

State System Project Agreement

COMPTROLLERS CONTRACT NO. D040222

This Agreement, effective this 10/01/2021, is by and between:
the New York State Department of Transportation ("NYSDOT"), having its principal office at
50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State"),

and

the County of Albany (the "Municipality")
acting by and through the County Executive
with its office at 112 State Street, Room 200, Albany, NY 12207.

This Agreement identifies the party responsible for administration, and establishes the method or provision for funding, of applicable phases of a project on the State highway system, as such project and phases are more fully described by Schedule A annexed to this agreement or one or more duly executed and approved Supplemental Schedules A to this agreement. The phases that are potentially the subject of this agreement, as further enumerated below, are: Preliminary Engineering ("PE") and Right-of-Way Incidental ("ROW Incidentals") work; Right-of-Way Acquisition; Construction; and/or Construction Supervision and Inspection. The project, which is on a State Highway, shall be identified for the purposes of this agreement as Albany County Rail Trail over New Scotland Road (Route 85) and Drainage Improvements, Town of Bethlehem, Albany County (as more specifically described in such Schedule A or supplemental Schedules A, the "Project").

WITNESSETH:

WHEREAS, pursuant to Highway Law §10(35) the Commissioner of Transportation (the "Commissioner") and the Municipality may enter into an agreement with a municipality for the performance of work connected with or necessitated by an authorized or anticipated project for the construction, reconstruction or maintenance of the State Highway System; and

WHEREAS, NYSDOT has requested the Municipality to perform drainage improvements to a State-owned facility, which is currently part of State Highway System located within the Municipality; and

WHEREAS, NYSDOT will reimburse approved Project costs to the Municipality; and

WHEREAS, there is a substantial public interest in and benefit to the Project, which will mitigate or improve traffic or safety conditions for the general public; and

WHEREAS, the Legislative body of the Municipality by Resolution No. adopted at meeting held on approved the Municipality's entry into this Agreement has appropriated necessary funds in connection with any applicable Municipal/Sponsor Deposit identified in applicable Schedules A and has further authorized the County Executive of the Municipality/Sponsor to execute this Agreement and the applicable Schedule A on behalf of the Municipality/Sponsor and a copy of such Resolution is attached to and made a part of this Agreement (where New York City is the Municipality/Sponsor, such resolution is not required).

NOW, THEREFORE, the parties agree as follows:

1. Documents Forming this Agreement. This agreement consists of the following:
 - Agreement Form - this document titled "State System Project Agreement";
 - Schedule "A" - Description of Project Phase and, funding requirements;
Schedule "B" – Phases, Subphase/Tasks, and Allocation of Responsibility
 - Appendix "A" - New York State Required Contract Provisions Dated October 2019
 - Appendix "A-1" - Supplemental Title VI Provisions (Civil Rights Act)
 - Appendix "B" – Requirements for State Aided Transportation Project
 - Municipal Resolution(s) - duly adopted municipal resolution(s) authorizing the appropriate municipal official to execute this Agreement on behalf of the Municipality and appropriating the funding required therefor.

ARTICLE 1: PROJECT RESPONSIBILITIES

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

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

The Municipality understands that funding is contingent upon its compliance with the applicable requirements of the "Procedures for Locally Administered Federal Aid Projects" manual (available both in hard copy and through NYSDOT's web site at <https://www.nysdot.gov/plafap>, and as such may be amended from time to time.

1.3 *Access, Control, Operation, Maintenance and Reconstruction of Project.* The Municipality shall have such access to and control of the right of way related to the Project as it may require for the performance of the work of the Project. The State of New York through NYSDOT shall assume all ownership and maintenance responsibilities of the improvements upon their completion.

ARTICLE 2: MANNER OF PERFORMING WORK

2.1 *Performing Work.* The Municipality may contract with any person, firm, corporation or

agency, to accomplish the Project, in accordance with applicable law.

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

2.3 *Force Account or Contract Work.* The Municipality shall accomplish the work of the Project either with its own forces or by contract let in accordance with law.

