MEMORANDUM OF UNDERSTANDING
AMONG
NYS DEPARTMENT OF TRANSPORTATION
AND
NYS DEPARTMENT OF AGRICULTURE AND MARKETS
AND
NYS SOIL AND WATER CONSERVATION COMMITTEE
FOR
ACTIVITIES RELATED TO HIGHWAYS AND SOIL AND WATER CONSERVATION

WHEREAS, the New York State Department of Transportation (NYSDOT), acting by and through the Commissioner of Transportation, has general and special powers and duties more fully described in Article 2 of the Highway Law and has general functions, powers and duties more fully described in Article 2 of the Transportation Law and it is the mission of the New York State Department of Transportation to ensure that those who live, work and travel in New York State have a safe, efficient, balanced and environmentally sound transportation system; and

WHEREAS, the State of New York and federal government (using NYSDOT as the administering agency) provide funding for Highway projects under various programs and oftentimes such projects are conditioned upon, among other things, mitigation of highway impacts to wetlands, floodplains, erosion and endangered species; and

WHEREAS, pursuant to Agriculture and Markets Law Section 16(37), the Department of Agriculture and Markets (NYSDA&M) has the power to provide for the operation of the State Soil and Water Conservation Committee (NYSSWCC) pursuant to the Soil and Water Conservation Districts Law (SWCD law); and

WHEREAS, pursuant to SWCD law Section 4(1), the NYSSWCC is established in the NYSDA&M, as an agency of this state; and

WHEREAS, pursuant to SWCD law Section 4(4)(c), the NYSSWCC has the authority to approve and coordinate the programs of the county soil and water conservation districts (SWCDs); and

WHEREAS, pursuant to SWCD law Section 9(3), the directors of the SWCDs have the power to cooperate with and to furnish aid to any governmental agency, or any occupier of lands within the district, in carrying on of erosion-control, flood prevention and sediment damage prevention operations, control and abatement of nonpoint sources of water pollution, and land use adjustments including ditching, draining and flood control operations for effective conservation and utilization of the lands and waters within the district, subject to such conditions as the directors may deem necessary to advance the purposes of this chapter; and

WHEREAS, pursuant to SWCD law Section 9(8), directors of the SWCDs have the power to act as an agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, maintenance or administration of any soil-conservation, erosion-control, or erosion-prevention, agricultural water management, flood prevention, sediment damage prevention, or nonpoint source water pollution control and abatement project within its boundaries; to accept donations, gifts, and contributions in money, services, materials or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from any other
source, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations; and

WHEREAS, the public and the environment would benefit from the cooperative governmental efficiencies advanced by this agreement:

THEREFORE, the NYSDOT, the NYSDA&M and the NYSSWCC shall cooperate as follows:

1. **NYSDOT Responsibilities**

   a. Subject to funding availability and appropriation therefore, NYSDOT will provide funding as more fully described in this MOU or in an appropriate Supplemental MOU.

   b. The NYSDOT shall work with its eleven regions to identify projects and component projects where assistance from Conservation Districts will mitigate impacts to soil and water resources. Project needs will be communicated in writing to NYSDA&M and NYSSWCC on a periodic basis.

   c. The NYSDOT agrees to work with NYSSWCC to develop quarterly work plans and/or mutually agreed to work protocols to facilitate completion of work as required.

   d. The NYSDOT agrees that the following activities, as described in Exhibits A and B, whether performed on or off of state rights of way, should be eligible for reimbursement to the extent funding is available:

      - Conservation District employee activity and all related expenses therein, as it relates to the various county jurisdictions where work is to be performed related to the preservation of soil and water resources along state highways.
      - Special initiatives and programs related to advancing the responsibilities and functions of NYSDOT as it relates to environmentally sound transportation systems.
      - Development of assessment tools and technical assistance, such as geographical information system analysis, maps, surveying, data collection, data synthesis, and monitoring in support of soil and water resources protection.
      - Assistance with NEPA reviews, development of permits and other elements that address environmental compliance and assessment.
      - Provision of education, training and training materials to affected parties.
      - Work with its partners and contractors to advance projects that mitigate impacts to soil and water resources.

