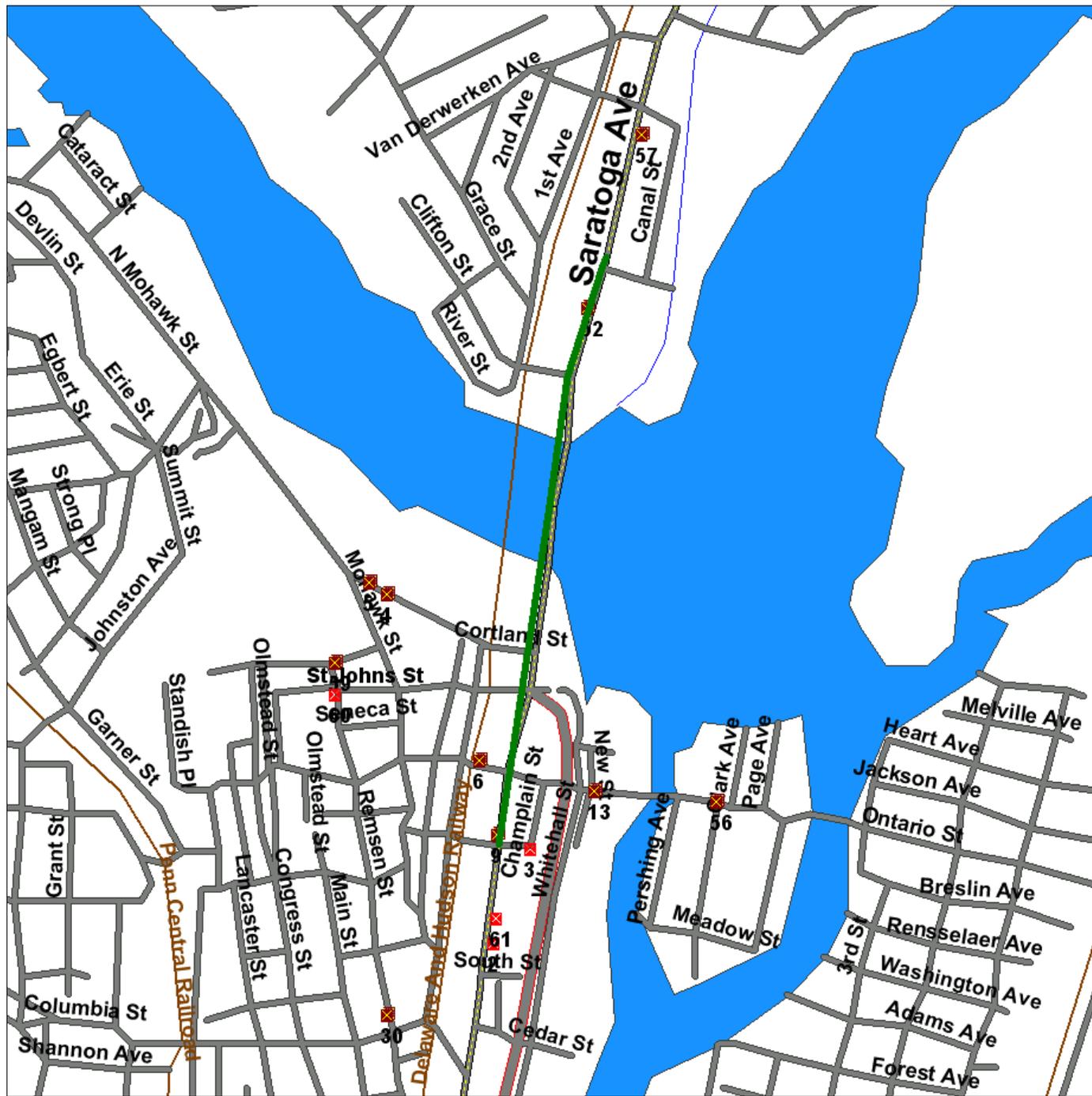


Environmental FirstSearch

.25 Mile Radius from Line
ASTM Map: RCRA GEN, ERNS, UST



ROUTE 32 ROAD, COHOES NY 12047



Source: 1999 U.S. Census TIGER Files

- Linear Search Line
- Identified Site, Multiple Sites, Receptor   
- NPL, Solid Waste Landfill (SWL) or Hazardous Waste 
- Railroads 
- Black Rings Represent 1/4 Mile Radii; Red Ring Represents 500 ft. Radius

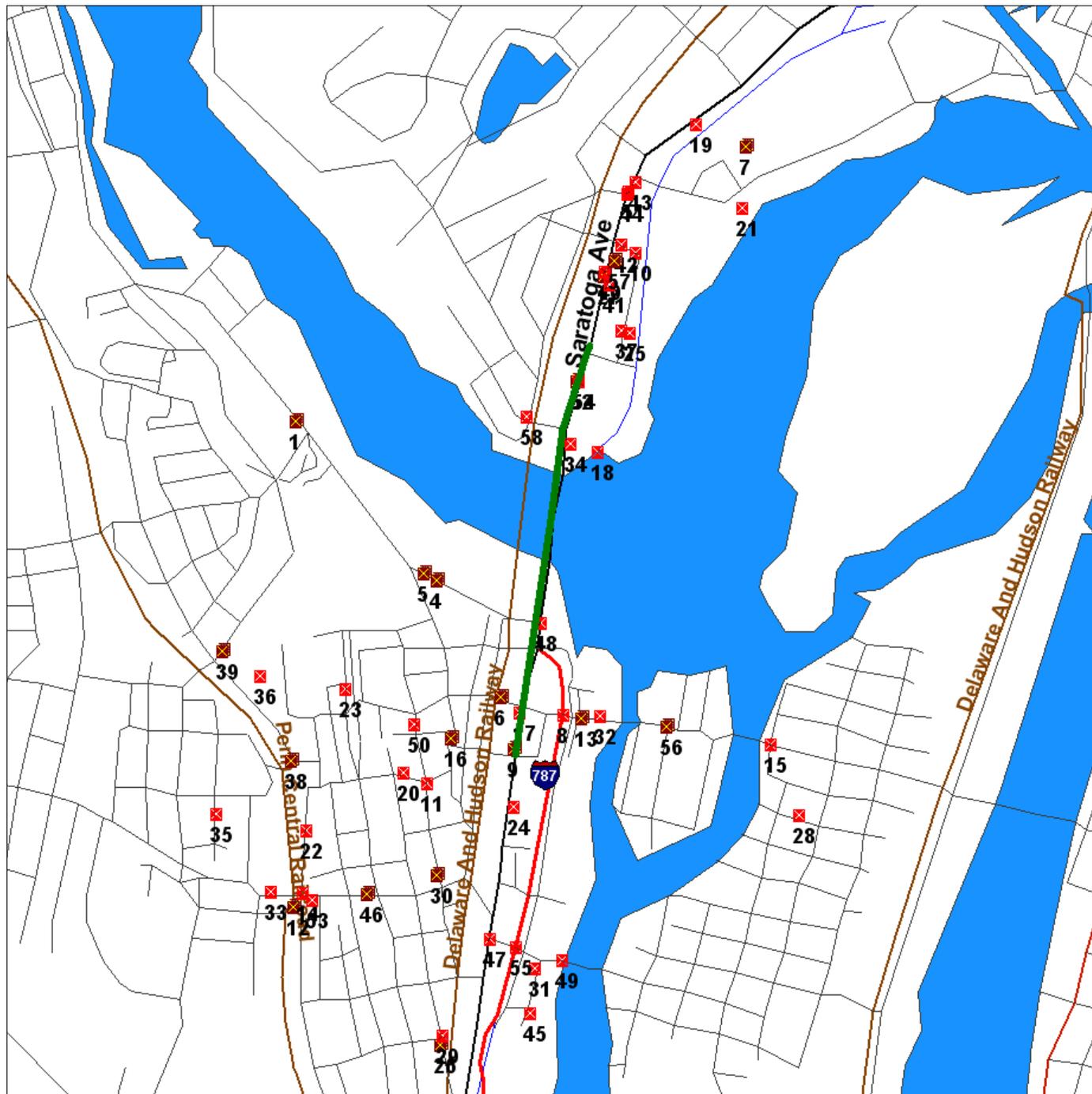


Environmental FirstSearch

.5 Mile Radius from Line
Non-ASTM Map: Spills 90



ROUTE 32 ROAD, COHOES NY 12047



Source: 1999 U.S. Census TIGER Files

- Linear Search Line
 - Identified Site, Multiple Sites, Receptor
 - NPL, Solid Waste Landfill (SWL) or Hazardous Waste
 - National Historic Sites and Landmark Sites
 - Railroads
- Black Rings Represent 1/4 Mile Radii; Red Ring Represents 500 ft. Radius

Finding Documentation For NYSHPO



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION - REGION ONE
50 WOLF ROAD
ALBANY, NEW YORK 12232
www.dot.ny.gov

MARY E. IVEY
REGIONAL DIRECTOR

JOAN McDONALD
COMMISSIONER

May 16, 2012

Ms. Ruth L. Pierpont
Director, Historic Preservation
New York State Office of Parks,
Recreation and Historic Preservation
Peebles Island, P.O. Box 189
Waterford, New York 12188-0189

Re: **FINDING DOCUMENTATION**
PIN 1460.42.121
BIN 1-02250-0
Cohoes-Waterford Bridge Replacement
City of Cohoes & Village of Waterford,
Albany & Saratoga County

Dear Ms. Pierpont:

The New York State Department of Transportation (NYSDOT) is in the preliminary design phase for the above referenced federally funded and permitted project. The attached Finding Documentation, prepared in accordance with the requirements of Section 800.11 of 36 CFR Part 800 (Section 106) of the National Historic Preservation Act, summarizes the project and its effect on historic properties. This project proposes to replace the Cohoes-Waterford Bridge on either an existing or adjacent alignment. Currently NYSDOT is progressing two feasible alternatives. The existing bridge is proposed to be replaced by a multi-span girder bridge. This project's design approval target date is September 2012.

The NYSDOT has applied the Criteria of Effect for this project and finds that this undertaking will have an ***adverse effect*** on properties eligible for or listed on the National Register. **The NYSDOT respectfully requests that the State Historic Preservation Officer (SHPO) review and respond in writing to this finding within 45 days of receipt or sooner.**

With the finding of "adverse effect" NYSDOT plans to evaluate the project's Section 4(f) properties appropriately and will apply the criteria for a Programmatic Evaluation for the adverse effects to the historic Cohoes-Waterford Bridge, BIN 1-02250-0, and a de minimis finding to property takings inside the Northside Historic District (#1 & #9 Saratoga Ave). This serves as the Federal Highway Administration's notification that Section 4(f) applies to this project.

Enclosed for your review are the Finding Documentation, mapping, project photos, project plan sheets for alternatives 6 & 8, visualizations, bridge inspection report, and condition inspection of the Cohoes Power Race.

If there are any questions or additional information required please contact Andrea Becker by telephone at (518) 485-9638 or by email at abecker@dot.state.ny.us.

Sincerely,

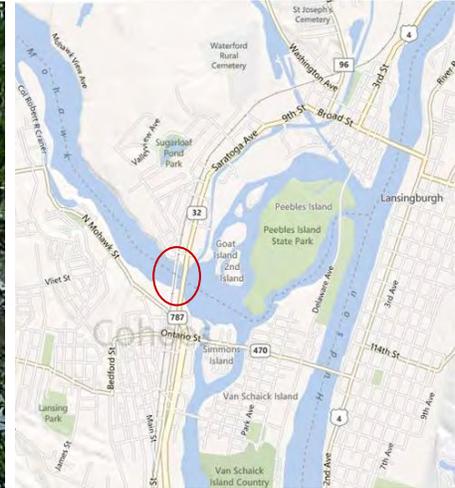
A handwritten signature in black ink, appearing to read 'Tanya Thorne', with a long horizontal flourish extending to the right.

Tanya Thorne
Regional Cultural Resources Coordinator

Enclosures: Finding Documentation and attachments
TFT:AB

cc: O. Elkassed, FHWA, Area Engineer
C. Delorier, Army Corp of Engineers
P. Dunleavy, OOE- NYSDOT
M. Rhodes, Project Manager, Region 1
📁 Regional Cultural File

FINDING DOCUMENTATION
PIN 1460.42.121
BIN 1-02250-0
Route 32 over the Mohawk River
“The Cohoes-Waterford Bridge”
City of Cohoes & Village of Waterford, Albany & Saratoga County



1. PROJECT DESCRIPTION

a. General Project Description

This federally funded project is designed to improve the Route 32 bridge over the Mohawk River (Cohoes-Waterford Bridge) and the corridor from N. Mohawk Street in Cohoes to Museum Lane in Waterford. This is an urban area located at the north end of NYS Route 787.

b. Area of Potential Effect

The southerly project limit is located at the intersection of NYS Route 787 / New Courtland Street and NYS Route 32 in the City of Cohoes. The project proceeds northerly along NYS Route 32, over the Mohawk River, to the northerly project limit at the NYS Route 32 and School Street / Museum Lane intersection in the Town of Waterford. The total project is 0.5 km (1650 ft) in length, with approximately 0.2 km (700 ft) of that length being the actual bridge itself (BIN 1-02250-0). This section of the Mohawk is not currently navigable to mariners although it was historically navigable. The Cohoes Falls is located west of the project location.

c. Project Objectives

To restore the Cohoes-Waterford bridge condition rating to 5 or greater, for at least 25 years for a bridge rehabilitation or 75 years for a bridge replacement, using cost effective techniques to minimize the life cycle cost of maintenance and repair.

d. Existing Intersection Condition

This project is needed to address bridge condition deficiencies. The structure received a General Recommendation of 4 (computed rating 3.773) in the New York State Department of Transportation (NYSDOT) 2010 Bridge Inspection Program on a scale of 1 to 7. NYSDOT defines a deficient bridge as one with a State condition rating of less than 5.0. A deficient condition rating indicates deterioration at a level that requires corrective maintenance or rehabilitation to restore the bridge to its fully functional non-deficient condition. It does not mean that the bridge is unsafe. Please see the attached bridge inspection report. A diving report is also available upon request.