2.4 *Traffic Control Devices.* To the extent required by Vehicle and Traffic Law §1680, the Manual of Uniform Traffic Control Devices and New York State Supplement will be followed.

ARTICLE 3: PROJECT COSTS; REIMBURSEMENT REQUIREMENTS

3.1 *Project Funding; Reimbursement.* The Municipality will fund Project costs in the first instance and shall be reimbursed by NYSDOT for Project work completed and accepted by NYSDOT in accordance with a NYSDOT approved Project Cost Estimate, in total amount not to exceed the NYSDOT share of Project costs shown in Schedule A.

3.2 *Project Cost Estimate.* Prior to the letting of any contract for the work of the Project the Municipality shall submit to NYSDOT, for NYSDOT's approval, a detailed estimate, by phase, of Project costs.

3.3 *Allocation of Costs.* The approved Project costs associated with the State System will be reimbursed by the State.

3.4 *Reimbursement Procedures.* In order to be eligible for reimbursement under this Agreement, the Municipality shall certify in a form acceptable to NYSDOT the actual Project costs to the Municipality of the work done by or for the Municipality that were necessary for the performance of the Project in accordance with NYSDOT's approvals under this Agreement.

3.5 *Periodic Reimbursement.* If the Municipality finds it desirable to have reimbursement made periodically, upon the request and certification therefor by the Municipality may submit progress payment vouchers based on Eligible Project Costs incurred under the preceding subsection. Payment through progress payments prior to completion of the Project shall not exceed the State's share of eligible Project costs shown in Schedule A. These payments shall be made as funds become available therefor.

3.6 *Final Payment.* Subject to final Project inspection by NYSDOT, final payment shall be made upon request of the Municipality on the basis of work accomplished, upon submission of a voucher certifying actual Eligible Project Costs expended for the completed and accepted Project.

ARTICLE 4: ASSIGNMENT

4.1 Other than contracting for the performance of its responsibilities as contemplated herein, the Municipality covenants agrees not to assign, transfer, sublet or otherwise dispose of this

Agreement or any part thereof, or any of its right, title or interest therein, or its power to execute this Agreement without the prior written consent of the Commissioner of Transportation.

4.2 **Term of Agreement.** As to the Project and phase(s) described in Schedule(s) A executed herewith, this agreement takes effect as of the date of this Agreement as first above written. This agreement takes effect as to the Project and phases(s) established in any duly executed and approved supplemental Schedule(s) A as of the date of such supplemental Schedule(s) A. This agreement shall remain in effect so long as State aid funding authorizations are in effect and funds are made available pursuant to the laws controlling such authorizations and availabilities. However, if such authorizations or availabilities lapse and are not renewed, continued or reenacted, as to funds encumbered or available and to the extent of such encumbrances or availabilities, this agreement shall remain in effect for the duration of such encumbrances or availabilities. Although the liquidity of encumbrances or the availability of funds may be affected by budgetary hiatuses, State budgetary hiatus will not by itself be construed to lapse this agreement, provided any necessary State appropriations or other funding authorizations therefor are eventually enacted.

ARTICLE 5: ADDITIONAL PROVISIONS

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

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

5.3 *State Access.* Project construction contracts shall permit and require that contractors permit the State and/or NYSDOT to inspect the Project and work sites at any time deemed necessary by the State and/or NYSDOT.

5.4 *SEQRA.* In connection with the Project the Municipality is the lead agency for the purposes of the State Environmental Quality Review Act ("SEQRA"). NYSDOT is an involved agency.

5.5 *Independent Contractor.* The parties recognize that they are independent contractors pursuant to this Agreement and will conduct themselves as such; that they will neither hold themselves out as nor claim to be an officer or employee of each other by reason hereof; and they will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer or employee of another party.

