Buffalo and Fort Erie Public Bridge Authority

Request for Proposals for

Project Consultant:
Right-of-Way Survey & Mapping Services
for the
Peace Bridge Expansion Project

City of Buffalo, Erie County, NY, USA
Town of Fort Erie, Ontario, Canada

100 Queen Street
Fort Erie, ON L2A 3S6

May 12, 2008
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I. INTRODUCTION

A. General Information

The Buffalo and Fort Erie Public Bridge Authority (PBA) is requesting proposals to procure Right-of-Way (ROW) Survey & Mapping services for land and property acquisition and temporary and permanent easements for the construction of the Peace Bridge Expansion Project. The consultant shall be responsible for the quality of the ROW maps throughout the life of the project. The scope of work under this agreement includes the following major elements:

- ROW Survey and Analysis
- Preliminary ROW Mapping
- Detailed ROW Mapping

All work performed by the Consultant at the Consultant's initiative shall be within the current project scoping and study limits specified in the current Scope of Services and further defined in the Final Environmental Impact Statement (FEIS).

Firms intending to respond to this RFP should e-mail Mandy Caughlin, Administrative Assistant, at axc@peacebridge.com to ensure that their correct contact information is listed. This will ensure that firms receive all updates and/or amendments/addendums to this RFP.

The following administrative requirements will apply to this RFP. Failure to comply fully with these requirements may result in disqualification of your proposal, at the sole discretion of the PBA.

Restrictions on Communications

From the date this RFP is issued until the contract award has been announced, no proposer initiated contact with any PBA official shall be permitted regarding this RFP, other than written inquiries, as described in this section. This prohibition includes, but is not limited to, any lobbying of individuals considered to have any influence over proposal evaluation and selection. Violation of this provision will be grounds for immediate disqualification. Written inquiries should be forwarded to:

Anthony D. Braunscheidel, Facilities Manager
E-mail: axc@peacebridge.com

As specifically endorsed by the PBA Board of Directors, contact, in the manner noted above, with personnel of the PBA other than Anthony D. Braunscheidel, Facilities Manager, regarding this request for proposals will be grounds for elimination from the selection process, at the sole discretion of the PBA.

Inquiries

There will be an opportunity available for submission of written questions. All questions or requests for clarification regarding this RFP must be submitted via email to the PBA contact as indicated in Section V (A), no later than May 28, 2008, 11 AM EST, citing the particular RFP section, and paragraph number where applicable. Questions or requests for clarification received after such time and date will not receive a response from the PBA. Answers to all questions, as well as copies of the questions, will be posted to the PBA website at www.peacebridge.com and email notification of such posting will be distributed to all firms that
provided contact information as requested above.

**Modifications to the RFP**

The PBA may modify any part of the RFP prior to the deadline for submission of proposals by issuance of addendum. Any addendum issued by the PBA will be posted to the PBA website and email notification of such posting will be distributed to all firms that provided contact information as requested above.

There is no expressed or implied obligation for the Buffalo & Fort Erie Public Bridge Authority to reimburse responding firms for any expenses incurred in preparing, submitting or presenting proposals in response to this request.

To be considered, six (6) copies of a proposal must be submitted to Anthony D. Braunscheidel, Facilities Manager, 100 Queen Street, Fort Erie, Ontario L2A 3S6. The PBA strongly recommends hand delivering the proposal to avoid mail and border clearance delays. The PBA reserves the right to reject any or all proposals submitted, in its sole discretion. Proposals submitted will be evaluated by a Committee consisting of individuals from PBA and New York State Department of Transportation (NYSDOT).

During the evaluation process, the PBA reserves the right, where it may serve the PBA’s best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. At the discretion of the Committee, selected firms submitting proposals will be required to make oral presentations as part of the evaluation process.

The PBA reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the PBA and the firm selected.

It is anticipated that the selection of a firm will be completed by July 17, 2008. Following the notification of the selected firm it is expected that a contract will be executed between both parties shortly thereafter.

All qualified applicants will be afforded equal opportunity without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. The PBA encourages minority and women-owned businesses to submit proposals.

**B. Term of Service**

It is anticipated that the successful proposer will enter into an agreement with the PBA for a term based on the anticipated length of the Right of Way Acquisition, Final Design and Construction phases of the project.
II. DESCRIPTION OF THE AUTHORITY

A. Name of Contact Person

The Consultant’s principal contact with the Buffalo & Fort Erie Public Bridge Authority will be Anthony D. Braunscheidel, Facilities Manager.

B. Background Information

The Buffalo and Fort Erie Public Bridge Authority is an international compact entity created pursuant to a compact entered into by the State of New York (the State), with the consent of the United States Congress, and the Government of Canada. The Authority is governed by a ten member Board consisting of five members from New York State and five members from Canada. The mission of the Authority is to be known as the premier U.S./Canada international border crossing, providing excellence in customer service and an effective conduit for trade and tourism.

The Peace Bridge crosses the Niagara River between Buffalo, New York and Fort Erie, Ontario. Upon its completion on June 1, 1927, the international Peace Bridge represented a monument to commemorate the century of peace which had existed between the United States and Canada since the War of 1812. The appearance and structure of the Peace Bridge has changed little since its dedication on August 17, 1927.

The Peace Bridge measures 3,580 feet in length from abutment to abutment. The roadway is 36 feet wide from curb to curb with two six-foot pedestrian sidewalks on either side of the bridge. The Peace Bridge was originally designed to support two lanes of 20-ton trucks and two tracks of 40-ton trolleys. Although the supporting steel is in place to support the trolley tracks, the tracks were never installed. Today, the Peace Bridge has been modified to a three-lane bridge. The center lane is reversible, allowing two-lane operation in one direction during peak hours. The main approaches to the Peace Bridge on the United States side are the New York State Thruway (I-190) and Porter Avenue, a four lane arterial. On the Canadian side, the principal approach highways are the Queen Elizabeth Way (“QEW”); Highway 3, a four-lane highway; and the Niagara Parkway.

Additional information regarding the PBA can be found on the PBA’s website at www.peacebridge.com.
III. NATURE OF SERVICES REQUIRED

A. General

The Buffalo and Fort Erie Public Bridge Authority (PBA) has initiated a Bi-National Integrated Environmental Process (BNIIP) that considers as a single action the capacity, expansion and congestion relief of the Peace Bridge international crossing; the Peace Bridge, Federal Inspection Station (Plaza), and Connecting Roadways in the Town of Fort Erie, Canada and Buffalo, USA. The proposed solution will provide operational, functional and security improvements that will reduce congestion and improve efficiency and functionality of the existing Peace Bridge Border Crossing Facility.

The Peace Bridge Expansion Project consists of expanding the existing Federal Inspection Station, referred to as the Plaza, constructing a companion bridge, re-decking the existing Peace Bridge, and reconstructing and improving the connecting roadway system. A Draft Design Report/Draft Environmental Impact Statement/Draft Section 4(f) Evaluation/Draft Section 6(f) [DDR/DEIS/4(f)/6(f)] for this project was prepared September 2007. A Final Environmental Impact Statement (FEIS) is currently being prepared and is expected to be published in spring, 2008 with a targeted Record of Decision (ROD) of July 31, 2008. The ROD will be prepared in accordance with 40 CFR 1505 and 23 CFR 771, which will identify the environmentally preferred alternative.

The PBA intends to use other consultants, not part of this agreement, for design of the project and acquisition of property in accordance with the Uniform Relocation Assistance ad Real Property Acquisition Policies Act. The purpose of this agreement is to procure Right-of-Way (ROW) Mapping services for land and property acquisition and temporary and permanent easements for the construction of the Peace Bridge Expansion Project. The consultant shall be responsible for the quality of the ROW maps throughout the life of the project. The scope of work under this agreement includes the following major elements:

- ROW Survey and Analysis
- Preliminary ROW Mapping
- Detailed ROW Mapping

All work performed by the Consultant at the Consultant's initiative shall be within the current project scoping and study limits specified in the current Scope of Services and further defined in the FEIS.

B. Project Classification

A DDR/DEIS/4(f)/6(f) was completed in September 2007 for the Peace Bridge Expansion Project. An FEIS is expected to be completed in the Spring, 2008 with a targeted ROD of July 31, 2008 or shortly thereafter.

This project is a National Environmental Policy Act (NEPA) Class I Action under USDOT Regulations, 23 CFR771. It will follow the Class I procedure under the NYSDOT Project Development Manual. Classification under the New York State Environmental Quality Review Act (SEQRA) Part 15, Title 17 of the Official Compilation of Codes, Rules and Regulations of New York State (17 NYCRR Part 15) is SEQRA Non-Type II (EIS).
C. Policy and Procedures

It is anticipated that this project will receive partial funding from the U.S. Federal Highway Administration as administered by NYSDOT. As such, the design of this project will be progressed in accordance with the current NYSDOT Project Development Manual and appropriate sections of the Procedures for Locally Administered Federal Aid Projects. These documents can be found at https://www.nysdot.gov/portal/page/protal/main/publications.