The existing structure is a continuous concrete arch bridge. The primary members are reinforced concrete arches which show signs of leakage with isolated areas of spalling and rebar exposure. Settlement and drainage on the approaches are deteriorated. The majority of length of granite curb on the east side has settled, leaving minimal reveal. Due to the lack of slope of the roadway, both on and off the bridge, water tends to pond and then seep into

filled arches, causing issues such as tipped wingwalls, tipped curbing, and leakage and deterioration through vertical walls above the arches. Previously eroded areas have had repairs.

A long term solution for the bridge is needed before further deterioration occurs. This bridge is a major connection between the Town of Waterford and the City of Cohoes, as well as an important link between Saratoga and Rensselaer Counties to the Albany area. The convenient access to Interstate 787 is the primary generator for use of this bridge.

e. Discussion of Alternatives

Alternative 1 - Null or No-Build (no-action) - This alternative would provide only routine maintenance of the existing bridge with no additional capital construction funds being expended on the existing structure. This no-action alternative would result in continued deterioration of the existing structure, resulting in increased maintenance efforts, eventual load posting and ultimately, closure. This alternative does not satisfy the project objective and has therefore been eliminated from further consideration.

Alternative 2 - Bridge Rehabilitation - This alternative would include the rehabilitation of the existing multiple span concrete arch structure to provide a minimum service life of 25 years. This alternative was thoroughly investigated due to the historic significance of the structure. Rehabilitation of the existing arch presents significant constructability problems. In addition, due to the structural needs and design of the existing arch structure, it would not be feasible to maintain traffic on the bridge during its rehabilitation. The feasibility of detouring traffic around the site was investigated by the NYSDOT Region 1 Traffic and Safety Group during the scoping phases of this project. The additional traffic volumes as a result of this detour would have a significant impact on the quality of life for both the residents along the detour route and the traveling public. The Department's experience with this detour route and knowledge of the associated traffic issues has resulted in the dismissal of this long term detour. As such, in order to maintain traffic during construction a temporary bridge would be required along the east side of the existing structure. Although this alternative meets the primary objective of providing a structurally sound bridge, it only provides for a service life of 25 years, unlike the bridge replacement service life of 75 years. Also, the rehabilitation cost is slightly higher than that of a bridge replacement. In addition, projected future maintenance costs for a rehabilitated structure would exceed that of a new bridge. This alternative does not satisfy the project objective of providing a cost effective solution and has therefore been eliminated from further consideration.

Alternative 3 - Bridge Replacement on a Skewed Alignment (with Signalized Intersections) - This alternative provides for the construction of a new three lane, multiple span structure on an independent alignment slightly to the east of (and skewed to) the existing bridge. The southerly approach would include a new four lane section with a raised median and turn lanes at the three reconstructed signalized intersections. The northerly approach would maintain the continuity in the cross-section to match the existing three lane section in Waterford. This alternative was developed to address the bridge deficiencies, as well as address traffic deficiencies at the adjoining intersections in the City of Cohoes. Since this alternative includes scope and significant construction costs beyond addressing the bridge condition it has been eliminated from further consideration.

Alternative 4 - Bridge Replacement on a Parallel Alignment (with Offset Signalized Intersection) - This alternative includes the construction of a new multiple span structure, a new three leg intersection and two coordinated traffic signals. The new multiple-span structure would be located approximately 30 m (100 ft) east of and parallel to the existing structure. The proposed horizontal mainline alignment would begin at the reconfigured intersection of NYS Route 787 and NYS Route 470, proceed northwest on a curvilinear alignment to meet with the tangent bridge alignment parallel to the existing bridge. North of the bridge, the horizontal alignment would follow a reverse curve to tie in with the existing NYS Route 32 alignment at its intersection with Clifton Street and Museum Lane. As with Alternative 3, this alternative includes scope and significant construction costs beyond addressing the bridge condition. It has therefore been eliminated from further consideration.

Alternative 5 - Bridge Replacement on a Skewed Alignment (with Roundabout) - This alternative is similar to Alternative 3 except that the signals along NYS Route 787 at the NYS Route 470 intersection and at the newly constructed New Courtland Street intersection would be replaced with two lane roundabouts. In addition, a "mini" roundabout would be required at the NYS Route 32 / NYS Route 470 intersection. Traffic during most construction operations would be maintained on the existing structure and roadways. Staged bridge construction would be necessary for the northern span due to the overlapping abutment locations. Construction of the two roundabouts on

NYS Route 470 would be performed utilizing staged construction and short term detours. Since this alternative includes scope and significant construction costs beyond addressing the bridge condition it has been eliminated from further consideration.

Alternative 7 – Bridge Replacement on a Parallel Alignment (with Roundabout), minimized approach work -

This alternative was specifically developed in an effort to focus the scope of the project on the condition of the bridge, while maintaining some of the potential traffic improvements recognized with a roundabout intersection. The bridge alignment for this alternative is essentially a new bridge parallel and offset to the east of the existing bridge. The signalized intersection at the NYS Route 787 / NYS Route 32 intersection would be replaced with a two lane roundabout. The two adjacent intersections with NYS Route 470 would remain as signalized intersections. Due to several non-standard features associated with the roundabout, along with the unbalanced traffic flow at the approaches and proximity of two nearby intersections, it was determined that a roundabout at this intersection was not viable. Therefore, this alternative has been eliminated from further consideration.

Re-use of the Historic Bridge

The type of deterioration with the “Cohoes-Waterford” bridge (concrete deterioration below the waterline) would pose a safety issue regardless of the mode of travel. If the bridge has to be closed for safety issues, the type of loading on the bridge wouldn’t matter and it would need to be closed to vehicle, bicycle and pedestrian traffic. Re-using the bridge for recreational or alternate travel modes that would re-purpose the bridge would not be feasible and therefore, will not be offered to the municipalities.

f. Feasible Alternatives Retained for Further Analysis:

Alternative 6 – Bridge Replacement on a Parallel Alignment (Signalized Intersections), Minimized Approach

Work - This alternative is similar to Alternative 4 discussed above, but with reduced approach work. It includes construction of a new 260 m (853 ft) long multiple-span structure located approximately 25 m (80 ft) east of and parallel to the existing structure. South of the bridge, the alignment is shifted east in order to provide sufficient space for the adjacent Shelter Enterprises driveway to allow trucks to turn into the driveway and back into the existing loading dock (instead of backing up in the middle of NYS Route 32, as they currently operate). Traffic during most construction operations would be maintained on the existing structure and roadways. Staged bridge construction would be necessary for the northern span and abutment due to the overlapping abutment locations. Roadway construction would be performed under traffic utilizing short-term lane closures and lane shifts as needed.

Inside the Northside Historic District a new retaining wall is proposed at #9 Saratoga Ave and would require permanent Right-Of-Way taking from the parcel. This area is a shale rock outcrop. The stairs and other landscape features would not be impacted. The project also proposes to extend the driveways along the west side of Saratoga Ave.

This alternative would address the deficiencies of the bridge and provide a service life of 75 years, while limiting the highway approach work and associated construction costs. This alternative has been retained for further evaluation.

Alternative 8 – Bridge Replacement On Existing Alignment, with Temporary Bridge - This alternative would

replace the existing bridge with a new 210 m (689 ft) long multiple span structure supported on conventional abutments. As outlined above, no feasible long term detour route exists. Thus, traffic would be maintained on a two lane temporary bridge constructed along the east side of the existing structure. This would extend the overall construction period for this alternative by approximately 6 months.

The existing bridge carries a significant amount of utilities (including electrical, phone, gas and water mains). Since the existing bridge would be removed prior to construction of the new bridge, this alternative would require that these utilities be relocated twice – once to the temporary structure and then to the proposed structure. This utility relocation cost is an added societal cost that is not directly reflected in the project cost and is not associated with any other alternative. This alternative would address the deficiencies of the bridge and provide a service life of 75 years, while limiting the highway approach work and associated construction costs. This alternative has been retained for further evaluation.

2. STEPS TAKEN TO IDENTIFY HISTORIC PROPERTIES

2004 - PIN 1460.42.121, Cultural Resources Survey Report, Archeological Pre-Reconnaissance & Architectural Reconnaissance Survey was completed May 2004 by the New York State Museum. This report covered a large area (larger than the current project area) from Ontario Street to Fulton Street along the Route 32 corridor. BIN 1-02250-0 was found National Register eligible and a HAER was recommended.

2005 - PIN 1460.42.121, Cultural Resources Survey Report, Archeological Pre-Reconnaissance & Architectural Survey was completed February 2005. 105 test pits were performed. 4 historic sites were identified and 4 sites were recommended for additional deep testing (MDSs 87, 113, 14, 15, 213, 217 and #1 Saratoga Ave).. No pre-historic sites were identified.

2011 - PIN 1460.42.121, Cultural Resources Survey Report, Phase 2 Site Exam of the Cohoes Mills Site was completed April 2011 by the Binghamton University for the New York State Museum. Eight trench tests and 10 shovel test pits were performed. This report identified no prehistoric sites. The reconnaissance survey identified two sites (Fuld & Hatching Knitting Warehouse and #1 Saratoga Ave Site NYSM #11597). The site examination identified the Cohoes Company Power Race Site as potentially National Register eligible and recommended a HABS/HAER report for the portion of the race within the project area. #1 Saratoga Ave Site was heavily disturbed between 2005 and 2011 by the storm of 2006 and the removal of the structure. For MDSs 87, 13, 14, 15, 213, 217 no further testing was recommended. No further testing was recommended on any of the sites identified previously.

2011 - Condition Inspection of the RT 32 Arch/Culvert (Cohoes Company Power Race), a Condition Inspection completed August 12, 2011 by Clough Harbor and Associates (CHA) detailed the condition of the Race, materials constructing the Race, integrity and function. These results were forwarded to Binghamton University to review the findings in regard to the National Register potential of the Race.

2011 - September 14, 2011 Email from New York State Museum via the Binghamton University. Binghamton University coordinated with the State Historic Preservation Office and reviewed the 2011 Phase 2 site exam along with the condition inspection report done by CHA. The recommendation is that the Cohoes Company Power Race is not individually eligible but is contributing to the adjacent Harmony Mills Historic District outside the APE. No HABS/HAER report is required for the Race. (Emails available upon request)

3. EVALUATION OF PROJECT IMPACT ON IDENTIFIED HISTORIC PROPERTIES

Table 1. Architectural Properties (see coordinating project map) Shaded areas are NRE resources with impacts

Architectural Property and Address	NRL/E? National Register Criteria	Associated Effect From Alternative 6 or 8*
The Cohoes-Waterford Bridge BIN 1-02250-0 Historic 7 span earth-filled continuous concrete arch	Yes Bridge type, (A & C)	Adverse Effect The structure is proposed to be removed for both Alternatives 6 & 8
1 Saratoga Ave	Previously Listed (in Northside Historic District) (A & C)	Removed in 2006
9 Saratoga Ave	Yes Listed (in Northside Historic District) (A & C)	No adverse effect for fee taking for Alternative 6 - No effect for Alternative 8
2, 4, 6, 8,10, 12 Saratoga Ave	Yes Listed (in Northside Historic District) (A & C)	No effect for either Alternative Alternative 6 lengthens drives
NYSM# 11595 Cohoes Company Power Race (sluiceway)	No Contributes to adjacent Harmony Mills Historic District (A & C)	Full depth reconstruction of roadway will impact. New design will bridge this area and water will continue to flow to Mohawk River here thru a new culvert

*Alternative 6 (new bridge on new adjacent alignment) Alternative 8 (detour and bridge same alignment)

BIN 1-02250-0; The Cohoes-Waterford Bridge was designed by the New York State Dept. of Public Works and built by Bates & Rogers Construction company for \$191,112.30. The crossing opened to traffic on November 15, 1932. The Cohoes-Waterford Bridge is considered eligible for the National Register of Historic Places because of its multi-span design, earth filled spandrel, continuous concrete arch design and significant to the Depression Era work relief. The bridge has exceptional integrity, notably the retaining wall, parapet railing and decorative lighting.

Archeological Sites; None of the sites identified in the three cultural resource surveys were found to require additional research and none of the sites were found national register eligible.

4. BASIS FOR RECOMMENDED PROJECT FINDING

NYSDOT has determined Alternative 6 or 8 (both preferred alternatives), will have a direct **adverse effect** on the National Register Eligible Cohoes-Waterford Bridge; due to the unfeasibility to avoid or rehabilitate the structure. Alternatives 6 and 8 both replace the structure with a girder bridge design. The project proposes a concrete parapet and bridge rail designs to be coordinated with SHPO. NYSDOT has also determined if Alternative 6 is chosen it will have a no adverse effect on the front yard of 9 Saratoga Ave and will not alter the structure, stairs, or other features. A new retaining wall is proposed for the rock outcrop location on the southwest corner of the parcel. No. 9 Saratoga Ave is 2 story wood framing Dutch Colonial residential home inside the Northside Historic District.

As mitigation for this project's adverse effect, NYSDOT proposes to document the existing (BIN 1-02250-0) structure by means of a **Level II Historic American Engineering Record (HAER)** documentation that will be requested by NYSDOT after the concurrence of this adverse effect determination by the SHPO. Mitigation will also be continued as coordination with interested parties on railing, retaining walls, lighting, or other decorative features.

Furthermore, a **Memorandum of Agreement (MOA)** between NYSDOT and SHPO-OPRHP is also warranted and will be provided following the established adverse effect concurrence in accordance with Protection of Historic Properties 36 CFR Part 800.6 of the National Historic Preservation Act. A **Section 4(f) Programmatic Evaluation** will also be written in accordance with the USDOT Act for the project's adverse effects on cultural resources and coordinated with the Federal Highway Administration.

5. PUBLIC INVOLVEMENT

April 15, 2005 – NYSDOT held a meeting with the City of Cohoes and Clough Harbor & Associates.

January 29, 2010 – NYSDOT held a meeting with the City of Cohoes.

June, 28, 2010 – NYSDOT held a meeting with Shelter Enterprises Inc.

A public informational meeting and public hearing will be held this summer (2012). A meeting with the Waterford Supervisor is anticipated in the coming months and possibly an additional meeting with the Mayor of Cohoes prior to the public meeting.