   e. The NYSDOT will obtain or identify in the work planning phase any permits, easements, permissions, etc. necessary to complete work on or near highways under its authority.

   f. The NYSDOT shall provide specialized training and/or materials regarding potential hazards to the health, safety and well being of SWCD employees working within the NYSDOT right-of-way.

   g. The NYSDOT agrees to verify and oversee the completion of work performed under this agreement in its eleven identified NYSDOT regions.

   h. The NYSDOT agrees that, for the purpose of implementing the Tioga County Regional Ecosystem Framework (REF) Development Project, NYSDA&M will, subject to all applicable procurement rules, directly access $100,000 of NYSDOT funds provided for this purpose. This will be accomplished by utilizing the following Cost Center Coding on contract documents:
The NYSDOT agrees that for future projects undertaken pursuant to this MOU, whether involving funding from the Federal Highways Administration (FHWA), State Environmental Protection Fund (EPF), or other funding sources, appropriate mechanisms for funding or reimbursement of project costs incurred by NYSDA&M will be established in advance of the execution of any contract(s) related to such projects. Such mechanisms could include direct charging to NYSDOT cost centers, reimbursement through journal vouchers, suballocations or other arrangements.

2. **NYSDA&M Responsibilities**

   a. The NYSDA&M will enter into agreements, subject to appropriate approvals, and where applicable, in compliance with federal procurement and other requirements, with Conservation Districts, or groups of Conservation Districts working jointly, in the jurisdictions where projects are to be completed.

   b. The NYSDA&M agrees to reimburse Conservation Districts for completed work, as verified by NYSDOT, notwithstanding any special payment schedule previously agreed to by all parties in this agreement.

   c. The NYSDA&M agrees to advance all work plans and details therein as approved by NYSDOT.

   d. The NYSDA&M agrees that all time extensions or cancelation of agreements with Conservation Districts, or groups of Conservation Districts working jointly will be done in consultation with NYSDOT.

   e. The NYSDA&M agrees to comply with any special contractual or reporting requirements agreed to in writing prior to the execution of any contracts.

   f. The NYSDA&M will be entitled to reimbursement for direct and indirect (when allowable by funding source) administrative charges related to any project implemented through this MOU up to 5 (five) percent of total project costs. Such reimbursement must be consistent with requirements of the relevant funding source for each project. In the event that certain funding sources require reporting requirements beyond those identified in 2g. of this memorandum, administrative costs may be increased upon agreement of all parties.

   g. The NYSDA&M shall submit to the NYSDOT an annual expenditure report, including accumulated total program expenditures by NYSDA&M to date by object of expenditure, and categorized by federal, state, and local funding sources no later than 60 days after the end of each State fiscal year in which this agreement is in effect with a final report no later than 90 days after the end of the fiscal year.

3. **NYSSWCC Responsibilities**

   a. The NYSSWCC shall facilitate the implementation of the activities to be funded pursuant to this MOU as described in Exhibits A and B.

   b. The NYSSWCC will assist NYSDA&M with any and all reporting requirements established in this MOU.
c. The NYSSWCC shall develop the necessary policy and work protocols required to advance work plans and disbursements of funds.

d. The NYSSWCC agrees to work in partnership with NYSDOT, its partners and contractors to indentify comprehensive and integrated partnerships to advance the protection of soil and water resources.