1. Compliance with documents

   All work shall conform to current versions of the following NYSDOT documents. Where necessary the PBA shall provide or make available to the Consultant either the full document or guidance extracted from it.

   • Engineering Instructions and Directives
   • Engineering Bulletins
   • Procedures for Locally Administered Federal Aid Projects
   • Surveying Standards & Procedures Manual
   • CADD Standards and Procedure Manual
   • Comprehensive Pavement Design Manual, June 2000
   • Project Development Manual
   • Annual Report titled "Update of Accident Reduction Factors and Average Accident Rates"
   • Right Of Way Mapping Procedure Manual
   • Rules and Regulations Governing the Accommodation of Utilities within the State Highway Right of Way
   • AASHTO LRFD Bridge Design Specifications (*)
   • Bridge Inspection Manual
   • Environmental Procedures Manual
   • Standard Specifications for Construction and Materials
   • Consultant Instructions
   • Highway Design Manual Volumes I, II and III
   • Specifications for Photogrammetric stereocompilation
   • Annual Report titled "Update of Accident Reduction Factors and Average Accident Rates"
   • Annual Report titled "Update of Accident Costs"
   • New York State Manual of Uniform Traffic Control Devices
   • Geometric Design Policy for Bridges
   • Standard Details for Highway Bridges
   • Bridge Safety Assurance Seismic Vulnerability Manual
- Cost Estimating System Program & Manual, including Preliminary Estimating Program (PEP) and Price Estimating System (PES)
- "Preliminary Estimate Worksheet Revision" for bridges
- Preliminary Plan Development Procedure for New and Replacement Bridge Projects
- Uniform Code of Bridge Inspection
- Design Consultant Manual
- Bridge Manual
- Annual Report titled "Axle Factor Update"
- 4/17/87 memorandum titled "Bridge Project Selection Guidelines"
- Field Measurement of Existing Noise Levels
- Bridge Safety Assurance Steel Details Vulnerability Manual

(*) Note: AASHTO LRFD Bridge Design Specifications have limitations. Before final design begins, one major task will be to develop appropriate supplemental design criteria for the new bridge. In order to accomplish this, it will be necessary to research design criteria for similar structures in the US and Canada. The development of the bridge criteria will be one of the key tasks in the project. This work will be done by other consultants.

In addition, all work shall be designed in accordance with the following documents or their current replacement policy:

- A Policy on Geometric Design of Highways and Streets, American Association of State Highway and Transportation Officials (AASHTO)
- A Policy on Design Standards Interstate System, AASHTO
- Manual for Condition Evaluation of Bridges, AASHTO
- Highway Capacity Manual, Special Report 209, Transportation Research Board
- Guide Specification for Evaluation of Existing Bridges, AASHTO
- FHWA Technical Advisory T6640.8A, 10/30/87 (environmental analyses)
- ADA Accessibility Guidelines for Buildings and Facilities
- New York State Eminent Domain Procedure Law Guidelines for acquisition in New York State only

2. Compliance with Environmental Laws, Regulations and Permits

All Consultant work shall meet the requirements of all applicable state and federal environmental laws, regulations and policy (specified in Appendix A of the Design Procedure Manual), including but not limited to:
### State Authority

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<tr>
<td>Farmlands Protection</td>
<td>Agriculture and Markets Law, §305</td>
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<tr>
<td>Tidal Wetlands Act</td>
<td>Article 25 of Environmental Conservation Law (6 NYCRR Part 661)</td>
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<tr>
<td>Freshwater Wetlands Act</td>
<td>Article 24 of Environmental Conservation Law (6 NYCRR Parts 662, 663, 664)</td>
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<tr>
<td>Water Quality Certification</td>
<td>6 NYCRR Part 608</td>
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<tr>
<td>Adirondack Park Agency Act</td>
<td>Section 814 of Executive Law (9 NYCRR Part 579)</td>
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<tr>
<td>Forever Wild Provisions of NYS Constitution</td>
<td>Article XIV of NYS Constitution</td>
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<tr>
<td>Historic Preservation Act</td>
<td>Parks, Recreation and Historic Preservation Law, Section 14.09</td>
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<tr>
<td>Wild, Scenic &amp; Recreational Rivers Act &amp; Regulations</td>
<td>Article 15, Title 27 of Environmental Conservation Law (6 NYCRR Part 666)</td>
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<td>Waterfront Revitalization &amp; Coastal Resources Act</td>
<td>Article 34 of Environmental Conservation Law</td>
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<td>State Pollution Discharge Elimination System (SPDES)</td>
<td>Article 17, Title 8 of Environmental Conservation Law</td>
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<td>State Environmental Quality Review (SEQR) Act</td>
<td>Article 8 of Environmental Conservation Law (17 NYCRR Part 15)</td>
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<td>Hazardous Waste and Substance Regulations</td>
<td>Articles 27, 37, &amp; 40 of Environmental Conservation Law (6 NYCRR Parts 370-376)</td>
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<td>Solid Waste Management Regulations</td>
<td>6 NYCRR Parts 360 and 370</td>
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<td>Industrial Code Rule 56 (Asbestos)</td>
<td>12 NYCRR Part 56</td>
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<td>Floodplain Management Criteria for State Projects</td>
<td>Article 36 of Environmental Conservation Law (6 NYCRR Part 502)</td>
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<td>Endangered and Threatened Species Protection</td>
<td>Article 11, Title 5 of Environmental Conservation Law</td>
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<td>Air Quality Indirect Source Permits</td>
<td>Article 19 of Environmental Conservation Law (6 NYCRR Part 203)</td>
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### Federal Authority

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<tr>
<td>Farmland Protection Policy Act</td>
<td>7 USC 4201-4209 (7 CFR 658)</td>
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<td>Water Quality Certification</td>
<td>33 USC 1341 (Section 401 of the Federal Water Pollution Control Act)</td>
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<td>Floodplain Management</td>
<td>42 USC 4001 <em>et seq</em>, 44 CFR 60.3, 23 CFR 650A; see also Executive Order 11988 and DOT Order 5650.2</td>
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<td>Protection of Wetlands</td>
<td>DOT Order 5660.1A (8/24/78); 23 CFR 777</td>
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<tr>
<td>Dredge and Fill Permit (U.S. Army Corps of Engineers)</td>
<td>33 USC 1344</td>
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<td>(Section 404 Permit)</td>
<td>33 CFR 320-325</td>
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<td>40 CFR 230 &amp; 231</td>
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<td>Rivers and Harbors Act, Section 9; Bridges Over Navigable Waters, Chapter 11</td>
<td>33 USC 401 (33 USC 525-533); 23 USC 144(h); 33 CFR 114-115</td>
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<td>National Historic Preservation Act, Section 106</td>
<td>16 USC 470f</td>
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<td>Noise Abatement Requirements</td>
<td>23 CFR 772 (FHWA Regulation)</td>
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<td>Rivers and Harbors Act, Section 10 (U.S. Army Corps of Engineers Permit)</td>
<td>33 USC 403</td>
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<td>Fish and Wildlife Coordination Act</td>
<td>16 USC 661</td>
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<td>National Environmental Policy Act (NEPA)</td>
<td>42 USC 4321; 23 CFR 771 (FHWA Regulations)</td>
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<td>Safe Drinking Water Act (Sole Source Aquifer Program)</td>
<td>PL 93-523, Section 1424(e); 42 USC 300f <em>et seq</em>; 40 CFR 149</td>
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<td>FHWA/EPA Memorandum of Understanding</td>
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<td>Wild &amp; Scenic Rivers Act</td>
<td>16 USC 1271</td>
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<tr>
<td>U.S. Dept. of Transportation Act</td>
<td>49 USC 303</td>
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<tr>
<td>Preservation of Parklands, Section 4(f)</td>
<td>23 USC 138; 23 CFR 771.135</td>
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<tr>
<td>Coastal Zone Management Act</td>
<td>16 USC 1451-1464</td>
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<tr>
<td>Coastal Barrier Resources Act</td>
<td>16 USC 3501-3510</td>
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<td>Endangered Species Act</td>
<td>16 USC 1531-1544</td>
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3. The Peace Bridge Expansion Project will be developed using NYSDOT specifications wherever possible. However, the bridge project will require development of special design criteria, based on international research by a Bridge consultant. Although NYSDOT specifications and guidelines will be used whenever possible the design consultant shall develop unique specifications for the bridge design under a separate agreement. It is also anticipated that special requirements for the Plaza may be required by the Federal Government Services Administration (GSA), US Customs and Border Security (CBP), and the Canadian Border Services Agency (CBSA) and Transport Canada.

