

RESOLUTION NO. 2014260

RE: ACCEPTING THE DETERMINATION AND FINDINGS RELATING TO THE PROPOSED PUBLIC PROJECT (PIN 8755.44 & PIN 8758.71) TO REHABILITATE APPROXIMATELY 4.0 CUMULATIVE KILOMETERS OF OLD HOPEWELL ROAD (CR 28) BETWEEN U.S. ROUTE 9 AND ALL ANGELS HILL ROAD (CR 94), AND OLD HOPEWELL ROAD / ALL ANGELS HILL ROAD INTERSECTION IMPROVEMENTS WITHIN THE TOWN OF WAPPINGER, DUTCHESS COUNTY, NEW YORK

Legislators HUTCHINGS, BOLNER, MICCIO, INCORONATO, and SAGLIANO offer the following and move its adoption:

WHEREAS, Old Hopewell Road is a major east-west arterial roadway that provides both local access to adjacent residential and commercial properties as well as commuter access to highways of higher classification such as US Route 9 and NYS Route 82; and

WHEREAS, Old Hopewell Road (CR 28) and All Angels Hill Road (CR 94) are owned by the County of Dutchess and are maintained by the Dutchess County Department of Public Works; and

WHEREAS, according to Census data, Dutchess County has experienced a population growth of 6.2% from 2000 to 2010 and this growth rate is expected to continue into the future; and

WHEREAS, the rehabilitation of the roadway is needed to insure the continued service of the roadway as a link in the greater mobility and transportation system of the area and to improve traffic safety along Old Hopewell Road (CR 28); and

WHEREAS, the need for these projects was identified by the Dutchess County Department of Public Works based on the deteriorated pavement condition, identified safety conditions, non-standard geometry, and poor drainage performance; and

WHEREAS, an examination of the aforementioned section of Old Hopewell Road (CR 28) identified several locations exhibiting non-standard features that do not meet current

geometric design criteria in terms of travel lane and shoulder widths, travel lane and shoulder cross sections, horizontal and vertical curvature, horizontal clearance, stopping sight distance, and grades; and

WHEREAS, the examination of the aforementioned section of Old Hopewell Road (CR 28) also identified several non-conforming features that exist within the project limits including side slopes, advance signing and delineation, intersection turning radii, improper turn lane lengths/transitions, and the lack of proper guide rail end terminals; and

WHEREAS, an inspection of the drainage systems along the aforementioned section of Old Hopewell Road has revealed the existing drainage system is exhibiting deterioration and will become functionally obsolete without required routine repair and maintenance; and

WHEREAS, the condition of the drainage system is contributing to localized flooding and creating safety issues during inclement weather; and

WHEREAS, the presence of non-standard and non-conforming features and the degraded drainage system along Old Hopewell Road provide a basis of concern for safety along the corridor; and

WHEREAS, the Dutchess County Department of Public Works caused to be performed a vehicular traffic accident analysis in the area of the aforementioned 4.0 km section of Old Hopewell Road for a 3-year period between January 14, 2008 and September 18, 2010, to document the accident history throughout the project corridor and to identify any accident patterns or clusters; and

WHEREAS, said study identified 142 reported, vehicular accidents and revealed a combined accident rate that exceeds the statewide average for an urban two-lane, undivided highway with no access control; and

WHEREAS, the Dutchess County Department of Public Works has concluded that traffic growth, safety deficiencies and the continued deterioration of the corridor infrastructure provides

a basis for the consideration of improvements along the aforementioned section of Old Hopewell Road; and

WHEREAS, by Resolution No. 204300 (PIN 8758.71) and Resolution No. 205025, amended by Resolution No. 205250 (PIN 8755.44), the County of Dutchess committed to advance the Projects for the Rehabilitation of Old Hopewell Road (CR 28) from US Route 9 to All Angels Hill Road (CR 94) and the Old Hopewell Road / All Angels Hill Road Intersection Improvements in the Town of Wappinger in the County of Dutchess; and

WHEREAS, the Dutchess County Department of Public Works established project objectives to analyze the feasible alternatives and guide the design process; and

WHEREAS, the project objectives include improving vehicular safety by addressing existing geometric, pavement surface, pavement cross slope and drainage conditions; improving intersection operations and safety by installing new traffic signal equipment at the Old Hopewell Road intersections with Losee Road/MacFarlane Road and Spook Hill Road; adding turning lanes at the Old Hopewell Road intersections with Losee Road/MacFarlane Road, Spook Hill Road, and Cedar Hill Road; upgrading traffic signal equipment and adding left turn lanes for each approach at the Old Hopewell Road / All Angels Hill Road intersection; addressing pavement, drainage and pipe culvert deficiencies; improving quality of life and environmental resources where feasible; and

WHEREAS, the Dutchess County Department of Public Works implemented a program to incorporate public involvement which included a public information meeting held on July 9, 2014; and

WHEREAS, notices of the public information meetings were published, mailed and generally distributed throughout the proposed project area, at which time the data was presented, project objectives were discussed and the public was allowed to address important project issues; and

WHEREAS, following consideration of public input, the County of Dutchess and its consultant did incorporate mitigation measures into the project design to address stated concerns where warranted; and

WHEREAS, the County of Dutchess and its consultant prepared and periodically revised a project design to accomplish the improvement of the aforementioned section of Old Hopewell Road (CR 28) in the Town of Wappinger, New York, which design included the development and consideration of various preliminary alternatives; and

WHEREAS, based on the analysis of data gathered by the Dutchess County Department of Public Works and its consultants and comments received through the public involvement program, Alternative #5 Option #5, Rehabilitation of Old Hopewell Road (US Route 9 to All Angels Hill Road), and Alternative #3 Old Hopewell Road / All Angels Hill Road Intersection Improvements, were deemed to be the preferred alternative for Final Design Approval; and

WHEREAS, Alternative #5 Option #5 includes: providing a new high friction asphalt wearing surface with cross-slope improvements; 3.3m travel lanes and 1.2m shoulders throughout; upgraded drainage facilities; minor horizontal and vertical realignments; improved clear zone and side slope treatments, installation of new traffic signal equipment and left turn lanes for Old Hopewell Road and Alternative #3 improvement of the Old Hopewell Road / All Angels Hill Road intersection includes upgraded traffic signal equipment with actuation and left turn lanes for all approaches; and

WHEREAS, these two projects are classified as Type I projects under the State Environmental Quality Review Act (SEQRA), and no further action is required; and

WHEREAS, the County of Dutchess acting as lead SEQRA agency, has completed all appropriate SEQRA processing in accordance with applicable laws, rules and regulations, and has otherwise considered the general effect of the proposed project on the environment; and

WHEREAS, the County of Dutchess has considered the general effect of the proposed project on the residents of the locality in which the proposed project is to be undertaken; and

WHEREAS, representatives of the County of Dutchess have met with residents who may be affected by the proposed public project and have made every effort to minimize the impact that the proposed public project will have on adjacent properties; and

WHEREAS, the proposed Alternative #5 Option #5 and Alternative #3 would require the County of Dutchess to acquire easements and/or fee interests in strips of land from approximately 50 properties along Old Hopewell Road (CR 28) and All Angels Hill Road (CR94) within the proposed project area; and

WHEREAS, in accordance with Article 2 of the Eminent Domain Procedure Law after due notice and publication a public hearing was held beginning at 7:30 p.m. on July 9, 2014 at the Wappinger Town Hall located at 20 Middlebush Road, Wappingers Falls, New York, to inform the public and to review the public use to be served by the proposed public project and the impact on the environment and residents of the locality where the project will be constructed and to consider all other matters appropriate to that project; and

WHEREAS, during the course of the public hearing, all matters required by the Eminent Domain Procedure Law and appropriate to such public hearing were identified and explained to persons then in attendance, and such persons in attendance were given an opportunity to, and did, speak and comment on the proposed public project and examined documents presented; and

WHEREAS, at the conclusion of the public hearing, the hearing was adjourned to the close of business on July 21, 2014; and

WHEREAS, the minutes of such public hearing were transcribed and made available, together with the exhibits and other documents, if any, which were identified or made available during the oral presentation phase thereof, for inspection and examination by the public at the offices of the Dutchess County Department of Public Works and the Dutchess County Clerk; and

WHEREAS, additional written public comments regarding the proposed public project were accepted until the close of business on July 21, 2014, and said comments were incorporated into the record of the aforementioned Eminent Domain Procedure Law Public Hearing;

NOW, THEREFORE, IT IS HEREBY RESOLVED, the following constitutes the determination and findings of this Body with respect to the proposed rehabilitation of an approximately 4.0 km section of Old Hopewell Road (CR 28) between US Route 9 and All Angels Hill Road (CR 94) and the Old Hopewell Road / All Angels Hill Road intersection improvements in the Town of Wappinger, Dutchess County, New York:

1. The public use, benefit or purpose to be served by the proposed public project is the rehabilitation of approximately 4.0 km of Old Hopewell Road (CR 28) between US Route 9 and All Angels Hill Road (CR 94) and the Old Hopewell Road / All Angels Hill Road intersection improvements in the Town of Wappinger, Dutchess County, and will include: providing a new pavement wearing surface with consistent 3.3 m (11 ft.) travel lanes in each direction, providing consistent 1.2m (4 ft.) wide full-depth paved asphalt shoulders on both sides of Old Hopewell Road, improving non-standard geometric features, such as minor horizontal and vertical realignment, providing a consistent, improved clear zone by removing, relocating or protecting obstructions within a minimum of 1.2m (4 ft.) from the edge of the travel lane, replacing or adding guide rail as needed, installing new or enhanced closed/open drainage facilities where required, providing cross sectional improvements such as restoration of uniform roadway crown in tangent sections and super elevation improvements on all curves, as required, installing new actuated traffic signals at the Old Hopewell Road intersections with Losee Road / MacFarlane Road and Spook Hill Road in conformance with NYSDOT standards, replacing existing traffic control signs and the installation of advanced warning signs in accordance with the 2009 Edition of the FHWA's *MUTCD for Streets and Highways with NYS Inserts*, constructing left turn lanes on Old Hopewell Road at the intersections with Losee Road / MacFarlane Road, Spook Hill Road and Cedar Hill Road to facilitate future traffic volumes and improve the level of service, upgrading the traffic signal equipment at the Old Hopewell Road / All Angels Hill Road intersection, and providing left turn lanes for each approach.
2. The proposed public project objectives are to: improve vehicular safety by addressing existing geometric, pavement surface, pavement cross slope and drainage conditions; improve intersection operations and safety by upgrading traffic signal equipment and adding turning lanes at the aforementioned intersections; address pavement, drainage and pipe culvert deficiencies; improve the quality of life and environmental resources where feasible. More specifically, the benefits to be obtained and purposes to be served by the proposed public project are as follows:
 - a. Improve Vehicular Safety. The proposed public project will improve vehicular safety for the traveling public by addressing deficiencies such as non-standard geometric features, pavement surface conditions, cross slope and drainage conditions.

