

**AGREEMENT FOR INSTALLATION, MAINTENANCE, REPAIR AND ENERGIZING OF
LIGHTING SYSTEM ON CROTON POINT AVENUE**

THE VILLAGE OF CROTON-ON-HUDSON, COUNTY OF WESTCHESTER
P.I.N. 8780.41;

Agreement # D032540

This Agreement, made this 02/14/2019 between:

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

and

the Board of Trustees of the Village of Croton-on-Hudson, County of Westchester which is
herein referred to as the "MUNICIPALITY" having its principal office at 1 Van Wyck Street,
Croton-on-Hudson, NY 10520.

WITNESSETH:

WHEREAS, pursuant to New York State Highway Law, Article III, §52, the Commissioner
of Transportation (the " COMMISSIONER"), may, at the expense of the local funds, permit the
installation of pedestrian lighting systems, provided the Commissioner deems it practicable for
such work being completed by such MUNICIPALITY in connection with the performance of any
work of construction, reconstruction or improvement under the Highway Law; and

WHEREAS, the MUNICIPALITY proposes the installation of pedestrian lighting system
along Croton Point Avenue and under State Highway pursuant to the New York State Highway
Law, such highway being identified as US Route 9, S.H. #657 in Westchester County within the
geographical jurisdiction of the MUNICIPALITY; and

WHEREAS, the MUNICIPALITY desires to have lighting system installed under **and**
attached to the bridge carrying such highway over Croton Point Avenue, within the geographical
jurisdiction of the MUNICIPALITY; and

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

WHEREAS, the MUNICIPALITY by Resolution No. #4 adopted at the Board of Trustees,
of the Village of Croton on Hudson meeting held on January 7, 2019, approved the installation,
maintenance, repair and energizing of said lighting and has provided such Resolution hereto, and
has further authorized Janine King, the Village Manager, to execute this Agreement on behalf of
the MUNICIPALITY; and

WHEREAS, the MUNICIPALITY and the COMMISSIONER are desirous of identifying the respective responsibilities of the parties with regard to the pedestrian lighting system;

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

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

- a. Agreement: This document, entitled "Agreement for Installation, Maintenance, Repair and Energizing of Lighting System on Croton Point Avenue";
- b. Schedule "A" - Description of Project, funding and deposit requirements;
- c. Schedule "B" - Phases, Sub-phase/Tasks, and Allocation of Responsibility
- d. Appendix "A" - Standard Clauses for New York State Contracts;
- e. Appendix "A-1" - Supplemental Title VI Provisions (Civil Rights Act);
- f. Appendix "B" – Requirements for Federally-Aided Transportation Projects;
- g. Municipal Resolution(s): duly adopted resolution authorizing this agreement and the appropriate municipal officer to execute the Agreement and undertake the project on the terms and conditions set forth herein.

ARTICLE 2: PROJECT RESPONSIBILITIES.

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

- a. Underground duct system, including conduit, pull boxes, handholds, and drainage pockets.
- b. Ducts, pull boxes, and anchor bolts on structures.
- c. Foundation for light standards, concrete pads and meter boxes.
- d. Light standards and bracket arms.
- e. Luminaries, lamps, wiring, photo-electric switches, switches and ballasts and all other components necessary to complete the lighting system.

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

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

ARTICLE 3: TERM OF AGREEMENT.

3.1 This Agreement shall commence upon February 14, 2019 (the date first appearing above) and shall expire upon February 14, 2044 (the date twenty-five (25) years thereafter). The MUNICIPALITY shall continue to maintain and energize the lighting system for the period of its useful life or until such time as the COMMISSIONER, at his/her discretion, in agreement with MUNICIPALITY, determines that such lighting and/or the maintenance of such lighting system is no longer warranted or desired for Croton Point Avenue, and sets forth action to remove such lighting system at the MUNICIPALITY's expense.

3.2 The MUNICIPALITY agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or its right, title, or interest therein, or its power to execute this Agreement to any person, company or corporation without COMMISSIONER's written consent. The MUNICIPALITY shall express their desire to change the terms of this Agreement in writing to the COMMISSIONER, except as herein provided by Municipal Resolution attached hereto.

3.3 The COMMISSIONER herewith extends his/her consent to the MUNICIPALITY to establish a lighting district to transfer the MUNICIPALITY's cost for repair, maintenance of the lighting system, and to ensure that payments are made to Utility Company for delivery and supply of energy.

ARTICLE 4. TERMINATION OF AGREEMENT

4.1. Prior to the expiration of the Agreement, the MUNICIPALITY shall review the Agreement and determine whether it desires to continue maintaining said lighting system. If at any time after the useful life of the lighting system the MUNICIPALITY, in its discretion, determines that it does not desire to maintain said lighting system, it shall notify the COMMISSIONER or his/her representative in writing.