6. ATTACHMENTS

Photos

Location Map

Area of Potential Effect Map

Historic District Map

Proposed Preliminary Plans of Alternative 6 & 8

Visualizations

2010 Bridge Inspection Report

Condition Inspection of the Cohoes Power Race (by CHA)

Location Map



Photos

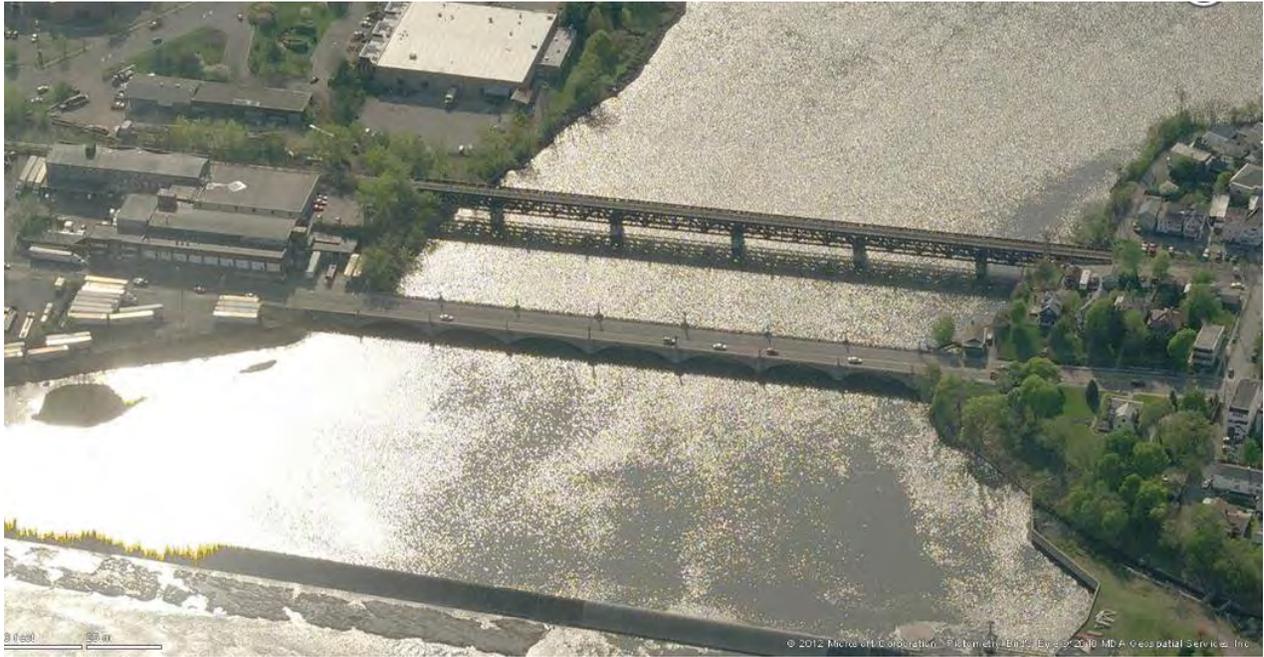


Photo 1



Photo 2

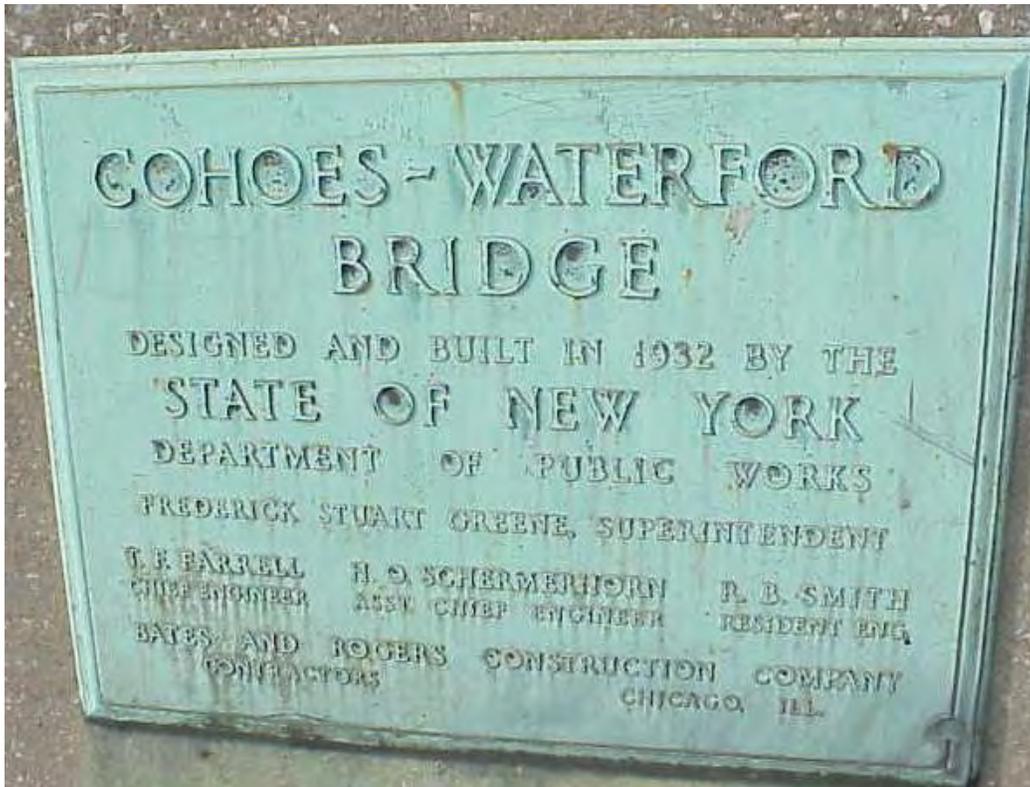


Photo 3



Photo 4

(#1 Saratoga Ave. white structure on right has been removed)



Photo 5 (Looking South)



Photo 6 (Looking North)



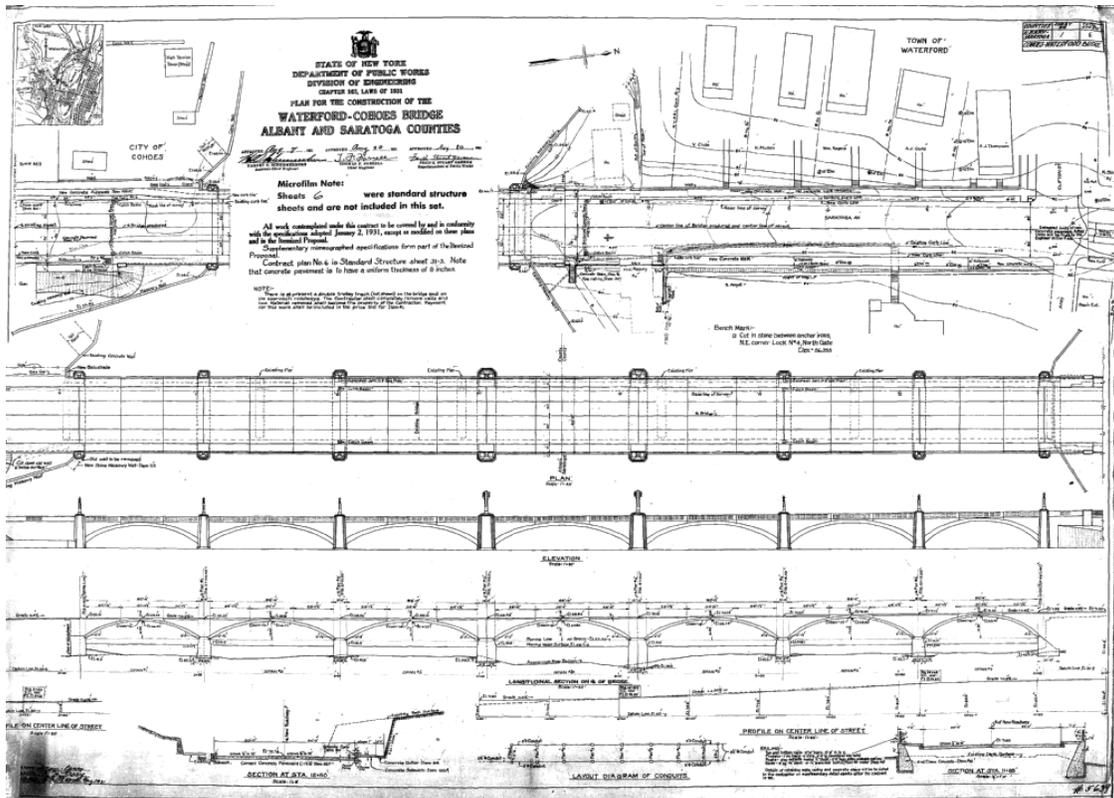
Photo 7 (Looking South)



Photo 8 (#9 Saratoga Ave.)



Photo 9 (Cohoes Power Race)



1931 Record Plans

NYSHPO Response to Finding Documentation



New York State Office of Parks, Recreation and Historic Preservation

Historic Preservation Field Services Bureau • Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

www.nysparks.com

Andrew M. Cuomo
Governor

Rose Harvey
Commissioner

May 30, 2012

Tanya Thorne
Cultural Resource Coordinator,
NYSDOT - Region 1
50 Wolf Road
Albany, NY 12232

Re: **FHWA/DOT PIN 1460.42.121**
BIN 1-02250-0
Cohoes-Waterford Bridge
(replacement)
Cohoes/Waterford, Albany/
Saratoga County
12PR02028

Dear Ms. Thorne:

The State Historic Preservation Office (SHPO) has received information for the above noted project. We have reviewed the Findings Documentation and archeological assessments in accordance with Section 106 of the National Historic Preservation Act of 1966. These comments are those of the SHPO and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland and may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the National Environmental Policy Act and/or the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8).

Based upon our review of the proposed treatments for the existing deteriorated bridge and in agreement with the Region's findings, all demolition alternatives will result in an Adverse Effect upon the bridge which has been determined to be eligible for inclusion in the National Register of Historic Places. Although the repair and retention of the bridge is not considered feasible, the SHPO finds that those alternatives can result in a No Adverse Effect determination. Our office is able to clear archeology for the project: no additional survey is warranted. Although this facilitates the implementation of a bridge replacement alternative, the existence of the Northside Historic District at the Waterford side of the project complicates the replacement treatments.

The conclusions reached in the submitted Findings Documentation appear to be well-reasoned considering the conditions evident at the bridge. However, before we can sign-off on bridge rehabilitation (Alternative 2), we request that additional information be provided in order to complete the evaluation of this option: What would be the estimated cost to rehabilitate the existing bridge, the cost for the required temporary bridge, the cost for the yearly maintenance at the repaired bridge and any other pertinent costs related to the implementation of a rehabilitation. These figures are necessary for our office to make a final determination on whether retaining the existing bridge is reasonable or not.

Due to the existence of the Northside Historic District in Waterford that is within the area effected by the project, the Feasible Alternatives need to be considered further. In order to retain the existing visual relationship the old bridge has to the Historic District, utilizing the current bridge alignment would be the preferred alternative (Alternative 8) from our viewpoint. Recognizing that costs associated with a temporary bridge, utility shifting, etc. could put this option beyond the new alignment alternative (Alternative 6) but cost estimates for both options need to be considered before the most reasonable approach can be determined in-light of the various factors involved.

Please forward the requested information once it becomes available so that we can continue our review of the project and help judge the most appropriate resolution. If you have any questions regarding this letter or your project, please feel free to contact me. Ext. 3273.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth Markunas". The signature is fluid and cursive, written over a faint, illegible background.

Kenneth Markunas
Historic Sites
Restoration Coordinator

Cc: Tricia Millington, FHWA

**Draft Memorandum of Agreement Among
NYSHPO, NYSDOT and FHWA**

**MEMORANDUM OF AGREEMENT
AMONG
THE NEW YORK STATE HISTORIC PRESERVATION OFFICE
AND
THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION,
AND
THE FEDERAL HIGHWAY ADMINISTRATION
REGARDING THE ROUTE 32 BRIDGE OVER THE MOHAWK RIVER
ALSO KNOWN AS THE “COHOES-WATERFORD BRIDGE”
IN THE CITY OF COHOES AND THE VILLAGE OF WATERFORD
ALBANY AND SARATOGA COUNTIES
NEW YORK
PIN 1460.42.121
BIN 1-02250-0
NYSHP0# 12PR02028**

WHEREAS, The **New York State Department of Transportation (NYSDOT)** is progressing the federally funded project to replace the “Cohoes-Waterford Bridge” in the City of Cohoes and the Village of Waterford in Albany and Saratoga Counties; and

WHEREAS, the undertaking impacts the “Cohoes-Waterford Bridge” (BIN 1-02250-0), determined individually eligible for listing in the National Register of Historic Places, thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. Part 800; and

WHEREAS, **NYSDOT** has defined the undertaking's area of potential effect (APE) as the area located between the intersection of NYS Route 787 / New Courtland Street and NYS Route 32 in the City of Cohoes and the proceeds northerly along NYS Route 32, over the Mohawk River, to the northern project limit at the NYS Route 32 and School Street / Museum Lane intersection in the Town of Waterford. The total project is 0.5 km (1650 ft) in length, with approximately 0.2 km (700 ft) of that length being the bridge itself (BIN 1-02250-0); and

WHEREAS, the **NYSDOT** proposes to remove the “Cohoes-Waterford Bridge,” a 1932 seven-span concrete arch bridge, BIN 1-02250-0, and replace the existing bridge on an adjacent alignment; and

WHEREAS, the replacement of the bridge will constitute an **Adverse Effect** on BIN 1-02250-0, the “Cohoes-Waterford Bridge”; and

WHEREAS, all prudent and feasible alternatives to avoid and minimize the impacts upon been explored; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the **Federal Highway Administration (FHWA)** has notified the **Advisory Council on Historic Preservation (ACHP)** of its adverse effect determination providing the specified documentation, and the **ACHP** has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

WHEREAS, the New York State Historic Preservation Office (**NYSHPO**) has determined that state agencies participating in the undertaking covered by this agreement will satisfy the requirements of consultation and review under **National Historic Preservation Law, Section 106**, for this undertaking by adopting the terms and conditions of this memorandum of agreement;

NOW, THEREFORE, NYSDOT, NYSHPO, and FHWA agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

NYSDOT shall ensure that the following measures are carried out:

I. BRIDGE DETAILS DESIGN CONSULTATION

To minimize the adverse effect of the removal and replacement of the “Cohoes-Waterford Bridge” on the Northside Historic District; the NYSDOT will consult with NYSOPRHP (SHPO) regarding the design, style, aesthetics of the bridge, fascia, railings, lighting and/or decorative amenities.