- b. Improve The Operation and Safety of the Old Hopewell Road / All Angels Hill Road intersection. The proposed public project includes upgrading the traffic signal equipment with actuation and installing left turn lanes for all approaches.
 - c. Address Pavement, Drainage and Pipe Culvert Deficiencies. Existing pavement deficiencies such as shoulder deterioration and reflective cracking are no longer resolved by routine maintenance or pavement overlays. New pavement will reduce the costs associated with future roadway maintenance. The existing pavement is in need of a new skid resistant wearing surface, which will help in the reduction of slippery pavement related accidents. In addition, deficient cross slopes need to be corrected as they contribute to run off the road and fixed object accidents. The existing drainage system throughout the Old Hopewell Road corridor is failing to adequately convey storm water runoff. The project will address this deficiency resulting in an extended life of the roadway, improved control of surface runoff and improve safety conditions for the traveling public.
 - d. Improve the quality of life and environmental resources. Quality of life will be improved by improving operations at the Old Hopewell Road / All Angels Hill Road intersection. The replacement of the traffic signal with modernized equipment and the addition of left turn lanes for all movements will reduce delay and improve vehicular flow. Overall, the road will be made safer by performing aforementioned improvements. Environmental resources will be improved by improving the drainage system and adhering to the New York State Department of Environmental Conservation's (NYSDEC) SPDES Phase II requirements. Steep slopes will also be cut back or filled in and seeded to reduce the frequency of erosion.
3. The proposed public project is located in the Town of Wappinger and impacts approximately 4.0 km of Old Hopewell Road (CR 28) between US Route 9 and All Angels Hill Road (CR 94).
 4. The following different alternatives were considered:
 - a) Alternative #1 – The No-Build “Null” Alternative. The null alternative calls for no improvements to the existing roadway throughout the project limits: it would retain all identified non-standard and non-conforming features. In addition, it would result in the continued deterioration of the pavement, shoulders and roadside features.
 - b) Alternative #2 – Limited Repairs. Under this alternative, limited repairs would be made to prevent further deterioration of the roadway pavement structure and related facilities by milling/resurfacing the existing pavement and adding stabilized shoulders.
 - c) Alternative #3 – Rehabilitation to meet design criteria for 80 km/hr. This alternative corrects the non-standard and non-conforming features to satisfy the requirements for a design speed of 80 km/hr (50 mph) (the 85th percentile speed). This alternative also meets all of the project objectives but it results in excessive ROW takings and wetland

impacts.

- d) Alternative #4 – Rehabilitation to meet design criteria for 60 km/hr. This alternative lowers the design speed and calls for correcting the non-standard and non-conforming features for a design speed of 60 km/hr (37.5 mph). Given the lower design speed this alternative would meet the project objectives, but it also results in excessive ROW takings and wetland impacts.
- e) Alternative #5 – Rehabilitation to meet design criteria for 3R work (Resurfacing, Restoration and Rehabilitation). This alternative proposes to correct the non-standard and non-conforming features to satisfy 3R design standards. Compared to Alternatives 3 and 4, this alternative requires less ROW takings and wetland impacts.

In addition, Alternative #5 was further analyzed with 5 options at the intersections of Old Hopewell Road with Losee Road / MacFarlane Road, Spook Hill Road and Cedar Hill Road.

- 1. Option #1 – No improvements. Similar to the null alternative no improvements to the existing intersections would be constructed and the side street approaches would retain poor LOS.
- 2. Option #2 – Roundabouts. This option proposes roundabouts at each location which would cause excessive impacts to ROW and wetlands.
- 3. Option #3 – Side street left turns. Under this option, exclusive left turn lanes are proposed on the side streets. However, since these improvements do not alter the gap in the Old Hopewell Road (CR 28) traffic stream, the side street approaches will suffer excessive delays.
- 4. Option #4 – Traffic signals and left turns for all approaches. This option calls for installing a semi-actuated signal and proposed left turn lanes for Old Hopewell Road (CR 28) and the side streets. This option results in a slightly better LOS over option 5 however, the additional costs (ROW and wetland impacts) do not warrant the implementation of the turn lanes as the overall LOS is not significantly improved.
- 5. Option #5 – Left turns at the three intersections and traffic signals at the Losee / MacFarlane Road and Spook Hill Road intersections. This option calls for the installation for left turns on of Old Hopewell Road (CR 28) at each of the intersections and the installation of a semi - actuated signal systems at the intersection of Spook Hill Road and Losee Road/MacFarlane Road. For the intersections of Cedar Hill Road, provisions will be made for the future installation of a traffic signal should the LOS deteriorate. Additionally, Losee Road will be realigned to form a standard four way intersection. This option meets the project objectives of improving safety and LOS and will be progressed with Alternative 5 as the preferred alternative.

The following alternatives were considered for the intersection of Old Hopewell Road (CR 28) and All Angels Hill Road (CR 94):

1. Alternative 1 – The No-Build “Null” Alternative. The null alternative calls for no improvements to the existing intersection: it retains all identified non-standard and non-conforming features and capacity deficiencies. This would result in the continued deterioration of the pavement, shoulders and roadside features as well as traffic operation through the Old Hopewell Road (CR 28) and All Angels Hill Road (CR 94) intersection.
 2. Alternative 2 – Left turns for each approach. This alternative maintains the alignment geometry of the existing intersection but widens all approaches to accommodate left turn lanes. This alternative meets the project objectives for capacity improvements and it requires minimal ROW takings and wetland impacts. However, the non-standard horizontal curve on the northbound approach would be retained.
 3. Alternative 3 – Northbound approach realignment. This alternative realigns the northbound approach to satisfy the requirements for a design speed of 60 km/hr. It also provides the same capacity improvements as described for Alternative 2 but it results in slightly more wetland and ROW impacts than Alternative 2.
5. The reasons for selecting Alternative #5 Option #5 include:
- a. Alternative #1 (Null Alternative) would result in continued roadway deterioration and retention of non-standard and non-conforming conditions, and would not fulfill any project objectives.
 - b. Alternative #2 does not meet the project objective of eliminating non-standard and non-conforming features.
 - c. Alternative #3 does satisfy the project objectives but results in excessive ROW takings and wetland impacts.
 - d. Alternative #4 does satisfy the project objectives but also results in excessive ROW takings and wetland impacts.
 - e. Alternative #5 corrects non-standard and non-conforming features to 3R design standards with less ROW and wetland impacts. Therefore, it is progressed as the preferred alternative.

The reasons for selecting Option #5 include:

1. Option #1 – The Null option does not satisfy the project objectives.
2. Option #2 – The installation of roundabouts would cause excessive ROW and wetland impacts.

3. Option #3 – The installation of side street left turns would not improve delays because of insufficient gaps in traffic along Old Hopewell Road.
4. Option #4 – The installation of traffic signals and left turn lanes for all approaches at the aforementioned intersections would require additional ROW and cause further wetland impacts and do not significantly improve the overall level of service (LOS).
5. Option #5 – Providing left turn lanes for Old Hopewell Road at the aforementioned intersections and traffic signals at Losee/ MacFarlane Road and Spook Hill Road meets the project objectives with limited impacts to ROW and wetlands.

The reasons for selecting Alternative #3 for the intersection of Old Hopewell Road (CR 28) and All Angels Hill Road (94) include:

- a. Alternative 1 – The Null alternative does not meet the project objectives.
 - b. Alternative 2 – Maintain alignment geometry meets project objectives but retains the non-standard horizontal curve on the northbound approach and requires minimal ROW and wetland impacts.
 - c. Alternative 3 – Realign the northbound approach to meet 3R design criteria with slightly more wetland and ROW impacts.
6. The proposed project underwent a thorough and proper State Environmental Quality Review Act (SEQRA) environmental review, during which environmental concerns were addressed. The County of Dutchess, acting as SEQRA lead agency, has issued a Negative Declaration (Notice of Determination of Non-Significance), meaning that the proposed project will not have a significant adverse impact on the environment.
7. It is hereby concluded that the proposed public project will have, among other things, the following effects upon the residents of the locality:
- a. The proposed public project will have a beneficial impact on the residents of the area of the proposed public project. The proposed public project will improve overall public safety by removing existing non-standard horizontal and vertical curves and non-standard sight distance, thereby reducing the potential vehicular accidents. Also, the new signing, pavement markings and other improvements will provide a safer environment for the traveling public.
 - b. The proposed public project will not have any long-term impacts on any highway-related businesses, nor will it require any relocations.
 - c. The proposed public project will require strip acquisitions, but will not affect land uses, change travel patterns or have any permanent effect on local planning.

- d. This proposed project will not have a substantial negative impact on the aesthetics of the area. Rather, various elements of the project will enhance the appearance of the area.
8. Three properties are or may be individually eligible for National Register listing including the Cooper Shook House at 309 Old Hopewell Road, the residential property at 3 Losee Road, and the residential property at 361 All Angels Hill Road. The proposed project would require minor strip right of way acquisition and pavement widening adjacent to two of these properties. No structures will be impacted. The proposed project will have no effect on resources which are on, or eligible for inclusion on, the state or national registers of historic places.
9. The Dutchess County Department of Public Works is hereby authorized and directed to prepare a brief synopsis of the foregoing determination and findings, such synopsis to include those factors set forth in Eminent Domain Procedure Law §204(B), and, further, such synopsis to state that copies of the determination and findings will be forwarded upon written request without cost.
10. The Dutchess County Department of Public Works is further hereby authorized and directed to publish the aforementioned synopsis of the foregoing resolution in at least two (2) successive issues of an official newspaper designated by the County of Dutchess and in at least two successive issues of a newspaper of general circulation in Dutchess County.
11. The Dutchess County Department of Public Works is further hereby authorized and directed to serve, by personal service or certified mail, return receipt requested, a notice of the aforementioned brief synopsis upon each assessment record billing owner (as that term is defined in Eminent Domain Procedure Law §103(B-1) or his or her attorney of record whose property may be acquired, such notice to:
 - a. include the information required by Eminent Domain Procedure Law §204(B)(2); and
 - b. state that copies of the determination and findings will be forwarded upon written request without cost; and
 - c. state that pursuant to Eminent Domain Procedure Law §207, such individual shall have thirty (30) days from the completion of the publication of the aforementioned brief synopsis in the newspapers as aforesaid, to seek judicial review of the County of Dutchess' determination and findings relating to the proposed public project; and

- d. inform such individual that, under Eminent Domain Procedure Law §§207 and 208, the exclusive venue for judicial review of the County of Dutchess' determination and findings relating to the proposed public project is the appellate division of the supreme court in the judicial department where any part of the property to be condemned is located.

CA-160-14

CAB/ca/R-0931

9/16/14

Fiscal Impact: See attached statement

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 14th day of October 2014, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 14th day of October 2014.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS (To be completed by requesting department)

Total Current Year Cost \$ 400

Total Current Year Revenue \$ 380
and Source

Source of County Funds (check one): Existing Appropriations, Contingency,
 Transfer of Existing Appropriations, Additional Appropriations, Other (explain).

