
PIN 3950.71
Dryden Rail Trail Phase 2
Town of Dryden

May 25, 2022

SUPPLEMENTAL AGREEMENT #1

For Right of Way and Engineering Services

ERDMAN
ANTHONY 

PIN 3950.71
Dryden Rail Trail Phase 2
Town of Dryden

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Architectural/ Engineering Consultant Agreement

PIN (s) 3950.71

Municipal Contract No. _____

Agreement made this _____ day of _____, 2022 by and between

Town of Dryden

(municipal corporation)

having its principal office at 93 East Main Street, in Dryden, NY

(the "**Municipality**")

and

Erdman, Anthony and Associates, Inc., a domestic business corporation with its office at 145 Culver

Road, Suite 200, Rochester NY

(the "**Consultant**")

WITNESSETH:

WHEREAS, in connection with a federal-aid project funded through the New York State Department of Transportation ("NYSDOT") identified for the purposes of this agreement as PIN 3950.71 – Dryden Rail Trail Phase 2 (as described in detail in Attachment A annexed hereto, the "Project") the Municipality has sought to engage the services of a Consultant Engineer) to perform the scope of services described in Attachment B annexed hereto; and

WHEREAS, in accordance with required consultant selection procedures, including applicable requirements of NYSDOT and/or the Federal Highway Administration ("FHWA"), the Municipality has selected the Consultant to perform such services in accordance with the requirements of this Agreement; and

WHEREAS, the _____, is authorized to enter this Agreement on behalf of the Municipality,

[name of the authorized municipal officer executing this agreement]

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. DOCUMENTS FORMING THIS AGREEMENT

This agreement consists of the following:

- Agreement Form - this document titled "Architectural/Engineering Consultant Agreement";
- Attachment "A" - Project Description and Funding;
- Attachment "B" - Task List;
- Attachment "C" - as applicable, Staffing Rates, Hours, Reimbursables and Fee.

ARTICLE 2. SCOPE OF SERVICES/STANDARD PRACTICES AND REQUIREMENTS.

2.1 The CONSULTANT shall render all services and furnish all materials and equipment necessary to provide the Municipality with plans, estimates and other services and deliverables more specifically described in Attachment "B".

2.2 The CONSULTANT shall ascertain the applicable practices of the Municipality, NYSDOT and/or FHWA prior to beginning any of the work of this PROJECT. All work required under this Agreement shall be performed in accordance with these practices, sound engineering standards, practices and criteria, and any special requirements, more particularly described in Attachment "B".

2.3 The CONSULTANT will commence work no later than ten (10) days after receiving written notice to proceed from the Municipality.

ARTICLE 3. COMPENSATION METHODS, RATES AND PAYMENT

As full compensation for Consultant's work, services and expenses hereunder the Municipality shall pay to the CONSULTANT, and the CONSULTANT agrees to accept compensation based the methods designated and described below. Payment of the compensation shall be in accordance with the Interim Payment procedures shown in the table and the final payment procedure in Article 6.

(Continued next page)

<input checked="" type="checkbox"/> 3.1 Cost Plus Fixed Fee Method			
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE	INTERIM PAYMENTS:
Item I	<ul style="list-style-type: none"> ■ Actual Direct Technical Salaries, regular time plus straight time portion of overtime compensation of all employees assigned to this PROJECT on a full-time basis for all or part of the term of this Agreement, plus properly allocable partial salaries of all persons working part-time on this PROJECT. ■ The cost of Principals', Officers' and Professional Staffs' salaries (productive time) included in Direct Technical Salaries is eligible for reimbursement if their comparable time is also charged directly to all other projects in the same manner. Otherwise, Principals' salaries are only eligible as an overhead cost, subject to the current limitations, generally established therefore by the Municipality. ■ If, within the term of this Agreement, any direct salary rates are paid in excess of the maximums shown in Attachment A, the excess amount shall be borne by the CONSULTANT WITHOUT REIMBURSEMENT either as a direct cost or as part of the overhead allowance. 	<ul style="list-style-type: none"> ■ Actual costs incurred in the performance of this agreement as identified in Attachment C or otherwise approved in writing by the Municipality or its representative. ■ Not to exceed the maximum allowable hourly rates of pay described in Attachment C of this Agreement, all subject to audit. ■ Actual overtime premium portion of Direct Technical Salaries, all subject to audit and prior approval by the Municipality. 	<ul style="list-style-type: none"> ■ The CONSULTANT shall be paid in <u>monthly</u> progress payments based on the maximum salary rates and allowable costs incurred during the period as established in Attachment C. ■ Bills are subject to approval of the Municipality and Municipality's Representative.
Item II	<ul style="list-style-type: none"> ■ Actual Direct Non-Salary Project-related Costs incurred in fulfilling the terms of this Agreement; all subject to audit. 	<ul style="list-style-type: none"> ■ All reimbursement for travel, meals and lodging shall be made at actual cost paid but such reimbursement shall not exceed the per diem rates established by the NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Department of Labor. 	
Item III	<ul style="list-style-type: none"> ■ Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of the Municipality at the completion of the work or at the option of the Municipality. 	Salvage value	