II. HISTORIC AMERICAN ENGINEERING RECORD DOCUMENTATION

To mitigate the adverse effect of the removal of the “Cohoes-Waterford Bridge” (BIN 1-02250-0) a **Level II Historic American Engineering Record (HAER)** documentation will be performed. Once the report is completed NYSDOT will distribute to OPRHP, Spindle City Historical Society, Saratoga County Historical Society, Albany County Historical Society, and the Waterford Maritime Museum. An Adobe pdf file format copy on cd shall also be included in the report.

III. DURATION

This **Memorandum of Agreement (MOA)** will be null and void if its stipulations are not carried out within **five (5) years** from the date of its execution. At such time, and prior to work continuing on the undertaking, **NYSDOT** shall either (a) execute a MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, **NYSDOT** may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V below. **NYSDOT** shall notify the signatories as to the course of action it will pursue.

IV. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, **NYSDOT** shall implement the discovery plan attached to this MOA (Attachment A).

V. MODIFICATIONS

Modification, amendment, or termination of this agreement as necessary shall be accomplished by the signatories in the same manner as the original agreement. Disputes regarding the completion of the terms of this agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, either may request the participation of the Advisory Council on Historic Preservation to assist in resolving the dispute.

Memorandum of Agreement
“Cohoes-Waterford Bridge”
(BIN 1-02250-0)

New York State Department of Transportation:

Sam Zhou, P.E., Acting Regional Director

Date

New York State Office of Parks Recreation Historic Preservation Officer:

Ruth L. Pierpont, Deputy Commissioner/Deputy State Historic Preservation Officer

Date

Federal Highway Administration:

Jonathan Mc Dade, Division Administrator

Date

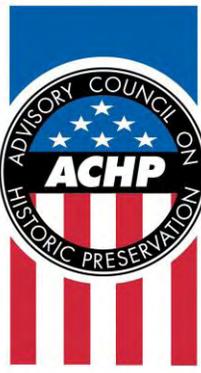
Attachments:

Project plans showing the Area of Potential Effects (APE)

Letter from SHPO concurring with NYSDOT’s determination of Adverse Effect (dated September 19, 2012)

Correspondence from ACHP (dated November 6, 2012)

Attachment A (as referred to in Stipulation IV) (not completed yet)



Preserving America's Heritage

November 6, 2012

Omar Elkassed
Area Engineer
FHWA – New York Division
Leo W. O'Brien Federal Building
11A Clinton Avenue, Suite 719
Albany, NY 12207

Ref: *Proposed Replacement of the Cohoes-Waterford Bridge on Route 32 over the Mohawk River*
PIN 1460.42
City of Cohoes, Village of Waterford, Albany and Saratoga Counties, New York

Dear Mr. Elkassed:

The Advisory Council on Historic Preservation (ACHP) has received your notification and supporting documentation regarding the adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places. Based upon the information provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800), does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed. However, if we receive a request for participation from the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer, affected Indian tribe, a consulting party, or other party, we may reconsider this decision. Additionally, should circumstances change, and it is determined that our participation is needed to conclude the consultation process, please notify us.

Pursuant to 36 CFR §800.6(b)(1)(iv), you will need to file the final Memorandum of Agreement (MOA), developed in consultation with the New York State Historic Preservation Office (SHPO), and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the MOA, and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

Thank you for providing us with the notification of adverse effect. If you have any questions or require further assistance, please contact Ms. Najah Duvall-Gabriel at (202) 606-8585 or at ngabriel@achp.gov.

Sincerely,

LaShavio Johnson
Historic Preservation Technician
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov



New York State Office of Parks, Recreation and Historic Preservation

Historic Preservation Field Services Bureau • Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

www.nysparks.com

Andrew M. Cuomo
Governor

Rose Harvey
Commissioner

September 19, 2012

Tanya Thorne
Cultural Resource Coordinator,
NYSDOT - Region 1
50 Wolf Road
Albany, NY 12232

Re: **FHWA/DOT PIN 1460.42.121**
BIN 1-02250-0
Cohoes-Waterford Bridge
(replacement)
Cohoes/Waterford, Albany/
Saratoga County
12PR02028

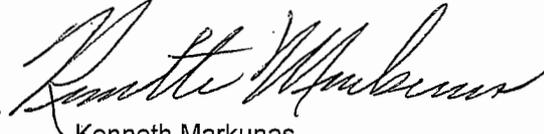
Dear Ms. Thorne:

The State Historic Preservation Office (SHPO) has received information regarding the cost and feasibility of various alternatives for the above noted project. We have reviewed the Bridge Rehabilitation Cost Comparison Memo in accordance with Section 106 of the National Historic Preservation Act of 1966. These comments are those of the SHPO and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland and may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the National Environmental Policy Act and/or the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8).

Based upon our review of the submitted documentation, the SHPO finds the replacement of the existing bridge to be a reasonable approach in light of the cost of bridge rehabilitation and the associated ongoing maintenance requirements. Either preferred Alternatives 6 or 8 (skewed alignment for new bridge or retain existing bridge alignment) requiring demolition will result in an Adverse Effect upon the existing bridge that has been determined eligible for listing in the National Register of Historic Places. However, our office is willing to enter into a Memorandum of Agreement (MOA) that allows the replacement with a new bridge. Because of the existing bridge's proximity to nearby Historic Districts, our office anticipates being involved with aspects of the new bridge design that will reflect visual qualities possessed by the historic bridge (e.g., Texas parapets, pre-cast arches, extended piers).

We request that a draft MOA be developed for circulation if the other involved parties have come to a similar consensus with the preferred Alternatives. Please forward this document once it has been developed for review and comment. If you have any questions regarding this letter or your project, please feel free to contact me. Ext. 3273

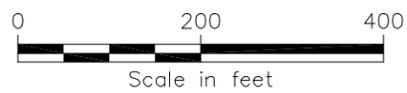
Sincerely,

A handwritten signature in cursive script, appearing to read "Kenneth Markunas".

Kenneth Markunas
Historic Sites
Restoration Coordinator

Cc: Tricia Millington, FHWA

File: X:\TRANSFER\HARDEN\12703-FIG1_RTE32.DWG Saved: 6/16/2010 4:13:03 PM Plotted: 6/16/2010 4:13:54 PM User: Harden, Jason



Drawing Copyright © 2010

III Winners Circle, PO Box 5269 - Albany, NY 12205-0269
Main: (518) 453-4500 - www.cia.companies.com

**ROUTE 32 OVER
THE MOHAWK RIVER**

PROJECT NO. 12703
DATE: 06/16/10
FIGURE 1



St. Regis Mohawk Tribe

June 27, 2012

She:kon Tonya,

This letter is in response to a request for a Section 106 consultation between your agency and the Saint Regis Mohawk Tribe. The following Project(s) that you requested my office to review are considered to be of "No Effect" in regards to cultural properties of concern to the Saint Regis Mohawk Tribe:

PIN 1460.42.121 Route 32 over the Mohawk River, City of Cohoes, Albany County & Village of Waterford, Saratoga County

Should you or your office have any further questions in regards to these comments please feel free to contact my office at your earliest convenience.

Nia:wen,

A handwritten signature in cursive script that reads "Arnold L. Printup III".

Arnold L Printup
Saint Regis Mohawk Tribe
Tribal Historic Preservation Office
1(518)358-2272 Ext. 162

Correspondence with Stockbridge- Munsee Tribe

Stockbridge-Munsee Tribal Historic Preservation Office

Sherry White - Tribal Historic Preservation Officer

W13447 Camp 14 Road

P.O. Box 70

Bowler, WI 54416

Date 4/26/12

Project Number WIN 460.42.121 Et 32 over the Milwaukee River

TCNS Number _____

Company Name _____

We have received your letter for the above listed project. Before we can process the request we need more information. The additional items needed are checked below.

Additional Information Required:

- Site visit by Tribal Historic Preservation Officer
- Archeological survey, Phase 1
- Literature/record search including colored maps
- Pictures of the site
- Any reports the State Historic Preservation Office may have
- Has the site been previously disturbed
- Review fee must be included with letter

If site has been previously disturbed please explain what the use was and when it was disturbed.

Other comments or information needed If project is in name, alignment I have no issues with project moving forward. If different alignment there I phase 1 would be requested.

After reviewing your letter we find that:

"No Properties" the Tribe concurs with a Federal agency's finding that there are no National Register eligible or listed properties within the Federal undertaking's area of potential effect or APE 36CFR 800.4 (d) (1)

"No Effect" historic or prehistoric properties are present but the Federal undertaking will have no effect on the National Register eligible or listed properties as defined in Sec. 800.16(i)

"No Adverse Effect" refers to written opinions provided to a Federal agency as to whether or not the Tribe agrees with (or believes that there should be) a Federal agency finding that its Federal undertaking would have "No Adverse Effect" 36 CFR 800.5(b)

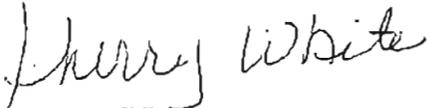
_____ "Adverse Effect" refers to written opinions provided to a Federal Agency that undertaking would cause Adverse Effects to the area of potential effect on National Register or eligible properties according to the criteria set forth in 36 CFR 800. 5(a) (1), (2) (i)- (vii)

_____ Project not within a county the Mohican Tribe has interest in

Should this project inadvertently uncover a Native American site, we ask that you halt all construction and notify the Stockbridge-Munsee-Tribe immediately.

Please do not resubmit project for changes that are not ground disturbance.

Sincerely,



Sherry White
Tribal Historic Preservation Officer

RECEIVED
APR 30 2012
NEW YORK DIVISION
ALBANY, NY

Correspondence with Delaware Tribe



Delaware Tribe Historic Preservation Office

1420 C of E Drive, Suite 190

Emporia, KS 66801

(620) 340-0111

bobermeyer@delawaretribe.org

May 21, 2012

State of New York
Department of Transportation – Region One
Attn: Tanya Thorne
328 State Street
Schenectady, New York 12305

Re: PIN 1460.42.121; BIN 1-02250-0; Route 32 over the Mohawk River, City of Cohoes,
Albany County & Vil. Of Waterford, Saratoga County

Dear Tanya Thorne:

Thank you for providing the survey report for the above referenced project. Our review also indicates that there are no religious or culturally significant sites in this project area and we have no objection to the proposed project. We defer comment to your office as well as to the State Historic Preservation Office and/or the State Archaeologist.

However, we ask that if any human remains are accidentally unearthed during the course of the project that you cease development immediately and inform the Delaware Tribe of Indians of the inadvertent discovery.

If you have any questions, feel free to contact this office by phone at (620) 340-0111 or by e-mail at bobermeyer@delawaretribe.org.

Sincerely,

A handwritten signature in cursive script that reads "Brice Obermeyer".

Brice Obermeyer
Delaware Tribe Historic Preservation Office
1420 C of E Drive
Emporia, KS 66801

- (6) Does the existing bridge have navigation lights?
Yes No
- (7) Does secondary lighting in the area provide a clear definition of the navigable channel and bridge opening?
Yes No
- (8) Does the waterway exhibit characteristics which may pose risk to navigation such as constricted navigation channel, piers in waterway, dams, rapids, etc.?
Yes No
- (9) Give minimum vertical clearance at mean high water (or maximum navigable pool elevation) for:
A) Existing Bridge 13feet
B) Downstream Bridge Dam is not navigable
C) Upstream Bridge RR bridge(Clearance Unknown)Cohoes Falls is not navigable
- (10) Give expected minimum vertical clearance at mean high water (or maximum navigable pool elevation) for the Proposed Bridge 8 Feet
- (11) Will this project utilize Federal funds?
Yes No

This checklist was completed by: A. Becker , Environmental Contact,
Title/Organization: SET/ NYSDOT
Date: 4/19/2013

If the need for a permit has not been determined, forward a copy of this checklist to M.O. Structures Division, Coast Guard Compliance Unit.

Determination: Permit No Permit

Determination Date: 144(h) to be requested by fhwa
Name: Omar Elkassed
Organization: FHWA

Include a copy of this form in the Design Approval Document for the project after a final determination has been made.

P.A. Agreement #*-**-*****

DATE

FIRM NAME

ADDRESS

CITY, STATE ZIP

Attention: CONTACT NAME, TITLE

SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL ** SERVICES
DURING ******

Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain FIRM NAME (the "Consultant" or "you") to provide expert professional services as more fully set forth in Attachment A, which is attached hereto and made a part hereof.

2. This Agreement shall be signed by you and the Director of Procurement. As used herein "Chief Engineer" shall mean the Chief Engineer, or the Deputy Chief Engineer of the Authority, acting either personally or through his or her duly authorized representatives acting within the scope of the particular authority vested in him or her, unless specifically stated as acting personally.

For the purpose of administering this Agreement, the Chief Engineer has designated ***, <TITLE>, to act as his duly authorized representative. The Project Manager for this project is ***, tel. (***), or email address ***@panynj.gov.

3. Your services shall be performed as expeditiously as possible and at the time or times required by the Chief Engineer. Time is of the essence in the performance of all your services under this Agreement.

4. In order to effectuate the policy of the Authority, the services provided by the Consultant shall comply with all provisions of Federal, State, municipal, local and departmental laws, ordinances, rules, regulations, and orders which would affect or control said services as if the services were being performed for a private corporation, unless the Authority standard is more stringent, in which case the Authority standard shall be followed, or unless the Consultant shall receive a written notification to the contrary signed by the Chief Engineer personally, in which case the requirements of said notification shall apply.

5. For the purpose of the contemplated services hereunder, the Consultant shall comply with all United States Department of Transportation Federal Highway Administration (FHWA) requirements, as applicable, to include but not be limited to all applicable federal laws, regulations, etc. (Exhibit I).

