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**County of Erie
Erie County Industrial Development Agency**

REQUEST FOR PROPOSALS

ENGINEERING SERVICES

for

**Track Improvements to the Buffalo Southern Railroad Mainline Track
Restoration and Bridge Rehabilitation between MP 2.70 Buffalo, NY, and MP
32.9 in Gowanda, NY**

Proposals are being solicited from Architectural and Engineering (A/E) Firms, experienced in railroad engineering and design work to provide Design/Engineering/Construction administration services for the safety and efficiency improvements project to the Buffalo Southern Railroad, (BSOR), This project will restore a State of Good Repair to five (5) bridges and 7-miles of track on the Buffalo Southern Railroad by replacing failing timber bridge decks, replacing missing stone ballast, and restore 7-miles of rail corridor through a 20% tie replacement and upgrades to a Class One status for improved safety, efficiency and reliability. Firms responding to this RFP should have expertise in designing repairs for railroad bridges and have experience rating railroad bridge structures.

The Erie County Industrial Development Agency (“ECIDA”), acting as Project Administrator is seeking Qualified Firms for Engineering/Construction Administration services for the above project.

The project is being funded through the New York State Department of Transportation’s PFRAP Fund and supplemented by County of Erie Bond Funds and Railroad match. Invited Firms are encouraged to include Minority and Women Owned Business Enterprises and Service-Disabled Veteran Owned Business Enterprises and their staff in their engineering teams in accordance with NYSDOT Standard Contract Goals (shown on page 9).

**THE ECIDA RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS
AND TO WAIVE ANY INFORMALITIES THEREIN.**

General Description of the Project:

The Buffalo Southern Railroad (BSOR) is a class III railroad operating in Western New York. The BSOR is locally owned and operates on 32 miles of track owned by Erie County, New York and leased from the Erie County Industrial Development Agency. The line runs south from Buffalo, New York to Gowanda, New York serving the communities of Hamburg, Eden and

North Collins along the way. BSOR interchanges with Norfolk Southern Railway, CSX Transportation, Canadian Pacific Railway, Buffalo and Pittsburgh Railroad and the New York and Lake Erie Railroad.

In preparation for the 2021 Passenger and Freight Rail Assistance Program (PFRAP) application, BSOR hired an engineering firm to review inspection reports of the current track conditions, recommend proposed improvements and develop detailed project costs for the PFRAP.

The report identified four (4) bridge structures, 3 of the 5 bridges are under a “slow order” due to the poor condition of the track. The report also identified a 7-mile section of railroad track in the most immediate need of repairs due to the poor condition of the ties. Ties are failing, bolts are missing, stone ballast is uneven or gone entirely, grass has overgrown the ties in some locations, and the rails themselves are uneven (please refer to Project Photos).

The proposed improvements were chosen to correct the most serious of the identified weaknesses, while restoring the full capacity of the railroad facility. This project will restore a State of Good Repair (SOGR) for the entire railroad by repairing the bridge structures and replacing failing railroad ties, replacing missing stone ballast and resurfacing areas with uneven rails. In order to accomplish these improvements, the selected firm will be required to coordinate the entire project in accordance with NYSDOT and Buffalo Southern Railroad procedures and requirements.

The selected firm will be required to review the assessment report, meet with stakeholders, prepare construction documents, assist in bidding and recommendations, provide the level of Construction Inspection mutually agreed upon ensuring the project meets or exceeds the standards of any and all government agencies with jurisdiction (including, but not limited to): the NYS Department of Transportation (NYSDOT); the US Department of Transportation - Federal Railroad Administration (FRA); the American Railway Engineering and Maintenance of Way Association (AREMA); and the Erie County Industrial Development Agency. The consultant will also be responsible for the project remaining in compliance with the standards of the Buffalo Southern Railroad’s CWR Program and allowing maintained service levels satisfactorily to all the Buffalo Southern customers.

A budget range of approximately \$2.133,553 million will be available for the entire project which is to include all design and engineering work, construction, and inspection costs. At this time, it is anticipated that there will be no additional funds available for this project.