<p>Item IV</p>	<ul style="list-style-type: none"> ■ Overhead Allowance based on actual allowable expenses incurred during the term of this Agreement, subject to audit. Submitted overhead amounts will be audited based upon the Federal Acquisition Regulations, sub-part 1-31.2 as modified by sub-part 1-31.105 (“FAR “), and applicable policies and guidelines of the Municipality, NYSDOT and FHWA. ■ For the purpose of this Agreement, an accounting period shall be the CONSULTANT's fiscal year. An audit of the accounting records of the CONSULTANT shall be made by the Municipality for each accounting period. For monthly billing purposes, the latest available overhead percentage established by such audit shall be applied to the charges made, under Item IA of this subdivision to determine the charge to be made under this Item. 	<ul style="list-style-type: none"> ■ The overhead allowance shall be established as a percentage of Item IA only (Actual Direct Technical Salaries) of this ARTICLE, and shall be a FAR compliant rate initially established as: <ul style="list-style-type: none"> ■ <u>160%</u> for Erdman Anthony (Prime), in all events not to exceed <u>165% office</u> for Erdman Anthony, subject to audit. 	
<p>Item V</p>	<ul style="list-style-type: none"> ■ Negotiated Lump Sum Fixed Fee. ■ Payment of the Fixed Fee for the described scope of services is not subject to pre-audit and is not subject to review or modification based on cost information or unless this Agreement is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed. 	<p>A negotiated Lump Sum Fee which in this AGREEMENT shall equal <u>\$718.00</u> for Erdman Anthony (Prime).</p>	
<p>Item VI</p>	<ul style="list-style-type: none"> ■ The Maximum Amount Payable under this Agreement including Fixed Fees unless this agreement is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed. 	<ul style="list-style-type: none"> ■ Maximum Amount Payable under this Method shall be <u>\$ 7,300.00</u>. 	

<input type="checkbox"/> 3.2 Specific Hourly Rate Method			
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE	INTERIM PAYMENTS
Item I	<ul style="list-style-type: none"> Specific Hourly rates of pay shown in Attachment C for employees assigned to this PROJECT. The Specific Hourly rates and all components of those rates are not subject to audit. The number of hours charged are subject to audit. 	Rates in Attachment C.	<ul style="list-style-type: none"> The CONSULTANT shall be paid in _____(fill in period) progress payments based upon the rate schedule in Attachment C and actual allowable Direct Non-Salary costs incurred. Bills are subject to approval of the Municipality and Municipality's Representative.
Item II	<ul style="list-style-type: none"> Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Agreement; all subject to audit. 	<ul style="list-style-type: none"> Actual costs incurred in the performance of this agreement as identified in Attachment C or otherwise approved in writing by the Municipality or its representative. All reimbursement for travel, meals and lodging shall be made at actual cost paid but such reimbursement shall not exceed the per diem rates established by NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Dept. of Labor. For Reimbursable Direct Non-Salary Costs a multiple of One times shall be applied to the expenses incurred by the Consultant, the consultant's employees, or the subconsultant not to exceed \$ _____. 	
ITEM III	<ul style="list-style-type: none"> Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of the Municipality at the completion of the work or at the option of the Municipality. 	<ul style="list-style-type: none"> Salvage value 	
ITEM IV	<ul style="list-style-type: none"> Maximum Amount Payable under this Method unless this Agreement is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed. 	<ul style="list-style-type: none"> The Maximum Amount Payable under this Method shall be \$_____ . 	

<input type="checkbox"/> 3.3 Lump Sum Cost Plus Reimbursables Method			
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE	INTERIM PAYMENTS
ITEM I	<ul style="list-style-type: none"> A Lump Sum paid to Consultant for the scope of services hereunder, unless this Agreement is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed. 	<ul style="list-style-type: none"> A Lump Sum of \$_____. 	<ul style="list-style-type: none"> The CONSULTANT shall be paid in _____(fill in period) progress payments based upon the percentage of work accomplished and Direct Non-Salary Costs incurred during the period. Progress payments are subject to approval by the municipality's representative.
ITEM II	<ul style="list-style-type: none"> Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Agreement; all subject to audit. 	<ul style="list-style-type: none"> Actual costs incurred in the performance of this agreement as identified in Attachment C or otherwise approved in writing by the Municipality or its representative. All reimbursement for travel, meals and lodging shall be made at actual cost paid, but such reimbursement shall not exceed the per diem rates established by NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Dept. of Labor. For Reimbursable Direct Non-Salary Costs a multiple of One times shall be applied to the expenses incurred by the Consultant, the consultant's employees, or the subconsultant not to exceed \$_____. 	
ITEM III	<ul style="list-style-type: none"> Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of the Municipality at the completion of the work or at the option of the Municipality. 	<ul style="list-style-type: none"> Salvage value 	