4.2. During the duration of this Agreement, where the MUNICIPALITY has no desire to maintain the lighting system, and / or discontinues payment for the energizing of the lighting system covered in this Agreement, said fixtures will be removed by the STATE at the expense of the MUNICIPALITY. Upon written notification by the COMMISSIONER of the removal cost, the MUNICIPALITY shall, within 90 days of the receipt of such written notification from the COMMISSIONER, reimburse the STATE the amount specified. The cost of removal includes but is not limited to review and upgrading of roadway delineation features, including pavement markings, and any and all penalties, fees and/or other costs for unamortized fixtures which the STATE is required to pay the Federal Government.

ARTICLE 5: REMEDIES

5.1. Should the MUNICIPALITY, within the term of this Agreement and without the prior written consent of the COMMISSIONER, discontinue the repairs and maintenance, and/or discontinue payment for energizing the lighting system covered in this Agreement, which results in the STATE being required to make payment to the Federal Government, as a penalty or otherwise, the MUNICIPALITY, upon written notification by the COMMISSIONER of such requirement to pay, shall reimburse the STATE the amount of such required payment within 90 days of the receipt of such written notification from the COMMISSIONER.

5.2. Further, it is expressly understood that the MUNICIPALITY shall indemnify and save harmless the STATE from claims, suits, actions, damages and costs of every name and description resulting from the discontinuance of the repairs and maintenance, and/or discontinuance of payment for energizing of the lighting system by the MUNICIPALITY.

5.3. The COMMISSIONER or his/her representative may periodically inspect the lighting system installed as part of the above-identified Construction Project, to ascertain that the lighting system is being maintained and energized in accordance with the terms of this Agreement and in condition satisfactory to the COMMISSIONER. The COMMISSIONER shall, in writing, notify the MUNICIPALITY of any observed deficiencies, listing such deficiencies. Within thirty (30) days of receipt of such notification by MUNICIPALITY, the COMMISSIONER or his/her representative shall arrange for a meeting to be held with the authorized representative of the MUNICIPALITY. At such meeting the COMMISSIONER or his/her representative and the authorized representative of the MUNICIPALITY shall discuss the means required to remedy the noted deficiencies. Based on the discussion, and based on the nature of the required remedial action, a reasonable time limit shall be mutually established by the COMMISSIONER or his/her representative and the authorized representative of the MUNICIPALITY for the satisfactory completion of remedial action by the MUNICIPALITY.

5.4. It is recognized by the parties hereto that failure of the MUNICIPALITY to complete the required remedial actions within the agreed upon time limit may subject the MUNICIPALITY to certain penalties. If the equipment supplied and installed by the MUNICIPALITY for the above subject lighting system was done pursuant to a Federally aided and/or Federally reimbursable contract, and the MUNICIPALITY fails to make the remedial actions within the agreed upon time limit, no further Federally aided project shall be approved for the MUNICIPALITY until such time as the said lighting system is restored to the level and condition required by this Agreement. In addition, failure of the MUNICIPALITY to make such remedial actions may subject the MUNICIPALITY to loss of State aid for other future municipal contracts.

ARTICLE 6: NOTICE REQUIREMENTS

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

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

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

New York State Department of Transportation (NYSDOT)

Name: Mr. Lance MacMillan

Title: Region 8, Regional Director

Address: 4 Burnett Blvd. Poughkeepsie, NY 12603

Telephone Number: 845-431-5750

E-Mail Address: Lance.Macmillan@dot.ny.gov

Municipality Village of Croton-on-Hudson

Name: Janine King

Title: The Village Manager

Address: 1 Van Wyck Street, Croton-on-Hudson, NY 10520

Telephone Number: 914-271-4848

E-Mail Address: jking@crotononhudson-ny.gov

6.2 Any such notice shall be deemed to have been given either at the time of delivery or, in the case of expedited delivery service or certified or registered US mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission by e-mail, upon request.

6.3 The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for the purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

ARTICLE 7: PROCESSING OF BETTERMENT DEPOSITS AND OTHER PAYMENTS

7.1 MUNICIPALITY will install, remove, relocate, replace and/or reconstruct the MUNICIPAL facilities in accordance with plans and specifications related thereto, as they may be amended or revised, and subject to such change orders as may be approved by NYSDOT in connection with its administration of the work and other work under the Construction Contract for or relating to the work under this Agreement.

7.2 For all Betterment work done by NYSDOT, the MUNICIPALITY shall, prior to the work being done, deposit in a project escrow account with the Office of State Comptroller the full amount of the MUNICIPAL share (if any) reflected in the itemized engineer's estimated cost of the work to be performed on MUNICIPAL facilities for payments by the Comptroller on account for Project costs. The excess amount of such deposit shall be reimbursed to the MUNICIPALITY after project close out, unless Fixed Price Lump Sum project share is established.

7.3 Payments to the Contractor for Betterment work shall be made using State Comptroller vouchers or requisitions approved by the COMMISSIONER.