Identify Line Items(s):
H0290 5110 3250.213

Related Expenses: Amount \$ 400

Nature/Reason:

Publication cost for Synopsis of Findings.

Anticipated Savings to County: \$380

Net County Cost (this year): \$20
Over Five Years: _____

Additional Comments/Explanation:

This Fiscal Impact Statement is related to the Resolution Request for the Acceptance of the Eminent Domain Procedure Law Determination and Findings for the Federally Funded projects identified as PIN 8755.44 Old Hopewell Road (CR 28) from US Route 9 to All Angels Hill Road (CR 94) and PIN 8758.71 Old Hopewell Road (CR 28) & All Angels Hill Road (CR 94) Intersection in the Town of Wappingers, Dutchess County.

Prepared by: Matthew W. Davis, Assistant Civil Engineer I

RESOLUTION REQUEST FORM

Date of Legislative Meeting: 9/8/14

Department: Public Works - Engineering Division	Contact (Name & Phone No.): Gregory V. Bentley, P.E. 486-2925
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Purpose of Resolution: *(check appropriate boxes:)*

- Personnel (Involving Authorized Positions)
- Authorizing Grant Application
- Contract/Lease Authorization (using budgeted funds)
- Budget Amendment
 - Grant
 - Contingency
 - Other (specify below)
- Capital Project
- Other (specify below)

Acceptance of Eminent Domain Procedure Law Determination and Findings

Brief Description of Request:

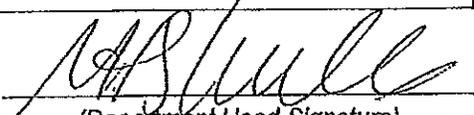
Legislative approval for the Acceptance of the Eminent Domain Procedure Law Determination and Findings for the Federally Funded projects identified as PIN 8755.44 Old Hopewell Road (CR 28) from US Route 9 to All Angels Hill Road (CR 94) and PIN 8758.71 Old Hopewell Road (CR 28) & All Angels Hill Road (CR 94) Intersection in the Town of Wappingers, Dutchess County.

Fiscal Impact (current year) of resolution: \$ 400
(Attach completed Fiscal Impact Statement)

Budget Amendment(s) & Capital Projects:

<u>Line No.</u>	<u>Description</u>	<u>Increase</u>	<u>Decrease</u>
		\$0	\$0
Appropriations:		\$0	\$0
Revenues:		\$0	\$0
		\$0	\$0

8-17-14
(Date)


(Department Head Signature) P/B

626 Dutchess Turnpike
Poughkeepsie, NY 12603
Phone: (845) 486-2925
Fax: (845) 486-2940

**Dutchess County
DPW ENGINEERING**

2014 AUG 12 PM 4:06

RECEIVED
DUTCHESS COUNTY
PUBLIC WORKS

Memo

TO: Noel H.S. Knille, AIA, ASLA, Commissioner of Public Works

FROM: Robert H. Balkind, P.E., Deputy Commissioner of Public Works (RB)

DATE: August 12, 2014

RE: RESOLUTION REQUEST
PIN 8755.44 - REHABILITATION OF OLD HOPEWELL ROAD (CR 28), US ROUTE 9 TO ALL ANGELS HILL ROAD (CR 94) AND
PIN 8758.71 - OLD HOPEWELL ROAD (CR 28) & ALL ANGELS HILL ROAD (CR 94) INTERSECTION IMPROVEMENTS,
TOWN OF WAPPINGERS, DUTCHESS COUNTY

The attached Resolution Request and Fiscal Impact Statement are submitted for the referenced project. A public hearing was held on Wednesday, July 9, 2014 at 6:30 P.M. at the Town of Wappinger Town Hall, 20 Middlebush Road, Wappingers Falls, New York. Following the public hearing, a two week written comment period ended on Wednesday, July 23, 2014 was provided to the public. The public hearing was completed on July 23, 2014. The purpose of this request is to authorize the Dutchess County Legislature to adopt the attached resolution which accepts the Eminent Domain Procedure Law (EDPL) Determination and Findings. The resolution must be adopted within 90 days of the completion of the public hearing.

This project will improve roadway geometry, reconstruct or rehabilitate pavement, and upgrade drainage facilities along Old Hopewell Road (CR 28) from US Route 9 to All Angels Hill Road (CR 94) and at the Old Hopewell Road (CR 28) & All Angels Hill Road (CR 94) intersection in the Town of Wappingers.

The project requires property acquisitions from approximately fifty (50) property owners along the road. This resolution and the acceptance of the Determination of Findings are necessary steps for the acquisition of property under Eminent Domain Procedure Law for this federally funded project.

Adoption of this resolution is a necessary step for continued federal funding of the project. Property acquisition is currently underway and will always be accomplished by willing sale

when possible. Acquisition by Eminent Domain will be employed only if absolutely necessary and would require additional legislative action.

Please find attached a copy of the Determination and Findings.

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McKinney's Consolidated Laws of New York Annotated Eminent Domain Procedure Law (Refs & Annos) Chapter 73. Of the Consolidated Laws Article 2. Determination of the Need and Location of a Public Project Prior to Acquisition

McKinney's EDPL § 201

§ 201. Public hearings

Currentness

Except as provided herein, prior to acquisition, the condemnor, in order to inform the public and to review the public use to be served by a proposed public project and the impact on the environment and residents of the locality where such project will be constructed, shall conduct a public hearing in accordance with the provisions of this article at a location reasonably proximate to the property which may be acquired for such project.

Credits

(L.1977, c. 839, § 1. Amended L.1982, c. 356, § 2.)

Notes of Decisions (12)

McKinney's E. D. P. L. § 201, NY EM DOM PROC § 201

Current through L.2014, chapters 1 to 351, 359, 369, 382 to 383, 386 to 387, 390, 395, 397 to 398.

End of Document

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McKinney's Consolidated Laws of New York Annotated
Eminent Domain Procedure Law (Refs & Annos)
Chapter 73. Of the Consolidated Laws
Article 2. Determination of the Need and Location of a Public Project Prior to Acquisition

McKinney's EDPL § 204

§ 204. Determination and findings

Effective: January 12, 2005

Currentness

(A) The condemnor, within ninety days after the conclusion of the public hearings held pursuant to this article, shall make its determination and findings concerning the proposed public project and shall publish a brief synopsis of such determination and findings in at least two successive issues of an official newspaper if there is one designated in the locality where the project will be situated and in at least two successive issues of a newspaper of general circulation in such locality. If the official newspaper is one of general circulation in such locality, publication therein as specified shall be deemed sufficient compliance. The synopsis shall include those factors set forth in subdivision (B) herein, and shall also state that copies of the determination and findings will be forwarded upon written request without cost.

✓ (B) The condemnor, in its determination and findings, shall specify, but shall not be limited to the following:

(1) the public use, benefit or purpose to be served by the proposed public project;

✓ (2) the approximate location for the proposed public project and the reasons for the selection of that location;

(3) the general effect of the proposed project on the environment and residents of the locality;

(4) such other factors as it considers relevant.

(C) Upon making the determination and findings, the condemnor shall serve, by personal service or certified mail, return receipt requested, a notice of the brief synopsis thereof upon each assessment record billing owner or his or her attorney of record whose property may be acquired. Such notice shall: (1) include the information required by paragraph two of subdivision (B) of this section; (2) state that copies of the determination and findings will be forwarded to such individuals upon written request and without cost; (3) inform such individual that, under section two hundred seven of this article, there are thirty days from the completion of the condemnor's newspaper publication requirement to seek judicial review of the condemnor's determination and findings; and (4) inform such individual that, under sections two hundred seven and two hundred eight of this article, the exclusive venue for judicial review of the condemnor's determination and findings is the appellate division of the supreme court in the judicial department where any part of the property to be condemned is located.

Credits

(L.1977, c. 839, § 1. Amended L.1982, c. 356, § 5; L.2004, c. 450, § 3, eff. Jan. 12, 2005.)

McKinney's Consolidated Laws of New York Annotated
Eminent Domain Procedure Law (Refs & Annos)
Chapter 73. Of the Consolidated Laws
Article 1. Purpose; Short Title; Definitions; Applicability

McKinney's EDPL § 103

§ 103. Definitions

Effective: January 12, 2005

Currentness

As used in this law:

(A) "Acquisition" means the act of vesting of title, right or interest to, real property for a public use, benefit or purpose, by virtue of the condemnor's exercise of the power of eminent domain.

(B) "Acquisition map" means the representation of the real property acquired by either a delineation of the perimeter of the particular project covering the acquisition; together with a description of the project's perimeter boundaries and of the estate, right or interest in and to such property so acquired or an individual property map representing the estate, right or interest in and to such property so acquired.

✓ (B-1) "Assessment record billing owner" means the owner, last known owner, or reputed owner, at such person's tax billing address, of each parcel or portion thereof, of real property which may be acquired by the condemnor for such public project, as shown on the assessment records of the political subdivision in which such parcel or portion thereof is located, as this information, in its most current form, may be obtained from and ascertained by the assessor of each such political subdivision.

(C) "Condemnee" means the holder of any right, title, interest, lien, charge or encumbrance in real property subject to an acquisition or proposed acquisition.

(D) "Condemnor" means any entity vested with the power of eminent domain.

(E) "Person" means any individual, partnership, corporation, association, trust, or legal entity.

(F) "Real property" includes all land and improvements, lands under water, waterfront property, the water of any lake, pond or stream, all easements and hereditaments, corporeal or incorporeal, and every estate, interest and right, legal or equitable, in lands or water, and right, interest, privilege, easement and franchise relating to the same, including terms for years and liens by way of mortgage or otherwise.

(G) "Public project" means any program or project for which acquisition of property may be required for a public use, benefit or purpose.

McKinney's Consolidated Laws of New York Annotated
Eminent Domain Procedure Law (Refs & Annos)
Chapter 73. Of the Consolidated Laws
Article 2. Determination of the Need and Location of a Public Project Prior to Acquisition

McKinney's EDPL § 207

§ 207. Judicial review

Currentness

(A) Any person or persons jointly or severally, aggrieved by the condemnor's determination and findings made pursuant to section two hundred four of this article, may seek judicial review thereof by the appellate division of the supreme court, in the judicial department embracing the county wherein the proposed facility is located by the filing of a petition in such court within thirty days after the condemnor's completion of its publication of its determination and findings pursuant to section two hundred four herein. Such petition shall be accompanied by proof of service of a demand on the condemnor to file with said court a copy of a written transcript of the record of the proceeding before it, and a copy of its determination and findings. Upon receipt of such petition and demand, the condemnor shall forthwith deliver to the court a copy of the record and a copy of its determination and findings. The proceeding shall be heard on the record without requirement of reproduction. If such proposed public improvement is located in more than one judicial department such proceeding may be brought in any one, but only one of such departments and all such proceedings with relation to any single public project shall be consolidated with that first filed.