ARTICLE 4. INSPECTION

The duly authorized representatives of the Municipality, and on Federally aided projects, representatives of the NEW YORK STATE DEPARTMENT OF TRANSPORTATION and the FEDERAL HIGHWAY ADMINISTRATION, shall have the right at all times to inspect the work of the CONSULTANT.

ARTICLE 5. AUDITS

5.1 Payment to the Consultant is subject to the following audit rights of the Municipality:

- A. For Cost Plus Fixed Fee Method - All costs are subject to audit, i.e. labor, direct non-salary, overhead, and fee.
- B. For Specific Hourly Rate Method - Labor hours and direct non-salary costs are subject to audit. If elements subject to audit are less than \$250,000, an audit may be waived by the Municipality.
- C. For Lump Sum Cost Plus Reimbursables Method - Only direct non-salary costs are subject to audit. If elements subject to audit are less than \$250,000, an audit may be waived by the Municipality.
- D. For Cost with Multiplier Method - Labor hours and direct non-salary costs are subject to audit.

5.2 In order to enable the Municipality to process the final payment properly and expeditiously, the CONSULTANT is advised that all of the following documents and submissions, as the same may be appropriate to this contract, are considered to be necessary to enable the commencement of the audit.

- A. Records of Direct Non-Salary Costs;
- B. Copies of any subcontracts relating to said contract;
- C. Location where records may be examined; and
- D. Name, address, telephone number of person to contact for production.

The application for final payment is not considered complete until receipt of these documents and information.

ARTICLE 6. FINAL PAYMENT

6.1 The Municipality will make final payment within sixty (60) calendar days after receipt of an invoice which is properly prepared and submitted, and all appropriate documents and records are received.

6.2 The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the Municipality from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Agreement or for any part thereof except as otherwise provided herein.

ARTICLE 7. EXTRA WORK

7.1 Consultant's performance of this Agreement within the compensation provided shall be continuously reviewed by the CONSULTANT. The CONSULTANT shall notify the Municipality of the results of those reviews in writing by submittal of a Cost Control Report. Such Cost Control Report shall be submitted to the Municipality on a monthly basis or such alternative interval as the Municipality directs in writing.

7.2 If the CONSULTANT is of the opinion that any work the CONSULTANT has been directed to perform is beyond the scope of the PROJECT Agreement and constitutes extra work, the CONSULTANT shall promptly notify the Municipality, in writing, of this fact prior to beginning any of the work. The Municipality

shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. In the event that the Municipality determines that such work does constitute extra work, the Municipality shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, an amendment to the PROJECT Agreement, providing the compensation and describing the work authorized, shall be prepared and issued by the Municipality. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the Municipality to the CONSULTANT for execution after approvals have been obtained from necessary Municipality officials, and, if required from the Federal Highway Administration.

7.3 In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the Municipality all assistance required by the Municipality. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this Agreement for the additional services above described, the Municipality's directions shall be exercised by the issuance of a separate Agreement, if necessary.

ARTICLE 8. CONSULTING LIABILITY

The CONSULTANT shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the CONSULTANT, its subcontractors, agents or employees in the performance of its service under this Agreement.

Further, it is expressly understood that the CONSULTANT shall indemnify and save harmless the Municipality from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the CONSULTANT under this Agreement, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the CONSULTANT's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the Municipality beyond such as may legally exist irrespective of this Article or this Agreement.

The CONSULTANT shall procure and maintain for the duration of the work for such project(s), Professional Liability Insurance in the amount of One Million Dollars (\$1,000,000) per project, issued to and covering damage for liability imposed on the CONSULTANT by this Agreement or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the Agreement. The CONSULTANT shall supply any certificates of insurance required by the Municipality and adhere to any additional requirements concerning insurance. All insurance policies carried by the CONSULTANT for this work except worker's compensation and professional liability policies shall name the Town of Dryden, its employees, elected officials and representatives as additional insured.

ARTICLE 9. WORKERS' COMPENSATION, DISABILITY AND LIABILITY INSURANCE

This agreement shall be void and of no effect unless the CONSULTANT shall secure Workers' Compensation and Disability Insurance for the benefit of, and keep insured during the life of this agreement, such employees as are necessary to be insured in compliance with the provisions of the Workers' Compensation and Disability Benefits Law of the State of New York.