4. All work shall conform to the NYSDOT CADD requirements stated in Consultant Instruction 03-02 (or current superseding policy). In general, this requires all CADD graphics be generated in the required version of MicroStation DGN (3D) format; and, all electronic engineering data (DTM, ALG, SDB) be generated in the applicable InRoads Civil Suite format. The Consultant shall submit files adhering to the format requirements and procedures defined in the CADD Standards and Procedure Manual. The Consultant shall assume that version upgrades of CADD software will occur on a routine basis (at least once per year) in order to remain current with the most productive software changes and fixes. The Consultant shall update file formats to newer versions of CADD software. The Consultant shall assure that the data contained in these files adheres to current standards and procedures stated in the CADD Standards and Procedures Manual for the duration of the project. All CADD settings/resource files and conversion tools developed by NYSDOT are available for consultants to use. The Consultant shall establish the configuration and operation of these settings/resource files for their site. The Consultants shall periodically check NYSDOT’s website for CADD update notices.

5. The Consultant shall prepare for and attend all meetings as directed by the PBA. The Consultant will be responsible for the review and accuracy of all prepared meeting minutes. Meeting minutes are to be quality reviewed and submitted to the PBA within one (1) week of the meeting date. Issues and follow up items will be summarized within 1 working day.
6. The PBA shall prepare and publish all required legal notices, with assistance by the Consultant, as required by the PBA.

7. When specifically authorized in writing to begin work, the Consultant shall render all services and furnish all materials and equipment necessary to provide the PBA with reports, plans, estimates, and other data specifically described herein under the individual work categories listed below under “D. Categorization of Work”.

8. Before transmitting each product to the PBA, the Consultant shall review it to ensure its conformity to all applicable State, Federal and Canadian requirements.

9. The Consultant shall ensure that all applicable New York State, US Federal and Canadian laws governing ROW Mapping requirements are followed in the respective countries. All US, NYS and Canadian civil rights procedures shall be followed within the contract administration process.

D. Categorization of Work

Work on this project shall be categorized as follows:

2000 Design Survey and Mapping
   2110 Primary Property Requirements ROW Mapping Control Survey
   2120 Secondary Project ROW Mapping Control Survey
   2130 Photogrammetric Control Survey

3000 Right-of-Way (ROW) Survey and Mapping
   3100 ROW Survey and Analysis
   3110 Record Research and Analysis
   3113 ROW Field Survey and Mapping
   3200 Preliminary ROW Mapping
   3210 Highway Boundary Determination and Mapping
   3220 Abstract Request Map
   3230 Taking Line Review
   3300 Detailed ROW Mapping
   3310 Final ROW Lines and Acquisitions
   3320 Right of Way Maps
   3330 Right of Way Plan

4000 Project Management and Miscellaneous Work
   4100 Project Reporting
   4200 Project Coordination

2110 Primary Property Requirements ROW Mapping Control Survey

2111 The Consultant shall set permanent survey monuments (GPS Base stations, and Azimuth Pairs) outside the construction project corridor.

The property taking limits length is approximately 1 km. Three GPS base stations shall be set within 7 km of the project site, to control secondary project control surveys, and photogrammetric ground control surveys.
Three azimuth pairs shall be set at 3km intervals along the project corridor, outside the project construction limits, to control a Total Station Positioning System (TPS) Survey. The monuments in each pair shall be intervisible and spaced at more than 300m apart.

2112 The Consultant shall use GPS Relative Positioning techniques to tie into NSRS HARN or CORS control stations and establish Primary Horizontal Project Control at the project site. The coordinate system shall be the New York State Plane Coordinate System (NYSPCS) NAD 83-96, Western Zone, and the vertical datum shall be NAVD 88.

2113 The Consultant shall use GPS, trigonometric or differential leveling techniques, to establish Primary Vertical Project Control at the project site. Level runs shall begin and end on different NSRS NAVD 88 bench marks of first or second order accuracy classification. All primary ground control shall be complete within 2 weeks of contract execution.

2120 Secondary Project ROW Mapping Control Survey

2121 The Consultant shall set four survey baseline stations and six survey benchmarks within the project ROW Mapping boundaries. NYSDOT standards for baseline stations and benchmarks shall be followed. The interval between adjacent traverse stations, and adjacent benchmarks, shall be about 300m.

2122 The Consultant shall establish Secondary Horizontal Project Control at the ROW mapping project site, using GPS or TPS techniques. The survey baseline traverse shall start from one of the previously established azimuth pair and proceed one-way to close on another azimuth pair, to form a closed-connecting traverse.

2123 The Consultant shall establish Secondary Vertical Project Control at the ROW acquisition project site, using trigonometrical or differential leveling techniques. The vertical datum shall be the North American Vertical Datum of 1988 (NAVD 88). The secondary level run shall start on one NSRS benchmark and shall close on a different NSRS benchmark. All secondary ground control shall be complete within two weeks of contract execution.

2130 Photogrammetric Control Survey

The Consultant shall obtain the terrain data by means of a photogrammetric survey, to be conducted as follows:

2131 The PBA shall place aerial photo targets in the field, to be used as photogrammetric control points. The targets shall be placed in accordance with the NYSDOT targeting diagram and “Targeting Guidelines”.

2132 The PBA shall provide photogrammetric ground control survey for photogrammetric mapping.

2133 The Consultant shall perform the field edit necessary to obtain data required for ROW maps (as required in Section 5.94 of the NYSDOT ROW Mapping Procedures Manual) which is not obtainable from the aerial photography, or to properly label or code terrain features. This could include determination of underground utility directions.
and types, numbering or labeling of physical features, discernment of feature shapes, types or material, and quality control that stereocompiled information is relatively located, labeled and aligned correctly. The data collection process could include observation and annotation, or conventional surveying. All field editing shall be completed within one month of contract execution.

3000 RIGHT-OF-WAY (ROW) SURVEY AND MAPPING

All ROW survey and mapping work shall conform to the NYSDOT ROW Mapping Procedure Manual, the Surveying Standards & Procedures Manual, the CADD Standards & Procedure Manual, and the specific requirements of the jurisdictional NYSDOT Regional Office.

All final graphical deliverables described in this section shall be provided both on paper media and digitally in Micro Station “DGN” format. Electronic files containing lists of all final coordinates for ROW parcels shall also be provided to the PBA as outlined in the CADD Standards & Procedure Manual.

3100 ROW Survey and Analysis

3110 Record Research and Analysis

Preliminary ROW Research has been performed for the project, based on tax maps and deeds, and a preliminary determination of existing highway boundaries, property owners and proposed ROW take lines has been made for the purpose of producing the Abstract Request Map (ARM). It is assumed that most, but not necessarily all, deeds for properties where takings are anticipated will be made available to the Consultant.

3111 The Consultant shall conduct the additional necessary record searches to determine all property or highway (ROW) rights or interests which affect the project’s highway(s). This research may also identify additional boundary information which may need to be located in the field.

3112 The Consultant shall review all the available ROW survey information for accuracy and completeness, and inform the PBA of additional field survey required to accomplish ROW Mapping. The PBA shall review and determine the survey needed and authorize the Consultant to proceed.

3113 ROW Field Survey and Mapping

When authorized, the Consultant shall perform the ROW field survey. The Consultant shall add this information to the project mapping.

3114 The Consultant shall determine the existing highway boundary and adjacent property lines for the project’s highway(s). This information shall be incorporated into the project mapping.
3200  Preliminary ROW Mapping

The PBA shall provide ARM, deeds, maps, tax maps, and any other information that was used in preparation of the ARM.

3210  Highway Boundary Determination and Mapping

The Consultant shall determine the existing highway boundary and adjacent property lines for the project’s highway(s). This information shall be incorporated into the project mapping.

3220  Abstract Request Map

3221  The NYSDOT shall prepare and submit to the Consultant a 1:600 scale Abstract Request Map (ARM), showing all properties affected by the viable design alternative(s). If necessary, consultant shall prepare Supplemental ARM, and shall revise it as necessary in response to the PBA and NYSDOT’s review.

3230  Taking Line Review

3231  Final Design Consultant shall prepare Proposed ROW Determinations in conformance with guidance provided in Section 5.5 of the Highway Design Manual. The Consultant shall review the Proposed ROW Determination with the PBA, NYSDOT and the FDC and discuss recommended changes with the Proposed ROW Determinations.

3232  The Consultant shall revise and update all information shown on the materials provided at the beginning of the contract and participate in Taking Line Review Meeting(s) as described in Section 5.5 of the Highway Design Manual. Proposed ROW lines shall be revised as determined at the Taking Line Review Meeting(s).

