

**AGREEMENT FOR INSTALLATION, MAINTENANCE, REPAIR AND ENERGIZING OF
LIGHTING SYSTEM FOR STATE HIGHWAYS**

IDENTIFIED AS

SH 67-2

**REMOVAL OF THE NIAGARA SCENIC (ROBERT MOSES) PARKWAY AND
IMPROVEMENTS TO THE PARKLAND AND ADJACENT AREA, RECONSTRUCTION OF
DISCOVERY WAY, RECONSTRUCTION OF THE TROLLEY PATH, AND CONSTRUCTION
OF NEW BICYCLE / PEDESTRIAN PATHS
CITY OF NIAGARA FALLS, NIAGARA COUNTY**

PIN 57619B, D263805; AGREEMENT No _____

This Agreement, made this _____ between:

Date

the New York State Department of Transportation ("NYSDOT"), having its principal office at
50 Wolf Road, Albany, NY 12232, on behalf of New York State ("STATE")

and

the City Council of the City of Niagara Falls, which is herein referred to as the
"MUNICIPALITY".

WITNESSETH:

WHEREAS, pursuant to Highway Law §10 (23, 24, and/or 27) the Commissioner of Transportation (the "COMMISSIONER"), may at the expense of the STATE, or using federal funds, and/or using local funds provide for the installation and/or replacement of lighting systems, provided the COMMISSIONER deems it practicable to perform such work for the MUNICIPALITY in connection with the performance of any work of construction, reconstruction, or improvement under the Highway Law; and

WHEREAS, the COMMISSIONER proposes to install, remove, relocate, replace, and /or reconstruct, herein referred to as "adjust, adjustment, or adjusted", the lighting system(s) within a State Highway pursuant to the New York State Highway Law, such highway being identified as PJ-LOC (for: the State Highway (S.H.) 67-2 in Niagara County within the geographical jurisdiction of the MUNICIPALITY and geographical jurisdiction of City of Niagara Falls, Niagara County); and

WHEREAS, the MUNICIPALITY desires to have the lighting system adjusted on or along such highway within the geographical jurisdiction of the MUNICIPALITY; and

WHEREAS, it is recognized by the MUNICIPALITY and the COMMISSIONER that if the MUNICIPALITY desires to have lighting system adjusted on or along such highway within the geographical jurisdiction of the MUNICIPALITY, the MUNICIPALITY shall maintain, repair and energize such lighting system at its own expense; and

WHEREAS, the MUNICIPALITY by Resolution No. _____ adopted at the City Council of the MUNICIPALITY meeting held on _____, approved the adjustment, maintenance and energizing of said lighting and has provided such Resolution hereto, and has further authorized the _____ (Title) to execute this Agreement on behalf of the MUNICIPALITY; and

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WHEREAS, the City Council of the City of Niagara Falls and the COMMISSIONER are desirous of identifying the respective responsibilities of the parties with regard to the lighting system;

NOW, THEREFORE, in consideration of the mutual promises and benefits moving to the parties, it is agreed as follows:

ARTICLE 1: DOCUMENTS FORMING THIS AGREEMENT. The parties agree that the Agreement consists of the following:

- a. Agreement: This document, entitled "Agreement for Installation, Maintenance, Repair and Energizing of Lighting System for State highway identified as "PJ-LOC" [See above];
- b. Schedule "A" - Description of Project, funding and deposit requirements;
- c. Appendix "A" - Standard Clauses for New York State Contracts;
- d. Appendix A-1: Supplemental Title VI Provisions (Civil Rights Act);
- e. Municipal Resolution(s): duly adopted resolution authorizing this agreement and the appropriate municipal office to execute the Agreement and undertake the project on the terms and conditions set forth herein.

ARTICLE 2: PROJECT RESPONSIBILITIES.

2.1 The COMMISSIONER shall provide for the furnishing and placing of the following items in connection with a lighting system on the above-mentioned highway and identified in the contract documents for this transportation project:

Install lighting standards and associated features per contract documents.

2.2 Upon completion of construction of the above identified highway project, the MUNICIPALITY shall, at its own expense, maintain the lighting system installed under such highway project within the geographical jurisdiction of the MUNICIPALITY. Such maintenance shall include, but not be limited to:

- a. Repair of equipment, which may be damaged from any cause whatsoever.
- b. Replacement of equipment, which may be non-functioning or damaged from any cause whatsoever, such replacement material to be of equal character to the original equipment.
- c. Payment for delivery and supply of the electric current for the lighting system during the customary night hours [dusk to dawn] of each day of the year, at no cost or obligation to the STATE.
- d. Should MUNICIPALITY choose to install lighting attached to a utility pole(s) belonging to the MUNICIPALITY'S Lighting Contractor, the STATE shall not be involved and MUNICIPALITY shall make appropriate Pole Attachment Agreement and payment arrangements with the MUNICIPALITY'S lighting contractor.