The CONSULTANT shall secure policies of general and automobile liability insurance, and maintain said policies in force during the life of this agreement. Said policies of insurance shall protect against liability arising from errors and omissions, general liability and automobile liability in the performance of this agreement in the sum of at least \$1,000,000.00 (One Million dollars) each.

The CONSULTANT shall furnish a certified copy of said policies to the Municipality at the time of execution of this agreement.

ARTICLE 10. INTERCHANGE OF DATA

All technical data in regard to the PROJECT existing in the office of the Municipality or existing in the offices of the CONSULTANT shall be made available to the other party to this Agreement without expense to such other party.

ARTICLE 11. RECORDS RETENTION

The CONSULTANT shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively called the "Records"). The Records must be kept for a minimum of six (6) years or three (3) years after final payment is received, whichever is later. The Municipality, State, Federal Highway Administration, or any authorized representatives of the Federal Government, shall have access to the Records during normal business hours at an office of THE CONSULTANT within the State of New York or, a mutually agreeable reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

ARTICLE 12. DAMAGES AND DELAYS

The CONSULTANT agrees that no charges or claim for damages shall be made by him for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the Municipality may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the Municipality of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising its rights under ARTICLE 7 of this agreement.

ARTICLE 13. TERMINATION

The Municipality shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

- A. for convenience of the Municipality - if a termination is brought about for the convenience of the Municipality and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the basis of the CONSULTANT'S compensable work delivered or completed prior to and under any continuing directions of such termination.
- B. for cause - if the termination is brought about as a result of the Municipality's determination of unsatisfactory performance or breach of contract on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the percent of the amount of such work satisfactorily delivered or completed by the CONSULTANT to the point of termination and acceptable to the Municipality, of the total amount of work contemplated by the PROJECT Agreement.

ARTICLE 14. DEATH OR DISABILITY OF THE CONSULTANT

In case of the death or disability of one or more but not all the principals of the CONSULTANT herein referred to as CONSULTANT, the rights and duties of the CONSULTANT shall descend upon the survivor or survivors of them, who shall be obligated to perform the services required under this Agreement, and the Municipality shall make all payments due to him, her or them.

In case of the death or disability of all the principals of the CONSULTANT herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within sixty (60) days to the Municipality or his duly authorized representative. In case of the failure of the CONSULTANT's successors or personal representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the Municipality for any damages it may sustain by reason thereof. Upon the delivery of all such data to the Municipality, the Municipality will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained

percentages to the date of the death of the last survivor.

ARTICLE 15. CODE OF ETHICS

The CONSULTANT specifically agrees that this Agreement may be canceled or terminated if any work under this Agreement is in conflict with the provisions of any applicable law establishing a Code of Ethics for Federal, State or Municipal officers and employees.

ARTICLE 16. INDEPENDENT CONTRACTOR

The CONSULTANT, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Municipality by reason hereof, and that it will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Municipality, including but not limited to Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

ARTICLE 17. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Municipality shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 18. TRANSFER OF AGREEMENT

The CONSULTANT specifically agrees, that it is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the Agreement or of its right, title or interest therein, or its power to execute such Agreement, to any other person, company or corporation, without the previous consent in writing of the Municipality.

If this provision is violated, the Municipality may revoke and annul the Agreement and the Municipality shall be relieved from any and all liability and obligations there under to the person, company or corporation to whom the CONSULTANT shall purport to assign, transfer, convey, sublet or otherwise dispose of the Agreement without such consent in writing of the Municipality.

ARTICLE 19. PROPRIETARY RIGHTS

The CONSULTANT agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York and the Municipality a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and states and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27. The Municipality has a royalty-free irrevocable license to use the work-product of this contract for whatever purpose it deems fit including but not limited to making copies and derivative works, and providing copies to the New York State DOT, and federal agency if required, and to contractors hired by the Municipality to perform work on the pedestrian bridge. The Municipality acknowledges that the work-product of this contract are prepared by Consultant for use on this PROJECT and at the Site identified in the Proposal only and are not appropriate for use on any other project or at any other site, or for any purpose other than as defined by the Scope of Services. The Municipality shall indemnify and save harmless Consultant from and against any and all claims, damages, judgments, demands, liabilities, costs or expenses (including reasonable attorney's fees and other defense costs) arising from any modification made by the Municipality or from reuse of the work-product of this contract by the Municipality without prior written consent of Consultant. This indemnification provision shall

survive the termination of this Agreement.