7.4 When Betterment work performed on the MUNICIPAL facilities contemplated herein has been completed, and all payments have been made to the Contractor, the COMMISSIONER shall determine the additional costs thereof to be borne by the MUNICIPALITY. Any excess of the deposit shall be returned to the MUNICIPALITY on the warrant of the State Comptroller or using vouchers approved by the COMMISSIONER; and, in the event such costs exceed the amount of the deposit, the COMMISSIONER shall send a written notice to the MUNICIPALITY requesting such extra payment be deposited with the Office of State Comptroller in a project escrow account. The MUNICIPALITY shall, within 90 days of receipt of such written notice from the COMMISSIONER, pay the amount of such deficiency to the Office of State Comptroller, unless Fixed Price Lump Sum project share has been established.

7.5 The MUNICIPALITY's performance of its obligations hereunder is to be financed from (*check applicable source or sources if the municipal deposit is financed thereby*):

☐ the proceeds of one or more loans from _____ [for name of Bank or financial institution or company] that the Municipality/Sponsor represents have been committed as evidenced by the commitment letters annexed hereto. The Municipality/Sponsor pledges proceeds of such loans to the performance of its obligations hereunder in amount sufficient to pay for work to be performed on local facilities costs hereunder;

☐ from amounts deposited by [name of Bank or financial institution or company above] with the Municipality/Sponsor into a segregated account solely for the purpose of financing work to be performed on local facilities costs, pursuant to the Municipality's/Sponsor's resolution establishing such account and providing for expenditures therefrom for such purpose;

☐ by an irrevocable letter of credit, bond or other security (annexed hereto) acceptable to NYSDOT in the full amount of estimated Project Costs per Schedule A, solely for the purpose of paying the costs for work to be performed on local facilities and providing for expenditures therefrom or sight drafts thereon by NYSDOT negotiable through and acceptable to the State's depository bank for such purpose; or

☐ from an escrow established pursuant to a written escrow agreement between the Municipality/Sponsor and the Company solely for the purpose of financing work to be performed on local facilities costs, pursuant to the Municipality's/Sponsor's resolution authorizing such escrow Agreement and providing for expenditures therefrom for such purpose.

ARTICLE 8: CONTRACT PAYMENTS

In order to receive Federal Reimbursements for lighting system installation, the MUNICIPALITY is referred to the instructions listed in the Federal Aid Local Project Agreement between the MUNICIPALY and NYSDOT related to this Project.

SCHEDULE A

DESCRIPTION OF PROJECT, FUNDING AND DEPOSIT REQUIREMENTS.

Is the project linked to a State project in the area? **NO**

If linked to a State project, describe the State project: **N/A**

Description of the work to be performed on local facilities:

The proposed project involves box widening reconstruction on Croton Point Avenue between Veterans Plaza and S. Riverside Avenue to accommodate 5 ft. bike lanes and new sidewalks on both sides of Croton Point Avenue. Roadway improvements include reducing the existing travel lanes on Croton Point Avenue from 12 ft. to 11 ft., realigning of the US Route 9 northbound on-ramp to eliminate the eastbound channelized free-flow right turn movement from Croton Point Avenue, widening the US Route 9 southbound off-ramp to provide an exclusive right turn lane, traffic signal installations with pedestrian signals at Veterans Plaza, the US Route 9 southbound on/off ramps and the US Route 9 northbound on/off ramps, widening of approximately 100 ft. of Veterans Plaza to accommodate four-lanes for reversible traffic flow operations, pavement and drainage improvements. A 2-course HMA overlay on the existing PCC pavement is proposed on Croton Point Avenue. Additionally, underbridge lighting will be installed on the Rt 9 overpass bridge to increase pedestrian visibility.

The New York State Department of Transportation and the Board of Trustees of The Village have entered into an agreement to allow for the installation of pedestrian underbridge lighting and appurtenances on the NYS Route 9 bridge as part of the work of PIN 8780.41, and also to recognize that the Village shall repair, energize and maintain, or cause to be maintained the installed facilities as shown on the contract plans within the geographical jurisdiction of the Village for a minimum period of 25 years.

Engineer's Estimate \$ 36,240.00 for installation of lighting system

Intrinsic cost for 25 yrs (minimum) \$ 13,909.50 for energizing of lighting system

(maximum) \$ _____

Federal Aid Eligible YES

State Share (in dollars) \$ N/A

Federal Share (in dollars) \$ 28,992.00 80% of lighting installation cost

Local Share (in dollars) \$ 7,248 20% of lighting installation cost

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

Agreement No. _____

APPROVED:

MUNICIPALITY:

Municipal Attorney

By: _____
(Title)

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

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

Notary Public

APPROVED FOR NYSDOT:

APPROVED AS TO FORM:
STATE OF NEW YORK ATTORNEY GENERAL

By: _____ Date _____
For the Commissioner
of Transportation

By: _____
Assistant Attorney General

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

COMPTROLLER'S APPROVAL:

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