6. The Consultant shall meet and consult with Authority staff as requested by the Chief Engineer in connection with the services to be performed herein. All items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Chief Engineer. The

Chief Engineer may disapprove, if, in his sole opinion said items are not in accordance with the requirements of this Agreement or professional standards, or are impractical, uneconomical, or unsuited in any way for the purpose for which the contemplated services is intended. If any of the said items or any portion thereof are so disapproved, the Consultant shall forthwith revise them until they meet the approval of the Chief Engineer, but the Consultant shall not be compensated under any provision of this Agreement for performance of such revisions. No approval or disapproval or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility under this Agreement to furnish the requested services are done in accordance with an agreed upon schedule and in accordance with professional standards.

7. The Consultant shall meet and consult with Authority staff as requested by the Chief Engineer in connection with the services to be performed herein. Any Contract Drawings and Technical Specifications and other items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Chief Engineer. The Chief Engineer may disapprove if, in his sole opinion, said items are not in accordance with the requirements of this Agreement, sound engineering principles or are impractical, uneconomical, or unsuited in any way for the purpose for which the contemplated construction is intended. If any of the said items or any portion(s) thereof are so disapproved, the Consultant shall forthwith revise them until they meet the approval of the Chief Engineer, but the Consultant shall not be compensated under any provision of this Agreement for performance of such revisions. No approval or disapproval or omission to approve or disapprove, however, shall relieve the Consultant of his responsibility under this Agreement to furnish in accordance with an agreed upon schedule, a complete, practical, economical design and Contract Drawings and Technical Specifications, and corrections and changes therein which are best suited for the contemplated construction, are done in accordance with sound engineering principles and are signed and sealed by a licensed Professional Engineer.

8. When the services to be performed by the Consultant include the preparation of computer aided design (CAD) and/or computer aided design and drafting (CADD) documents, said documents must be prepared using the latest available revision of Autodesk's "AUTOCAD" software or as directed by the Engineer prior to the performance of specific services. All drawings shall be prepared in strict conformance to the Port Authority CAD Standards. All submissions of CAD and CADD drawings shall be submitted to the Authority on compact discs, uploaded to the Project Website, or as otherwise required in DWG and DWF format in accordance with the Port Authority CAD Standards..

9. You shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder including reimbursable expenses reaches the amount of \$*** unless you are specifically authorized in writing to so continue by the Chief Engineer. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

10. As full compensation for all your services and obligations in connection with this Agreement, the Authority will pay you the total of the amounts computed as set forth below, subject to the limits on compensation and the provisions set forth above. Subject to the terms and conditions

below, travel time is not reimbursable unless approved in advance and in writing by the Authority.

A. Consultant's Fixed Fee: For Consultant's satisfactory performance of its services and all of its obligations in connection with this Agreement, the Authority will pay to the Consultant, subject to pro-rata portion reduction thereof due to any suspension or termination of this Agreement as permitted herein, a Fixed Fee in the amount of \$_____. In no event shall a Change Order for additional services that are within the general scope of this Agreement result in an increase in the Consultant's Fixed Fee. Payment of the Consultant's Fixed Fee will be made as a percentage of the total labor and overhead on a monthly basis, but in no event shall the total amount of the Fixed Fee exceed the total amount stated herein. Additionally, the Consultant's Fixed Fee shall not apply to partners, principals or temporary employees of Consultant who are engaged in the performance of services to be provided herein.

B. Direct Personnel Costs: The Consultant will be reimbursed for the actual hourly rates of the Consultant's full-time employees ("Personnel") for services performed in connection with this Agreement. Exhibit III, Pricing and Compensation Proposal, attached hereto, includes a schedule of the actual hourly labor rates and titles of all Consultant's Personnel that have been approved by the Authority to perform Services in connection with this Agreement, including an organizational chart showing the names and titles of all such Personnel. Clearly indicate if any of the employees, proposed by you to perform the requested services, are former Authority employees.

1) The Port Authority reserves the right to audit and verify the hourly rate and time billed for the Services of such Personnel. It is understood that such Personnel shall bill time only for authorized work actually performed in connection with this Agreement and shall not bill time for holidays, vacation days, sick leave, personal days, maternity, medical, or family leave, or for any other item included in the Overhead Rate, as set forth below.

2) When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit the employee's name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change setting forth in detail any increased costs to the Consultant of providing the services under this Agreement that has given rise to the request for increased salary. For adjustments submitted after the effective date of this Agreement, it is the intention of the Authority to grant an increase only if the Consultant demonstrates compliance with all of the following conditions: that increases in salary, or partner's or principal's billing rate or amount are in a) accordance with the program of periodic merit and cost of living increases normally administered by it, b) are warranted by increased costs of providing services under this Agreement, c) are based upon increases in salaries and billing rates that are generally applicable to all of Consultant's clients and d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience. If during any calendar year, Authority limits are not available to the Consultant in a timely fashion, increases falling within such limits may be approved retroactively, as appropriate. The amount of increase in salary or billing rate, if any, to be applicable under this Agreement shall in all cases be finally determined by the Chief Engineer or his designee, in their sole and absolute discretion.

The Consultant shall verify that its employees and subconsultants working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9

Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide access to the Authority, federal Form I-9 (Employment Eligibility Verification) for each individual hired by the Consultant, performing services hereunder. This includes citizens and noncitizens.

C. Overhead Rate: The overhead rate of *** (“Overhead Rate”) shall be applied to the Direct Personnel Costs as permitted above. Computation of the Overhead Rate shall include but not be limited the following indirect cost items: applicable taxes, employee benefits, insurance payments, maternity leave, paternity leave, medical leave, family leave, disability benefits, bonuses, overtime pay, premium pay, parking and car allowance, fringe benefits, retirement plans, union dues, contributions and assessments required by Law, and the costs of employee benefits acquired through collective bargaining-and as otherwise in compliance with 48 CFR Part 31.

1) An Overhead Rate shall be applicable for a one-year accounting period (“Provisional Overhead Rate”). Ninety (90) days prior to the expiration of the applicable accounting period, the Consultant shall submit one of the following: i) a current indirect cost audit (not currently under dispute) by a cognizant federal or state government agency; ii) a new calculation by the Consultant of the Overhead Rate in accordance with this Section 10.C; or iii) the Consultant shall submit to an audit of the Overhead Rate by the Authority. Should a subsequent audit rate differ from the rate set forth in this subparagraph, said rate shall be adjusted by a contract modification.

2) The Overhead Rate shall represent reimbursement to Consultant for all other costs incurred by Consultant for such Personnel, provided, however, that for purposes of this Paragraph C only, the term “Personnel” shall exclude any non exempt personnel eligible to receive overtime pay who belong to a labor union, perform work in connection with this Agreement under the terms of a collective bargaining agreement and in accordance with the contract documents, and are paid wages for such work. For the avoidance of doubt, the term “Personnel” for purposes of this Section 10.C, shall include members of a labor union who are exempt from receiving overtime pay and who render superintendent’s services hereunder.

3) The Overhead Rate shall not apply to partners, principals or temporary employees of Consultant.

4) The Consultant’s actual Overhead Rate(s) during the term of this Agreement shall be subject to audit by the Port Authority. The Authority reserves the right to retroactively adjust the Consultant’s compensation in the event that a final audit of overhead indicates that the actual rate applicable during the Agreement is less than the rate(s) used during the Agreement. The Consultant is responsible for monitoring its actual rates to ensure compliance with the Provisional Overhead Rate applicable at the time.

5) The Overhead Rate shall not include any element that is attributable to the Consultant’s Fixed Fee or addressed as a reimbursable expense or cost under this Agreement.

D. Costs of Subconsultants: Consultant shall be reimbursed for the costs of any subconsultants, which shall include only an amount equivalent to the aggregate amount actually paid to subconsultants by Consultant. Under no circumstances shall any subconsultant contract, at any tier, contain a cost-plus-percentage-of-cost compensation structure.

E. Reimbursable Out-of-Pocket Expenses: Approved in advance by the Chief Engineer, necessarily and reasonably incurred and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your

services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for mailing and delivery charges for submittal of drawings, specifications and reports; long distance telephone calls; rentals of equipment; travel and local transportation; and meals and lodging on overnight trips.

Notwithstanding the above, the Authority will pay an amount approved in advance by the Chief Engineer and computed as follows for the reproduction of submittal drawings, specifications and reports:

1) If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents on agreements such as this, or

2) If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.

The Authority will not pay for expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including FAX, email and text messaging, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses his personal vehicle to provide services within the Port District, the Consultant shall be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate, as determined by the General Services Administration (GSA) - <http://www.gsa.gov/portal/content/100715>, per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals shall be reimbursable hereunder when approved in advance in writing by the Chief Engineer. If the Consultant chooses to travel each day to an assignment, where it would be more economical to take a hotel room near the assignment, the maximum reimbursable travel expenses shall not exceed the daily cost for meals and lodging. The cost for all meals and lodging on approved overnight trips are limited to the amounts established by the United States General Services Administration (GSA) for that locality.

General Services Administration (GSA) Rates:

Domestic Rates: <http://www.gsa.gov/portal/category/21287>

You shall obtain the Chief Engineer's written approval prior to making expenditures for out-of-pocket expenses in excess of \$1,000 per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of \$25 with receipted bills and provide said receipts with the appropriate billing except as follows: as approved by the Chief Engineer in advance, receipts for compensable meals may not be required.

E. As used herein:

"Port District" is an area comprised of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States.

"Salaries paid to employees" or words of similar import shall mean salaries and amounts actually paid (excluding payments or factors for holidays, vacations, sick time, bonuses, profit participations and other similar payments) to architects, engineers, designers, drafters or other professional and technical employees of the Consultant, for time actually spent directly in the performance of technical services hereunder and recorded on daily time records which have been approved by the employee's immediate supervisor, excluding the time of any employee of the Consultant to the extent that the time of such employee of the Consultant is devoted to typing/word processing, stenographic, clerical or administrative functions. Such functions shall be deemed to be included in the Overhead Rate.

F. All costs under this Agreement will be allowed to the extent permitted under 48 CFR Part 31.

11. The Authority reserves the right to make changes to any portion of the Work.

A. The Consultant shall immediately notify the Authority, in writing, of any change in the work scope either requested by the Authority or desired by the Consultant. Such notice shall be in the form of an "Initial Notice of Change" and shall include a detailed Statement of Work describing the change and the reasons for it. Upon the Authority's acknowledgment of the proposed change order, the Consultant will be requested to submit a Cost Proposal that must include the estimated hours by element of work and the applicable fully loaded hourly rate(s), other direct charges, if any, and subconsultant charges, if any, in the same detail as cost elements for the Consultant, in accordance with the provisions of this Agreement related to compensation, as well as any schedule adjustment arising from the change. The amounts to which both parties agree with the proposed change will be incorporated into the Agreement by issuance of a Change Order.

B. If the Consultant does not agree with any schedule or cost decision of the Authority related to said change, the Consultant shall diligently perform all such work as directed by the Authority. The Consultant must issue any related claim to the Authority within five (5) work-days of the Authority's request to perform said change. Upon receipt, the Authority may consider the claim. If accepted, in whole or part, the Authority will issue a Change Order. The performance of all such services shall comply with the requirements of this Agreement except as otherwise mutually agreed upon by the parties, in writing.

The Authority reserves the right to delete any item of the work in whole or in part. The Director must authorize such deletions in writing.

12. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder, and, notwithstanding

any other provisions of this Agreement, failure to do so shall be a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority shall have the right to audit all such records.

The Authority shall have the right to inspect your records, and those of your subconsultants, pertaining to any compensation to be paid hereunder, such records to be maintained by you and your subconsultants for a period of one year after completion of services to be performed under this Agreement.

12. On or about the fifteenth day of each month, you shall render a bill for services performed and reimbursable out-of-pocket expenses incurred in the prior month, accompanied by such records and receipts as required, to the Project Manager. Each invoice shall bear your taxpayer number and the purchase order number provided by the Chief Engineer. Upon receipt of the foregoing, the Chief Engineer will estimate and certify to the Authority the approximate amount of compensation earned by you up to that time. As an aid to you, the Authority shall, within fifteen days after receipt of such certification by the Chief Engineer, advance to you by check the sum certified minus all prior payments to you for your account.

13. Termination.

A. For Cause: The Authority may at any time for cause terminate this Agreement as to any services not yet rendered. You shall have no right of termination as to any services under this Agreement without an Authority determination that you acted with just cause. Termination by either party shall be by certified letter addressed to the other at its address hereinbefore set forth. Should this Agreement be terminated in whole or in part by either party as above provided, you shall receive no compensation for any services not yet performed, but if termination is, in the Authority's opinion, without fault on your part, the Authority will pay you as the full compensation to which you shall be entitled in connection with this Agreement the amounts computed as above set forth for services completed to the satisfaction of the Director through the date of termination, minus all prior payments to you.

B. For Convenience: In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Agreement, the Authority may terminate this Agreement and the rights of the Consultant hereunder without cause at any time upon three (3) days written notice to the Consultant and in such event this Agreement shall cease and expire on the date set forth in the notice of termination as fully and completely as though such date were the original expiration date hereof; and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Consultant from the Authority shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed, but no allowance shall be made for anticipated profits.

14. You shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or to the services performed in connection with this Agreement, unless you first obtain the written approval of the Chief Engineer. Such approval may be withheld, if for any reason the Chief Engineer believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

15. Under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the services to be performed hereunder except upon prior written approval and instructions of the Chief Engineer, provided, however that data from manufacturers and suppliers of material shall be obtained by you when you find such data necessary unless otherwise instructed by the Chief Engineer.

16. Any services performed for the benefit of the Authority at any time by you or on your behalf, even though in addition to those described herein, even if expressly and duly authorized by the Authority, shall be deemed to be rendered under and subject to this Agreement (unless referable to another express written, duly executed agreement by the same parties), whether such additional services are performed prior to, during or subsequent to the services described herein, and no rights or obligations shall arise out of such additional services.

17. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Chief Engineer shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority.

18. Originals of estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority shall have the right to use or permit the use of them and of any ideas or methods represented by them for any purpose and at any time without other compensation other than that specifically provided herein. The Consultant hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons whether presently existing or arising in the future and whether presently known to either of the parties to this Agreement or not. This Agreement shall not be construed, however, to require the Consultant to obtain for the Consultant and the Authority the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless owned by the Consultant, or subconsultant, or an employee of either. Whether or not your Proposal is accepted by the Authority, it is agreed that all information of any nature whatsoever which is in any way connected with the services performed in connection with this Agreement, regardless of the form in which it has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

19. If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by the Consultant, his officers, agents, employees, or subconsultants, the Authority shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the Authority.