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General Existing Track Conditions

Mile Post	Existing FRA Class	Proposed FRA Class
2.70 – 12.2	2	2
12.2 – 25.0	1	2
25.0 – 32.9	Excepted Track	1

The scope of work will include the following items and be approved by NYSDOT when finalized prior to bidding the project for construction:

Water Valley Bridge - Mile Post 13.94

- Replace 257 deck timbers & add safety walkway
- Replace 18 approach ties
- Furnish and Install 40Ton ballast stone
- Install 1 guardrail nose

Eden 18 Mile S. Branch Bridge – Mile Post 15.85

- Replace 269 deck timbers and add safety walkway
- Replace 16 abutment timbers
- Replace 18 approach ties
- Furnish and Install 4-ton ballast
- Perform steel work /abutment repair to strengthen span 2 & 3

Franklin Gulf bridge- Mile Post 22.25

- Replace 118 timbers + add safety walkway
- Repoint walls
- Replace 20 approach ties
- Furnish and install 40ton ballast
- Replace Bearings

Cattaraugus Creek Bridge – Mile Post 32.90

- Replace 118 timbers on bridge & add safety walkway
- Replace 18 approach ties
- Furnish and Install 40ton ballast

Track Improvements from Mile Post 25 to 32.9 to restore rail corridor from “Excepted” to Class 1

- Replace 4,000 cross ties (550/mile)
- Replace 2,000 joint tie plates
- Install 600ton ballast to fill cribs

(The quantities provided above are engineered estimates that will require verification.)

SCOPE OF WORK

The following is a description of the Design/Engineering/Construction Administration Services to be performed and completed by the successful Engineering Firm, (Firm):

Project Initiation *(Tasks include, but are not limited to):*

- The selected Firm shall meet with the Steering Committee (ECIDA, Erie County DEP, BSOR RR), to discuss project scope.
- The Firm will be required to review the initial Engineering Assessment Report.
- The Firm shall conduct site visit(s) to become familiar with existing conditions.
- The Firm shall become familiar with all documents, agreements and regulations controlling the site (i.e.: NYSDOT permitting, BSOR permitting and safety training, easements, etc.).
- The Firm shall organize a pre-design meeting with all involved parties (including NYSDOT, railroad, ECIDA and Erie County DEP).

The Firm shall provide all details necessary to meet the project timeline as outlined in the Project Schedule to follow.

Site Planning *(Tasks include, but are not limited to):*

- Analysis of key factors influencing site planning, including but not limited to vehicular and rail traffic, environmental conditions, potential lane closures,
- Sidewalk safety for bicycles and pedestrians.

Design Development *(Tasks include, but are not limited to):*

- The Firm shall prepare the preliminary construction documents (working plans, designs, grades, detailed drawings, computations, calculations, special specifications, schedule of quantities, estimates of cost, etc.) for final review and approval by representatives of the County, ECIDA, BSOR RR and NYSDOT.
- The Firm shall schedule a meeting(s), to ensure that all comments, feedback and changes are incorporated into the final construction documents.
- The Firm shall provide Engineer’s Estimates of Cost. All estimates are to include a 10% contingency.
- Review and identify all permits for the Track Improvements, Bridge Rehabilitation and Restoration Project. Special attention should be paid to local permit ordinances and state permits pertaining to but not limited to environmental and transportation issues and Army Corp. permit renewal for work on bridge wing walls.

Construction Document Development *(Tasks include, but are not limited to):*

- The Firm shall prepare the final construction documents (plans, specifications, bidding documents and cost estimates). Bidding documents will be developed to create a unit price-based bid document. State prevailing wage rates, affirmative action requirements and M/WBE participation requirements will be required for the construction work and will be provided by the ECIDA for incorporation into the bid

- documents. Construction specifications must be in compliance with all NYSDOT, FRA, AREMA and BSOR rail and construction requirements.
- The ECIDA's boiler plate contract documents will be provided electronically for editing by the design consultant.
 - The project shall be bid out in two (2) packages, one for the rail work and one package for bridges (Steel/ Masonry Contractors) to repair the wing walls and place bank stabilization measures.
 - The Firm shall prepare 3 (3) full-size copies of the drawings and five (5) copies of the specifications for the bid process, and an additional four (4) reduced (half-size) copies of the drawings.
 - The firm shall provide five (five) flash drives containing all drawings and specifications in a PDF Format.

Construction Bidding *(Tasks include, but are not limited to):*

- The Firm will provide assistance with the construction bid proceedings, including responding to requests for additional information or questions regarding bid documents during the bidding process and the analysis of all bids received.
- The Firm will review all bids, including an analysis of quantity prices and will make a specific recommendation as to the award of the construction contract. Prior to the award of the construction contract, the ECIDA will review the qualifications of the lowest bidding contractors for eligibility to participate in the project.