3300  Detailed ROW Mapping

3310  Final ROW Lines and Acquisitions

3311  The Consultant shall incorporate all final ROW lines and acquisitions into the project mapping, as required in Section 5.5 of the Highway Design Manual. The map and parcel numbers shall be shown. A “Table of Right of Way Acquisitions” and other applicable Miscellaneous Survey and ROW Tables (see HDM, Chapter 21) shall be prepared and submitted to the PBA and NYSDOT.

3320  Right of Way Maps

3321  The Consultant shall prepare and submit to the PBA 106 Fee ROW Maps, including a bed of streets map, and shall revise them as necessary in response to the PBA, NYSDOT, and project management consultant’s review.

Note: All ROW maps shall show dual unit dimensions, (both English and Metric System dimensions), and shall conform to the NYSDOT CADD Standards & Procedure Manual and regional preferences. ROW maps shall be at a 1:250 scale.
3322 The Consultant shall review all title data, as it becomes available, to assure accuracy and completeness of maps prepared, and revise any maps as necessary.

3330 Right of Way Plan

3331 The Consultant shall prepare and submit to the PBA and NYSDOT a Right of Way Plan per regional specifications, and shall revise it as necessary in response to the PBA’s, NYSDOT’s and the owner representative’s review or to reflect all ROW acquisition changes. The ROW plan shall be submitted no later than one month after the take line meeting and the revised ROW plan shall be completed two weeks after receipt of review comments. The ROW Plan shall be at a 1:500 scale.

4000 PROJECT MANAGEMENT AND MISCELLANEOUS WORK

4100 Project Reporting

4110 For the duration of work under this agreement the Consultant shall prepare and submit to the PBA on a monthly basis a Cost Control Report, a Progress Report, and a Project Schedule in a format approved by the PBA. The beginning and ending dates defining the reporting period shall wherever applicable correspond to the beginning and ending dates for billing periods, so that this reporting process can also serve to explain billing charges. (In cases where all work under this contract is officially suspended by the PBA, this task will not be performed during the suspension period.)

4200 Project Coordination

The PBA is currently in the process of procuring a FDC Manager (Owner’s representative). Upon execution of that agreement, a Final Design Consultant (FDC) will be procured. Coordination with the PBA, NYSDOT, Design Consultant(s) and the Consultant Manager/Owner’s representative will be required throughout the life of this agreement.

4210 Project Meetings

Whenever appropriate the Consultant shall prepare for, attend, and submit minutes of meetings with the PBA to present, coordinate, discuss, or receive direction on the work.

E. Schedule

The Consultant shall develop an agreed upon schedule capable of meeting project goals, and ensure project costs remain within agreed upon budget constraints. In the event that Cost, Schedule or Quality falls outside the agreed upon boundaries, the Consultant shall immediately notify the PBA and make recommendations on the best course of action. Current project goals require all ROW maps to be complete eight months after contract execution as follows: 3 maps complete by the end of the third month and 21 maps per month thereafter.
IV. TIME REQUIREMENTS

A. Proposal Calendar

The following is a list of key dates up to and including the date proposals are due to be submitted:

- Requests for proposals issued: May 12, 2008
- Inquiries: May 28, 2008 11 A.M. EST
- Due date for proposals: June 9, 2008 11 A.M. EST

B. Expected Notification and Contract Dates

- Short-listed firms notified: June 19, 2008
- Presentations/Interviews by short-listed firms: June 26, 2008
- Selected firm notified: July 7, 2008
- Contract Commencement: August 1, 2008
V. PROPOSAL REQUIREMENTS

A. General Requirements

1. **Inquiries** – Inquiries concerning the request for proposals and the subject of the request for proposals must be made via e-mail to:

   BUFFALO & FORT ERIE PUBLIC BRIDGE AUTHORITY  
   Attn: Anthony D. Braunscheidel, Facilities Manager  
   axc@peacebridge.com

   Contact with personnel of the PBA other than Anthony D. Braunscheidel, Facilities Manager, regarding this request for proposals may be grounds for elimination from the selection process.

2. **Submission of Proposals** - The following material is required to be received by June 5, 2008 at 11 AM EST for a proposing firm to be considered:

   a. Proposal and six copies to include the following:

      (i) **Title Page** – Title page showing the request for proposals subject; the firm’s name; the name, address, and telephone number of the contact person; and the date of the proposal.

      (ii) **Table of Contents**

      (iii) **Transmittal Letter** – A signed letter of transmittal briefly stating the proposer’s understanding of the work to be completed, the commitment to perform the work within the time period, a statement why the firm believes itself to be best qualified to perform the engagement, and a statement that the proposal is a firm and irrevocable offer.

      (iv) **Detailed Proposal** – The detailed proposal should follow the order set forth in Section V. B. of this request for proposals.

      (v) Proposers should send the completed proposal to the following address:

         BUFFALO & FORT ERIE PUBLIC BRIDGE AUTHORITY  
         Attn: Anthony D. Braunscheidel, Facilities Manager  
         100 Queen Street, Fort Erie, Ontario L2A 3S6

         **PBA HIGHLY RECOMMENDS HAND DELIVERING TO AVOID MAIL DELIVERY AND BORDER DELAYS**

         *Emails and faxes are not acceptable*
B. Proposal

1. **General Requirements** – The purpose of the proposal is to demonstrate the qualifications, competence, and capacity of engineering firms seeking to undertake consultant services in conformity with the requirements of this request for proposals. As such, the substance of proposals will carry more weight than their form or manner of presentation. The proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify the general project approach that will meet the request for proposal requirements.

The proposal should address all the points outlined in the request for proposals. The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer’s capabilities to satisfy the requirements of the request for proposals. While additional data may be presented, the following subjects, item Nos. 2 through 11 must be included. They represent the criteria against which the proposal will be evaluated.

For clarity purposes, the PBA requests that you restate each question, with the answer directly below each question.

2. **Independence** – The firm should provide an affirmative statement that it is independent of the PBA and that the firm will avoid any actual or perceived conflict of interest. Conflict of interest is defined as a situation in which a person is, or is perceived to be, in a position to benefit more preferentially than in an open market situation.

3. **Licensed to Practice** – An affirmative statement should be included that the project manager assigned and/or project principal are properly licensed to practice in the State of New York. A statement should be included which details how the firm will meet licensing requirements in Canada.

4. **Firm Overview** – The proposer should include the following information:

   - General description of organization
   - Ownership structure
   - Identify key personnel, including experience, skill and knowledge
   - Identify the location of the office from which this engagement will be served

PBA access to and continuous involvement by company principals who have similar experience themselves will be an essential characteristic of the successful proposal.

   a) **Similar Project Experience** – The successful proposer will demonstrate to the PBA an extensive history of similar performance delivered by the proposed project manager and key staff to previous clients.

6. **Experience of Project Manager and Key Staff** – The proposer should identify the project manager and key staff for the assignment and detail the following:

   a) General qualifications: general education, training, length of experience, positions held, time with firm, and so forth.
b) Adequacy for assignment: experience in specific sector or field.

7. **Disciplinary Actions** - The firm is also required to provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past five (5) years with federal, state/provincial regulatory bodies or professional organizations.

8. **Prior Engagements with the Buffalo & Fort Erie Public Bridge Authority** – List separately all engagements within the last five (5) years, for the PBA by type of engagement. Indicate the scope of work, date, the location of the firm’s office from which the engagement was performed, and the name and telephone number of the principal client contact.

9. **Similar Engagements with other Entities** – For the firm’s office that will be assigned responsibility for the consulting services, list the most significant engagements (maximum of 5) performed in the last five (5) years that are similar to the engagement described in this request for proposal. Indicate the scope of work, dates and duration of service and the name and telephone number of the principal client contact.

10. **Identification of Anticipated Potential Problems** – The proposal should identify and describe any anticipated potential problems in providing the service requested, the firm’s approach to resolving these problems, and any special assistance that will be requested from the PBA.

11. **Schedule Commitment** – The proposal should affirm the commitment to the schedule and describe how the work is expected to be accomplished in the required timeframe. Staffing level commitment and the firm’s resource capability should be discussed.
VI. EVALUATION PROCEDURES

A. Review of Proposals

A Committee comprised of individuals from the PBA and NYSDOT will review qualifications of the proposals. Firms with unacceptably low technical qualifications will be eliminated from further consideration.

The PBA reserves the right to retain all proposals submitted and use any idea in a proposal regardless of whether that proposal is selected.

B. Evaluation Criteria

Proposals will be evaluated using three sets of criteria. Firms meeting the mandatory criteria will have their proposals evaluated for technical qualifications. The following represent the principal selection criteria, which will be considered during the evaluation process.

1. **Mandatory Elements**

   a. The consulting firm is independent and licensed to practice in the State of New York and as necessary, the Province of Ontario.

   b. The firm has no conflict of interest with regard to any other work performed by the firm for the PBA or any third party.

   c. The firm adequately addresses actual and pending disciplinary actions and has a record of quality work.

   d. The firm adheres to the instructions in this request for proposal on preparing and submitting the proposal.

   e. The firm has the demonstrated capacity to perform the services in the necessary time frame.