Promptly upon request by the Authority, the Consultant shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but it is expressly understood and agreed that, as between the Authority and the Consultant the license herein provided for shall nevertheless arise for the benefit of the Authority immediately upon the production of said subject matter, and shall not await formal exemplification in a written license agreement as provided for above. Such license agreement may be transferred by the Authority to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by the Authority but such license shall not be otherwise transferable.

20. Notwithstanding anything to the contrary herein, the work product of the Consultant, its officers, agents, employees, or subconsultants which is produced in accordance with the Agreement, whether it consists of computer programming or documentation thereof, including source code, and on any media whatsoever, shall be deemed to belong exclusively to the Authority, and the Authority shall have the exclusive right to obtain and to hold in its own name any and all copyrights, patents, trade secrets or other proprietary rights and protection as may be produced as part of this work product, including the right to extensions or renewals, where appropriate. The work product shall not be destroyed or released to anyone outside of the Authority without express written authorization of the Chief Engineer. The Authority shall have the exclusive right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided for herein. You agree to contract with your employees for the benefit of the Authority to insure that the Authority has such rights and to give to the Authority or any party designated by the Authority all assistance reasonably required to perfect the rights herein above stated. You shall indemnify and hold harmless the Authority against any claims of proprietary rights infringement arising out of such use of your work product.

21. You shall promptly and fully inform the Chief Engineer in writing of any intellectual property disputes, as well as patents or patent disputes, whether existing or potential, of which you have knowledge, relating to any idea, design, method, material, equipment or other matter related to the subject matter of this Agreement or coming to your attention in connection with this Agreement.

22. You shall promptly and fully inform the Chief Engineer in writing of any patents or patent disputes, whether existing or potential, of which you have knowledge, relating to any idea, design, method, material, equipment or other matter related to the subject matter of this Agreement or coming to your attention in connection with this Agreement.

23. This Agreement being based upon your special qualifications for the services herein contemplated, any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority shall be void and of no effect as to the Authority, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Chief Engineer. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement or to impose any obligation on the Authority to such subconsultant or give the subconsultant any rights against the Authority.

24. Disadvantaged Business Enterprise (DBE) Program

A. The requirements for the Disadvantaged Business Enterprise (DBE) program are set forth in U.S. Department of Transportation (DOT) Title 49 Code of Federal Regulations Part 26 (49 CFR Part 26) and is incorporated into this Agreement by reference.

B. The DBE participation goal for this Agreement is 16.5%.

C. This regulation applies to all agreements that include any federal funds; therefore the Consultant agrees to include the clauses cited below in all agreements for this project and to enforce such clauses. With regards to paragraph 2) below, the Consultant agrees to pay each subcontractor within 7 days of receipt of payment from the Authority.

D. The Consultant agrees to include the following clauses (printed in *Italics*) in all agreements and subcontracts:

1) The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract and shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted agreements. This regulation is incorporated into this agreement by reference. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Authority deems appropriate. This provision shall likewise apply to each subconsultant at each tier.

2) The Consultant agrees to pay each subconsultant on this project for satisfactory performance of its subcontract no later than seven (7) days from the receipt of each payment received from the Authority or within such later period as is provided in the subcontract.

3) 49 CFR Part 26 is incorporated into this Agreement by reference.

4) The DBE participation goal for this agreement is 16.5%.

5) The obligation of the Consultant is to make good faith efforts to meet the Agreement DBE participation goal of 16.5%. The Consultant can demonstrate that it has done so by meeting the Agreement goal or documenting good faith efforts. See Section 26.53 and Appendix A of 49CFR Part 26 for descriptions and discussions of good faith efforts. The Authority is responsible for determining whether a Consultant that has not met the Agreement goal has documented sufficient good faith efforts to be regarded as responsible.

E. Assistance is available from the Authority's Office of Business Diversity and Civil Rights to identify DBE firms and to answer any questions related to the preparation and submission of the DBE Participation Plan (Exhibit II). Questions can be addressed to Robert Foreman at (212) 435-7818 or email at rforeman@panynj.gov. The Authority through the New York State and New Jersey Uniform Certification Programs (UCP) maintains Directories identifying all DBE firms. The Directories list the DBE firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. Each state UCP revises the Directory periodically. The Authority makes the Directories available as follows:

1) New York State UCP Directory: www.nysucp.net

2) New Jersey UCP Directory: www.njucp.net

25. NOTIFICATION OF SECURITY REQUIREMENTS

The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems, and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to certain documents, sensitive security sites and facilities (including rental spaces) to any person that declines to abide by Authority security procedures and protocols, any person with a criminal record with respect to certain crimes or who may otherwise poses a threat to the construction site or facility security. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff, depending upon the level of security required, or may make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Consultant identity checks and background screening

The Consultant may be required to have its staff, visitors or others over whom the Consultant has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Consultant may also be required to use an organization designated by the Authority to perform the background checks.

The Authority's designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning.

- As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as the Transportation Worker Identification Credential for personnel performing in secure areas at Maritime facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located at <http://www.secureworker.com>, or S.W.A.C. can be contacted directly at (877) 522-7922 for more information and the latest pricing. If approved by the Project Manager, the cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Consultant as an out-of-pocket expense as provided herein. Staff that are rejected for a credential for any reason are not reimbursable. Issuance of Photo Identification Credential.

No person shall be permitted on or about the Authority construction site or facility (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the authority requires facility-specific identification credential for the Consultant, the Authority will supply such identification at no cost to the Consultant. Such facility-specific identification credential shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Consultant to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Consultant shall be billed for the cost of the replacement identification credential. Staff shall display Identification badges in a

conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

Staff may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, non-laminated social security card for identify and SSN verification.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority (“Secure Areas”). The Authority will require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated secure areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Consultant shall notify the Project Manager. The Consultant shall conform to the procedures as may be established by the Project Manager from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of work, the Consultant shall request a description from the Project Manager of the Secure Areas, which will be in effect on the commencement date. The description of Secure Areas may be changed from time to time and at any time by the Project Manager during the term of the Agreement.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained consultant security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and service suppliers at the Authority construction site or facility (including rental spaces). In addition, the Consultant, or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or make sketches on any other medium at the Authority construction sites or facilities (including rental spaces), except when necessary to perform the Work under this Agreement, without prior written permission from the Authority. Upon request, any photograph, digital images, video recording or sketches made of the Authority construction site or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

The Agreement may require access to Authority information considered Confidential Information (“CI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October, 2008, corrected as of February, 2009, and as may be further amended. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of CI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained upon request or at:

<http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>

- Audits for Compliance with Security Requirements

The Authority may conduct random or scheduled examinations of business practices under this section and the Handbook in order to assess the extent of compliance with security requirements, Confidential Information procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

At the direction of the Authority, you shall be required to have your employees execute Authority approved non-disclosure agreements.

27. CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST), INDICTMENT, CONVICTION, DEBARMENT, SUSPENSION, DISQUALIFICATION AND DISCLOSURE OF OTHER INFORMATION

By proposing on this Agreement, each Consultant and each person signing on behalf of any Consultant certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, that the Consultant and each parent and/or affiliate of the Consultant has not:

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government agreement for failure to meet standards related to the integrity of the Consultant;
- C. had an agreement terminated by any governmental agency for breach of agreement or for any cause based in whole or in part on an indictment or conviction;
- D. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal;
- E. had any business or professional license suspended or revoked or, within the five years prior to proposal opening, had any sanction imposed in excess of \$50,000 as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- F. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, proposal rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and
- G. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

28. NON-COLLUSIVE PROPOSING, AND CODE OF ETHICS CERTIFICATION, CERTIFICATION OF NO SOLICITATION BASED ON COMMISSION, PERCENTAGE, BROKERAGE, CONTINGENT OR OTHER FEES

By proposing on this Agreement, each Consultant and each person signing on behalf of any Consultant certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that:

A. the prices in its proposal have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other consultant or with any competitor;

B. the prices quoted in its proposal have not been and will not be knowingly disclosed directly or indirectly by the Consultant prior to the official opening of such proposal to any other consultant or to any competitor;

C. no attempt has been made and none will be made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition;

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996 (a copy of which is available upon request to the Authority), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

E. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Consultant for the purpose of securing business, has been employed or retained by the Consultant to solicit or secure this Agreement on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency;

F. the Consultant has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Agreement; and

G. no person or organization has been retained, employed or designated on behalf of the Consultant to impact any Authority determination with respect to (i) the solicitation, evaluation or award of this Agreement; or (ii) the preparation of specifications or request for submissions in connection with this Agreement.

The foregoing certifications shall be deemed to be made by the Consultant as follows:

* if the Consultant is a corporation, such certification shall be deemed to have been made not only with respect to the Consultant itself, but also with respect to each parent, affiliate, director, and officer of the Consultant, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Consultant with an ownership interest in excess of 10%;

* if the Consultant is a partnership, such certification shall be deemed to have been made not only with respect to the Consultant itself, but also with respect to each partner.

Moreover, the foregoing certifications, if made by a corporate Consultant, shall be deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Consultant cannot make the foregoing certifications, the Consultant shall so state and shall furnish with the signed proposal a signed statement, which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "28G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement, as described in the Procurement Disclosure policy of the Authority (a copy of which is available upon request to the Director of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Agreement. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

Failure to make the required disclosures shall lead to administrative actions up to and including a finding of non-responsibility.

Notwithstanding that the Consultant may be able to make the foregoing certifications at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultants are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g. New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify a Consultant, and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant. Furthermore, the Consultant selected for performance of the subject services shall immediately notify the Authority in writing, at any

time during the term of the Agreement, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, or might require disclosure.

Under certain circumstances the Consultant may be required as a condition of this Agreement award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority. Said Monitor shall be charged with, among other things, auditing the actions of the Consultant to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Authority. Furthermore, the Consultant selected for performance of the subject services shall immediately notify the Authority in writing, at any time during the term of the Agreement, of any change of circumstances which might, under this clause, make it unable to make the foregoing certification, or might require disclosure.

29. CONSULTANT ELIGIBILITY FOR AWARD OF AGREEMENTS - DETERMINATION BY AN AGENCY OF THE STATE OF NEW YORK OR NEW JERSEY CONCERNING ELIGIBILITY TO RECEIVE PUBLIC AGREEMENTS

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or New Jersey that a Consultant is not eligible to propose on or be awarded public agreements because the Consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The policy permits a Consultant whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a proposal on an Authority agreement and then to establish that it is eligible to be awarded an agreement on which it has proposed because (i) the state agency determination relied upon does not apply to the Consultant, or (ii) the state agency determination relied upon was made without affording the Consultant the notice and hearing to which the Consultant was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state agency determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or violation of a prevailing rate of wage law.

The full text of the resolution adopting the policy may be found in the Minutes of the Authority's Board of Commissioners meeting of September 9, 1993.

30. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

During the term of this Agreement, the Consultant shall at all times during the Agreement term remain responsible. The Consultant agrees, if requested by the Authority to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Authority, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Agreement activity may resume at such time as the Authority issues a written notice authorizing a resumption of performance under the Agreement.

Upon written notice to the Consultant, and an opportunity to be heard with appropriate Authority officials or staff, the Agreement may be terminated by the Authority at the Consultant's expense where the Consultant is determined by the Authority to be non-responsible. In such event, the Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Consultant associated with such termination.

31 NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

At all times, the Consultant shall not offer, give or agree to give anything of value either to an Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Authority of duties involving transactions with the Consultant on behalf of the Authority, whether or not such duties are related to this Agreement or any other Authority agreement or matter. Any such conduct shall be deemed a material breach of this Agreement.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other Authority agreement), etc. which might tend to obligate the Authority employee to the Consultant, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Agreement or any other Authority agreement. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries of the Authority.

The Consultant shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it and by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel.

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by this section entitled "No Gifts, Gratuities, Offers of Employment, Etc.", it shall report such occurrence to the Authority's Office of Inspector General within three (3) business days of obtaining such knowledge. (See "<http://www.panynj.gov/inspector-general>" for information about reporting information to the Office of Inspector General). Failing to report such conduct shall be grounds for a finding of non-responsibility.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996, (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

Without the express written approval of the Chief Engineer, you shall keep confidential, and shall require your employees, your subconsultants, and your subconsultant's employees to keep confidential a) all information disclosed by the Authority or its consultants to you or b) developed by you or your subconsultants in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of the Agreement.

The Consultant shall include the provisions of this clause in each subagreement entered into under this Agreement.

32. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall not participate in any way in the preparation, negotiation or award of any agreement (other than an agreement for its own services to the Authority) to which it is contemplated the Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such an agreement if the Consultant has a substantial financial interest in the Consultant or potential Consultant of the Authority or if the Consultant has an arrangement for future employment or for any other business relationship with said Consultant or potential Consultant, nor shall the Consultant at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Consultant has reason to believe such an arrangement may be the subject of future discussion, or if the Consultant has any financial interest, substantial or not, in a Consultant or potential Consultant of the Authority, and the Consultant's participation in the preparation, negotiation or award of any agreement with such a Consultant or the review or resolution of a claim in connection with such an agreement is contemplated or if the Consultant has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Consultant shall immediately inform the Chief Engineer in writing of such situation giving the full details thereof. Unless the Consultant receives the specific written approval of the Chief Engineer, the Consultant shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. The Chief Engineer may require the Consultant to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, which is subject to the approval of the Chief Engineer and shall become a requirement, as though fully set forth in this Agreement. In the event the Chief Engineer shall determine that the performance by the Consultant of a portion of its services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Consultant's said services is determined by the Chief Engineer to be no longer appropriate because of such preclusion, then the Chief Engineer shall have full authority on behalf of both parties to order that such portion of the Consultant's services not be performed by the Consultant, reserving the right, however, to have the services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Consultant's execution of this document shall constitute a representation by the Consultant that at the time of such execution the Consultant knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Consultant's part. The Consultant acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any agreements, which result, directly or indirectly, from the services provided by the Consultant hereunder. The Authority's determination regarding any questions of conflict of interest shall be final.