Construction – Administration *(Tasks include, but are not limited to):*

- The Firm shall be responsible for conducting weekly construction progress meetings.
- The firm will be responsible for conducting a contractor project kick-off meeting.
- The Firm shall be responsible for reviewing the contractor's safety plan to ensure compliance with all relevant standards including any lead paint issues.
- The Firm shall provide construction oversight to ensure the quality of construction and the conformity with plans and specifications and to verify quantities in reference to contractor payment applications.
- The Firm shall review shop drawings, submittals, payment applications, change orders, documentation for funding sources, EEO compliance documentation, OSHA compliance documentation, NYS Department of Labor compliance documentation, etc. as prepared by the contractor.
- The Firm will be responsible for reviewing all payment applications and certifying said applications for payment.
- The Firm will prepare parallel cost estimates for proposed change orders and make necessary recommendations to the ECIDA.
- The Firm shall make recommendations (in writing) to ECIDA and the County on all project issues.
- The Firm shall prepare and supply five (5) sets of final "as-built" plans and four (4) Flash drives of same in a format acceptable to the ECIDA.

Construction – Inspection *(Tasks include, but are not limited to):*

- The Firm shall analyze the various needs for construction inspection and develop a plan to accomplish same with its internal staff and/or an outside consultant.

If an Outside consultant is being proposed, the consultant’s proposed fee should be included in the overall proposal and should include a complete breakdown of associated costs.

Other Project Particulars (*Tasks include but are not limited to*):

- The firm shall analyze the various needs for Construction Inspection and develop a plan to accomplish the same with its internal staff and/ or an outside consultant. If an outside consultant is being proposed, the consultant’s proposed fee should be included in the overall proposal and should include a complete breakdown of associated costs.
- All payment applications made by the A/E and any contractors must be submitted to the ECIDA in a format acceptable by Erie County and the NYSDOT for reimbursement of funds through the NYS DOT PFRAP.
- The firm shall provide meeting minutes to the steering committee for all meetings during the design and construction phases.

This Scope of Work has been prepared as a proposal guideline. It is the respondent’s responsibility to add any other Engineering services that the consultant feels would be necessary to complete the project.

BACKGROUND/EXPERTISE OF PARTICULAR VALUE:

- Railroad Engineering experience in short line railroad track improvement projects.
- Experience working with projects utilizing NYS PFRAP Funds.
- Masonry bridge repair design and construction inspection.
- Railroad bridge structure load rating.
- Experience in obtaining Army Corps of Engineers’ permitting extensions.
- Experience working with the local NYSDEC and NYSDOT office.
- Experience in working with projects administered by ECIDA and its affiliates.
- Background in similar projects of this nature.
- Experience with Bridge or Railroad projects within the County of Erie.

GENERAL PROPOSAL REQUIREMENTS:

A. Experience of Firm/Project Team

Firms, or their principals responding to this RFP, must be licensed to practice engineering in New York State. Proposals should include an organizational chart, identifying the project manager and team members with their titles. All proposed sub-consultants must also be identified, along with their project managers and key personnel.

B. Experience, Depth and Breadth of Personnel

The project team should have a full range of relevant bridge repair, environmental and railroad engineering expertise. Primary personnel in each of the noted disciplines must be identified by name and office location, with resumes included, and should demonstrate satisfactory experience and depth in each of the required disciplines.

C. Approach and Methodology

Respondents to this RFP should include a brief narrative explaining their approach. The narrative should outline the products and tasks to be provided in response to the recommended Scope of Work outlined above.

D. Cost and Budget

The Firm contract will be a fixed-price or lump sum cost contract. Therefore, all proposals must contain a Lump Sum Cost Proposal for the scope of services delineated, inclusive of all expenses (there will be no reimbursables). Proposals must include a breakdown by the categories outlined.

For the purposes of the proposal submittal, the following categories should be delineated in a **Fee Chart**, showing a lump sum amount for each category:

- **Bridge Rating**
- **Design Development**
- **Construction Document Development**
- **Construction Bidding**
- **Construction – Administration**
- **Construction – Inspection**

E. Hourly Personnel Rates

As a supplement, a schedule of billable rates for all key personnel (Principal-in-Charge, Project Manager, primary personnel for each design discipline, etc.) must be included in the proposal. Proposals must also include the ranges of billable rates for technical staff and support personnel.

E. Schedule

Advertise RFP for Engineering Services	August 23, 2023
RFP Submittal Due Date	2 PM September 12, 2023
Approximate Notice of Award	September 20, 2023
Contract Agreement Executed	September 28, 2023
Construction Documents Complete	November 10, 2023
Advertise RFP for Construction	November 27, 2023
Contractor Bids Due Date	January 8, 2024
Notice of Award approximately	January 22, 2024
Begin Construction approximately	February 16, 2024
Project Completion approximately	April 15, 2024

SUBMISSION OF PROPOSALS:

There is no restriction on the length of a proposal; however, respondents are encouraged to be as concise as possible. **Seven (7) copies** of the proposal must be submitted, **no later than 2:00 PM, Friday, September 12, 2023 To:**

**Buffalo Southern Railroad Project
NYS DOT PIN 5936.74.301
ECIDA Attn: Talia Johnson-Huff
95 Perry St., Suite 403**

Buffalo, New York, 14203

SELECTION PROCESS:

The ECIDA will form a selection Committee consisting of representatives from the Erie County Industrial Development Agency, The County of Erie, and Buffalo Southern Railroad.

