MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NYS OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION
AND THE
NYS DEPARTMENT OF TRANSPORTATION

FOR ADVICE AND TECHNICAL ASSISTANCE RELATING TO DESIGN,
CONSTRUCTION, RECONSTRUCTION OR REHABILITATION WORK
PERFORMED ON NYS OFFICE OF PARKS, RECREATION AND HISTORIC
PRESERVATION FACILITIES

THIS MEMORANDUM OF UNDERSTANDING ("MOU") made __________, 2013, by and between the New York State Office of Parks, Recreation and Historic Preservation an agency within the government of New York State Albany, New York 12238 having its principal place of business located at 625 Broadway, Albany, New York 12207, acting by and through its Commissioner, Rose Harvey, ("PARKS") and the New York State Department of Transportation, an agency within the government of New York State having its principal place of business located at 50 Wolf Road, Albany, New York 12232, acting by and through its Commissioner, Joan McDonald, ("DOT"), collectively (the "Parties").

WITNESSETH

WHEREAS, Under Subdivision 2 of Section 3.09 of the Parks, Recreation and Historic Preservation Law, PARKS has jurisdiction to operate and maintain its facilities; and

WHEREAS, the general powers, functions and duties of the DOT are set forth in Article 2 of the Transportation Law and Article II of the Highway Law; and

WHEREAS, PARKS does not possess sufficient expertise in designing, constructing, reconstructing or rehabilitating certain of its facilities while DOT does possess this expertise: and

WHEREAS, PARKS desires to secure the assistance of its sister New York State agency, DOT, to perform, administer and coordinate the design, construction, reconstruction or rehabilitation of certain facilities ("Services") on an individual project-by-project basis using a Supplemental MOU Cover Page ("Cover Page") that will be executed for each subsequent Project under this MOU.

NOW, THEREFORE, in consideration of the above, it is agreed by and between the parties

1. Term.
This MOU will take effect as of the date it is fully executed by the Parties and will extend for two years and may be renewed.
Either PARKS or DOT may terminate this MOU at any time, in its sole discretion and without cause, by giving at least ninety days prior written notice by email and regular mail to the other party’s MOU Administrator listed below, provided that, if the MOU is terminated before the necessary and required Services under a Cover Page have been completed, those pending Projects will continue to completion under the terms of the contracts, change orders or purchase orders executed by DOT.

2. Cover Page.
DOT’s services for each Project to be funded by PARKS under this MOU will be procured using applicable provisions of the State Finance Law. Each subsequent Cover Page for a Project authorized by this MOU will be in letter form executed by the person authorized by each party’s Commissioner to do so and will include a DOT Project Identification Number (“PIN”), will identify the source and maximum amount of funding available for the Project, and will attach a Schedule A (“Budget”) approved by the MOU Administrators and Schedule B (“Scope of Work”). The Cover Page and attachments may be modified upon mutual agreement of the Parties.

DOT will provide or cause to be provided, the same performance, administration and coordination of Services for PARKS Projects as it provides for the facilities under its own jurisdiction.

Services under each Cover Page will be performed so as to ensure compliance with all applicable laws, rules, regulations, operational and safety standards; along with applicable N.Y.S. Standard Specifications (with any amendments, addendums associated with DOT contracts where applicable).

Unless otherwise specified and agreed to by the MOU Administrators, the Schedule B attached to the Cover Page for each Project will indicate that PARKS will be the lead agency and the entity responsible for complying with all applicable federal and state laws and regulations pertaining to environmental reviews and obtaining permits for the Project, including but not limited to, the: National Environmental Policy Act (“NEPA”) and its implementing regulations; New York State Environmental Quality Review Act (“SEQRA”) and its implementing regulations; Clean Water Act, 33 USC 1251-1387 (“CWA”) and its implementing regulations; and State Pollutant Discharge Elimination System (“SPDES”) and its implementing regulations. DOT will provide PARKS with all drawings, calculations or technical reports PARKS may require to secure the environmental review and permit approvals.

Unless otherwise specified and agreed, PARKS will retain all maintenance responsibility for its property which may be the subject of or impacted by the services provided under this MOU and each respective Supplemental MOU Cover Page.

It is not anticipated that DOT will perform right-of-way acquisition services for PARKS; however, allocation of responsibility for any tasks associated with right-of-way
acquisition necessary for implementation of any individual project will be specifically addressed in the respective Supplemental MOU Cover Page and associated Schedules.

For utility-related issues, see the following sections of the most current and applicable DOT Standard Specifications. For example, subject to changes in the DOT Standard Specifications, the following sections may be applicable:
- §101-02 Definitions of Terms for definition of Utility;
- §104-01 Work Required;
- §105-06 Cooperation with Utilities and Other Contractors; and
- §107-07 Protection of Underground Facilities.

By way of further example, for construction signs and work zone traffic control issues, see §619 Work Zone Traffic Control and various subsections.

Upon execution of the Supplemental Cover Page and after consulting with PARKS’ MOU Administrator, DOT, may enter into contracts or change orders for Services under the Project or it may perform the work directly with its own forces. DOT has discretion to choose whichever option is reasonable, prudent and cost-effective.

DOT will administer any contract for the Project and direct the work as it would any other of its construction-related contracts and the work will be completed to the reasonable satisfaction of PARKS’ MOU Administrator.

For each Project DOT will notify PARKS’ MOU Administrator of all planned work, and as soon as practicable will notify PARKS of any emergency work.