33. DEFINITIONS

As used in sections 27 to 32 above, the following terms shall mean:

Affiliate - Two or more firms are affiliates if a parent owns more than fifty percent of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than

fifty percent of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting and/or law enforcement agency and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or federal, state, and local inquiries into tax returns.

Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the Consultant by whatever titles known.

Parent - An individual, partnership, joint venture or corporation which owns more than 50% of the voting stock of the Consultant.

34. The entire agreement between the parties is contained herein and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith, or his duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

35. No Commissioner, officer, agent or employee of the Authority shall be charged personally by you with any liability or held liable to you under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach hereof.

36. If the foregoing meets with your approval, please indicate your acceptance by signing the original and the additional enclosed copy in the lower left-hand corner and returning them to the Authority.

Sincerely,

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

Lillian D. Valenti
Director
Procurement Department

Date _____

ACCEPTED:

Company: _____

By: _____

Title: _____

Date: _____

INSTRUCTIONS

If the selected Consultant firm is not located in the States of New York or New Jersey, change the number of the last Paragraph of this Agreement from "36" to "37" and insert a new Paragraph "36" as follows:

36. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles.

EXHIBIT I

PERFORMANCE OF EXPERT PROFESSIONAL CONCEPTUAL DESIGN AND RELATED ENVIRONMENTAL SERVICES FOR HOWLAND HOOK ROADWAY ACCESS IMPROVEMENTS

The Consultant shall comply with all applicable federal laws, regulations, executive orders, policies, guidelines and requirements, including but not limited to the following, as they relate to the use of Federal funds for this project:

A. Federal Legislation

1. Title 49, U.S.C., subtitle VII, as amended.
2. Davis-Bacon Act -40 U.S.C. 276(a), et seq. ⁽¹⁾
3. Federal Fair Labor Standards Act -29 U.S.C. 201, et seq.
4. Hatch Act -5 U.S.C.1501, et seq. ⁽²⁾
5. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 42 U.S.C. 4601, et seq. ⁽¹⁾⁽²⁾
6. National Historic Preservation Act of 1966 -Section 106 -16 U.S.C. 470(f).
7. Archeological and Historic Preservation Act of 1974 -16 U.S.C. 469 through 469c. ⁽¹⁾
8. Native Americans Grave Repatriation Act – 25 U.S.C. Section 3001, et seq.
9. Clean Air Act, P.L. 90-148, as amended.
10. Coastal Zone Management Act, P.L. 93-205, as amended.
11. Flood Disaster Protection Act of 1973 - 42 U.S.C. 4012(a). ⁽¹⁾
12. Title 49, U.S.C., Section 303 (formerly known as Section 4(f))
13. Rehabilitation Act of 1973 -29 U.S.C. 794.
14. Civil Rights Act of 1964, Title VI -42 U.S.C. 2000d through d-4
15. Age Discrimination Act of 1975 -42 U.S.C.6101, et seq.
16. American Indian Religious Freedom Act, P.L. 95-341, as amended.
17. Architectural Barriers Act of 1968 42 U.S.C. 4151, et seq. ⁽¹⁾
18. Powerplant and Industrial Fuel Use Act of 1978 42 U.S.C. 8373, Section 403 . ⁽¹⁾
19. Contract Work Hours and Safety Standards Act 41 U.S.C. 327, et seq. ⁽¹⁾
20. Copeland Anti-kickback Act -18 U.S.C. 874 . ⁽¹⁾
21. National Environmental Policy Act of 1969 -42 U.S.C. 4321, et seq.
22. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
23. Single Audit Act of 1984 -31 U.S.C. 7501, et seq. ⁽²⁾
24. Drug-Free Workplace Act of 1988 -41 U.S.C. 702 through 706.

B. Executive Orders

1. Executive Order 11246 - Equal Employment Opportunity⁽¹⁾
2. Executive Order 11990 – Protection of Wetlands
3. Executive Order 11998 – Flood Plain Management
4. Executive Order 12372 - Intergovernmental Review of Federal Programs
5. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction⁽¹⁾
6. Executive Order 12898 – Environmental Justice

C. Federal Regulations

1. 14 CFR Part 13 – Investigative and Enforcement Procedures.
2. 14 CFR Part 16 – Rules of Practice for Federally Assisted Airport Enforcement Proceedings.
3. 14 CFR Part 150 -Airport Noise Compatibility Planning.
4. 29 CFR Part 1 -Procedures for Predetermination of Wage Rates. ⁽¹⁾
5. 29 CFR Part 3 -Contractors or Subcontractors on Public Buildings or Public Works Financed in Whole or Part by Loans or Grants from U.S. ⁽¹⁾
6. 29 CFR Part 5 -Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction. ⁽¹⁾
7. 41 CFR Part 60 -Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-Assisted Contracting Requirements). ⁽¹⁾
8. 49 CFR Part 18 -Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. ⁽³⁾
9. 49 CFR Part 20- Lobbying and Influencing Federal Employees.
10. 49 CFR Part 21 -Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -Effectuation of Title VI of the Civil Rights Act of 1964.
11. 49 CFR Parts 23 and 26 -Participation by Disadvantaged Business Enterprises in Department of Transportation Programs
12. 49 CFR Part 24 -Uniform Relocation Allowance and Real Property Acquisition Regulation for Federally Assisted Programs ⁽¹⁾⁽²⁾
13. 49 CFR Part 27 -Non-Discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance. ⁽¹⁾
14. 49 CFR Part 29 -Debarments, Suspensions, and Voluntary Exclusions.
15. 49 CFR Part 30 -Denial of Public Works Contracts to Suppliers of Goods and Services of Countries that Deny Procurement Market Access to U.S. Contractors.

16. 49 CFR Part 41 – Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction.⁽¹⁾

D. Office of Management and Budget Circulars

1. A-87, revised -Cost Principles Applicable to Grants and Contracts with State and Local Governments.⁽³⁾
2. A-133 – Audits of States, Local Governments, and Non-Profit Organizations

E. AIP Handbook Order 5100.38C, Chapter 9, Section 2

NOTES:

- (1) Does not apply to airport planning sponsors.
- (2) Does not apply to private sponsors.
- (3) 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and local governments receiving Federal assistance. Any requirement levied upon State and local governments by this Regulation or Circular shall also be applicable to private sponsors receiving Federal assistance under the Airport and Airway Improvement Act of 1982, as amended. Specific assurances required by any grant agreement to be included in this Agreement between the FAA and the Port Authority are incorporated in this Agreement by reference to the above.

FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS

1.	Incorporation of Federal Highway Administration Terms	1
2.	Federal Changes	1
3.	No Federal Government Obligations to Third Parties.....	1
4.	Organizational Conflict of Interest.....	1
5.	Certification – Debarment and Suspension	2
6.	Certification – Lobbying Restrictions – Contracts Exceeding \$100,000	4
7.	Access to Records and Reports	11
8.	Civil Rights	12
9.	Cargo Preference – Use of United States Flag Vessels	13
10.	Davis-Bacon and Copeland Anti-Kickback Acts – Contracts Exceeding \$100,000	13
11.	Contract Work Hours and Safety Standards Act - Contracts Exceeding \$100,000.....	21
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1. INCORPORATION OF FEDERAL HIGHWAY ADMINISTRATION TERMS

As used herein, the term “Agreement” shall also mean “Contract” and “Contractor” shall also mean “Consultant”. This Agreement is anticipated to be partially or wholly funded by the Federal Highway Administration (FHWA). As a result, this contract is subject to the provisions of these FHWA Requirements, and those set forth in Form FHWA-1273, attached and incorporated herein. In the event of any conflict between the provisions of these FHWA Requirements set forth below and Form FHWA-1273, the provision(s) of Form FHWA-1273 shall prevail.

Anything to the contrary herein notwithstanding, all FHWA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of the FHWA terms and conditions.

Each and every provision required by the FHWA to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If any provision of this Contract shall be such as to effect non-compliance with any FHWA requirement, such provision shall not be deemed to form part hereof, but the balance of this Contract shall remain in full force and effect.

2. FEDERAL CHANGES

The Contractor shall at all times comply with all applicable FHWA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in a Master Agreement, if applicable, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to so comply shall constitute a material breach of this Contract. The most recent Federal laws, regulations, policies, and administrative practices apply to this Contract at any particular time, unless FHWA issues a written determination otherwise. All standards or limits within a Master Agreement, as applicable, are minimum requirements, unless modified by the FHWA.

3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal Assistance provided by the FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

4. ORGANIZATIONAL CONFLICT OF INTEREST

FHWA Requirements

- A. This Contract may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the contract may, without some form of restriction on future activities; result in an unfair competitive advantage to the Contractor.
- 1.) The Contractor shall have access to confidential and/or sensitive Authority information in the course of contract performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.
 - 2.) To the extent that the Contractor either (a) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (b) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Contractor agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless the Authority provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Contractor was ineligible to compete.
- B. The Contractor, by submitting its bid or proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.
- C. If the Authority determines that the Contractor has violated any term of this numbered clause, the Authority may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the Authority; determining the Contractor ineligible to compete for or be awarded any subsequent or "follow-on" contracts that may be based upon the Contractor's actions under this Contract or violations of this numbered clause, or terminating this Contract, in whole or in part.

5. CERTIFICATION - DEBARMENT AND SUSPENSION

This Contract is a covered transaction for purposes of 2 CFR Parts 180 and 1200. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR

FHWA Requirements

180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935 and 180.940.

The Contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Port Authority of New York and New Jersey. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the Port Authority of New York and New Jersey, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- A. FHWA requires that each potential Contractor, for major third party contracts, complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for itself and its principals and requires each Subcontractor or Supplier (for Subcontracts and Supplier agreements expected to equal or exceed \$25,000) to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" for itself and its principals. Copies of the required Certification forms and accompanying instructions are set forth following the clause herein entitled "Integrity Monitor".
- B. In the event that the Contractor has certified prior to award that it is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Contract may be canceled, terminated or suspended by the Authority and the Contractor will be liable for any and all damages incurred by the Authority because of such cancellation, termination or suspension because of such false certification.
- C. The Contractor shall obtain certifications from all known potential Subcontractors and Suppliers (for which payments are expected to equal or exceed \$25,000) and submit such certifications to the address set forth in E below.
- D. Prior to the award of any Subcontracts or Supplier agreements expected to equal or exceed \$25,000, regardless of tier, any prospective Subcontractor or Supplier who has not previously submitted a certification for this Contract must execute and submit to the Contractor a certification in the form set forth following the clause herein entitled "Integrity Monitor" which will be deemed a part of the resulting Subcontract and Supplier agreement.

- E. The originals of any Certifications or correspondence relating hereto shall be sent by the Contractor to the Director of Procurement, Two Montgomery Street, 3rd Floor, Jersey City, NJ 07302.
 - F. The Contractor shall not knowingly enter into any Subcontracts or Supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.
 - G. As required by FHWA, the Contractor and its Subcontractors or Suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to the Authority if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 6. CERTIFICATION - LOBBYING RESTRICTIONS –CONTRACTS EXCEEDING \$100,000**
- A. Definitions as used in this Clause:
 - 1.) "Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1). As used in the Certification set forth following the clause herein entitled "Integrity Monitor," it also includes any other public agency.
 - 2.) "Covered Federal action" means any of the following Federal actions:
 - a. The awarding of any Federal contract;
 - b. The making of any Federal grant;
 - c. The making of any Federal loan;
 - d. The entering into of any cooperative agreement; and
 - e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. As used in the above referenced Certification, it includes the award of the contract with which it is associated.
 - 3.) "Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan natives are included under the definitions of Indian tribes in that Act.
 - 4.) "Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employees of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

FHWA Requirements

- 5.) "Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government. It also includes a bi-state agency.
- 6.) "Officer or employee of an agency" includes the following individuals who are employed by an agency:
 - a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
 - b. A member of the uniformed services as defined in section 101(3), title 37, United States Code;
- 7.) A special government employee as defined in Section 202, title 18, United States Code;
 - a. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code Appendix 2; and
 - b. An employee of a bi-state agency.
- 8.) "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian Organization with respect to expenditures specifically permitted by other Federal law.
- 9.) "Reasonable Compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
- 10.) "Reasonable Payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
- 11.) "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal Contract. The term excludes an Indian Tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

- 12.) "Regularly Employed" means, with respect to an officer or employee of a person requesting or receiving a Federal Contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.
- 13.) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

B. Prohibition

- 1.) Section 1352 of Title 31, United States Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. For the purposes of the Certification included herein following the clause entitled "Integrity Monitor", it includes the award of the associated contract.
- 2.) The prohibition does not apply as follows:
 - a. Agency and legislative liaison by own employees.
 - (i) The prohibition on the use of appropriated funds, in subparagraph B.1.) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or the contract associated with the certification if the payment is for agency and legislative liaison activities not directly related to a covered Federal Action.
 - (ii) For purposes of subparagraph B. 2.) a.(i) of this Section, providing any information specifically requested by an agency or Congress is allowable at any time.

FHWA Requirements

- (iii) For purposes of subparagraph B. 2.) a.(i) of this Section, the following agency and legislative liaison activities are allowable at any time only where they are not related to specific solicitation for any covered Federal action.
 - (a.) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sales and service capabilities; and,
 - (b.) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (iv) For purposes of paragraph B. 2)a.(i) of this Section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
 - (a.) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (b.) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (c.) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
 - (v) Only those activities expressly authorized by subparagraph B. 2)a. of this Section are allowable under subparagraph B. 2)a.
- b. Professional and Technical Services by Own Employees.
- (i) The prohibition on the use of appropriated funds, in subparagraph B. of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract or the contract associated with the certification if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that contract.

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- (ii) For purposes of subparagraph B. 2.) b. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
 - (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
 - (iv) Only those services expressly authorized by subparagraph B. 2.) b. this Section are allowable under subparagraph B. 2.) b.
- c. Reporting for Own Employees.
- No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.
- d. Professional and Technical Services by Other than Own Employees.
- (i) The prohibition on the use of appropriated funds, in subparagraph B. 1.) of this Section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the

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preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

- (ii) For purposes of subparagraph B. 2.) d. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (v) Only those services expressly authorized by subparagraph B. 2.) d. of this Section are allowable under subparagraph B. 2.) d.