ARTICLE 20. SUBCONTRACTORS/ SUBCONSULTANTS

All SUBCONTRACTORS and SUBCONSULTANTS performing work on this project shall be bound by the same required contract provisions as the CONSULTANT. All agreements between the CONSULTANT and a subcontractor or other SUBCONSULTANT shall include all standard required contract provisions, and such agreements shall be subject to review by the Municipality.

ARTICLE 21. CERTIFICATION REQUIRED BY 49 CFR, PART 29

The signator to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership)

- A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- C. does not have a proposed debarment pending; and
- D. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

ARTICLE 22. CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing this Agreement to the best of his or her 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 the standard "Disclosure Form to Report Lobbying," in accordance with its instructions.

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 Section 1352, Title 31, U.S. Code. 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.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be, included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE 23. RESPONSIBILITY OF THE CONSULTANT

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. However, the Municipality may in certain circumstances, provide compensation for such work.
- B. Neither the Municipality's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to the Municipality in accordance with applicable law for all damages to the Municipality caused by the CONSULTANT'S negligent performance or breach of contract of any of the services furnished under this contract.
- C. The rights and remedies of the Municipality provided for under this contract are in addition to any other rights and remedies provided by law.
- D. If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ARTICLE 24. NON-DISCRIMINATION REQUIREMENTS

The CONSULTANT agrees to comply with all applicable Federal, State and Municipality Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with 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 CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. 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 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, CONSULTANT agrees that neither it nor its SUBCONSULTANTS 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 Agreement. CONSULTANT 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 Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

ARTICLE 25. CERTIFICATION REQUIRED BY 40 CFR 111506.5©

If the work of the PROJECT includes the preparation of an Environmental Impact Statement (EIS), the signator to this Agreement, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

- a. an existing contract for the PROJECT's ROW incidental work or construction engineering; or
- b. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the PROJECT alternatives.

This does not preclude the CONSULTANT from being awarded a future contract covering the work describe in this Article or being awarded Phases V & VI Final Design after the EIS has been approved.

ARTICLE 26. BIDDING OF DIRECT NON-SALARY ITEMS *(unless more restrictive municipal laws apply)*

For all contracts other than personal services in excess of \$5,000, the consultant shall solicit a number of quotes from qualified subcontractors so that at least three (3) quotes will be received. For all contracts other than personal services in excess of \$20,000 except printing contracts in excess of \$10,000, the consultant shall solicit a number of sealed bids from qualified subcontractors so that at least three (3) bids will be received. The consultant shall then enter into a subcontract with the lowest bidder or entity submitting the lowest quotation who is fully responsive to the invitation to submit a quote/bid.

ARTICLE 27. 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 Consultant'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, Consultant and its subconsultants 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.

ARTICLE 28. 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 Consultant agrees, as a material condition of the contract, that neither the Consultant 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 Consultant, or any of the aforesaid affiliates of Consultant, 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 Municipality and the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (See, 2 NYCRR 105.4).

ARTICLE 29. SERVICE OF PROCESS

In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Consultant hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Consultant's actual receipt of process or upon the Municipality's receipt of the return thereof by the United State Postal Service as refused or undeliverable. Consultant must promptly notify the Municipality, in writing, of each and every change of address to which service of process can be made. Service by the Municipality to the last known address shall be sufficient. Consultant will have thirty (30) calendar days after service hereunder is complete in which to respond.

ARTICLE 30. MISCELLANEOUS

30.1 Executory Contract. This Agreement shall be deemed only executory to the extent of the monies available, and no liability shall be incurred by the Municipality beyond the monies legally available for the purposes hereof.

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

Reference: Municipality Contract # _____

Municipality: Town of Dryden	Consultant: Erdman Anthony
by: _____	by: _____
Date:	Date:

Municipality:
STATE OF NEW YORK
ss:
COUNTY OF _____

On this _____ of _____, 20__ before me, the subscriber, personally appeared to me known, who, being by me duly sworn, did depose and say; that he/she resides in the _____, New York; that he/she is the _____ of the Municipal corporation described in and which executed the foregoing instrument; that he/she is the authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of the Municipality.

Notary Public, _____ County, N.Y.

Consultant:
STATE OF NEW YORK
ss:
COUNTY OF _____

On this _____ day of _____, 20__ before me, the subscriber, personally appeared to me known, who, being by me duly sworn, did depose and say; that he/she resides in the _____, New York; that he/she is the _____ of Erdman Anthony, the corporation described in and which executed the foregoing instrument; that he/she is the authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of the Consultant.

Notary Public, _____ County, N.Y.