3. Funding.
Whether or not the Services are performed under a DOT contract or are performed by DOT’s own forces, PARKS will fund the full amount of the costs as outlined in each Cover Page Schedule A. Such funding will be made by a suballocation of the funds or journal voucher from PARKS at the request of DOT prior to DOT’s commitment of any personnel or advancement of expenditures or any other resources.

The Schedule A attached to the Cover Page will include a “not to exceed amount” of funding which will be the cost estimate previously obtained by DOT and approved by PARKS’ MOU Administrator, and the Schedule B will include a timetable for completion.

PARKS will pay for all Services on the Project as described in each Cover Page, however, PARKS will not be obligated to pay any amounts over the “not to exceed amount” in Schedule A unless PARKS’ MOU Administrator first approves of a change order for such additional amount. Such approval will not be unreasonably withheld and will be provided on a reasonably timely basis given the character of the Project and the work involved. If there is no funding appropriated or available, it would be reasonable for PARKS to withhold approval.
PARKS may request an accounting from DOT in summary form for each Project and DOT will provide it. Also, DOT will provide a full written accounting to PARKS at the end of the Project. At a minimum the accounting will incorporate a break out as resource hours by title for each task/phase.

4. Oversight.
DOT will, on a reasonably timely basis given the character of the work involved, provide PARKS with copies of all relevant documents relating to the work performed, including but not limited to, its own separate work orders, meeting minutes, reports, photographs, test results and any other documents and things relating to the work.

5. MOU Administration.
PARKS and DOT will each appoint an MOU Administrator, who will be an employee within each agency, respectively. The MOU Administrator may be changed by either party by giving the other party advance written notice of the change.

The MOU Administrator will:
   a. contact all appropriate agency employees;
   b. coordinate agency responsibilities, including accepting written notices and telephone calls;
   c. ensure uniformity in agency operating procedures; and
   d. represent the agency in the first instance in resolving or attempting to resolve any ambiguities or disputes that may arise under this MOU.

The following information will be set forth in the Cover Page for each Project:

PARKS Administrative Contact:
Name: Frank McCue
Title: Assistant Deputy Commissioner for Capital Programs
Address: Albany, NY 12238 (USPS mail); 625 Broadway, Albany, NY 12207 (delivery)
Telephone: (518) 486-2923
Fax: (518) 486-2372
E-mail Address: Frank.McCue@parks.ny.gov

DOT Administrative Contact:
Name: Phillip Eng
Title: Chief Engineer
Address: 50 Wolf Road, 6th Floor, Albany, NY 12232
Telephone: (518) 457-4430
Fax: (518) 457-4021
E-mail Address: Phillip.Eng@dot.ny.gov

All contracts or purchase orders for the Projects will be entered into in the name of the DOT by and through the Commissioner of Transportation acting for the People of the
State of New York. Under its contracts DOT will have the right to reject and bar from
the facility site any employee hired by a contractor.

PARKS will provide DOT access to construction and maintenance records where
available, and will address public complaints and inquiries related to the Project. PARKS
will retain authority to issue any permits required under its own jurisdiction and provide
copies of these permits to DOT.

The parties hereby agree to cooperate to the best of their ability with each other and with
other third parties with respect to resolution of issues involving the Projects. In the event
the parties are unable to agree on the resolution of a dispute hereunder at the staff level,
the MOU Administrator from each agency, or his or her designee, will meet within ten
(10) business days of either party’s request to resolve the dispute. In the event they are
not able to resolve the dispute at this meeting, they may agree to further appropriate
dispute resolution procedures.

7. Insurance and Save Harmless.
To the extent that DOT may retain a private contractor or consultant to perform services
under a Project which is the subject of this MOU, DOT will require any such private
contractor or consultant to have the appropriate insurance coverage in place under DOT’s
standard contract requirements and will require the private contractor to agree to save
harmless, indemnify and defend PARKS and its officers, agents, commissioners and
employees from and against any and all claims, suits, actions, cost and expense involving
injury to persons or property arising out of the contractor’s or consultant’s negligence
under the Project or Program.

DOT will require all insurance policies and certificates procured by the contractor to
name as additional insured “the New York State Office of Parks, Recreation and Historic
Preservation and its officers, agents, commissioners and employees.” Designating
PARKS as a “certificate holder” will not constitute compliance with this section.

DOT will also require the contractor to notify PARKS at least thirty (30) days prior to
cancellation or modification of any insurance, and DOT will require the contractor to
notify PARKS’ MOU Administrator of any known accidents and/or claims, including
without limitation accidents or claims involving bodily injury (excluding injuries
requiring only minimal first aid treatments), death or property damage, arising on or
within the site where the applicable work under the Project is performed. This
notification will be in writing and made as soon as practicable after any accident or claim.

8. Entireties.
This MOU constitutes the entire understanding between the Parties with respect to these
services. This MOU may be amended or modified only by mutual written agreement of
the Parties. No other understanding, oral or otherwise, regarding the subject matter of the
MOU will be deemed to exist or to bind any of the parties hereto.
In accordance with Section 41 of the State Finance Law neither party will have any liability under this MOU beyond funds available and appropriated for this MOU.

IN WITNESS WHEREOF, the parties have executed this MOU on the date and year indicated on the first page.

NYS OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION
Date: 10/30/13
By: Melinda Scott
Deputy Commissioner for Finance and Administration

NYS DEPARTMENT OF TRANSPORTATION
Date: 11/4/13
By: 
Name: 
Title: 