4. **It is Mutually Agreed:**

a. The technical liaisons for this agreement will be:

NYSDOT:  
Debra Nelson  
NYSDOT, Operations Division  
Assistant to the Director  
50 Wolf Road  
Albany, NY 12232

NYSSWCC:  
Michael Latham  
NYSDAM, Division of Soil and Water  
10B Airline Drive  
Albany, NY 12235

b. This MOU is effective from 1 August, 2011 until 31 July 2016. This term may be extended upon mutual agreement of all parties.

c. This MOU will include project costs totaling $400,000.

d. This MOU may be amended upon written agreement of all parties.

e. Any party may terminate this MOU in writing upon 60 days notice to the other parties. Upon such notification, NYSDA&M will notify Conservation Districts as appropriate to cease work within 30 days. NYSDA&M will provide a final expenditure report no later than 45 days after the termination.

MOU Approval

George Proios  
Chair  
NYS Soil & Water Conservation Committee  

Dated: August 8, 2011

Joe Foglietta  
Acting Chief Engineer  
NYS Department of Transportation  

Dated: Sept 16, 2011

Robert Haggerty  
First Deputy Commissioner  
NYS Department of Agriculture and Markets  

Dated: Sept 27, 2011
Exhibit B
(August 1, 2011)
Scope of Services Fund Sources
Special Initiatives Budget

<table>
<thead>
<tr>
<th>Activity</th>
<th>Amount ($)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tioga County REF Development</td>
<td>$100,000</td>
<td>$100,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grand Total</td>
<td></td>
<td>$100,000</td>
</tr>
</tbody>
</table>
Exhibit A
(August 1, 2011)

Technical Assistance -
The State Committee proposes to work in partnership with Soil and Water Conservation Districts amongst the various jurisdictions to advance technical assistance in support of the NYSDOT mission. The State Committee will develop and provide a broad series of administrative protocols to ensure that effective and efficient services are delivered by Soil and Water Conservation Districts in support of work to be performed under these categories. The scope of these services may include, but are not limited to:

1) Stream Corridor Management and Wetlands
   a. Stream rehabilitation and restoration, including planning, permits, design, construction, construction oversight, monitoring and other related activities, including fish passage and habitat enhancement, culvert replacement, rock rip rap, natural stream structures and establishment of riparian buffers.
   b. Wetland restoration, including planning (i.e., watershed assessment for the identification/prioritization of wetland and stream mitigation sites) permits, designs and construction, construction oversight, plantings, monitoring and other associated activities.
   c. Floodplain management including the design, implementation and management of flood control structures.
   d. Training for contractors and agency staff on stream corridor management and wetlands practices and policies.

2) Stormwater Management
   a. Stormwater remediation, including design and installation of wetlands, drywells, pervious pavements, sediment catch basins, curb cuts, and other related structures and approaches.
   b. Training for contractors and agency staff on Stormwater Management and Erosion and Sediment Control by Certified Professionals in Erosion and Sediment Control.
   c. Development, site compliance, site plan reviews, and consultation as it related to erosion and sediment control plans.
   d. Design, implementation and management of green infrastructure elements to assist storm water runoff management along urban corridors.

3) Invasive Species
   a. Identification, location and cataloging of the presence of invasive species located on project lands which may be impairing the soil and water resources of such lands.
4) Sediment and Erosion Control
   a. Road ditch and road bank erosion mapping and rehabilitation and repair including the use of geotextiles, hydroseeding, rock drop structures and related techniques.
   b. Construction of temporary erosion controls, temporary slope drains, diversion channels, earth berms, filter barriers and temporary turf establishment in incremental stages consistent with construction objectives.
   c. Design and implementation of drainage features including diversions, subsurface, grassed waterways and weirs.
   d. Development of gravel and sand mining plans.
   e. Design and installation of windbreaks such as living snow fences.

Additional Special Initiatives

- Regional Ecosystem Framework (REF) Development

The State Committee will provide funding to the Tioga County Soil and Water Conservation District as provided by DOT to facilitate and support the development of a Regional Ecosystem Framework (REF) using the FHWA Eco-Logical approach. http://environment.fhwa.dot.gov/ecological/eco_index.asp