(B) The jurisdiction of the appellate division of the supreme court shall be exclusive and its judgment and order shall be final subject to review by the court of appeals in the same manner and form and with the same effect as provided for appeals in a special proceeding. All such proceedings shall be heard and determined by the appellate division of the supreme court, and by the court of appeals, as expeditiously as possible and with lawful preference over other matters.

(C) The court shall either confirm or reject the condemnor's determination and findings. The scope of review shall be limited to whether:

- (1) the proceeding was in conformity with the federal and state constitutions,
- (2) the proposed acquisition is within the condemnor's statutory jurisdiction or authority,
- (3) the condemnor's determination and findings were made in accordance with procedures set forth in this article and with article eight of the environmental conservation law, and
- (4) a public use, benefit or purpose will be served by the proposed acquisition.

Credits

(L.1977, c. 839, § 1. Amended L.1982, c. 356, § 6; L.1991, c. 356, § 1.)

McKinney's Consolidated Laws of New York Annotated
Eminent Domain Procedure Law (Refs & Annos)
Chapter 73. Of the Consolidated Laws
Article 2. Determination of the Need and Location of a Public Project Prior to Acquisition

McKinney's EDPL § 208

§ 208. Jurisdiction of courts

Currentness

Except as expressly set forth in section two hundred seven, and except for review by the court of appeals of an order or judgment of the appellate division of the supreme court as provided for therein, no court of this state shall have jurisdiction to hear and determine any matter, case or controversy concerning any matter which was or could have been determined in a proceeding under this article.

Credits

(L.1977, c. 839, § 1.)

Notes of Decisions (7)

McKinney's E. D. P. L. § 208, NY EM DOM PROC § 208

Current through L.2014, chapters 1 to 351, 359, 369, 382 to 383, 386 to 387, 390, 395, 397 to 398.

RESOLUTION NO. 204300

RE: AUTHORIZING THE IMPLEMENTATION, AND FUNDING IN THE FIRST INSTANCE 100% OF THE FEDERAL-AID AND STATE "MARCHISELLI" PROGRAM-AID ELIGIBLE COSTS, OF A TRANSPORTATION FEDERAL-AID PROJECT, AND APPROPRIATING FUNDS THEREFOR

Legislator HUTCHINGS and Hammond offer the following and move its adoption:

WHEREAS, a project for the improvements to Old Hopewell Road (CR 28) at All Angels Hill Road (CR 94) in the Town of Wappinger, identified as PIN 8758.71 (the "Project") is eligible for funding under Title 23, U.S. Code, as amended, that calls for the apportionment of the costs of such project to be borne at the ratio of 80% Federal funds and 20% non-federal funds, and

WHEREAS, Dutchess County desires to advance the Project by making a commitment of 100% of the non-federal share of the costs of preliminary engineering and right-of-way incidental work, now, therefore, be it

RESOLVED, that the Dutchess County Legislature hereby approves of the above subject project, and it is further

RESOLVED, that the Dutchess County Legislature hereby authorizes Dutchess County to pay in the first instance 100% of the federal and non-federal share of the cost of preliminary engineering and right-of-way incidental work for the Project or portions thereof, and it is further

RESOLVED, that the sum of \$220,000 is hereby appropriated and made available to cover the cost of participation in the above phase of the Project, and it is further

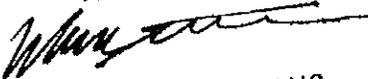
RESOLVED, that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the Dutchess County Legislature shall convene as soon as possible to appropriate said excess amount immediately upon the notification by Dutchess County thereof, and it is further

RESOLVED, that the County Executive be and he hereby is authorized to execute all necessary agreements, certifications or reimbursement requests for Federal Aid and/or applicable Marchiselli Aid on behalf of the County of Dutchess with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality's first instance funding of project costs and permanent funding of the local share of federal-aid and state-aid eligible Project costs and all Project costs within appropriations therefore that are not so eligible, and it is further

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary agreement in connection with the Project.

CA-214-04
ca/C-6805
10/14/04

Fiscal Impact: See attached statement

APPROVED

WILLIAM R. STEINHAUS
COUNTY EXECUTIVE
Date 11/19, 2004

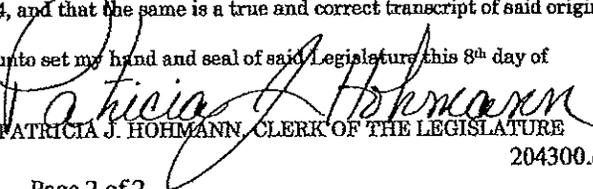
STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 8th day of November, 2004, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 8th day of November, 2004.


PATRICIA J. HOHMANN, CLERK OF THE LEGISLATURE

204300.doc

FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS *(To be completed by requesting department)*

Total Current Year Cost \$ 220,000

Total Current Year Revenue \$ 209,000
and Source

80% Federal-Aid funding Reimbursement and 15% State Reimbursement

Source of County Funds (check one): Existing Appropriations, Contingency,
 Transfer of Existing Appropriations, Additional Appropriations, Other (explain).

Identify Line Items(s):
HO290 - 2000 Roads (ISTEA/TEA 21)

Related Expenses: Amount \$ _____
Nature/Reason:

Anticipated Savings to County: _____

Net County Cost (this year): \$11,000
Over Five Years: \$11,000

Additional Comments/Explanation:

This F.I.S. is related to the Resolution Request for executing a Master Agreement from NYSDOT for the preliminary engineering phase for P.I.N. 8758.71 - Old Hopewell Road (CR 28) at All Angels Hill road (CR 94) Intersection Improvements.

Prepared by: Robert Balkind, PE, Assistant Director of Engineering

Out.pdf

AMENDED BY RESOLUTION NO. 205250

Public Works and Capital Projects

RESOLUTION NO. 205025

RE: AUTHORIZING THE IMPLEMENTATION AND FUNDING IN THE FIRST INSTANCE 100% OF THE FEDERAL-AID AND STATE "MARCHISELL" PROGRAM-AID ELIGIBLE COSTS OF A TRANSPORTATION FEDERAL-AID PROJECT AND APPROPRIATING FUNDS THEREFOR (PIN 8755.44)

Legislators HUTCHINGS, MCCABE, and SWARTZ offer the following and move its adoption:

WHEREAS, a project for Old Hopewell Road (CR 28) from Route 9 to All Angels Hill Road (CR 94) in the Town of Wappinger, Dutchess County, identified as PIN 8755.44 (the "Project") is eligible for funding under Title 23, U.S. Code, as amended, that calls for the apportionment of the costs of such program to be borne at the ratio of 80% Federal funds and 20% non-federal funds, and

WHEREAS, Dutchess County desires to advance the above subject project by making a commitment of 100% of the non-federal share of the costs of preliminary engineering and right-of-way incidental work, now, therefore, be it

RESOLVED, that the Dutchess County Legislature hereby approves of the above subject project, and it is further

RESOLVED, that the Dutchess County Legislature hereby authorizes the County of Dutchess to pay in the first instance 100% of the federal and non-federal share of the cost of preliminary engineering and right-of-way incidental work for the Project or portions thereof, and it is further

RESOLVED, that the sum of \$320,000.00 is hereby appropriated and made available pursuant to Bond H0290-2000 Roads (ISTEA-TEA21) to cover the cost of participation in the above phases of the Project, and it is further

RESOLVED, that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the Dutchess County Legislature shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the Commissioner of Public Works thereof, and it is further

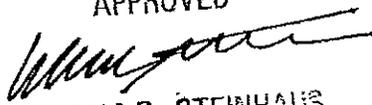
RESOLVED, that the County Executive be and he hereby is authorized to execute all necessary agreements, certifications or reimbursement requests for Federal Aid and/or applicable Marchiselli Aid with the New York State Department of Transportation on behalf of the County of Dutchess in connection with the advancement or approval of the above referenced project and providing for the administration of the Project and the municipality's first instance funding of project costs and permanent funding of the local share of federal-aid and state-aid eligible project costs and all project costs within appropriations therefor that are not so eligible, and it is further

RESOLVED, that a copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary agreement in connection with the project, and it is further

205025

RESOLVED, that this resolution shall take effect immediately.

APPROVED


WILLIAM R. STEINHAUS
COUNTY EXECUTIVE

Date

1/28 2005

CA-04-05

ca/C-6839

1/5/05

Fiscal Impact: See attached statement

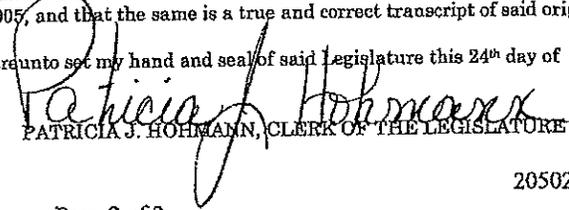
STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 24th day of January, 2005, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 24th day of January, 2005.


PATRICIA J. HOHMANN, CLERK OF THE LEGISLATURE

205025.doc

FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS *(To be completed by requesting department)*

Total Current Year Cost \$ 320,000

Total Current Year Revenue \$ 304,000
and Source

80% Federal-Aid funding Reimbursement and 15% State Reimbursement

Source of County Funds *(check one)*: Existing Appropriations, Contingency,
 Transfer of Existing Appropriations, Additional Appropriations, Other *(explain)*.

Identify Line Items(s):

HO290 - 2000 Roads (ISTEA/TEA 21)

Related Expenses: Amount \$ _____

Nature/Reason: _____

Anticipated Savings to County: _____

Net County Cost (this year): \$16,000

Over Five Years: \$16,000

Additional Comments/Explanation:

This F.I.S. is related to the Resolution Request for executing a Master Agreement from NYSDOT for the preliminary engineering phase for PIN 8755.44 - Old Hopewell Road (CR 28) reconstruction from State Route 9 to All Angels Hill Road (CR 94).

Prepared by: Robert Balkind, P.E., Assistant Director of Engineering

MASTER Federal Aid and Marchiselli Aid Project AGREEMENT
COMPTROLLER'S CONTRACT NO _____

This Agreement, effective this 9th day of November 2004, is by and between:

the New York State Department of Transportation ("NYSDOT"), having its principal office in the Legal Services Division, 6th Floor, 50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State");

and,

Dutchess County (the "Municipality")
acting by and through the **Commissioner of Public Works**
with its office at 22 Market Street, City of Poughkeepsie, Dutchess County.

This agreement identifies the party responsible for administration, and establishes the method or provision for funding, of applicable phases of a federal-aid municipal streets and highway project not 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; Acquisition; Construction; and/or Construction Supervision and Inspection. The federal-aid project, which is on a County, City, Town or Village Road shall be identified for the purposes of this agreement as **PIN 8755.44, Old Hopewell Road (CR 28) from Route 9 to All Angles Road (CR 94), in the Town of Wappinger, Dutchess County** (as more specifically described in such Schedule A or Supplemental Schedules A, the "Project").