The Selection Committee will rate the proposals and make an award recommendation, based on the following criteria:

Background of Firms

Experience and performance of firm (team), in similar projects, experience of project manager/team, specific railroad project experience of proposed project team, size, experience, and breadth of staff.

Approach to Scope of Services

Understanding of owner’s program and intent for project, understanding tasks, and demonstrated experience with specific scope tasks.

Schedule

Demonstrated ability to meet proposed schedule including consideration of amount and quality of allocated firm resources.

Other Factors

Firms are encouraged to include minority owned and woman owned businesses as part of their team. Please include a proposed utilization plan for each based on the New York State Department of Transportation (NYSDOT) Standard Contract Goals.

CATEGORY/CONTRACT TYPE	MBE	WBE	SDVOB
C: Commodities	12.00%	15.00%	6.00%
CC: Construction Consultants (Architecture/Engineering)	20.00%	9.00%	6.00%
CN: Construction	9.00%	13.00%	6.00%
SC: Services/Consultants (Non-Architectural/Engineering)	6.00%	13.00%	6.00%

Firms are encouraged to propose innovative approaches to this design and construction administration project.

ECIDA may shortlist from the proposals and interviews may be required. Award of a contract is expected to be made on or about **September 18, 2023**.

ECIDA does not assume the responsibility or liability for costs incurred by firms responding to this RFP or to any subsequent requests for interviews, additional information, submissions, etc. prior to issuance of a contract.

Restricted Period and Designated Individuals

This request for qualifications includes and imposes restrictions on communications between Selection Committee members and a Bidder during the procurement process. A respondent is restricted from making contact with Selection Committee Members and their respective firms, noted above, regarding this RFP solicitation, from the earliest notice of intent to solicit Request for Qualifications through final award and approval of the Procurement Contract, (“restricted period”), to other than the noted Designated Individuals. Firms violating the restricted period will be subject to disqualification from consideration.

Any other requests for RFP interpretations should be made in writing to the ECIDA (faxes will be accepted at (716) 856-6754, attn. Talia Johnson- Huff or e-mail to tjohnson-huff@ecidanv.com by **September 3, 2023**. No requests for oral interpretations via the telephone will be accepted. All questions will be answered in writing and distributed to all RFP recipients simultaneously.

Designated Individuals:

John Cappellino jcappell@ecidanv.com **Talia Johnson-Huff** tjohnson-huff@ecidanv.com

Notice to all Respondents:

Please note that any firm responding to this RFP will be required to submit the forms contained in Exhibit 1 as part of their qualifications statement.



Permissible Contacts

Pursuant to State Finance Law §§139-j and 139-k, this Solicitation/Request for Proposal includes and imposes certain restrictions on communications between the ECIDA and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit Request for Proposals through the final award and approval of the Procurement Contract by the ECIDA and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on page ___ of this solicitation. ECIDA employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

Offer/Bidder’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

State Finance Law §139-j(6)(b) provides that the ECIDA seek written affirmations from all Offerers/Bidders as to the Offerer’s/Bidder’s understanding of and agreement to comply with the ECIDA’s procedures relating to permissible contacts (described above) during a Governmental Procurement pursuant to subdivision three of this section.

The ECIDA must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k. It is recommended that this affirmation be provided to the ECIDA as early as possible in the procurement process, such as when the Offerer/bidder submits its proposal or bid. The following language may be used for the affirmation.

Offerer/Bidder affirms that it understands and agrees to comply with the procedures of the ECIDA relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).	
By: _____	Date: _____
Name: _____	Title: _____
Contractor Name: _____	
Contractor Address: _____	



Offerer's/Bidder's Certification of Compliance with State Finance Law §139-k(5)

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer/Bidder that all information provided to the ECIDA with respect to State Finance Law §139-k is complete, true and accurate. It is recommended that the certification be provided to the ECIDA as early as possible in the process, such as when an Offerer/Bidder submits its proposal, bid or other form of offer. The following language may be used for the certification.