Attachment A
Architectural/ Engineering Consultant Agreement
Project Description and Funding

PIN: 3950.75

Term of Agreement
Ends: December 31, 2023

BIN:

Main Agreement Amendment to Agreement [add identifying #] Supplement to agreement

Phase of Project Consultant to work on:

P.E./Design ROW Incidentals ROW Acquisition Construction, C/I, & C/S

Dates or term of Consultant Performance:

Start Date: April 20, 2020

Finish Date: December 31, 2023

PROJECT DESCRIPTION:

This project includes the construction of a trail, including a pedestrian bridge over Route 13.

Project Location:

Town of Dryden, Tompkins County

Consultant Work Type(s): See Attachment B for more detailed Task List.

MAXIMUM AMOUNT OF FUNDS FOR ALL COMPENSATION PAYABLE UNDER THIS AGREEMENT FOR THE SCOPE OF WORK DESCRIBED IN ATTACHMENT B FOR THE PROJECT DESCRIBED IN THIS ATTACHMENT A, OTHERWISE IN ACCORDANCE WITH THE CHOSEN METHOD OF COMPENSATION AND OTHER TERMS OF THIS AGREEMENT:

\$ 7,300

Section B
ATTACHMENT 'B'
(Scope of Services – Task List)

Scope of Services (SOS)

Prepared for: Town of Dryden, 93 East Main St., Dryden, NY 13053

Describing Services for: Dryden Rail Trail Phase 2

Prepared by: Paul Presutti, Erdman Anthony

Reviewed by: Ray Burger, Director of Planning, Town of Dryden

Table of Contents

Section 1 General (**Not Used**)

Section 2 Data Collection & Analysis (**Not Used**)

Section 3 Preliminary Design (**Not Used**)

Section 4 Environmental (**Not Used**)

Section 5 Right-of-Way

Section 6 Detailed Design (**Not Used**)

Section 7 Advertising, Bid Opening and Award (**Not Used**)

Section 8 Construction Support (**Not Used**)

Section 9 Construction Inspection (**Not Used**)

Section 10 Estimating & Technical Assumptions

Section 5 - Right-of-Way

5.01 Abstract Request Map and/or Title Search

The Consultant will prepare an abstract request map and submit to NYSDOT. The NYSDOT will engage a qualified title company to complete title searches (abstracts of title) for properties to be acquired by the Sponsor.

5.02 Right-of-Way Survey

The Consultant will perform survey needed to accurately determine existing right-of-way limits and establish side property lines. [NOTE: Survey limits and standards should be listed here or in the Technical Assumptions Section.]

5.03 Right-of-Way Mapping

The Consultant will meet with the Sponsor to discuss the types of right-of-way acquisitions required and the limits of acquisition lines.

The Consultant will prepare acquisition maps in accordance with the format provided by the Sponsor. Two maps will be prepared. One will be for the town to negotiate a donation from a property owner. The other will be for NYSDOT to acquire property through eminent domain.

All right-of-way mapping will show dimensions in U.S. Customary units of measurement.

The Consultant will prepare all map revisions or additions which are determined necessary during the construction of the project.

Assume 1 Acquisition Map will be required.

5.04 Right-of-Way Plan

The Consultant will prepare the Right-of-Way Plan(s) in accordance with the PLAFAP Manual.

Section 10 - Estimating and Technical Assumptions

10.01 Estimating Assumptions

The following assumptions have been made for estimating purposes:

Section 5 Estimate 0 properties will require title searches.

 Estimate 2 ROW maps will be required.

 Estimate 1 property acquisitions will be required.

10.02 Technical Assumptions

Right-of-Way

Assume the highway boundary will be calculated and two ROW maps will be created.

Section C
ATTACHMENT 'C')
(Cost Estimate Exhibits)

ERDMAN ANTHONY AND ASSOCIATES, INC.
PIN 3950.71: Dryden Rail Trail Phase 2

JOB TITLE	ASCE (A) OR NICET (N) GRADE	AVERAGE HOURLY RATES						OVERTIME CATEGORY
		PRESENT Apr-21	PROJECTED Apr-22	MAX. HOURLY RATES				
				2021	2022	2023		
Principal Engineer	VI (A)	\$75.72	\$77.99	\$77.50	\$79.83	\$82.22	A	
Senior Project Engineer	VI (A)	\$65.70	\$65.00	\$73.00	\$75.19	\$77.45	A	
Project Engineer	V (A)	\$49.70	\$51.19	\$54.00	\$55.62	\$57.29	A	
Sr. Civil Engineer	IV (A)	\$45.50	\$46.87	\$46.00	\$47.38	\$48.80	B	
Civil Engineer	III (A)	\$35.94	\$37.02	\$40.75	\$41.97	\$43.23	B	
Jr. Civil Engineer	I/III (A)	\$29.94	\$30.84	\$32.15	\$33.11	\$34.11	B	
Principal Engineering Technician	IV (N)	\$40.05	\$41.25	\$45.05	\$46.40	\$47.79	C	
Sr. Engineering Technician	III (N)	\$34.99	\$36.04	\$36.18	\$37.27	\$38.38	C	
Engineering Technician	II (N)	\$20.00	\$20.60	\$21.00	\$21.63	\$22.28	C	
Technical Typist	NA	\$20.50	\$21.12	\$25.50	\$26.27	\$27.05	C	
Senior Land Surveyor	V (A)	\$61.50	\$63.35	\$61.50	\$63.35	\$65.25	B	
Senior Land Surveyor	III (N)	\$36.75	\$37.85	\$36.75	\$37.85	\$38.99	B	
Party Chief	III (N)	\$29.15	\$30.02	\$36.75	\$37.85	\$38.99	C	
Instrumentperson/Rodperson	II (N)	\$20.92	\$21.55	\$26.85	\$27.66	\$28.49	C	