WITNESSETH:

WHEREAS, the United States has provided for the apportionment of federal-aid funds to the State for the purpose of carrying out federal-aid highway projects pursuant to the appropriate sections of Title 23 U.S. Code as administered by the Federal Highway Administration ("FHWA"); and

WHEREAS, the New York State Highway Law authorizes the Commissioner of Transportation (hereinafter referred to as "Commissioner") to use federal aid available under the federal-aid highway acts and provides for the consent to and approval by the Municipality of any project under the federal-aid highway program which is not on the State highway system before such Project is commenced; and

WHEREAS, pursuant to Highway Law §10(34-a) and section 15 of Chapter 329 of the Laws of 1991 as amended by section 9 of Chapter 330 of the Laws of 1991 the State enabled the "Marchiselli" Program, that provides State aid for federal aid highway projects not on the State highway system; and

WHEREAS, pursuant to Chapters 329, 330 and 331 of the Laws of New York of 1991, Highway Law §80-b and Public Authorities Law §380 funding of the "State share" of projects under the Marchiselli Program is provided from the proceeds of Local Highway and Bridge Service Contract Bonds issued by the New York State Thruway Authority ("Thruway Authority Bonds"); and

WHEREAS, the continuing legislative authorization for the funding of eligible costs of federal aid municipal streets and highway projects from the proceeds of Thruway Authority Bonds is pursuant to a chapter or chapters of the laws of New York State providing appropriations pursuant to Public Authorities Law §380(1); and

C-6839

WHEREAS, projects eligible for Marchiselli aid are identified by the State Legislature in the "Comprehensive List" published in the annual Report of the Fiscal Committees on the Executive Budget (the "Green Book"), and the Project is duly included in the current Green Book; and

WHEREAS, pursuant to authorizations therefor, NYSDOT and the Municipality are desirous of progressing the Project under the Marchiselli Program; and

WHEREAS, the Legislative Body of the Municipality by Resolution No. _____ adopted at meeting held on _____ approved the Project, the Municipality's entry into this Agreement, has appropriated necessary funds in connection with any applicable Municipal Deposit identified in applicable Schedules A and has further authorized the _____ of the Municipality to execute this Agreement and the applicable Schedule A on behalf of the Municipality (a copy of such Resolution is attached to and made a part of this Agreement).

NOW, THEREFORE, the parties agree as follows:

1. *Documents Forming this Agreement.* The agreement consists of the following:

- Agreement Form - this document titled "Master Federal Aid and Marchiselli Aid Project Agreement";
- Schedule "A" - Description of Marchiselli Project Phase, funding and deposit requirements;
- Schedule "B" - Phases, Subphase/Tasks, and Allocation of Responsibility
- EXHIBIT A - Work Requirements
- EXHIBIT B - Municipal Record Keeping Guidelines
- EXHIBIT C (as applicable) - Consultant Selection Procedures
- Appendix "A" - New York State Required Contract Provisions
- Appendix "B" - Requirements for Federally Aided Transportation Projects
- 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.

2. *General Description of Work and Responsibility for Administration and Performance.* Subject to the allocations of responsibility for administration and performance thereof as shown in Schedule B (attached), the work of the Project may consist generally of the categories of work marked and described in Schedule B for the scope and phase in effect according to Schedule A or one or more supplemental Schedules A as may hereafter be executed by the parties hereto and approved as required for a State contract, and any additions or deletions made thereto by NYSDOT subsequent to the execution of such Schedules A for the purposes of conforming to New York State or to Federal Highway Administration requirements.

3. *Municipal Deposit.* Where the work is performed by consultant or construction contract entered by NYSDOT, or by NYSDOT forces, the Municipality shall deposit with the State Comptroller, prior to the award of NYSDOT's contract or NYSDOT's performance of work by its own forces, the full amount of the non-federal share of the Project costs due in accordance with Schedule A.

4. *Payment or Reimbursement of Costs.* For work performed by NYSDOT, NYSDOT will directly apply federal aid and the required Municipal Deposit for the non-federally aided portion, and shall request Thruway Authority funding of Marchiselli aid to the Municipality as described below. For work performed by or through the Municipality NYSDOT will reimburse the Municipality with federal aid and Marchiselli aid as described below.

4.1 *Federal Aid.* NYSDOT will administer federal funds for the benefit of the Municipality for the federal share and will fund the upset amount and percentage

designated in Schedule A of federal aid participating costs incurred in connection with the work covered by this Agreement, subject to the limitations set forth on Schedule A. For work performed by or through the Municipality, NYSDOT will reimburse federal aid-eligible expenditures in accordance with NYSDOT policy and procedures.

4.1.1 *Participating Items.* NYSDOT shall apply federal funds only for that work and those items that are eligible for Federal participation under Title 23 of U.S. code, as amended, that requires federal aid-eligible projects to be on the Federal Aid Highway System ("FAHS"), except for bridge and safety projects that can be off the FAHS. Included among the participating items are the actual cost of employee personal services, leave and fringe benefit additives are eligible for Federal participation. Other participating costs include materials and supplies, equipment use charges or other Federal Participating costs directly identifiable with the eligible project.

4.1.2 *Periodic Reimbursement.* Except where the Municipality proceeds or has proceeded without an agreement with NYSDOT or §4.6 applies, if the Municipality finds it desirable to have reimbursement made periodically, upon the request and certification therefor by the Municipality NYSDOT may make federal aid progress payments based on either:

- a. billings submitted by the consultant;
- b. payment estimates prepared by NYSDOT's Engineer in Charge; or
- c. billings prepared by the Municipality in accordance with NYSDOT requirements, based on costs incurred as disclosed by the records thereof, as required by the Project, with adjustments (including for applicable retainage) to be made after audit by NYSDOT or FHWA. These payments shall be made as moneys become available therefor.

4.2 *Marchiselli Aid.* NYSDOT will request Thruway Authority reimbursement to the Municipality of the upset amount and designated percentage in Schedule A of the non-overmatched non-federal share of federal participating cost, (the "State share"), incurred in connection with the work covered by this

agreement, subject to the limitations set forth on Schedule A. Not all federal aid-eligible participating costs are eligible for Marchiselli aid. Only "Eligible Project Costs" (as defined in Marchiselli Program instructions issued by NYSDOT) incurred after April 1, 1991 are reimbursable.

4.2.1 *Marchiselli Eligible Project Costs.* To be eligible for Marchiselli Aid Project costs must: (a) be eligible for federal participation as described under §4.1; (b) be for work which, when completed, has a certifiable service life of at least 10 years; and (c) be for a work type that relates directly and exclusively to a municipally-owned highway, bridge or highway-railroad crossing off the State Highway System.

4.2.2 *Periodic Reimbursement.* Except where the Municipality proceeds or has proceeded without a Marchiselli agreement with NYSDOT or §4.6 applies, if the Municipality finds it desirable to have reimbursement made periodically, upon the request and certification therefor by the Municipality NYSDOT may submit a request to the Thruway Authority to make progress payments based on the amount of Federal Aid participating expenditures made to date by the New York State Comptroller. For work performed by or through the Municipality, NYSDOT will reimburse eligible Marchiselli expenditures in accordance with Marchiselli program policy and claims procedures, with adjustments (including for applicable retainage) to be made after audit by NYSDOT or FHWA. These payments shall be made as moneys become available therefor.

4.3 In no event shall this Agreement create any obligation to the Municipality for funding or reimbursement of any amount in excess of:

(a) the amount stated in Schedule A or duly executed Supplemental Schedules A for the **Federal Share**; and

(b) the amount stated in Schedule A or duly executed Supplemental Schedules A as the **State (Marchiselli) share** or the amount stated in the Comprehensive List, whichever is lower.

4.4 All items included by the Municipality in the record of costs shall be in conformity with accounting procedures acceptable to NYSDOT (See EXHIBIT B) and the FHWA. Such items shall be subject to audit by the State and the FHWA.

4.5 If PE or ROW Incidental work is performed by NYSDOT, NYSDOT will be paid for the full costs thereof. To effect such payment the reimbursement to the Municipality provided for in sections 4.1 and 4.2 may be reduced by NYSDOT by the amounts thereof in excess of the Municipal Deposit available for such payment to NYSDOT.

4.6 "Credit" or "Soft Match". Where the Municipality, at its own cost, performs PE and/or ROW Incidental or ROW acquisition work for the federal aid-eligible construction project covered by this agreement, subject to:

(a) NYSDOT and FHWA approval of the plans, specifications and estimates prepared by the Municipality; and,

(b) entry into a "soft match" Federal-Aid or Marchiselli Aid project agreement with NYSDOT that provides a credit toward the local share of the construction phase of the Project hereunder,

the costs of such work that are approved in writing by NYSDOT as applicable to the federal aid and Marchiselli aid construction work (excluding costs applicable to non-federally eligible or non-Marchiselli eligible project elements) shall be credited following FHWA's construction phase closeout audit of the Project to Project costs that are eligible for federal aid and Marchiselli aid.

4.6.1 Notwithstanding subsection 4.3(b), the maximum amount of such "soft match" credit is limited to the lower of: (i) the Municipality's share of Marchiselli aid-eligible construction costs; (ii) the unexpended balance of construction phase funding identified for the Project in the Comprehensive List; or, (iii) the amount of certified Project costs claimed for credit.

5. *Supplemental Agreement or Supplemental Schedule A.* Supplemental Agreements or Supplemental Schedules A may be entered by the

parties, and must be approved in the manner required for a State contract. In the event Project cost estimates increase over the amounts provided for in Schedule, A or Eligible Project Costs in the Comprehensive List are increased by the legislature, **no additional reimbursement shall be due to the Municipality unless** the parties enter into a Supplemental Agreement or Supplemental Schedule A for reimbursement of additional Eligible Project Costs.

6. *State Recovery of Ineligible Reimbursements.* NYSDOT shall be entitled to recover from the Municipality any moneys paid to the Municipality pursuant to this Agreement which are subsequently determined to be ineligible for Federal Aid or Marchiselli Aid hereunder.

7. *Loss of Federal Participation.* In the event the Municipality withdraws its approval of the project, or suspends or delays work on the Project, or takes other action that results in the loss of federal participation for the costs incurred pursuant to this agreement, the Municipality shall refund to the State all reimbursements received from the State, and shall reimburse the State for 100% of all preliminary engineering and right-of-way incidental costs incurred by NYSDOT. The State may offset any other State or federal aid due to the Municipality by such amount and apply such offset to effect such refund.

8. *Municipal Liability.*

8.1 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.

8.2 The Municipality shall indemnify and save harmless the State 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.

9. *Facility Maintenance.* Except as otherwise provided for a NYSDOT administered project during its construction phase only, the Municipality shall be responsible for the maintenance of the project at the sole cost and expense of the Municipality. If the Municipality intends to have the project maintained by another, any necessary maintenance agreement will be executed and submitted to NYSDOT before construction of the Project is begun.