2. **Technical Qualifications**

   a. Expertise and Experience

      (i) The firm’s qualifications and past experience and performance on similar engagements.

      (ii) The firm’s general consultant services experience.

      (iii) Experience of the project manager and key staff.

C. Oral Presentations

During the evaluation process, the Committee, at their discretion, may request any one or all firms to make oral presentations, at the firms sole cost and expense. Such
presentations will provide firms with an opportunity to answer any questions that the Committee may have on a firm’s proposal. Not all firms may be asked to make such oral presentations.

D. Final Selection

The PBA will select a firm based upon the recommendation of the Committee.

It is anticipated that a firm will be selected by July 17, 2008. Following notification of the firm selected, it is expected that a contract will be executed between both parties by August 1, 2008.

E. Right to Reject Proposals

Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposal unless clearly and specifically noted in the proposal submitted and confirmed in the contract between PBA and the firm selected.

The PBA reserves the sole and exclusive right without prejudice to reject any or all proposals, waive any and all informalities, and the right to disregard all non-conforming or conditional proposals. The PBA reserves the sole and exclusive right to accept any proposal deemed to be in its best interest even though the proposal is not mathematically the lowest price.
VII. FORM OF AGREEMENT

A copy of the PBA’s standard agreement is presented in this section. The PBA reserves the right to modify such standard agreement. The PBA will not use a consultant prepared agreement. The successful consultant will be required to enter into a contract using the PBA’s standard agreement.
BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

CONSULTANT AGREEMENT

PROJECT: PEACE BRIDGE EXPANSION PROJECT

Project Consultant: Right-of-Way Survey & Mapping Services for the Peace Bridge Expansion Project

This CONSULTANT Agreement is entered into as of the __ day of __________, 2008 by and between The Buffalo and Fort Erie Public Bridge AUTHORITY, created as a public benefit corporation and an international compact entity in 1933 by a Special Act of the Legislature of the State of New York, consented to by the United States Congress, and by a Special Act of the Government of Canada (the “PBA” or “AUTHORITY”) and ________________________________ (hereinafter referred to as the "CONSULTANT").

WITNESSETH:

WHEREAS, the AUTHORITY has undertaken the Peace Bridge Expansion Project as described in Attachment “A” hereto (the “Project”) for which it requires certain services related to the Right-of-Way Survey & Mapping Services for the Peace Bridge Expansion Project, such services being more fully described in Attachment “B” hereto (the “Services”);

WHEREAS, the services to be performed hereunder may be funded in whole or in part by the United States Federal Highway Administration (“FHWA”) through the New York State Department of Transportation (“NYSDOT”) and/or through the General Services Administration (GSA);

WHEREAS, CONSULTANT has agreed to the Additional Terms and Conditions of this Agreement contained in Attachment “D”, Appendix “A” and Appendix “B” hereto which arise in connection with the governmental funding of this Agreement and the AUTHORITY’s enabling legislation in New York;

WHEREAS, the AUTHORITY has solicited proposals for the provision of the Services; and

WHEREAS, the CONSULTANT responded to the AUTHORITY’s request for proposals; and

WHEREAS, the AUTHORITY has selected the CONSULTANT pursuant to such request for proposals process;
NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the sufficiency of which is expressly acknowledged, the parties hereto agree as follows.

ARTICLE 1. DOCUMENTS FORMING THIS AGREEMENT
This agreement consists of the following:

- Project Agreement - this document titled, "Consultant Agreement," together with all attachments, appendices, exhibits and schedules hereto, is sometimes referred to herein as the "Project Agreement" or as this "Agreement."
- Attachment "A" - Project Description
- Attachment "B" – Scope of Services and Term
- Attachment "C" – Compensation (Staffing Rates, Hours and Reimbursable)
- Attachment “D” – Additional Terms and Conditions
- Appendix “A” – Standard Clauses for New York State Contracts
- Appendix “B” – Requirements for Federally Aided Transportation Projects

ARTICLE 2. SCOPE OF SERVICES/STANDARD PRACTICES AND REQUIREMENTS

2.1 Except as otherwise provided in Attachment “B” or in this Agreement, this Agreement shall be effective as of the date set forth above and shall terminate on the date that all of the Services have been provided and the Authority has made its final payment, as provided in Article 6 hereof.

2.2 The CONSULTANT shall provide the services, reports, documents and other related materials, described in Attachment "B".

2.3 All work required under this Agreement shall be performed in accordance with the applicable practices of the AUTHORITY, NYSDOT, FHWA, GSA and/or Transport Canada, sound engineering standards, practices and criteria, and any special requirements described in Attachment "B".
ARTICLE 3. COMPENSATION METHODS, RATES AND PAYMENT

As full compensation for CONSULTANT’s work, services and expenses hereunder the AUTHORITY shall pay to the CONSULTANT, and the CONSULTANT agrees to accept compensation as set forth in Attachment “C.” All payments shall be made in United States funds. Except as specifically noted in the Agreement, all dollar amounts are in U.S. dollars.

ARTICLE 4. INSPECTION

The duly authorized representatives of the AUTHORITY, NYSDOT and FHWA, GSA and/or Transport Canada shall have the right at all times to have access to all books and records of the CONSULTANT associated with this Agreement. The CONSULTANT shall require in any subcontract for work associated with this Agreement a provision that such subcontractor shall allow similar access to the subcontractor’s books and records. This right of access to books and records of CONSULTANT and the audit rights specified below in Article 5 shall survive until the earlier of three (3) years from the date of final payment (as provided in Article 6) or the date that this Agreement is finally terminated by the AUTHORITY as otherwise provided herein.

ARTICLE 5. AUDITS

5.1 The AUTHORITY, NYSDOT, FHWA, GSA and/or Transport Canada shall have the right to audit the CONSULTANT’s books, inspect all Project work, materials, payrolls, records of personnel, invoices of materials and other relevant contracting, equipment, data and records. Any subcontract entered into by the CONSULTANT for the Project shall include a provision allowing the same rights of the AUTHORITY, NYSDOT, FHWA, GSA and/or Transport Canada with respect to the books, records and equipment of the subcontractor.

5.2 In order to enable the AUTHORITY to process payments to the CONSULTANT properly and expeditiously, the CONSULTANT is advised that all of the following documents and submissions, as the same may be appropriate to this contract, are considered to be necessary to enable the commencement of the audit.

- Records of Direct Non-Salary Costs;
- Copies of any subcontracts relating to said contract;
- Location where records may be examined; and
- Name, address, telephone number of person to contact for production.

The application for final payment is not considered complete until receipt of these documents and information.
ARTICLE 6. FINAL PAYMENT

6.1 The AUTHORITY will make final payment as provided for in Attachment "C" within sixty (60) calendar days after receipt of an invoice that is properly prepared and submitted, and all appropriate documents and records are received.

6.2 The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the AUTHORITY from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Agreement or for any part thereof except as otherwise provided herein.

ARTICLE 7. EXTRA WORK

7.1 CONSULTANT’s performance of this Agreement within the compensation provided shall be continuously reviewed by the CONSULTANT. The CONSULTANT shall notify the AUTHORITY of the results of those reviews in writing by submittal of a Cost Control Report. Such Cost Control Report shall be submitted to the AUTHORITY on a monthly basis or such alternative interval as the AUTHORITY directs in writing.

7.2 If the CONSULTANT is of the opinion that any work the CONSULTANT has been directed to perform is beyond the scope of the PROJECT Agreement and constitutes extra work, the CONSULTANT shall promptly notify the AUTHORITY, in writing, of this fact prior to beginning any of the work. The AUTHORITY shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. In the event that the AUTHORITY determines that such work does constitute extra work, the AUTHORITY shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, an amendment to the PROJECT Agreement, providing the compensation and describing the work authorized, shall be prepared and issued by the AUTHORITY. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the AUTHORITY to the CONSULTANT for execution after approvals have been obtained from necessary AUTHORITY officials and, if required, from FHWA, NYSDOT, GSA and/or Transport Canada.

7.3 In the event of any claims being made or any actions being brought in connection with the PROJECT by third parties, the CONSULTANT agrees to render to the AUTHORITY all assistance required by the AUTHORITY. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this Agreement for the additional services above described, the AUTHORITY’s directions shall be exercised by the issuance of a separate Agreement, if necessary.
ARTICLE 8. CONSULTING LIABILITY

8.1 The CONSULTANT shall be responsible for all damage to life and property due to the negligence, errors or omissions of the CONSULTANT, its subcontractors, agents or employees in connection with this Agreement.

8.2 The CONSULTANT shall maintain professional liability insurance (also known as Errors and Omissions Insurance) in the amount of two-million dollars ($2,000,000).