Offerer/Bidder Certification:

I certify that all information provided to the ECIDA with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Name: _____ Title: _____

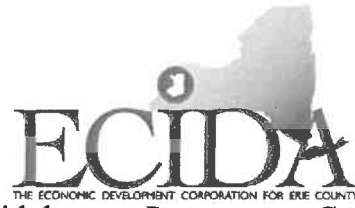
Contractor Name: _____

Contractor Address: _____

Offerer/Bidder Disclosure of Prior Non-Responsibility Determinations

New York State Finance Law §139-k(2) obligates the ECIDA to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer/bidder must disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer/bidder fails to timely disclose accurate or complete information regarding



the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer/bidder that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer/bidder is necessary to protect public property or public health safety, and that the Offerer/bidder is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

The ECIDA must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached “Offerer Disclosure of Prior Non-Responsibility Determinations” form is to be completed and submitted by the Offer/Bidder and submitted to the ECIDA.

Contract Termination Provision

New York State Finance Law §139-k(5) provides that every procurement contract award subject to the provisions of State Finance Law §§139-k and 139-j contain a provision authorizing the ECIDA to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. This statutory contract language authorizes, but does not mandate, termination. “Governmental Entity” and “procurement contract” are defined in State Finance Law §139-k(1). If a contract is terminated in accordance with State Finance Law §139-k(5), the ECIDA is required to include a statement in the procurement record describing the basis for any action taken under the termination provision.

Accordingly,

The ECIDA reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law §139k was intentionally false or intentionally incomplete. Upon such finding, the ECIDA may exercise its termination right by providing written notification to the Offerer/Bidder in accordance with the written notification terms of this contract.



Form 2: Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.



Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Offerer certifies that all information provided to the ECIDA with respect to State Finance Law §139-k is complete, true and accurate.