10. *Independent Contractor.* The officers and employees of the Municipality, in accordance with the status of the Municipality as an independent contractor, covenant and agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as nor claim to be an officer or employee of the State by reason hereof, and that they will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to, Workers Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit.

11. *Contract Executory; Required Federal Authorization.* It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the moneys available to the State and no liability on account thereof shall be incurred by the State beyond moneys available for the purposes hereof. No phase of work for the project shall be commenced unless and until NYSDOT receives authorization from the Federal government.

12. *Assignment or Other Disposition of Agreement.* The Municipality agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title or interest therein, or its power to execute such Agreement to any person, company or corporation without previous consent in writing of the

Commissioner.

13. *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 Master Agreement as first above written. This agreement takes effect as to the Project and phase(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 federal aid and Marchiselli 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, a federal or State budgetary hiatus will not by itself be construed to lapse this agreement, provided any necessary federal or State appropriations or other funding authorizations therefor are eventually enacted.

14. *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.

15. *Required Clauses.* Attached hereto and made a part of this agreement as if set forth fully herein is Appendix A, standard clauses for all New York State contracts.

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

NYS DOT D# _____

BY: _____

BY: _____

Title: _____

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.

Municipal Attorney

APPROVED AS TO FORM:
STATE OF NEW YORK ATTORNEY GENERAL

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 DUTCHESS)

On this _____ day of _____, 2004 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

Marchiselli Local Agreement - Schedule A

Instruction: One Form is required for each Phase

OSC Municipal Contract #

Phase Completion Date: May 2010

- Purpose:** **MM1 Master** (To Originate a "1st time" Marchiselli Match Agreement)
 MM2 Master (To Supersede all prior Marchiselli agreement phases, or Change "1st Instance" financing role)
 MM3 Master (To Convert from Non-Marchiselli Federal/Local Agreement to a Marchiselli Match Agreement)
 Supplemental Schedule No. _____
 Administrative Correction

Non-Federal Funding Level: \$5,000 & Over; Thruway; 80-0-20 Under \$5,000; Comptroller SDF; 80-20-0

Agreement Type & Deposit Status: [Check applicable box below]

- State Administered:** Deposit Required for Non-Federal % of all estimated eligible costs + 100% of ineligible costs; Marchiselli Matching Aid is paid quarterly following verified eligible federal aid expenditures by the State Comptroller.
- Locally Administered:** REGULAR (Federal Aid + NYS Marchiselli Match): No Deposit Required, but Non-federal % of State service costs are charged at Close Out. Marchiselli Matching Aid begins as eligible state expenditures & local reimbursements appear in Federal Aid Current Bill.
- Locally Administered:** SOFT MATCH (Not Federally Aided): No Federal or Marchiselli Matching Aid is reimbursed during soft matched phase. Sponsor files itemized statement of direct costs for Regional certification. Sponsor receives normal quarterly Construction phase reimbursement, but lump sum Soft Match Credit (SMC) payment is applied *following* Final FHWA close out of Construction phase – limited to the Local Share of Construction Costs (normally 5%).

Individual Project Phase ID: P.E./Design ROW Incidentals ROW Acquisition Construction, C/I, & C/S

List all 9-digit PIN Marchiselli-Match Eligible Fiscal Shares *in this Phase* (e.g., 123456.121; 123456.122):

PIN 8755.44.121 and PIN 8755.44.221

Work Type(s): Improve existing non-standard horizontal and vertical alignment to improve sign distances on Old Hopewell Road (CR 28) from Route 9 to All Angels Hill Road (CR 94) in the Town of Wappinger, Dutchess County. Also included will be the rehabilitation of existing pavement and rehabilitate/widen shoulders. Roadside drainage will be improved, existing culverts will be inspected and replaced as required. Guide rail, pavement striping and signing will be upgraded to meet current guidelines.

List any 9-digit PIN Fiscal Shares NOT Eligible for Marchiselli-Matching Aid (e.g., 123456.123; 123456.104):

Local Municipal Sponsor (Village, Town, City, or County of ...): **County of Dutchess**

Other Municipal Sponsor(s)?:

% of Cost Shared by Other Municipality(ies) :

(List only if applicable)

(List only if applicable)

Record ALL Approved Budget Allocations in Legislature's Comprehensive List (List ALL Phases)

List State Fiscal Year(s) which apply:	SFY	SFY	SFY	SFY	SFY	SFY	Authorized BUDGET To Date
6 digit PIN# (in Green Book)							
P.E./Design							
ROW(see note)							
Construction, C/I & C/S							
TOTAL							

Note: "ROW" in the Comprehensive List means either ROW Incidentals or ROW Acquisition.

A. COST SUMMARY FOR THE FOLLOWING PHASE [Check applicable box(es) below]:
 * = P.E./Design * = ROW Incidentals = ROW Acquisition = Construction, C/Inspection, & C/Supervision

B. Summary of ELIGIBLE MARCHISELLI Program Costs (for this Phase Only)

List Eligible PIN Fiscal Share(s) (i.e., 9-digit PINs)	TOTAL ELIGIBLE COSTS	FEDERAL Participating Share @80%	STATE MARCHISELLI Match	LOCAL MATCHING Share	LOCAL DEPOSIT AMOUNT REQUIRED (if any)
- 8755.44.121 PE	\$300,000.00	\$240,000.00	\$-0-	\$60,000.00	\$-0-
- 8755.44.221 Row Inc	\$ 20,000.00	\$ 16,000.00	\$-0-	\$ 4,000.00	\$-0-
TOTAL MARCHISELLI ELIGIBLE COSTS	\$320,000.00	\$256,000.00	\$-0-	\$64,000.00	\$-0-

C. Summary of MARCHISELLI-INELIGIBLE or MARCHISELLI NON-PARTICIPATING Costs, if any

List any other PIN Fiscal Shares (i.e., 9-digit PINs)	List SOURCE of Funds (e.g., 100% Local, SDF, SALB, Other Agency, Authority, Private Entity, Legislative Member Item, Utility Co., etc)	List TYPE of Work or Costs (e.g., Betterments, Overmatch, Parking Lot, New Sidewalk, Highway Rest Area, Bridge Demolition, Excess Grant Amt, Utility Expense, "Under \$5,000", etc)	TOTAL "Marchiselli-Ineligible & Non-Participating" Costs (if any)	Other NON-LOCAL (Federal & State) "Marchiselli-Ineligible or Non-Participating" Costs (if any)	Other LOCAL "Marchiselli-Ineligible or Non-Participating" Costs (if any)
			\$	\$	\$
Total:			\$	\$	\$

D. Total Local DEPOSIT(s) Required for this Phase (including any prior deposits): \$-0-

E. TOTAL PROJECT COSTS for this Federally Aided Phase (all sources)

TOTAL FEDERAL AID	TOTAL MARCHISELLI AID	TOTAL LOCAL AID	TOTAL OTHER AID	TOTAL (all sources)
\$256,000.00	\$-0-	\$64,000.00	\$-0-	\$320,000.00

NYSDOT ADMINISTRATIVE PROCESSING DATA:

<p>For completion by the NYSDOT Regional Office</p>
<p>1. Is a Local Deposit Required with this Agreement? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>2. If prior deposit(s) were made on this Phase, list <u>Current</u> Amount Due: \$ _____ Otherwise, leave blank</p> <ul style="list-style-type: none"> • List any prior deposit check amount(s) and the approximate date(s) in the "Footnotes:" section below. <p>3. Has any required deposit check been received by the NYSDOT Region? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No", list due date:</p> <p>4. Has the required Marchiselli Deposit Check Transmittal (CP74) form been completed? <input type="checkbox"/> Yes <input type="checkbox"/> No To insure municipalities receive full and accurate credit for their deposits, note the following:</p> <ul style="list-style-type: none"> • A separate municipal check is required for each individual project PIN (6-digit). Each check should clearly identify the PIN, PHASE of work, and State Comptroller "D" AGREEMENT No. • A separate CP74 Marchiselli Deposit Transmittal form is required for each State Administered, federally-aided PHASE of work (attached to the local sponsor's check) from the applicable NYSDOT Regional Office (n.b., For this purpose, Design & ROW Incidentals is considered one phase).

<p>For Detailed PIN Review by NYSDOT Project Coordinator (Check applicable box & record date)</p>
<p><input type="checkbox"/> My review of Page 1 & 2 indicates there are no additional PIN Fiscal Share extensions issued at this time.</p> <p><input type="checkbox"/> My review indicates the following additional 3-digit PIN Fiscal Share Extension(s) were previously unrecorded, and are chargeable to this phase within the amount authorized as the State Marchiselli Match on Page 2, Block B:</p> <p>Date Reviewed: _____</p>

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

Footnotes:

Where agreement is pre-Marchiselli, i.e., provides federal aid only

At this time the *non-federal share* of Project costs identified for federal aid funding in this agreement is to be provided entirely by the Municipality. No subsidy or reimbursement of any portion of that local match is provided by New York State's Marchiselli Program or this contract at this time. Furthermore, this Agreement does not assure that any Marchiselli aid for the Project or phase hereunder will be authorized or available in the future.

If the Project (and the phase of work) are eligible for State aid under the Marchiselli Program, and such aid is duly requested by the Municipality, NYSDOT may (subject to budgetary requirements) submit an appropriate request for Marchiselli funding authorization by the Legislature. If Legislative authorization for such funding is received, NYSDOT and the Municipality may enter a supplemental agreement providing such Marchiselli aid. Only then would Marchiselli aid be available to the affected Project and phase.

SCHEDULE B: Construction Project Type Phases, Subphases/Tasks, and Allocation of Responsibility Page 1 of 4

Instructions: Enter an "X" to indicate the appropriate Phase, then assign the responsibility for each applicable Subphase task by entering an "X" in either the NYSDOT column to allocate the task to State Labor Forces or a State Contract, or enter an "X" in the other appropriate column to indicate a task allocated to Non-State Labor Forces or a Locally Administered Contract.