NOTES:

Hourly rates shall not exceed those shown above or the current NYSDOT Maximum Allowable, as described in Exhibit E of the original agreement.

OVERTIME POLICY

Category A - No overtime compensation.

Category B - Overtime compensated at straight time rate.

Category C - Overtime compensated at straight time rate x 1.50.

Overtime applies to hours worked in excess of the normal working hours of 40 hours per week.

ERDMAN ANTHONY AND ASSOCIATES, INC.

PIN 3950.71: Dryden Rail Trail Phase 2

JOB TITLE	ASCE (A) OR NICET (N)	T A S K S									Total Hours	PROJECTED HOURLY RATE	DIRECT TECHNICAL TOTAL LABOR
	GRADE	Sect. 1	Sect. 2	Sect. 3	Sect. 4	Sect. 5	Sect. 6	Sect. 7	Sect. 8	Sect. 9			
Principal Engineer	VI (A)	0	0	0	0	0	0	0	0	0	0	\$77.99	\$0.00
Senior Project Engineer	VI (A)	0	0	0	0	5	0	0	0	0	5	\$65.00	\$325.00
Project Engineer	V (A)	0	0	0	0	0	0	0	0	0	0	\$51.19	\$0.00
Sr. Civil Engineer	IV (A)	0	0	0	0	4	0	0	0	0	4	\$46.87	\$187.48
Civil Engineer	III (A)	0	0	0	0	0	0	0	0	0	0	\$37.02	\$0.00
Jr. Civil Engineer	I/III (A)	0	0	0	0	0	0	0	0	0	0	\$30.84	\$0.00
Principal Engineering Technician	IV (N)	0	0	0	0	30	0	0	0	0	30	\$41.25	\$1,237.50
Sr. Engineering Technician	III (N)	0	0	0	0	0	0	0	0	0	0	\$36.04	\$0.00
Engineering Technician	II (N)	0	0	0	0	0	0	0	0	0	0	\$20.60	\$0.00
Technical Typist	NA	0	0	0	0	0	0	0	0	0	0	\$21.12	\$0.00
Senior Land Surveyor	V (A)	0	0	0	0	12	0	0	0	0	12	\$63.35	\$760.20
Senior Land Surveyor	III (N)	0	0	0	0	0	0	0	0	0	0	\$37.85	\$0.00
Party Chief	III (N)	0	0	0	0	0	0	0	0	0	0	\$30.02	\$0.00
Instrumentperson/Rodperson	II (N)	0	0	0	0	0	0	0	0	0	0	\$21.55	\$0.00
	TOTAL	0	0	0	0	51	0	0	0	0	51		\$2,510.18
	DTL	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%		\$2,510.18

Exhibit C
Summary

26-May-22

ERDMAN ANTHONY AND ASSOCIATES, INC.
PIN 3950.71: Dryden Rail Trail Phase 2
HIGHWAY AND BRIDGE

Item IA, Direct Technical Salaries (estimated) subject to audit	\$2,510
Item IB, Direct Technical Salaries Premium Portion of overtime subject to audit (estimate)	\$0
Item II, Direct Non-Salary Cost (estimated) subject to audit	\$0
Item II Direct Non-Salary Cost (estimated) subject to Audit (Sub-Contractor Cost)	\$0
Item III, Overhead (estimated at 160%) subject to audit	\$4,016
Item IV, Fixed Fee (11%)	\$718
Item II Direct Non-Salary Cost (estimated) subject to audit (Sub-Consultant Cost)	
Total Estimated Cost	\$7,244
MAXIMUM AMOUNT PAYABLE	\$7,300

Section D
ATTACHMENT 'D')
(Cost Estimate Back-up)

LOCALLY ADMINISTERED PROJECTS TASK LIST
Erdman Anthony STAFF HOUR ESTIMATE - Project Summary