8.3 In addition to professional liability insurance, the CONSULTANT shall provide the following coverages and limits:

1. The CONSULTANT shall procure and maintain at its own expense, and without expense to the AUTHORITY, until final acceptance by the AUTHORITY of the work covered by the Contract, insurance for liability for damages imposed by Law, of the kinds and in the amount hereinafter provided with insurance companies authorized to do such business in the State of New York and/or Province of Ontario, covering all operations under the Contract, whether performed by it or by a Sub-CONSULTANT.

2. Cancellation Notice: Each insurance policy and certificate of insurance shall contain a provision providing that it shall not be cancelled or changed by the CONSULTANT or Insurance Company without thirty (30) calendar days of written notice to the AUTHORITY of intention to cancel or change.

3. Indemnification: It is expressly understood that the CONSULTANT shall indemnify and save harmless the AUTHORITY from claims, suits, actions, damages and costs of every name and description (including attorney fees) resulting from the negligent performance of the services of the CONSULTANT under this Agreement, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Negligent performance of service within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the CONSULTANT’S failure to meet professional standards and resulting in obvious or patent errors in the progression of his work. Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the CONSULTANT or the AUTHORITY beyond such as may legally exist irrespective of this Article or this Agreement. Such obligation does not extend to those suits, actions, damages and cost of every name which arise out of the sole negligence of the AUTHORITY, its agents or employees relative to the construction, alteration, repairs or maintenance of a building, structure, appurtenances and appliances including moving, demolition and excavating connected therewith.

4. Comprehensive General Liability: The CONSULTANT shall procure and maintain until final acceptance and at its own expense, comprehensive general liability insurance to include:
i. Contractor's Liability;
ii. Contractor’s Protective Liability;
iii. Completed Operations Liability;
iv. Contractual Liability.

The limits of such insurance shall be not less than:

$2,000,000 combined single limit, each occurrence;
$4,000,000 aggregate.

5. Automobile: The CONSULTANT shall procure and maintain until final acceptance and at its own expense, automobile liability and property damage insurance, covering the use, in connection with the work, of all owned, non-owned and hired vehicles required by the vehicle and traffic law of the State of New York and/or the province of Ontario to bear license plates. The coverage under such policy shall not be less than the following limits:

$1,000,000 combined single limit;
bodily injury and property damage.

6. Workers Compensation: The CONSULTANT shall procure and maintain, until final acceptance and at its own expense, Workers Compensation and Employers Liability Insurance, covering the obligations of the CONSULTANT in accordance with Workers Compensation and Employers Liability Insurance Law, covering all operations under the Contract, whether performed by it or its Sub-Consultants or Suppliers. The CONSULTANT shall secure Workmen's Compensation for its employees as required by law or comparable insurance for employees in Canada as may be required under Canadian Federal or Provincial law.

7. Umbrella: Excess liability coverage for each of the above with a limit of $2,000,000 each occurrence and $2,000,000 aggregate.

8. Professional Liability: The CONSULTANT and its subconsultants shall maintain professional liability insurance (also known as Errors and Omissions Insurance) in the amount of two million dollars ($2,000,000), minimum.

9. The CONSULTANT will provide Certificates of Insurance prior to commencing work. The Insurance policies must clearly include the Buffalo and Fort Erie Public Bridge Authority, its Board and AUTHORITY employees as additional insured. The CONSULTANT will be required to maintain all coverages throughout the schedule of the Project. The cost of all insurances is the responsibility of the CONSULTANT.
ARTICLE 9. INTERCHANGE OF DATA
All technical data in regard to the PROJECT existing in the office of the AUTHORITY or existing in the offices of the CONSULTANT shall be made available to the other party to this Agreement without expense to such other party.

ARTICLE 10. RECORDS RETENTION
The CONSULTANT shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Agreement (collectively called the "Records"). The Records must be kept for a minimum of six (6) years or three (3) years after final payment is received, whichever is later. The AUTHORITY, NYSDOT, FHWA, GSA, Transport Canada or any authorized representatives of the Federal Government, shall have access to the Records during normal business hours at an office of THE CONSULTANT within the State of New York or, a mutually agreeable reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

ARTICLE 11. DAMAGES AND DELAYS
The CONSULTANT agrees that no charges or claim for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the AUTHORITY may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the AUTHORITY of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising his rights under ARTICLE 7 (Extra Work) of this agreement.

ARTICLE 12. DISPUTES
Any controversy, claim or cause of action arising out of or relating to this Agreement or the breach thereof (except as provided below), shall be finally determined by arbitration in Buffalo, New York in accordance with the Commercial Arbitration Rules then obtaining of the American Arbitration Association (AAA). Notice of a demand for arbitration hereunder by either party hereto shall be given in writing to the other party hereto and to AAA within sixty (60) days after any such controversy, claim or cause of action shall have arisen. Within twenty (20) days after any such demand for arbitration shall have been given by either party hereto, CONSULTANT shall select one arbitrator and the AUTHORITY shall select one arbitrator. The two arbitrators so selected shall select a third arbitrator within twenty (20) days after their selection and the decision of the majority shall be final and binding on the issue or issues submitted to arbitration. Any arbitrator or arbitrators not selected within the period or periods of time provided in this Section, shall be selected by AAA upon the application of any party hereto. The award rendered by the arbitrator shall be final and binding and judgment may be entered thereon by either party hereto in accordance with applicable law in any court in the United States or Canada having jurisdiction as provided for herein. All costs and expenses incurred in connection with the arbitration proceeding, including, without
limitation, the fees and disbursements of the arbitrators and of the attorneys of the respective parties hereto, shall be paid by the party against whom any such award shall have been rendered. The agreement of the parties herein to arbitrate shall be specifically enforceable.

Notwithstanding the foregoing, the AUTHORITY shall have the right to commence an action in the United States District Court for the Western District of New York in the event that the AUTHORITY desires to bring an action for gross negligence or misconduct of CONSULTANT. The parties hereto, to the extent permitted by applicable law, hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding brought in the above-named court, any claim that it is not subject personally to the jurisdiction of such courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter of this Agreement may not be enforced in or by such court. Each of the parties hereto hereby consents to service of process by mail, at its address to which notices are to be given to it pursuant hereto.

ARTICLE 13. TERMINATION OR SUSPENSION

The AUTHORITY shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

A. This Agreement may be terminated on thirty (30) days written notice for the convenience of the AUTHORITY. If a termination is brought about for the convenience of the AUTHORITY and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the basis of the CONSULTANT’S compensable work delivered or completed prior to and under any continuing directions of such termination.

B. This Agreement may be terminated on five days written notice for cause. If the termination is brought about as a result of the AUTHORITY’s determination of unsatisfactory performance or breach of contract on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the percent of the amount of such work satisfactorily delivered or completed by the CONSULTANT to the point of termination and acceptable to the AUTHORITY, of the total amount of work contemplated by the project Agreement.

ARTICLE 14. CODE OF ETHICS AND CONFLICTS OF INTEREST

The CONSULTANT specifically agrees that this Agreement may be canceled or terminated by the AUTHORITY if any work under this Agreement is in conflict with the provisions of any applicable law establishing a Code of Ethics for Federal, State or Municipal officers and employees. The CONSULTANT represents and warrants to the AUTHORITY that neither the CONSULTANT nor any shareholder, member, principal,
director, or employee of the CONSULTANT is related to, affiliated with or interested in any subcontractor or subconsultant that may be employed by the CONSULTANT, nor is the CONSULTANT, or any of the CONSULTANT’s shareholders, members, principals, shareholder, officers, directors or employees related to, affiliated with, or interested in, any member, officer or employee of the AUTHORITY. CONSULTANT represents and warrants that it has no knowledge of any fact or circumstance that would constitute a conflict of interest or the appearance of a conflict of interest in its performance of the services to be performed by the CONSULTANT pursuant to this Agreement.

ARTICLE 15. INDEPENDENCE

The CONSULTANT, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that neither it, nor any of its officers or employees will hold itself out as, nor claim to be, an officer or employee of the AUTHORITY by reason hereof, and that it 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 AUTHORITY, including but not limited to Worker’s Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

ARTICLE 16. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. CONSULTANT further represents that it (nor any employee or agent of CONSULTANT) has not had inappropriate contact with any AUTHORITY staff or member of the AUTHORITY’S Board during the selection process leading up to the engagement of CONSULTANT hereunder. For purposes of determining whether a breach of the foregoing requirement has occurred, any breach of the rules specified in the AUTHORITY’s Request For Proposal issued in connection with the selection of CONSULTANT hereunder shall be considered a breach for purposes hereof. For breach or violation of this warranty, the AUTHORITY shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 17. TRANSFER OF AGREEMENT

The CONSULTANT specifically agrees that it is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or of its right, title or interest therein, or his power to execute such Agreement, to any other person, company or corporation, without the previous consent in writing of the AUTHORITY. If this provision is violated, the AUTHORITY may revoke and annul this Agreement and the
AUTHORITY shall be relieved from any and all liability and obligations thereunder to the person, company or corporation to whom the CONSULTANT shall purport to assign, transfer, convey, sublet or otherwise dispose of the Agreement without such consent in writing of the AUTHORITY.