ARTICLE 3: TERM OF AGREEMENT.

3.1 This Agreement shall commence upon _____ (the date first appearing above, month, day, year) and shall expire upon _____ (the date twenty-five (25) years thereafter, month, day, year). The MUNICIPALITY shall continue to maintain and energize the lighting system for the period of its useful life or until such time as the

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COMMISSIONER, at his/her discretion, in agreement with MUNICIPALITY, determines that such lighting system and/or the maintenance of such lighting system is no longer warranted or desired for such State Highway and sets forth action to remove such lighting system at the MUNICIPALITY's expense.

- 3.2 The MUNICIPALITY agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or its right, title, or interest therein, or its power to execute this Agreement to any person, company or corporation without COMMISSIONER's written consent. MUNICIPALITY shall express their desire to change the terms of this Agreement in writing to the COMMISSIONER, except as herein provided by Municipal Resolution attached hereto.
- 3.3 The COMMISSIONER herewith extends his/her consent to the MUNICIPALITY to establish a lighting district to transfer the MUNICIPALITY'S cost for repair, maintenance of the lighting system, and to ensure that payments are made to the MUNICIPALITY's lighting contractor for delivery and supply of energy.

ARTICLE 4: TERMINATION OF AGREEMENT.

- 4.1 Prior to the expiration of the Agreement, the MUNICIPALITY shall review the Agreement and determine whether it desires to continue maintaining said lighting system. If at any time after the useful life of the lighting system, the MUNICIPALITY, in its discretion, determines that it does not desire to maintain said lighting system, it shall notify the COMMISSIONER or his/her representative in writing.
- 4.2 During the duration of this Agreement, where the MUNICIPALITY has no desire to maintain the lighting system, and / or discontinues payment for the energizing of the lighting system covered in this Agreement, said fixtures will be removed by the STATE at the expense of the MUNICIPALITY, unless the STATE has funds available to maintain, repair and energize said lighting system, and the COMMISSIONER, in his/her discretion, determines that such lighting system is warranted or desired for such State Highway. Upon written notification by the COMMISSIONER of the removal cost, the MUNICIPALITY shall, within ninety (90) days of the receipt of such written notification from the COMMISSIONER, reimburse the STATE the amount specified. The cost of removal includes but is not limited to review and upgrading of roadway delineation features, including pavement markings, and any and all penalties, fees and/or other costs for unamortized fixtures which the STATE is required to pay the Federal Government.

ARTICLE 5: REMEDIES.

- 5.1. Should the MUNICIPALITY, within the term of this Agreement and without the prior written consent of the COMMISSIONER, discontinue the repairs and maintenance, and/or discontinue payment for energizing the lighting system covered in this Agreement, which results in the STATE being required to make payment to the Federal Government, as a penalty or otherwise, the MUNICIPALITY, upon written notification by the COMMISSIONER of such requirement to pay, shall reimburse the STATE the amount of such required payment within 90 days of the receipt of such written notification from the COMMISSIONER.
- 5.2. Further, it is expressly understood that the MUNICIPALITY shall indemnify and save harmless the STATE from claims, suits, actions, damages and costs of every name and

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description resulting from the discontinuance of the repairs and maintenance, and/or discontinuance of payment for energizing of the lighting system by the MUNICIPALITY.

- 5.3. The COMMISSIONER or his/her representative may periodically inspect the lighting system adjusted under the above-identified Construction Project to ascertain that the lighting system is being maintained and energized in accordance with the terms of this Agreement and in condition satisfactory to the COMMISSIONER. The COMMISSIONER shall, in writing, notify the MUNICIPALITY of any observed deficiencies, listing such deficiencies. Within thirty (30) days of receipt of such notification by MUNICIPALITY, the COMMISSIONER or his/her representative shall arrange for a meeting to be held with the authorized representative of the MUNICIPALITY. At such meeting the COMMISSIONER or his/her representative and the authorized representative of the MUNICIPALITY shall discuss the means required to remedy the noted deficiencies. Based on the discussion, and based on the nature of the required remedial action, a reasonable time limit shall be mutually established by the COMMISSIONER or his/her representative and the authorized representative of the MUNICIPALITY for the satisfactory completion of remedial action by the MUNICIPALITY.
- 5.4. It is recognized by the parties hereto that failure of the MUNICIPALITY to complete the required remedial actions within the agreed upon time limit may subject the MUNICIPALITY to certain penalties. If the equipment supplied and installed by the STATE for the above subject lighting system was done pursuant to a Federally aided and/or Federally reimbursable contract, and the MUNICIPALITY fails to make the remedial actions within the agreed upon time limit, no further Federally aided project shall be approved for the MUNICIPALITY until such time as the said lighting system is restored to the level and condition-required by this Agreement. In addition, failure of the MUNICIPALITY to make such remedial actions may subject the MUNICIPALITY to loss of State aid for other future municipal contracts.