PHASE/SUBPHASE	Allocation of Responsibility	
	NYSDOT	MUNICIPALITY
XX_A1. Preliminary Engineering ("PE") Phase		
1. <u>Scoping:</u> Prepare & distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.		X
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, land use and development analysis and forecasts.		X
3. <u>Preliminary Design:</u> Prepare & distribute Design Report/Design Approval Document (DAD), including environmental analysis/assessments, and other reports required to demonstrate the completion of specific design subphases or tasks and/or to secure the approval/authorization to proceed.		X
4. Review & Circulate all project reports, plans, and other project data to obtain the necessary review, approval, and/or other input and actions required of other NYSDOT units and external agencies.	X	XX
5. Obtain aerial photography and photogrammetric mapping.		X
6. Perform all surveys for mapping and design.		X
7. <u>Detailed Design:</u> Perform all project design, including preparation of plan sheets, cross-sections, profiles, detail sheets, specialty items, shop drawings, and other items required in accordance with the <i>Highway Design Manual</i> , all Highway Design (including pavement evaluations, taking and analyzing cores; design of pavement mixes and applications procedures), preparation of any necessary bridge site data package and all Structural Design (including any necessary hydraulic analyses, foundation design), all design of highway appurtenances & systems (e.g., Signals, IVHS facilities), and maintenance and protection of traffic plans. FRA criteria will apply to rail work.		X
8. Perform landscape design (including erosion control).		X
9. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need for cultural resources survey.		X
10. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance, separately, any portions of the project which may be more appropriately progressed separately and independently.		X

PHASE/SUBPHASE	Allocation of Responsibility	
	NYSDOT	MUNICIPALITY
11. Compile PS&E package, including all plans, proposals, specifications, estimates, notes, special contract requirements, and any other contract documents necessary to advance the project to construction.		X
12. Conduct any required soils and other geological investigations.		X
13. Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocation plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.		X
14. Determine the need and apply for any required permits, including U. S. Coast Guard, U. S. Army Corps of Engineers, Wetlands (including identification and delineation of wetlands), SPDES, NYSDOT Highway Work Permits, and any permits or other approvals required to comply with local laws, such as zoning ordinances, historic districts, tax assessment and special districts.		X
15. Prepare and execute any required agreements, including: <ul style="list-style-type: none"> -- Railroad force account -- Maintenance agreements for sidewalks, lighting, signals, betterments. -- Betterment Agreements - Utility Work Agreements for any necessary Utility Relocations of Privately owned Utilities. 		X
16. Provide overall supervision/oversight of design to assure conformity with Federal and State design standards or conditions, including final approval of PS&E by NYSDOT		X
XX A2. Right-of-Way (ROW) Incidentals		
1. Prepare ARIM or other mapping, showing preliminary taking lines.		X
2. Right-of-Way (ROW) mapping.		X
3. Obtain abstracts of title and certify those having an interest in right-of-way to be acquired.		X
4. Secure Appraisals.		X
5. Perform Appraisal Review and establish an amount representing just compensation.		X
6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including "de minimus" determination, as may be applicable. If NYSDOT is responsible for acquiring the right-of-way, this determination may be performed by NYSDOT only if NYSDOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.		X
7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedures Law, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.		X

PHASE/SUBPHASE	Allocation of Responsibility	
	NYS DOT	MUNICIPALITY
8. Prepare a Right-of-Way plan.		X
9. Prepare relocation plans, if required.		X
XX B. Right of Way (ROW) Acquisition		
1. Perform all Right-of-Way (ROW) Acquisition work, including negotiations with property owners, acquisition of properties and accompanying legal work, payments to and/or deposits on behalf of property owners; Prepare, publish, and pay for any required legal notices; and all other actions necessary to secure title to, possession of, and entry to required properties. If NYS DOT is to acquire property on behalf of the Municipality, the Municipality agrees to accept and take title to any and all permanent property rights so acquired which form a part of the completed Project.		X
2. Provide required relocation assistance, including payment of moving expenses, replacement housing supplements, mortgage interest differentials, closing costs, mortgage prepayment fees.		X
3. Conduct condemnation proceedings, court, and any other legal actions required to acquire properties.		X
4. Monitor all ROW Acquisition work and activities, including review and processing of payments to property owners.	X	XX
5. Provide official certification that all right-of-way required for the construction has been acquired in compliance with applicable Federal, State or local requirements and is available for use and/or making projections of when such property(ies) will be available if such properties are not in hand at the time of contract award.		X
6. Conduct any property management activities, including establishment and collecting rents, building maintenance and repairs, and any other activities necessary to sustain properties and/or tenants until the sites are vacated, demolished, or otherwise used for the construction project.		X
7. Subsequent to completion of the Project, conduct ongoing property management activities in a manner consistent with applicable Federal, State and local requirements including, as applicable, the development of any ancillary uses, establishment and collection of rent, property maintenance and any other related activities.		X
XX C. Construction (C), Supervision (C/S) and Inspection (C/I) Phase		
1. Advertise contract lettings and distribute contract documents to prospective bidders.		X
2. Conduct all contract lettings, including receipt, opening, and analysis of bids, evaluation/certification of bidders, notification of rejected bids/bidders, and awarding of the construction contract(s).		XX
3. Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.		X

PHASE/SUBPHASE

Allocation of Responsibility	MUNICIPALITY	
	NYSDOT	
4. Compile and submit Contract Award Documentation Package.		X
5. Review and approve any proposed subcontractors, vendors, or suppliers.		X
6. Conduct & control all construction activities in accordance with the plans and proposal for the project. Maintain accurate, up-to-date project records & files, including all diaries & logs, to provide a detailed chronology of project construction activities. Procure or provide all materials, supplies & labor for the performance of the work on the project, & insure that the proper materials, equipment, human resources, methods and procedures are used.		X
7(A). For non-NHS or State Highway System Projects: Test and accept materials, including review and approval for any requests for substitutions.		X
7(B) For NHS or State highway System Projects: Inspection and approval of materials such as bituminous concrete, Portland cement concrete, structural steel, concrete structural elements and/or their components to be used in a federal aid project will be performed by, and according to the requirements of, NYSDOT. The Municipality shall make or require provision for such materials inspection in any contract or subcontract that includes materials that are subject to inspection and approval in accordance with the applicable NYSDOT design and construction standards associated with the federal aid project.	Inspection by NYSDOT	Contractual reqs. of contractor and subs.
8. Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.		X
9. Administer construction contract, including the review and approval of all contractor requests for payment, orders-on-contract, force account work, extensions of time, exceptions to the plans and specifications, substitutions or equivalents, and special specifications.		X
10. Review and approve all shop drawings, fabrications details, and other details of structural work.		X
11. Administer all construction contract claims, disputes or litigation.		X
12. Perform final inspection of the completed work to determine and verify final quantities, prices, and compliance with plans specifications, and such other construction engineering supervision and inspection work necessary to conform to Municipal, State and FHWA requirements, including the final acceptance of the project by NYSDOT.	X	XX

xx= Lead in task.

EXHIBIT A Work Requirements

The work of the project shall be performed in accordance with the following requirements:

1. Plans, Specifications and Estimates

a. The Municipality shall comply with all applicable statutes, permits, ordinances, rules and regulations relative to the development of the project including those for projects which may have a significant effect on the environment (e.g. the National Environmental Policy Act ("NEPA") and State Environmental Quality Review Act, significant effect on agricultural districts (Agriculture and Markets Law, Article 25AA), the preservation of historic structures, the quality of water and potential for flood hazards and losses (Environmental Conservation Law, Articles 8 and 36) and certify such compliance in a form acceptable to NYSDOT.

b. Contract work with any person, firm, corporation or agency, either governmental or private, to accomplish the Project will be in accordance with applicable State and Federal law. The choice of contract engineers by the Municipality to perform preliminary engineering or construction inspection is subject to the approval of NYSDOT.

c. All construction materials and construction methods shall be in accordance with specifications approved by NYSDOT. The Municipality shall design and construct the Project, or cause it to be designed and constructed, in accordance with standards agreed to by NYSDOT under the supervision of a professional engineer, or architect or other professional as agreed to by NYSDOT. Construction supervision work shall be performed by the Municipality or by contract.

d. The record sampling program, independent testing and quality assurance procedures applicable to federal-aid Projects performed by the Municipality shall be in accordance with specifications approved by the NYSDOT whether or not such procedures are required for the receipt of Federal-Aid.

e. Any contract plans and specifications shall be stamped with the seal of a professional engineer licensed in this State and shall be signed by such professional engineer, or shall be signed by such other professional licensed in this State, as approved by NYSDOT. The plans and specifications shall be filed with NYSDOT.

f. The contract between the Municipality and its contractor(s) must comply in every way with applicable Federal laws, rules, regulations and the Federal-Aid Policy Guide (FPG). NYSDOT shall not be a party to any such third party contract.

2. As required by law, construction contract lettings and construction contract awards shall be based on competitive bidding, and shall require prior approval of NYSDOT in the

following manner:

a. Prior to advertising for bids, one copy each of the proposed construction contract, plans, specifications and all related bidding documents shall be submitted to NYSDOT for approval, and must receive approval from NYSDOT prior to such advertisement. The bid invitation and the contract to be let shall contain a statement that the contract will be awarded by the Municipality subject to the approval of NYSDOT.

b. Advertisement must be placed in newspapers, bulletins, trade journals and/or minority publications for a *minimum of three weeks* to insure free and open competition, unless a different period is approved, in writing, by NYSDOT.

c. After the bid opening and before award, the following contract award package shall be submitted to NYSDOT:

1. Proof of publication of advertising for bids.
2. Certification of all bids received with tabulation of up to six lowest.
3. Copy of the proposal signed by the bidder selected for award of the contract.
4. If the award is not to be made to the lowest bidder, a statement of explanation.
5. Bid amount broken down by fiscal shares.
6. Competitive bidding statement.
7. Recommendations for award.
8. Analysis of low bid, including identification of unbalanced bids.
9. Certification of quantities of items bid 25% or greater over the engineer's estimate.
10. Non-collusive Bidding Certification.
11. Bidder Debarment History Certification.
12. For contracts over \$500,000 or as otherwise required:
 - Schedule of proposed DBE participation; and
 - NYS Uniform Contracting Questionnaire (CCA-1).

NYSDOT will review the Contract award package and, upon its approval, the Municipality shall award the contract and file an executed copy thereof with NYSDOT.

EXHIBIT B
Record Keeping Guidelines

Listed below are the submission and record keeping requirements for State reimbursement of participating costs on Federal-aid and/or State-aid projects. The Municipality or Sponsor shall submit requests for NYSDOT payment(s) under this Agreement on forms and in accordance with procedures required by NYSDOT. Submission of detailed backup materials may not be required by NYSDOT with all submissions. However, NYSDOT may, in its discretion, request particular records at any time, and such records will be required to be available for audit purposes. Accordingly, the Municipality or Sponsor shall make submissions and maintain the types of support records described below.

1. **Submissions for State Reimbursement.** Once this Agreement is fully executed and approved the party to receive payment under this agreement may submit progress billings to NYSDOT for the Federal share, and any applicable State share of approved Project costs. Only eligible Project costs as defined in applicable Federal and/or State regulations or guidelines (and, for Federal-aid projects, incurred subsequent to the date of Federal Highway Administration authorization) can be submitted in such progress billings.

2. **Support Records for Contractor, Consultant, Personal and Non-Personal Services Costs.** The party to receive payment hereunder shall maintain among its Project records a copy of its progress billings to NYSDOT, together with the following types of support records:

(a) **Contracts/Consultant Agreements** - Paid invoices or similar supporting documentation (e.g., vendor's vouchers) for each contract and each consultant agreement and payment documentation (e.g., canceled checks).