ARTICLE 18. PROPRIETARY RIGHTS

18.1 The CONSULTANT agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the AUTHORITY a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and states and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

18.2 All original detailed survey information, survey notes (copies), data, calculations, drawings, reports, supervision records, and similar “work products” made hereunder shall be and remain the property of the AUTHORITY.

ARTICLE 19. SUBCONTRACTORS/ SUBCONSULTANTS

19.1 All SUBCONTRACTORS and SUBCONSULTANTS performing work on this project shall be bound by the same required contract provisions as the CONSULTANT. All agreements between the CONSULTANT and a subcontractor or other SUBCONSULTANT shall include all standard required contract provisions, and such agreements shall be subject to review by the AUTHORITY.

The CONSULTANT agrees to pay promptly each subcontractor and subconsultant upon receipt of payment from the AUTHORITY (but in no event later than 15 days from such receipt) out of the amount paid to the CONSULTANT on account of such subcontractor’s portion of the services, the amount to which such subcontractor is entitled. Each of the CONSULTANT’s agreements with a subcontractor or subconsultant shall contain a provision requiring subcontractors and subconsultants to make payments to their sub-subcontractors and subconsultants (if any) in a similar manner, except where approved by the AUTHORITY.

19.2 Each agreement between the CONSULTANT and a subcontractor or subconsultant shall contain a provision in which the subcontractor or subconsultant acknowledges and agrees that (i) it has no contractual relationship with the AUTHORITY (except as may be specified, such as a software license agreement), (ii) payment by the AUTHORITY directly to a subcontractor or subconsultant shall not create any such contract with the AUTHORITY, express or implied and (iii) subcontractor or subconsultant shall sign an agreement waiving any right to seek damages, indemnification or otherwise pursue claims
against the AUTHORITY unless such claim arises directly from the gross negligence of the AUTHORITY. The provisions in this Agreement which relate to submissions of documents to the AUTHORITY by subcontractors or subconsultants, equitable adjustment of subcontracts, payment to subcontractors or subconsultants and similar provisions addressing subcontractors are for the convenience of the parties and the efficient effectuation of the work and shall not be construed as creating direct contractual relationships between the AUTHORITY and the subcontractors or subconsultants.

ARTICLE 20.  DEBARMENT

The CONSULTANT certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):

A. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any United States or Canadian federal, state, provincial or local governmental agency;

B. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any United States or Canadian federal, state, provincial or local governmental agency within the past three years;

C. Does not have a proposed debarment pending; and

D. Has not been indicted, convicted, or had a civil or criminal judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

ARTICLE 21.  CERTIFICATION FOR FEDERAL-AID CONTRACTS

The CONSULTANT, by signing this Agreement to the best of his or her knowledge and belief, that:

A. No Federal (United States) appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal
contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the standard "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE 22. RESPONSIBILITY OF THE CONSULTANT

A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings; specifications and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. However, the AUTHORITY may in certain circumstances, provide compensation for such work.

B. Neither the AUTHORITY’s review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to the AUTHORITY in accordance with applicable law for all damages to the AUTHORITY caused by the CONSULTANT’S negligent performance or breach of contract of any of the services furnished under this contract.

C. The rights and remedies of the AUTHORITY provided for under this contract are in addition to any other rights and remedies provided by law.

D. If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ARTICLE 23. REGULATIONS, CODES, PERMITS AND PROFESSIONAL LICENSURE

23.1 The CONSULTANT agrees to comply with all Federal, Provincial, State, Regional and Local laws and regulations applicable to the work to be done under this Agreement in the United States and/or Canada. Any licenses or permits necessary for the performance of the professional services required under this Agreement shall be obtained by the CONSULTANT.
23.2 The CONSULTANT warrants that it and all subconsultants are licensed to practice their respective professional disciplines in the Province of Ontario and State of New York as applicable.

23.3 In the event that CONSULTANT or any subconsultant requires access to the premises of the Peace Bridge, the AUTHORITY shall control and make all decisions as to the timing and extent of such access and, if necessary, any lane closure, reduction and/or traffic flow. The CONSULTANT agrees that during any access of the AUTHORITY’s site by the CONSULTANT, its subcontractors, subconsultants or employees, the CONSULTANT shall not disturb the AUTHORITY’s facilities and shall comply with the AUTHORITY’s conditions relating to the CONSULTANT’s access to the AUTHORITY’s premises.

ARTICLE 24. APPLICABLE LAW

This contract, shall be governed by the law of the United States of America, as applicable to an international compact entity. The appropriate jurisdiction for any judicial proceedings commenced by either party in connection with this Agreement shall be the United States District Court of the Western District of New York.

ARTICLE 25. NOTICES

Unless otherwise provided herein, all legal notices concerning this Agreement shall be addressed to:

The CONSULTANT at:

_____________________
_____________________
_____________________
Attn: __________________

To the AUTHORITY at:

Buffalo and Fort Erie Public Bridge Authority
100 Queen Street
Fort Erie, Ontario L2A 3S6
Attention: Facilities Manager
With a copy to:

Kavinoky Cook LLP
726 Exchange Street
Suite 800
Buffalo, New York 14210

Attn: Jonathan H. Gardner

or at such other address or addresses or in such other manner as may be designated in writing to the other party.

The AUTHORITY’s agent for service of process in the United States is:

Kavinoky Cook LLP
726 Exchange Street
Suite 800
Buffalo, New York 14210

Attn: Jonathan H. Gardner

Unless otherwise provided herein, notices shall be sent by registered or certified United States or Canadian Mail, return receipt requested, postage prepaid, or overnight delivery service and shall be deemed served or delivered to the addressee, or its office, upon the date of return receipt acknowledgment or upon receipt of by overnight delivery service or if postal claim notice is given, on the date of its return marked "unclaimed"; provided, however, that upon receipt of a returned notice marked "unclaimed", the sending party shall make reasonable effort to contact and notify the other party by telephone.

ARTICLE 26. MISCELLANEOUS

The section titles are for convenience only and shall not be construed to affect the meanings of the sections titled.

This Agreement shall be deemed only executory to the extent of the monies available, and no liability shall be incurred by the AUTHORITY beyond the monies legally available for the purposes hereof.
IN WITNESS WHEREOF, the parties have duly executed this Agreement effective the
day and year first above written.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

By: _____________________________

CONSULTANT

[________________________________________________]

By: _____________________________________________

(Acknowledgement by Corporation)

AUTHORITY OF NEW YORK )       SS:
COUNTY OF ERIE       )

On this ____day of ___________ 2008, before me came
______________________________________, to me known, who being duly sworn did say that
he resides in ________________________, that he is the _______________ of
__________________________

the corporation described in and which executed the foregoing instrument; and that he
signed his name thereto by order of the Board of Directors of said corporation.

___________________________________________
NOTARY PUBLIC
INTRODUCTION

The Buffalo and Fort Erie Public Bridge Authority (PBA) has initiated a Bi-National Integrated Environmental Process (BNIEP) that considers as a single action capacity improvements to the Peace Bridge, Plazas and Connecting Roadways in the Town of Fort Erie, Ontario, Canada and Buffalo, New York, USA. The proposed alternative solutions would provide operational, functional and security improvements to reduce congestion and improve the overall efficiency and functionality of the existing Peace Bridge Border Crossing Facility. This report documents this process and is the Draft Design Report/Draft Environmental Impact Statement/Draft Section 4(f) Evaluation/ Draft Section 6(f) Evaluation (DDR/DEIS/4(f)/6(f)) for PIN 5753.58, Peace Bridge Expansion Project in Buffalo, New York and Fort Erie, Ontario, Canada.

The Peace Bridge border crossing serves as a major international link in the Canadian and US national highway systems – serving as an economic conduit for trade and tourism between the US and Canada. The Peace Bridge connects the Queen Elizabeth Way (QEW) in Fort Erie, Ontario with I-190 in Buffalo, NY. The project study area is shown in Figure 1-1.

An Environmental Impact Statement (EIS) is prepared for a project which could have a significant social or environmental effect. The EIS evaluates a reasonable range of alternatives to an action, and recommends the alternative that best addresses the objectives of the project while minimizing impacts. In the development of an EIS, first a draft report is prepared and circulated for public comment. A Public Hearing will be held during the comment period. At the hearing, the alternatives are presented and explained and comments are received from the public. Following the public comment period and the hearing, all comments received will be carefully evaluated and addressed. A Final Environmental Impact Statement (FEIS), which identifies the selected preferred alternative for the project and includes the responses to comments, is then published and distributed for public comment. If no substantial comments are received on the Final EIS a Record of Decision is issued. The Record of Decision (ROD) is prepared in accordance with 40 CFR 1505 and 23 CFR 771, which identifies the environmentally preferred alternative. After the ROD, the project proceeds through Final Design and to Construction.