ARTICLE 6: NOTICE REQUIREMENTS.

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

- i. Via certified or registered United States mail, return receipt requested;
- ii. By personal delivery;
- iii. By expedited delivery service; or
- iv. By e-mail.

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

New York State Department of Transportation (NYSDOT)

Name: Ronald W. Rolling

Title: NYSDOT Region 5 Utility Engineer

Address: 100 Seneca Street, Buffalo, NY 14203

Telephone Number: (716) 847-3954

E-Mail Address: Ronald.Rolling@dot.ny.gov

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LIGHTING SYSTEM FOR STATE HIGHWAYS****City of Niagara Falls**

Name of Representative: Robert Buzzelli

Title: Civil Engineer III

Address: PO Box 69

Niagara Falls, NY 14302-0069

Telephone Number: (716) 286-4411

E-Mail Address: robert.buzzelli@niagarafallsny.gov

- 6.2 Any such notice shall be deemed to have been given either at the time of delivery or, in the case of expedited delivery service or certified or registered US mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission by e-mail, upon request.
- 6.3 The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for the purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

ARTICLE 7: PROCESSING OF BETTERMENT DEPOSITS AND PAYMENTS

- 7.1 NYSDOT will adjust the MUNICIPAL facilities in accordance with plans and specifications related thereto, as they may be amended or revised, and subject to such change orders as may be approved by NYSDOT in connection with its administration of the work and other work under the Construction Contract for or relating to the work under this Agreement.
- 7.2 For all Betterment work done by NYSDOT, the MUNICIPALITY shall, prior to the work being done, deposit in a project escrow account with the Office of State Comptroller the full amount of the MUNICIPAL share (if any) reflected in the itemized engineer's estimated cost of the work to be performed on MUNICIPAL facilities for payments by the Comptroller on account of Project costs. The excess amount of such deposit shall be reimbursed to the MUNICIPALITY after project close out, unless Fixed Price Lump Sum project share is established.
- 7.3 Payments to the Contractor for Betterment work shall be made using State Comptroller vouchers or requisitions approved by the COMMISSIONER.
- 7.4 When Betterment work performed on the MUNICIPAL facilities contemplated herein has been completed, and all payments have been made to the Contractor, the COMMISSIONER shall determine the additional costs thereof to be borne by the MUNICIPALITY. Any excess of the deposit shall be returned to the MUNICIPALITY on the warrant of the State Comptroller or using vouchers approved by the COMMISSIONER; and, in the event such costs exceed the amount of the deposit, the COMMISSIONER shall send a written notice to the MUNICIPALITY requesting such extra payment be deposited with the Office of State Comptroller in a project escrow account. The MUNICIPALITY shall, within 90 days of receipt of such written notice from the COMMISSIONER, pay the amount of such deficiency to the Office of State Comptroller, unless Fixed Price Lump Sum project share has been established.

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IN WITNESS WHEREOF, the STATE has caused this instrument to be signed by the said COMMISSIONER of Transportation and the MUNICIPALITY has caused this instrument to be signed by its authorized officer.

Agreement No. _____

APPROVED:

MUNICIPALITY:

Municipal Attorney

By: _____
(Signature and Title)

STATE OF NEW YORK)
)
COUNTY OF _____) ss:
)

On this _____ day of _____, 20 ___, before me personally came _____, to me known, who being by me duly sworn did depose and say that he/she is the _____ of the Municipal Corporation described herein, and which executed the above instrument; that he/she knows the seal of such Municipality; that the seal affixed to said instrument is such corporate seal, that it was affixed by order of the legislative Body of said Municipal Corporation pursuant to a Resolution which was duly adopted on _____ and to which a certified copy is attached and made a part hereof; and that he signed his name thereto by like order.