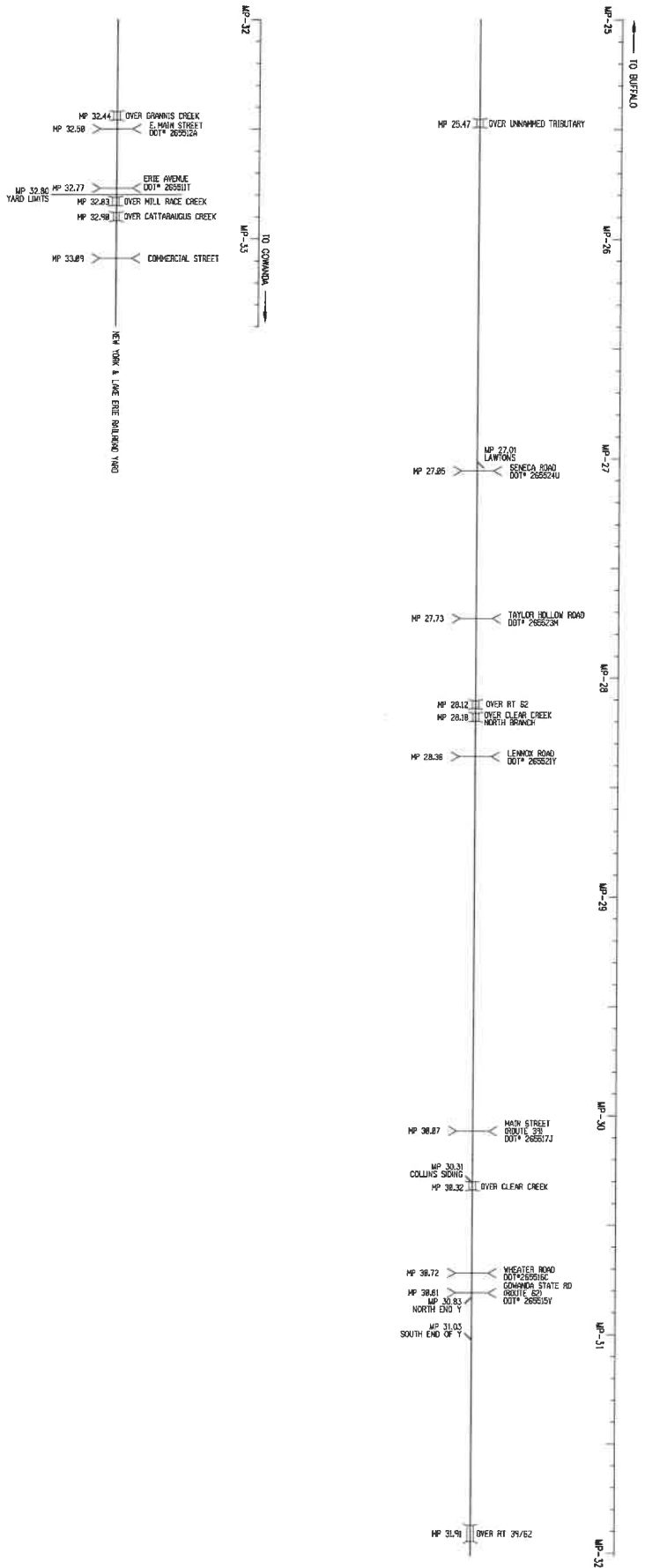
By: _____ Date: _____
Signature

Name: _____ Title: _____

LEGEND
 HIGHWAY AT
 OVERPASS
 RAILROAD
 BRIDGE
 OVERPASS
 OVERPASS

BUFFALO SOUTHERN RAILROAD - LINE 1246 TRACK CHART

SHEET 2 OF 2



**SAMPLE AGREEMENT FOR SERVICES TO COMPLETE THE BUFFALO
SOUTHERN RAILROAD PROJECT**

THIS AGREEMENT made this ___ day of September, 2023, by and between the **Buffalo & Erie County Industrial Land Development Corporation, (ILDC)** with offices located at 95 Perry Street, Suite 403, Buffalo, NY 14203 and _____,
(ARCHITECTURE/ENGINEERING FIRM), with offices at _____

WITNESSETH:

For and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE 1- ARCHITECTURE/ENGINEERING FIRM'S SERVICES AND RESPONSIBILITIES

ECIDA hereby retains and employs the ENGINEERING/ARCHITECTURAL FIRM and the FIRM agrees to provide _____ services in accordance with the requirements provided within the request for proposal herein attached as Exhibit 2.

ARTICLE 2- TERM

The term of this Agreement shall commence on the later of the date hereof or upon the ARCHITECTURE/ENGINEERING FIRM's execution of this agreement AND the simultaneous provision by the ARCHITECTURE/ENGINEERING FIRM of a Certificate of Insurance evidencing the coverage required below. This contract will expire on December 31, 2024 unless otherwise suspended or terminated.

ARTICLE 3- PAYMENT

ECIDA shall pay the ARCHITECTURE/ENGINEERING FIRM the following lump sum for the services described in THE ACCEPTED PROPOSAL, (Exhibit 1).
\$ _____ as specified per task in the approved Schedule of Values (SOV) as submitted to the ECIDA by the ARCHITECTURE/ENGINEERING FIRM.

Further, additional services, provided as requested by ECIDA, will be charged according to the costs listed in Exhibit 1:

As Invoiced in accordance with Exhibit 1 (no sales tax on materials).

Payments to be made within 30 days of ECIDA's receipt, and approval of a detailed invoice based upon the approved SOV from the ARCHITECTURE/ENGINEERING FIRM on which charges have been specified.

ARTICLE 4- INDEPENDENT ARCHITECTURE/ENGINEERING FIRM

The ARCHITECTURE/ENGINEERING FIRM is retained by the ECIDA only for the purposes and to the extent set forth in this Agreement, and its relation to the ECIDA shall be as an independent contractor. The ARCHITECTURE/ENGINEERING FIRM represents that it is qualified to render the Services set forth herein under the laws of New York State, the County of Erie and the City of Buffalo. The ARCHITECTURE/ENGINEERING FIRM and its employees shall not be considered, under the provisions of this agreement or otherwise, as having employee status or as being entitled to participate in any plan, benefit or arrangement which the ECIDA has for its employees. The ARCHITECTURE/ENGINEERING FIRM shall provide, at its own expense, all Workers' Compensation, Social Security, Unemployment Insurance and other coverage required for its employees.

ARTICLE 5- INSURANCE

The ARCHITECTURE/ENGINEERING FIRM agrees to carry at its own cost and expense and for the benefit of the ECIDA the following insurance coverage with limits not less than stated:

1. Comprehensive General Liability, including completed operations, explosions, collapse and underground operations, contractors protective liability, broad form contractual liability and indemnity.
 - \$1,000,000 Bodily Injury and Property Damage Occurrence
 - \$2,000,000 Aggregate
2. Personal Injury (with employment exclusion and contractual exclusion deleted).
 - \$1,000,000 Occurrence and Aggregate
3. Auto Liability (including non-owned and hired vehicles)
 - \$1,000,000 CSL
4. Statutory Workers' Compensation, Employers' Liability and Disability Benefits
 - Unlimited
5. And any other special insurance reasonably required by the ECIDA against or loss damage throughout the period of the work performed.

Such insurance shall be with a casualty insurance company authorized under the laws of the State of New York and satisfactory to ILDC. **ECIDA**, the **County of Erie**, **NYS DOT** and the **Buffalo Southern Railroad** shall be named as additional insured. The CONSULTANT shall furnish ECIDA prior to the commencement of operations hereunder a properly executed copy of a Certificate of Insurance showing that such insurance is in force. Such certificate shall provide that the insurance will not be cancelled, terminated materially changed or renewed until at least 45 days prior notice has been given to the ECIDA.