A one hearing (combined corridor-design hearing) process will be followed for this project. This document was prepared according to the requirements of the National
Environmental Policy Act (NEPA), the State Environmental Quality Review Act (SEQRA), City Environmental Review Ordinance (CERO) and the New York State Department of Transportation Project Development Manual. It presents a complete discussion of the scope of the proposed project and describes in detail the alternatives that were studied and their potential environmental and social impacts. With the help of this information and the comments received throughout the public comment period, an alternative will be selected.

Due to the significant procedural and timing differences between the regulations required under US and Canadian laws, a separate document, titled the Environmental Screening Report (ESR), will be produced to comply with procedural requirements of the Canadian Environmental Assessment Act (CEAA) of 1995. The ESR will be drafted concurrent with the development of the FEIS, after a preferred alternative has been identified. The ESR will comply with the provisions of CEAA.

ENVIRONMENTAL CLASSIFICATION

Although under the instant circumstances it is not mandatory that there be designated a SEQRA Lead Agency, it is appropriate that NYSDOT be the Lead Agency for this project for SEQRA purposes. The Authority is an international compact entity formed by a compact between the State of New York and Canada and approved by the United States Congress. The Authority is not subject to SEQRA. Each involved state agency is responsible for ensuring its actions related to this project comply with all SEQRA requirements.

The project is classified as a National Environmental Policy Act (NEPA) Class I in accordance with 23 CFR 771 and a State Environmental Quality Review Act (SEQRA) Non-Type II (EIS) in accordance with 17 NYCRR Part 15. These are large scale projects similar to the Federal-aid NEPA Class I projects. The Federal Highway Administration (FHWA) is the lead agency for NEPA.
**PURPOSE AND NEED**

*Why Is the Project Needed?*

The project will address the following needs:

- Border Crossing Operations
- Safety
- Bridge Structure
- Capacity
- Environmental
- Economic
- Modal Interrelationship
- System Mobility
- Social Demand and Economic Development

*What Are the Objectives of the Project?*

The purpose of this project is to provide operational, functional and security improvements that will relieve congestion and improve the overall efficiency and functionality of the existing Peace Bridge Border Crossing Facility.

The primary objectives of the project, commensurate with the Project Needs are:

1. Provide for a Federal Border Inspection Station that meets Customs and Border Protection’s (CBP) security and operational requirements.
2. Provide for operational flexibility and redundancy that will accommodate operational changes at other regional border crossings due to security measures.
3. Provide adequate capacity for the movement of vehicles in expedited release programs.
4. Provide adequate bridge, plaza, and connecting roadway capacity to efficiently and safely serve present and future projected traffic conditions (Year 2040).
   a) Provide direct connections to and from the adjacent highway system and local arterial streets.
b) Prevent queue ends from reaching adjacent highway and local street systems.

c) Reduce overall travel times across the border.

d) Eliminate conflicting traffic movements and improve circulation within the Federal Inspection Station (Plaza).

e) Eliminate or reduce the use of local streets for highway to highway commercial traffic.

5. Provide safe accommodations for bicycle and pedestrian traffic.

**What Enhancement Opportunities and Potential Secondary Benefits Are There?**

During the scoping process the project stakeholders and members of the community identified enhancement opportunities not directly related to the project purpose. While these opportunities are not considered essential to improve transportation services, the project has considered in the development of project alternatives the following:

1. Improve aesthetics of the Peace Bridge facilities - commensurate with its status as an historic gateway entry into Canada and the US.

2. Make surplus land available for community parkland and provide for safe linkages between neighborhoods and parks where planned project facilities may interfere with such linkages.


4. Preserve recent and ongoing investments made in the Peace Bridge Canadian plaza.
Attachment B

SCOPE OF SERVICES
Attachment C

COMPENSATION

Staffing Rates, Hours, Reimbursables, Fee, Partial Payments
The AUTHORITY’s enabling legislation, in Chapter 612 of the Laws of 1993 of the State of New York, includes certain requirements for all contracts for design, construction, services and materials, of whatever nature. These requirements do not apply to contracts to be performed other than in the State of New York. These Additional Terms and Conditions shall apply to the portion of work being performed in the United States. Because of the international nature of the performance of this Agreement, CONSULTANT shall consult with the AUTHORITY as to the implementation of these Additional Terms and Conditions.

The following terms and conditions shall be incorporated into sub-agreements between the CONSULTANT and its sub-consultants where work is to be performed in New York State.

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

1. The CONSULTANT 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 persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignments, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

2. At the request of the AUTHORITY, the CONSULTANT shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the AUTHORITY to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the CONSULTANT’s obligations hereunder.

3. The CONSULTANT will state, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT in the performance of the contract with the AUTHORITY, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
4. The CONSULTANT will include the above provisions one through three of this section in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract with the AUTHORITY.

5. The AUTHORITY may establish procedures and guidelines to ensure that contractors and subcontractors undertake programs of affirmative action and equal employment opportunity as required by this section. Such procedures may require after notice in a bid solicitation, the submission of an affirmative action program prior to the award of any contract, or at any time thereafter, and may require the submission of compliance reports relating to the operation and implementation of any affirmative action program adopted hereunder. The AUTHORITY may take appropriate action including contractual sanctions for non-compliance to effectuate the provisions of this section and shall be responsible for monitoring compliance with this section.

Minority and Women-Owned Business Enterprise Program

A. Minority and women-owned business enterprises shall be given the opportunity for meaningful participation. The AUTHORITY requires that the CONSULTANT establish measures and procedures to secure meaningful participation and identify those contracts and items of work for which minority and women-owned business enterprises may best bid to actively and affirmatively promote and assist their participation in the projects, so as to facilitate the award of a fair share of contracts to such enterprises. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident aliens who are Black, Hispanic, Asian or American Indian, Pacific Islander or Alaskan natives and such ownership interest is real, substantial and continuing and have the AUTHORITY to independently control the day-to-day business decisions of the entity; and women-owned business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing and have the AUTHORITY to independently control the day-to-day business decisions of the entity. The provisions of this paragraph shall not be construed to limit the ability of any minority or women-owned business enterprise to bid on any contract.

B. In the implementation of this section, the AUTHORITY shall consider compliance by any CONSULTANT with the requirements of any federal, state, or local law concerning minority and women-owned business enterprises, which may effectuate the requirements of this section. If the AUTHORITY determines that by virtue of the imposition of the requirements
of any such law, in respect to project contracts, the provisions thereof duplicate or conflict with this section, the AUTHORITY may waive the applicability of this section to the extent of such duplication or conflict.

C. Nothing in this section shall be deemed to require that overall state and federal requirements for participation of minority and women-owned business enterprises in the project be applied without regard to local circumstances to all projects or in all communities or any contract to be performed in Canada.

In order to implement the requirements and objectives of this section, the AUTHORITY shall establish, and the CONSULTANT shall abide by, procedures to monitor the contractors' compliance with provisions hereof, provide assistance in obtaining minority and women-owned business enterprises to perform contracts proposed to be awarded, and take other appropriate measures to improve the access of minority and women-owned business enterprises to these contracts.
APPENDIX A

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 (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education 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 affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (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 set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, “the Records”). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter 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's 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. MacBride Fair Employment Principles (Non-Federal Aid New York State Contracts). In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. Omnibus Procurement Act of 1992 (Non-Federal Aid New York State Contracts). It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York  12245
Telephone:  518-292-5220

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York  12245
http://www.empire.state.ny.us

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:
(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

21. **RECIPROCITY AND SANCTIONS PROVISIONS (NON-FEDERAL AID NEW YORK STATE CONTRACTS).** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. **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.

23. **CONTRACT TERMINATION PROVISION.** The State reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with the requirements contained in State Finance Laws 139j and 139k was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.
24. **PERSONAL INFORMATION SECURITY.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 889-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor’s negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor’s agents, officers, employees, or subcontractors.
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 there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: http://www.fhwa.dot.gov/programadmin/contracts/1273.htm).

In addition to the referenced requirements, the attention of Municipality 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 26.

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 sub-recipients and any contractor.

(1) **“POLICY.”** It is the policy of the Department of Transportation that minority business enterprises as defined in 49CFR Part 26 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 26 apply to this Agreement.

(2) **“MBE OBLIGATION.”** The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49CFR Part 26 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 26 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, 50 Wolf Road, 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.

PROMPT PAYMENT MECHANISMS

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

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

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

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

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

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

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

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

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