Notary Public

APPROVED FOR NYSDOT:

APPROVED AS TO FORM:
STATE OF NEW YORK ATTORNEY GENERAL

By: _____
for the Commissioner
of Transportation Date _____

By: _____
Assistant Attorney General

COMPTROLLER'S APPROVAL:

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

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

**SCHEDULE A
DESCRIPTION OF PROJECT, FUNDING AND DEPOSIT REQUIREMENTS.**

SH 67-2

**REMOVAL OF THE NIAGARA SCENIC (ROBERT MOSES) PARKWAY AND
IMPROVEMENTS TO THE PARKLAND AND ADJACENT AREA, RECONSTRUCTION OF
DISCOVERY WAY, RECONSTRUCTION OF THE TROLLEY PATH, AND CONSTRUCTION
OF NEW BICYCLE / PEDESTRIAN PATHS
CITY OF NIAGARA FALLS, NIAGARA COUNTY**

P.I.N. 5761.9B; Construction Contract D263805, Agreement # _____

Is the project linked to a State project in the area? YES

If linked to a State project, describe the State project:

Removal of the Niagara scenic (Robert Moses) Parkway and provide multiuse pathways.

Description of the work to be performed on local facilities:

The City of Niagara Falls by Resolution No. _____ adopted on the _____ day of _____, 20____, requested and authorized the State Department of Transportation to proceed with the necessary arrangements to incorporate installation of lighting standards on Walnut Avenue with the work of as set forth in the plans and specifications for said project.

The MUNICIPALITY shall be responsible for the removal of wood poles with luminaire bracket arms on Whirlpool Street between Walnut Avenue and Third Street

Engineer's Estimate \$ 6,731.16

Federal Aid Eligible No

State Share (in dollars) \$ 6,731.16

Federal Share (in dollars) \$ _____

Local Share (in dollars) \$ _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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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, licensor, 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 State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments 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 \$50,000 (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 \$25,000, 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 \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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.

Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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 (2 NYCRR § 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. 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) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, 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 the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, 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 and 5 NYCRR Part 143, 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 the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

- (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, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts 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. 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 clause. 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 Department of Economic Development's Division of Minority and Women's Business Development 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 Section 165 of the State Finance Law, (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 (APPLICABLE ONLY IN 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 (APPLICABLE ONLY IN 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
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) 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. 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT

DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

APPENDIX A-1 SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)
(To be included in all contracts)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, age, color, sex or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a) Withholding of payments to the contractor under the contract until the contractor complies; and/or
 - b) Cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Intrinsic Cost of the Lighting System for the Subject Project over Twenty-Five Years
Worksheet**

Removal of the Niagara Scenic Robert Moses Parkway and improvements to the parkland and adjacent Area, reconstruction of Discovery Way, reconstruction of the trolley path, and construction of new bicycle/pedestrian paths City of Niagara Falls - Contract 3

PIN 5761.9B, D263805; AGREEMENT No _____

Date: _____

Federal Tax ID number for the City of Niagara Falls is 16-6002548

Designer: Doug Ackerman, Parson Transportation Group

Brief Description of work done under this project:

Robert Moses Parkway (RMP) removal from Main Street to Findlay Drive. Work includes removal of the RMP travel lanes, converting a portion of the southbound travel lanes into a mixed-use path and adding additional pathways and access roadways. In addition, this work includes removal of a portion of Whirlpool Street from Walnut Avenue to Cedar Avenue, as well as sidewalk and roadway improvements along Whirlpool Street, Third Street, Walnut Avenue, Whirlpool Street (South) and Park Road.

Item 670.15010005 – Furnish and Install Decorative Lighting Pole Assembly = 2.0 each

TOTAL = 2 each (City of Niagara Falls).

Estimated cost of energy for energizing lights for 25 years:

Number of Luminaires: 2; Type of bulb: LED each rated at 120 watts.

120 watts per luminaire /1000= 0.1200 Kw

0.1200 Kw x \$0.1200 per Kw = \$0.0144 per hour

\$0.0144 per hour x 12 hours = \$0.17 per day per luminaire

\$0.1728 per day x 365 days per year = \$63.0720 per year per luminaire.

\$63.07 per year per luminaire x 2 luminaires =

\$126.14 Total cost for all the luminaires per year

\$126.14 total cost per year x 25 years =

\$3,153.60 Total cost for energy for the life of the agreement (25 years)

Maintenance:

The life expectancy of each bulb is +/- 100,000 hours or +/- 22 years.

Average cost for a replacement bulb is \$1,200.00 Luminaire for decorative davit arm.

No. of replacement bulbs for each luminaire: 25 years / 22 years of bulb life expectancy