ARTICLE 6- SUSPENSION AND TERMINATION

ECIDA reserves the right to terminate this Agreement at any time during the term of the contract by giving a thirty (30) days' written notice of its intent to the ARCHITECTURE/ENGINEERING FIRM. ECIDA also reserves the right to terminate the Agreement for cause immediately upon written notice.

ARTICLE 7- COMPLIANCE WITH LAWS AND REGULATIONS

The ARCHITECTURE/ENGINEERING FIRM agrees to conduct any and all Services required by this Agreement in accordance with the mandates of any and all State or Local statutes, Regulations, laws, or ordinances in effect or promulgated during the term of this Agreement or extension thereof.

ARTICLE 8- NON-DISCRIMINATION

The ARCHITECTURE/ENGINEERING FIRM shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, ancestry, sex, age, disability, or marital status and shall under programs of affirmative action insure that such employees and applicants are afforded equal employment opportunities without discrimination. The ARCHITECTURE/ENGINEERING FIRM shall comply fully with the non-discrimination and equal opportunity provisions of the Civil Rights Law of the State of New York and Sections 291-299 of the Executive Law of the State of New York.

ARTICLE 9- INDEMNIFICATION

The ARCHITECTURE/ENGINEERING FIRM agrees to indemnify and hold the ECIDA harmless for any claims, damages, losses or expenses arising out of any negligent error or omission by the ARCHITECTURE/ENGINEERING FIRM in connection with any of the Services performed by the ARCHITECTURE/ENGINEERING FIRM under this Agreement, and from any claims, damages, losses or expenses arising out of the negligent performance of said Services by the ARCHITECTURE/ENGINEERING FIRM pursuant to this Agreement, and any claims made by an employee of

ARCHITECTURE/ENGINEERING FIRM for injuries incurred while providing services pursuant to this Agreement.

Nothing contained in this Agreement or any obligations herein imposed upon ECIDA, or the breach thereof, shall constitute or give rise to or impose upon ECIDA a pecuniary liability or a charge upon its general credit. All covenants, stipulations, promises, agreements and obligations of ECIDA contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of ECIDA, and not of any member, director, officer, employee or agent of ECIDA in his or her individual capacity, and no recourse shall be had for any claim hereunder against any member, director, officer or employee or agent of the ECIDA.

ARTICLE 10- NON-ASSIGNABLILITY

The ARCHITECTURE/ENGINEERING FIRM shall not assign or subcontract all or any portion of this Agreement without the prior written consent of the ECIDA. Any such assignment as is consented to by the ECIDA shall not relieve the ARCHITECTURE/ENGINEERING FIRM from its responsibility for the performance of the Services hereunder.

ARTICLE 11- NOTICES

All notices that may be given in connection with this Agreement shall be in writing and shall be delivered personally, or mailed, postage prepaid, by regular mail, to the party at the address specified above or such other address as may be designated in writing from time to time. Notices shall be deemed given upon delivery or upon deposit with the United States Mail.

ARTICLE 12- ENTIRE AGREEMENT

Each party hereto acknowledges its full understanding of this Agreement, that there are no verbal promises, undertakings or agreements in connection herewith and that this Agreement may be modified only by a written agreement signed by the parties hereto. All previous negotiations and agreements between the parties hereto with respect to the transaction set forth herein are merged in to this instrument which fully and completely expresses the entire agreement between the parties, setting forth all the parties' rights and obligations.

ARTICLE 13- SEVERABILITY

The provisions of this agreement shall be severable, and if any clause, sentence, paragraph, provision or other part hereof shall be adjudged by any court of competent

jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder hereof, which remainder shall continue in full force and effect.

ARTICLE 14- GOVERNING LAW

This Agreement shall be governed by and interpreted, construed and enforced in accordance with, and subject to, the laws of the State of New York.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

ARCHITECTURE/ENGINEERING FIRM

Buffalo & Erie Co. ILDC

By _____

By _____

Date _____

Date _____

Exhibit 1

ARCHITECTURE/ENGINEERING FIRM's Proposal

Exhibit 2
Request for Proposal

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, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) 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, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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, citizenship or immigration status, 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. 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. 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 and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebuisnessdev@esd.ny.gov
<https://ny.newnyccontracts.com/FrontEnd/searchcertifieddirectory.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 May 2023, 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 899-bb and State Technology Law § 208).

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/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.

Exhibit B-1

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
(Insurance Specifications as of June 2021)**

A summary of ECIDA insurance requirements follows. Please note that insurance is to be provided by the Company named in the agreement and shall be maintained during the term of any applicable agreement by and between the ECIDA and the Company.