(b) **Work by Municipal or Sponsor Employees** - For the period covered by the progress billings; payroll records, time sheets and payment documentation (e.g., payroll checks, direct deposit documentation) for all personal service cost items. The supporting documents for personal service and non-personal service costs are to include the following:

(1) **Payroll Time Sheets** - The signature of the employee and approval of the employee's supervisor, or other verification acceptable to NYSDOT, is required on each time sheet. These signatures attest to the employee's assignment and hours worked on the Project(s) indicated, and demonstrate that periods of paid leave are charged to appropriate leave categories or accounts. Employee time for such leave, holidays, vacation or other paid leave cannot be charged directly to Projects on time sheets since such costs must be allocated to Projects by using an approved percentage additive rate applied to direct payroll costs. Time sheets must correspond with applicable payroll records and amount paid for each employee based on a comprehensive payroll/labor cost distribution system.

(2) Leave and fringe benefit additives are to be calculated and charged to Projects at percentage rates previously approved by NYSDOT for provisional billing purposes, subject to final audit.

(3) Indirect costs may be charged to Projects at indirect cost rates developed in compliance with Federal OMB circular A-87.

(4) **Non-Personal Service Costs** - Payment documentation (e.g., canceled checks) and paid invoices or similar supporting documentation (e.g., employee reimbursement vouchers for travel or similar costs) showing amounts and

notations as may be required to clearly identify the purpose of each item and its direct cost relationship to the Project.

3. **Project Detail Ledgers.** For audit purposes, a Project Detail Ledger is required as the official accounting record of the Municipality or Sponsor to record and accumulate all cost transactions applicable to the Project. All costs recorded on the Project Detail Ledger should be for 100% of such costs, identifying among the totals the total non-Federal share and any applicable total State share.

Every transaction listed on the Project Detail Ledger will be recorded in the same level of detail as the total from each supporting source document (no summarization of source document amounts). All transactions listed on the Project Detail Ledger will identify the source document for the transaction by referencing contract/estimate numbers, social security numbers (for time sheets and employee reimbursements), vendor or payee numbers for vouchers, etc. The applicable accounting system record date will also be included for each transaction (i.e. pay period dates for time sheets, or voucher approval or date paid for payments to the consultant, employee reimbursements, etc.).

The Project Detail Ledger for the Project will include totals for all transactions recorded during: (1) each accounting month, (2) the fiscal year of the Municipality or Sponsor, and (3) for the Project life to date.

4. **Source Documents.** The Municipality or Sponsor will retain an official copy of consultant estimates, payroll time sheets, employee travel claims and all other original source documents for transactions listed on the Project Detail Ledger. These will be systematically filed in an order that will facilitate retrieval. All expenditure vouchers or other cost documents must also be traceable through the Municipality's or Sponsor's disbursement process to copies of warrants or checks issued and to corresponding documentation maintained in the official accounting records of the Municipality's or Sponsor's central finance office.

5. **Audit/Disallowances.** On Federal-aid projects the Municipality or Sponsor shall cause a Certified Public Accountant to audit the performance of any consultant contract entered for the Project and retain the results thereof for State or Federal audit of this agreement. Costs claimed or previously reimbursed that cannot be supported as outlined herein are subject to audit disallowance by NYSDOT, the State Comptroller, Federal Highway Administration, and/or the U.S. Department of Transportation, Office of the Inspector General. Amounts paid by NYSDOT that are subsequently disallowed by the Federal government are subject to recovery by NYSDOT from the recipient, or at the option of the State, will be offset or reduced against current or future reimbursement claims on the same or other projects or purposes.

EXHIBIT C
Consultant Selection Procedure

The Municipality will select consultants for the Project by NYSDOT approved, or FHWA approved procedures that are in accordance with Chapter 6 of NYSDOT's Locally Administered Federal Aid Projects Manual available through NYSDOT's web site at <http://www.dot.state.ny.us/pubs/localproj/local.html>.

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the

time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter or three (3) years after final payment, whichever is later. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Empire State Development Corporation's Division of Minority- and Women-owned Business Development (MWBD) pertaining hereto.

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

APPENDIX B

Requirements for Federally Aided Transportation Projects

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

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

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

Non Discrimination/EEO/DBE/MBE Requirements

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

1. Non Discrimination. No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of or be subject to discrimination under the Project funded through this Agreement.
2. Equal Employment Opportunity. In connection with the execution of this Agreement, the Municipality's or Sponsor's contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
3. Disadvantaged Business Enterprises. In connection with the performance of this Agreement, the Municipality or Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the maximum utilization of disadvantaged business enterprises and will use its best efforts to ensure that disadvantaged business enterprises will have the maximum practicable opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with Section 105(f) of the Surface Transportation Assistance Act of 1982, as implemented in 49CFR Part 23.

In addition, the Municipality or Sponsor (also referred to as "recipients" below) shall cause such contractors and subcontractors to agree to abide by the statements in paragraphs (1) and (2) below. These statements are, by reference, made part of this Agreement and must be included in all subsequent agreements between the Contractor and any subcontractor and in all UMTA-assisted contracts between recipients or subrecipients and any contractor.

- (1) "Policy. It is the policy of the Department of Transportation that minority business enterprises as defined in 49CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the MBE requirements of 49CFR Part 23 apply to this Agreement."
- (2) "MBE Obligation. The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts."

Federal Single Audit Requirements

Non-Federal entities that expend \$300,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations". Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than \$300,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in §3052.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. General Accounting Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance, to the New York State Department of Transportation, Contract Audit Bureau, 1220 Washington Avenue, Albany, NY 12232.

**Catalog of Federal Domestic Assistance ("CFDA")
Identification Number**

OMB Circular A-133 as to Federal-aid recipients responsibilities regarding identification and accounting for awards and expenditures by CFDA Number.

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The CFDA number for the Federal-aid Highway Planning and Construction program is 20.205.

RESOLUTION NO. 205250

RE: AMENDING RESOLUTION #205025 WHICH AUTHORIZED THE IMPLEMENTATION AND FUNDING IN THE FIRST INSTANCE 100% OF THE FEDERAL-AID AND STATE "MARCHISELLI" PROGRAM-AID ELIGIBLE COSTS OF A TRANSPORTATION FEDERAL-AID PROJECT AND APPROPRIATING FUNDS THEREFOR (PIN 8755.44)

Legislators SWARTZ, LAFRANCE, and HORTON offer the following and move its adoption:

WHEREAS, Resolution No. 205025 adopted on January 24, 2005 by the Dutchess County Legislature approved of, and agreed to provide the local share of Preliminary Engineering and Right-of-Way Incidental costs for the above subject project at the ratio of 80% Federal funds and 20% non-federal funds, and

WHEREAS, the project for Old Hopewell Road (CR 28) from Route 9 to All Angels Hill Road (CR 94) in the Town of Wappinger, Dutchess County, identified as PIN 8755.44 (the "Project") is eligible for funding under Title 23, U.S. Code, as amended, now calls for the apportionment of the costs of such program to be borne at the ratio of 90% Federal funds and 10% non-federal funds, and

WHEREAS, it was subsequently found necessary to revise the project ratio of federal funds and non-federal funds and to undertake additional preliminary engineering work for the above-subject project not contemplated in the original agreement authorized by the previous resolution, and

WHEREAS, the preliminary engineering costs came in higher than anticipated at \$480,000.00, and

WHEREAS, Dutchess County continues to desire to advance the project by making a commitment of 100% of the non-federal share of the costs of preliminary engineering and right-of-way incidental work, now, therefore, be it

RESOLVED, that the Dutchess County Legislature hereby continues to approve of the above subject project, and it is further

RESOLVED, that the Dutchess County Legislature hereby authorizes the County of Dutchess to pay in the first instance 100% of the federal and non-federal share of the cost of preliminary engineering and right-of-way incidental work for the Project or portions thereof, and it is further

RESOLVED, that the sum of \$160,000 (\$480,000 minus previously authorized \$320,000) is hereby appropriated and made available from Bond H0290-2000

Roads (ISTEA-TEA21) and made available to cover the cost of participation in the above phases of the Project, and it is further

RESOLVED, that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the Dutchess County Legislature shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the County Executive thereof, and it is further

RESOLVED, that the County Executive be and he hereby is authorized to execute all necessary agreements, certifications or reimbursement requests for Federal Aid and/or applicable Marchiselli Aid with the New York State Department of Transportation on behalf of the County of Dutchess in connection with the advancement or approval of the above referenced project and providing for the administration of the Project and the municipality's first instance funding of project costs and permanent funding of the local share of federal-aid and state-aid eligible project costs and all project costs within appropriations therefore that are not so eligible, and it is further

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary agreement in connection with the project, and it is further

RESOLVED, that this resolution shall take effect immediately.

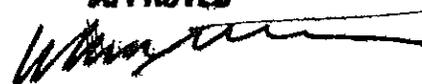
CA-145-05

ca/C-6839

8/9/05 revised 9/6/05

Fiscal Impact: See attached statement

APPROVED


WILLIAM R. STEINHAUS
COUNTY EXECUTIVE

Date 9/30, 2005

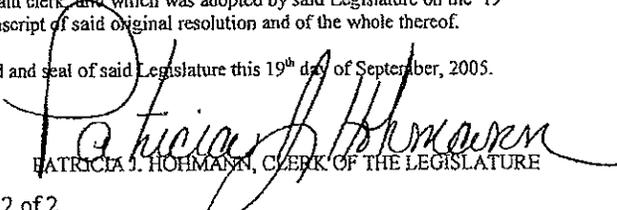
STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 19th day of September, 2005, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 19th day of September, 2005.


PATRICIA J. HOHMANN, CLERK OF THE LEGISLATURE

FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS

(To be completed by requesting department)

Total Current Year Cost \$ 0

Total Current Year Revenue \$ 16,000
and Source

Revenue is a result of Federal Reimbursement level changing from 80% to 90%.

Source of County Funds *(check one)*: Existing Appropriations, Contingency,
 Transfer of Existing Appropriations, Additional Appropriations, Other *(explain)*.

Identify Line Items(s):

HO290 - 2000 Roads (ISTEA/TEA 21)

Related Expenses: Amount \$ _____

Nature/Reason:

Anticipated Savings to County: \$16,000

Net County Cost (this year): _____
Over Five Years: _____

Additional Comments/Explanation:

This F.I.S. is related to the Resolution Request for executing a Supplemental Agreement from NYSDOT for the preliminary engineering phase for PIN 8755.44 - Old Hopewell Road (CR 28) reconstruction from State Route 9 to All Angels Hill Road (CR 94). Although the preliminary engineering costs are higher under the Supplemental Agreement, the increased reimbursement level from 80% to 90% results in a net decrease in the County share of project costs.

Prepared by: Robert Balkind, P.E.; Assistant Director of Engineering

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