C. Disclosure

- 1.) Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a certification entitled

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"Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352," as set forth following the clause herein entitled "Integrity Monitor" that the person has not made, and will not make, any payment prohibited by subparagraph B. of this Clause. Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a disclosure form entitled "Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352" (Standard Form-LLL), as set forth following the clause herein entitled "Integrity Monitor", if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B. of this Clause if paid for with appropriated funds.

- 2.) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph C.2) of this Section. An event that materially affects the accuracy of the information reported includes:
 - a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- 3.) Any person who requests or receives from a person referred to in subparagraph C.1) of this Section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- 4.) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in subparagraph C.1) of this Section. That person shall forward all disclosure forms to the Authority.

D. Agreement

- 1.) In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this Clause.

E. Penalties

- 1.) Any person who makes an expenditure prohibited under subparagraph A of this Clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

- 2.) Any person who fails to file or amend the disclosure form to be filed or amended if required by the Clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 3.) Contractors may rely without liability on the representations made by their Subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this Clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this Clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

7. ACCESS TO RECORDS AND REPORTS

The Contractor agrees to provide the Authority, the FHWA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees to provide the FHWA Administrator or his authorized representatives including any PMO Contractor access to the Contractor's records and construction sites pertaining to the project.

The Contractor agrees to provide the Authority, FHWA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

The Contractor shall make available records related to the contract to the Authority, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after final payment is made by the Authority and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FHWA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

This requirement is independent of the Authority's requirements for record retention contained elsewhere in the contract documents.

8. CIVIL RIGHTS

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FHWA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
- 1.) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action 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. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.
 - 2.) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.
 - 3.) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.

- C. The Contractor also agrees to include these requirements in each subcontract related to this project, modified only if necessary to identify the affected parties.

9. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

If this Contract involves equipment, materials, or commodities that may be transported by ocean vessels, the Contractor herein agrees:

- A. To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) 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 twenty (20) days following the date of loading for shipments originating within the United States or within thirty (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 (1) above to the FHWA Administrator and grantee (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 20230.
- C. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

10. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – CONTRACTS EXCEEDING \$2000

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below and are applicable if this Contract is a construction contract (as delineated above) over \$2000.

- A. **Minimum Wages**
 - 1.) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid

unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which, if applicable, is attached hereto and made a part hereof (the attachment is the most current determination), regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Determinations may change during the term of the Contract, and the wages and fringe benefits required by the most recent determination of the Secretary of Labor are those to be used.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (A)(2) of this Section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- 2.)
 - a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (ii) The classification is utilized in the area by the construction industry;
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

- b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(ii) (b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- 3.) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 4.) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- 5.)
- a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with

the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(ii)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- B. Withholding**

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and

mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and Basic Records

1.) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2.)
a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Highway Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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- b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph C(2)(b) of this Section.
 - d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- 3.) The Contractor or subcontractor shall make the records required under paragraph C(1) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Highway Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and Trainees

- 1.) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State

Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- 2.) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which

provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- 3.) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

E. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

F. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Highway Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

G. Contract Termination: Debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

H. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

I. Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility –

- 1.) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- 2.) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- 3.) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – CONTRACTS EXCEEDING \$100,000

The Contract Work Hours and Safety Standards Act applies to grantee contracts and subcontracts under 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6) for contracts for construction, and non-construction projects that employ “laborers or mechanics on a public work, where the contract amount is greater than \$100,000.

A. Overtime Requirements

No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages

In the event of any violation of the clause set forth in paragraph A of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek

of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this Section.

- C. **Withholding for unpaid wages and liquidated damages**
The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.
- D. **Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this Section.

12. SEISMIC SAFETY

If this is a contract for the construction of new buildings or additions to existing buildings, the Contractor agrees that any new building or addition to an existing building will be constructed in accordance with standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance. The completed certification of compliance is to be submitted to the Engineer. The seismic safety standards applicable to this Contract are contained in Section 2312 ICBO Uniform Building Code (UBC), as modified by the Appendix to Title 27, Chapter 1 (Volume 7), of the Administrative Code and Charter of the City of New York at RS 9-6 Earthquake Loads.

13. ENERGY CONSERVATION

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 et seq. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the requirements of this Section.

14. CLEAN WATER REQUIREMENTS – CONTRACTS EXCEEDING \$100,000

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251 et seq.
- B. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.
- C. The Contractor also agrees to include the requirements of this Article in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

15. CLEAN AIR REQUIREMENTS – CONTRACTS EXCEEDING \$100,000

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

16. FLY AMERICA

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for this Contract unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

17. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

- B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FHWA.

18. PREFERENCE FOR RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recover Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

19. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or project. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this Contract, financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract related to this Contract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

20. ADA ACCESS REQUIREMENTS

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

21. STANDARD CHANGED CONDITIONS CLAUSE

Notwithstanding the Extra Work provisions of this Contract, the following applies to all construction projects.

A. **Differing Site Conditions Clause** - This clause provides for the adjustment of the contract terms if the contractor encounters:

1. Type I Condition - subsurface or latent physical conditions that differ materially from those indicated in the contract, or
2. Type II Condition - unknown physical conditions of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent to the work.
3. Some examples of potential Type I conditions include encountering the following: more rock than indicated in the contract, larger rock, rock that is harder to drill, permafrost when the boring had given no indication of its general extent, or unexpected quantities of underground water not indicated on the boring logs.
4. While these are potential Type I conditions, in order to receive compensation, the contractor must prove the following by a preponderance of evidence:

- a. *"(1) the contract documents must have affirmatively indicated or represented the subsurface or latent physical conditions which form the basis of plaintiff's claim; (2) the contractor must have acted as a reasonably prudent contractor in interpreting the contract documents; (3) the contractor must have reasonably relied on the indications of subsurface or latent physical conditions in the contract; (4) the subsurface or latent physical conditions actually encountered within the contract area must have differed materially from the conditions indicated in the same contract area; (5) the actual subsurface conditions or latent physical conditions encountered must have been reasonably unforeseeable; and (6) the contractor's claimed excess costs must be shown to be solely attributable to the materially different subsurface or latent physical conditions within the contract site. To prove these six elements, the contractor is only required to use a simple logical process in evaluating the information in the contract documents to determine the expected subsurface or latent physical conditions..."*
(Source: NCHRP, "Selected Studies in Transportation Law, Construction Contract Law", p. 5-16)

5. Some examples of a potential Type II conditions include unanticipated hazardous waste deposits or unanticipated archaeological sites.
6. To recover costs under a Type II condition, the contractor must prove:
 - a. *"(1) that it did not know about the condition; (2) that it could not have reasonably anticipated the condition after a review of the contract*

documents, a site inspection, and the contractor's general experience in that area; and (3) that the condition was unusual because it varied from the norm in similar construction work."
(Source: NCHRP "Selected Studies in Transportation Law, Construction Contract Law", p. 5-16)

7. Further guidance for design and construction engineers on Differing Site Conditions can be found in FHWA's Geotechnical Engineering Notebook, Geotechnical Guidelines No. 15, dated April 30, 1996. (See <http://www.fhwa.dot.gov/bridge/gt-15.pdf>).

B. Suspensions of Work Ordered by the Engineer - This clause provides for the adjustment of the contract terms if the performance of all or a portion of the work is suspended or delayed by the Engineer, in writing, for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry). The contractor is required to submit a request for adjustment, in writing, to the Engineer within 7 calendar days of receipt of the notice to resume work. Recovery of profit on costs resulting from suspensions of work is not allowed.

1. This clause does not preclude the recognition of constructive suspensions or delays resulting from the contracting agency's actions, without written notification. These are delays caused by the owner's instructions that are not in writing. The contractor may receive verbal orders from the engineer, or be delayed by the owners' lengthy review of submittals. Some states recognized constructive delays in their specifications prior to the FHWA regulation. The preamble to the regulation indicates that states may continue to recognize construction delays if this is provided in their standard specifications and contract administration procedures.
2. To qualify for an adjustment, suspensions must be for unreasonable periods and do not include brief, customary suspensions for reasons inherent to highway construction (i.e., material sampling and testing; approval of shop drawings, material sources, etc.; and other reasonable and customary suspensions necessary for the supervision of construction by the contracting agency). In addition, an adjustment under this clause is not allowed if the work is suspended for other reasons or if an adjustment is provided for, or excluded, under other terms or conditions of the contract.

C. Material Changes in the Scope of the Work - This clause provides for the adjustment of the contract terms if the Engineer orders, in writing, an alteration in the work or in the quantities that significantly change the character of work. The term "significant change" shall be construed to apply only to the following circumstances:

1. the altered character of the work differs materially from that of the original contract, or
2. a major item of work, as defined in the contract, is increased or decreased by more than 25 percent of the original contract quantity (adjustments shall apply only to that portion in excess of 125 percent of original contract quantity, or in case of a decrease, to the actual quantity performed).

3. This clause provides for adjustments resulting from formal change orders by the Engineer, in writing, to the extent that the impacted work is part of the contract. Either party may initiate an adjustment and both must be in agreement before the work is performed. As with the suspension of work provision, this clause does not preclude the recognition of constructive suspensions or delays.

22. BUY AMERICA

By submitting a proposal, or executing a contract, hereunder, Contractor certifies compliance with 23 U.S.C. 313, which sets forth the FHWA Buy America requirements: all steel and iron used in Federally funded construction projects must be domestic. All foreign steel and iron materials and products are covered by Buy America regardless of the percentage they comprise in a manufactured product or the form they may take.

See the regulations at 23 CFR 635.410 for more information on compliance, including the some latitude through minimum use, waivers, and alternate bids.

CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352

The undersigned

(name of authorized officer)

certifies, to the best of my knowledge and belief, that:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by, 31, U.S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Note: Pursuant to 31 U.S.C § 1352(c)(I)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this day _____ of _____, 2010

By: _____

Signature of Authorized Official

Official Name and Title of Authorized Official

FHWA REQUIREMENTS

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant,

_____, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day _____ of _____, 2009 _____.

BY SIGNATURE OF AUTHORIZED OFFICIAL

NAME AND TITLE OF AUTHORIZED OFFICIAL

**INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -
LOWER TIER COVERED TRANSACTIONS**

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue available remedies including suspension and/or debarment.

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant 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 proposal 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 had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
DBE PARTICIPATION PLAN**

INSTRUCTIONS: Submit this completed form with your proposal. Note: If more than one (1) page is used, complete all totals on last page.

Agreement Title: _____
 Consultant's Name: _____ Agreement Amt: _____
 Mailing Address: _____
 Telephone No: _____ DBE Goal: _____ %

Name, Address, Telephone No. of DBE Subconsultant (Including name of contact person)	DBE	Description of Work/Services to be Provided	Anticipated Date DBE Will Start Work	Approximate \$ Amount to DBE Sub	DBE % of Tot. Agreement Amount
TOTAL				\$	%

Signature of Contact Person: _____ Approved by: _____
 Print Name: _____ Office of Business and Job Opportunity (OBJO) Representative
 Title: _____ Date: _____

Note:
 All subsequent revisions to the plan must be submitted for approval to the Project Manager for acceptance by Office of Business Diversity and Civil Rights.

ATTACHMENT B

**REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL
CONCEPTUAL DESIGN AND RELATED ENVIRONMENTAL SERVICES FOR
HOWLAND HOOK ROADWAY ACCESS IMPROVEMENTS (RFP #34649)**

AGREEMENT ON TERMS OF DISCUSSION

The Port Authority's receipt or discussion of any information (including information contained in any proposal, vendor qualification, ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) shall not impose any obligations whatsoever on the Port Authority or entitle us to any compensation therefor (except to the extent specifically provided in such written agreement, if any, as may be entered into between the Port Authority and us). Any such information given to the Port Authority before, with or after this Agreement on Terms of Discussion ("Agreement"), either orally or in writing, is not given in confidence. Such information may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever. Any statement which is inconsistent with this Agreement, whether made as part of or in connection with this Agreement, shall be void and of no effect. This Agreement is not intended, however, to grant to the Port Authority rights to any matter, which is the subject of valid existing or potential letters patent. The foregoing applies to any information, whether or not given at the invitation of the Authority.

Notwithstanding the above, and without assuming any legal obligation, the Port Authority will employ reasonable efforts, subject to the provisions of the Port Authority Freedom of Information Code and Procedure adopted by the Port Authority's Board of Commissioners on March 29, 2012, which may be found on the Port Authority website at: <http://www.panynj.gov/corporate-information/pdf/foi-code.pdf>, not to disclose to any competitor of the undersigned, information submitted which are trade secrets or is maintained for the regulation or supervision of commercial enterprise which, if disclosed, would cause injury to the competitive position of the enterprise, and which information is identified by the Proposer as proprietary, as more fully set forth in the FOI Code, which may be disclosed by the undersigned to the Port Authority as part of or in connection with the submission of a proposal.

(Company)

(Signature)

(Title)

(Date)

ORIGINAL AND PHOTOCOPIES OF THIS PAGE ONLY.
DO NOT RETYPE.

ATTACHMENT C

COMPANY PROFILE

**REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL
CONCEPTUAL DESIGN AND RELATED ENVIRONMENTAL SERVICES FOR
HOWLAND HOOK ROADWAY ACCESS IMPROVEMENTS (RFP #34649)**

1. Company Name (print or type):

2. Business Address (to receive mail for this RFP):

3. Business Telephone Number: _____

4. Business Fax Number: _____

5. Firm website: _____

6. Federal Employer Identification Number (EIN): _____

7. Date (MM/DD/YYYY) Firm was Established: ____/____/____

8. Name, Address and EIN of Affiliates or Subsidiaries (use a separate sheet if necessary):

9. Officer or Principal of Firm and Title:

10. Name, telephone number, and email address of contact for questions:

11. Is your firm certified by the Authority as a Disadvantaged Business Enterprise (DBE)? Yes No

If yes, please attach **Port Authority** certification as a part of this profile.

If your firm is an M/WBE not currently certified by the Authority, see the Authority's web site – <http://www.panynj.gov/business-opportunities/supplier-diversity.html>, to receive information and apply for certification.