During the term of an agreement entered into with the Erie County Industrial Development Agency an **ACORD 25-Certificate of Liability Insurance** and **ACORD 855 NY-New York Construction Certificate of Liability Addendum** shall be provided evidencing the following insurance is currently maintained and in force with an insurance carrier approved to do business in the State of New York and maintaining an A.M. Best Rating of A- or better showing Erie County Industrial Development Agency as Certificate Holder. It is our suggestion that you share these requirements with your current insurance agent, broker or insurance company.

Acceptable Certificates of Insurance shall indicate the following minimal coverage, limits of insurance, policy numbers and policy effective and expiration dates.

Commercial General Liability: Grantee shall provide such coverage on an occurrence basis for work performed on the named insured's premises & operations and products-completed operations. Blanket Contractual Liability provided within the "insured contract" definition may not be excluded or restricted in any way. Property damage to work performed by subcontractors may not be excluded or restricted nor shall the Additional Insured's coverage for claims involving injury to employees of the Named Insured or their subcontractors be excluded or restricted. The "insured contract" exception to the Employers Liability exclusion also may not be removed or restricted in any way.

These coverages are to be properly evidenced by checking the appropriate box(es) on the **ACORD 855-NY Construction Certificate of Liability Addendum's** Information Section, Items G, H, I and L.

Limits expressed shall be no less than:

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Per Occurrence	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Fire Damage Liability	\$ 100,000
Medical Payments (per person)	\$ 5,000

Erie County Industrial Development Agency shall be named as Additional Insured per **ISO Form CG 20 26-Additional Insured Designated Person or Organization**, or its equivalent, to provide coverage for the Additional Insured. Coverage shall apply on a Primary & Non-Contributory basis. All insurance required of the Company shall waive any right of subrogation of the insurer against any person insured under such policy and waive any right of the insurer to any off-set or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under such policy.

Blanket Additional Insured endorsement to include – Owner, Lessees or Contractors - Automatic Status for Other Parties When Required in Written Construction Agreement – Wording should include any other person or organization you are required to add as an additional insured under the contract or agreement (Paragraph 2 of CG 20 38 04 13 or equivalent)

Any scheduled person or organization section of the additional insured endorsement containing wording other than designated names shall not be accepted.

ACORD 855 NY-New York Construction Certificate of Liability Insurance: It is not uncommon for insurers to modify the standard ISO policy language with endorsements that result in modifications to language preferred by the insurer. This addendum is required to supplement the **ACORD 25-Certificate of Liability Insurance** with additional information that provides a more detailed expression of the types of coverage required. Specifically required coverages may be excluded or limited by the attachment of exclusionary or limitation endorsements. This addendum provides the insurer the ability to certify coverage provided by the absence of such exclusionary or limiting modifications.

Umbrella/Excess Liability: Commercial Umbrella or excess liability for a limit of at least \$5,000,000 per occurrence with a \$5,000,000 Aggregate. Coverage should respond on a follow-form basis and excess over the aforementioned underlying policy limits. Erie County Industrial Development Agency shall be named as Additional Insured. Coverage shall apply on a Primary & Non-Contributory basis.

Workers Compensation/Disability Insurance:

i) The Company and/or Project Owner shall provide evidence of insurance and maintain Workers Compensation/Disability insurance as required by statute.

ii) **Accepted Forms:**

Workers Compensation Forms		DBL (Disability Benefits Law) Forms	
CE-200	Exemption	CE-200	Exemption
C-105.2	Commercial Insurer	DB-120.1	Insurers
SI-12	Self-Insurer	DB-155	Self-Insured
GSI-105.2	Group Self-Insured		
U-26.3	New York State Insurance Fund		

If the Company and/or Project owner have no employees, the Company and/or Project owner shall provide a completed and signed Form CE-200 or later revision, which is found on the New York State Workers Compensation Board website: www.wcb.ny.gov/ This form is to be completed on-line, printed, and signed.

ECIDA Address: All evidence of insurance shall be sent to:

Tjohnson-huff@ecidanv.com

Exhibit C

General Contractor Certificate of Insurance

[Attach certificate naming Erie County, ECIDA, Buffalo Southern Railroad and Department of
Transportation as Additional Insured]



**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Business Name _____

Date _____

By _____
Name and Title of Authorized Representative

Signature of Authorized Representative

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645 (a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplaces under grants, for grantees other than individuals, need to be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about - -
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will - -
 - (1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within 10 calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted - -

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

Signature and Date

Printed Name

Title

Organization

**CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING
(FHWA 1273 SECTION XI.) (FOR FEDERAL-AID CONTRACTS ONLY)**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of their knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure of Lobbying Activities” in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S. Code §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The Prospective Participant shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

Name of Firm/Company Name

Name and Title of Principal

Signature of Principal

Date