5.6 *Municipal Liability.*

5.6.1 If the Municipality performs work under this agreement with its own forces, it shall be responsible for all damage to person or property arising from any act or negligence performed by or on behalf of the Municipality, its officers, agents, servants or employees, contractors, subcontractors or others in connection therewith. The Municipality specifically agrees that its agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

5.6.2 The Municipality shall indemnify and save harmless the State, its officers and employees for all damages and costs arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Municipality its officers, agents, servants, employees, contractors, subcontractors or others under this agreement. Negligent performance of service, within the meaning of

this section shall include, in addition to negligence founded upon tort, negligence based upon the Municipality's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

5.6.3 The Municipality/Sponsor shall at all times during the Contract term remain responsible. The Municipality/Sponsor agrees, if requested by the Commissioner of Transportation or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

5.6.4 The Commissioner of Transportation or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Municipality/Sponsor. In the event of such suspension, the Municipality/Sponsor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Municipality/Sponsor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Transportation or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

5.6.5 Upon written notice to the Municipality/Sponsor, and a reasonable opportunity to be heard with appropriate Department of Transportation officials or staff, the Contract may be terminated by the Commissioner of Transportation or his or her designee at the Municipality's/Sponsor's expense where the Municipality/Sponsor is determined by the Commissioner of Transportation or his or her designee to be non-responsible. In such event, the Commissioner of Transportation or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

5.7 *NYSDOT Obligations.* NYSDOT's responsibilities and obligations are as specifically set forth in this contract, and neither NYSDOT nor any of its officers or employees shall be responsible or liable, nor shall the Municipality assert, make, or join in any claim or demand against NYSDOT, its officers or employees, for any damages or other relief based on any alleged failure of NYSDOT, its officers or employees, to undertake or perform any act, or for undertaking or performing any act, which is not specifically required or prohibited by this agreement.

5.8 *Audit; Records.* The Municipality shall permit the authorized representatives of the Commissioner and/or the State Comptroller to inspect and audit all books, records and accounts of the Municipality pertaining to the work described in Schedule A or the Project, to the extent deemed necessary by the State. All such records shall be retained by the Municipality for a minimum of three years after the later of the submission of the Municipality's latest certification of costs or the State's last reimbursement thereof.

6. *Notice Requirements.*

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

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

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

New York State Department of Transportation (NYSDOT)

Name: Greg Wichser, P.E.

Title: R-1 Capital Program Manager

Address: 50 Wolf Road, Suite 1s50, Albany, NY 12232

Telephone Number: 518-485-7324

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

[Municipality/Sponsor] Albany County

Name: Lisa Ramundo

Title: Commissioner of Public Works

Address: 449 New Salem Road, Voorheesville, NY 12186

Telephone Number: 518-765-2055

E-Mail Address: Lisa.Ramundo@albanycountyny.gov

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

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

7. *Electronic Contract Payments.* Municipality/Sponsor shall provide complete and accurate supporting documentation of eligible Local expenditures as required by this contract, NYSDOT and the State Comptroller. Following NYSDOT approval of such supporting documentation, payment for invoices submitted by the Municipality/Sponsor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The contracting Local Sponsor shall comply with the State Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [Office of State Comptroller](#), by email at epunit@osc.state.ny.us, or by telephone at 518-402-4067. When applicable to State Marchiselli and other State reimbursement by the NYS Thruway, registration forms and instructions can be found at the NYSDOT Local Programs website at [Local Programs Bureau](#). The Municipality/Sponsor herein acknowledges that it will not receive payment on any invoices submitted under this Contract agreement if it does not comply with the applicable State Comptroller and/or NYS Thruway Authority's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

MUNICIPALITY _____

NYSDOT

BY: _____
 Title: _____

BY: _____
 For Commissioner of Transportation

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

APPROVED AS TO FORM:
 STATE OF NEW YORK ATTORNEY GENERAL

 Municipal Attorney

BY: _____
 Assistant Attorney General

COMPTROLLER'S APPROVAL:

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

STATE OF NEW YORK)
)ss.:
 COUNTY OF ALBANY)

On this _____ day of _____, 2021 before me personally came _____ to me known, who, being by me duly sworn did depose and say that (s)he resides at _____; that (s)he is the _____ of the Municipal Corporation described in and which executed the above instrument; that it was executed by order of the _____ of said Municipal Corporation pursuant to a resolution which was duly adopted on _____ and which a certified copy is attached and made a part hereof; and that (s)he signed his(her) name thereto by like order.

 Notary Public