26-May-22

PIN 3950.71: Dryden Rail Trail Phase 2

	PRINC. ENGR.	SENIOR PROJ. ENGR.	PROJ. ENGR	SENIOR CIVIL ENGR.	CIV. ENGR	JR. CIVIL ENGR	LAND ARCH	PRINC. ENGR. TECH.	SENIOR ENGR. TECH.	ENGR. TECH.	SEN LS V (A)	SEN LS III (N)	PARTY CHIEF	INSTR PERS	TECH. TYPIST	TASK SUB- TOTAL
SECTION 1 - GENERAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SECTION 2 - DATA COLLECTION & ANALYSIS	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SECTION 3 - PRELIMINARY DESIGN	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SECTION 4 - ENVIRONMENTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SECTION 5 - RIGHT-OF-WAY	0.0	5.0	0.0	4.0	0.0	0.0	0.0	30.0	0.0	0.0	12.0	0.0	0.0	0.0	0.0	51.0
SECTION 6 - DETAILED DESIGN	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SECTION 7 - ADVERTISEMENT, BID OPENING & AWARD	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SECTION 8 - CONSTRUCTION SUPPORT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SECTION 9 - CONSTRUCTION INSPECTION	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTALS	0.0	5.0	0.0	4.0	0.0	0.0	0.0	30.0	0.0	0.0	12.0	0.0	0.0	0.0	0.0	51.0

LOCALLY ADMINISTERED PROJECTS TASK LIST
Erdman Anthony STAFF HOUR ESTIMATE - SECTION 5, RIGHT-OF-WAY

5/26/22

PIN 3950.71: Dryden Rail Trail Phase 2

TASK NO.	WORK TO BE COMPLETED	PRINC. ENGR.	SENIOR PROJ. ENGR.	PROJ. ENGR.	SENIOR CIVIL ENGR.	CIV. ENGR.	JR. CIVIL ENGR.	LAND ARCH.	PRINC. ENGR. TECH.	SENIOR ENGR. TECH.	ENGR. TECH.	SEN LS V (A)	SEN LS III (N)	PARTY CHIEF	INSTR PERS	TECH. TYPIST	TASK SUB-TOTAL	EA TOTAL
5.00	RIGHT-OF-WAY																	
5.01	Abstract Request Map and Title Search																	
	Obtain Title Searches of Properties																0.0	
	ARM Preparation		1.0		2.0				6.0			2.0					11.0	
	Coordinate with sub (1 parcels @ 1 hr ea)																0.0	11.0
5.01.1	Review and Analysis of Right of Way Requirements																	
	Complete required analysis	NA															0.0	
	Coordinate with sub (1 parcels @ 1 hr ea)																0.0	0.0
5.01.2	Title Research																	
	Complete Title Research	NA															0.0	
	Coordinate with sub (1 parcels @ 1 hr ea)																0.0	0.0
5.01.3	Title Review and Certification																	
	Complete review	NA															0.0	
	Coordinate with sub (1 parcels @ 1 hr ea)																0.0	0.0
5.02	Right-of-Way Survey																	
	Field Survey & Map Update		1.0						6.0			2.0					9.0	9.0
5.03	Right-of-Way Mapping																	
	Meet with Town and NYS DOT		2.0														2.0	
	Prepare Acquisition Maps (2 map)		1.0		2.0				18.0			8.0					29.0	
	Prepare Map Revisions																0.0	31.0
5.04	Right-of-Way Plan																	
	Prepare ROW Plan																0.0	
	Abstract Preparation																0.0	
	Overall ROW Coordination																0.0	0.0
5.05	Right-of-Way Cost Estimates																	
	Cost Estimates for ROW to be Acquired (by subcontractor, see sect. 1.11)	NA															0.0	
	Coordinate with sub (1 parcels @ 1 hr ea)																0.0	0.0
5.06	Public Hearings/Meetings																	
	Conduct Public Information Meeting/Public Hearing for ROW	NA															0.0	0.0
5.07	Property Appraisals																	
	Obtain Property Appraisals	NA															0.0	
	Estimates for Rental of Occupied Properties																0.0	
	Coordinate with sub (1 parcels @ 1 hr ea)																0.0	0.0
5.08	Appraisal Review																	
	Assist Mnuicipality in appraisal review	NA															0.0	
	Coordinate with sub (1 parcels @ 1 hr ea)																0.0	0.0
5.09	Negotiations and Acquisition of Property																	
	Negotiations with Property Owners	NA															0.0	
	Documentation of Negotiations																0.0	
	Coordinate with sub (1 parcels @ 1 hr ea)																0.0	0.0
5.09.1	Right of Way Certification																	
	Prepare certification	NA															0.0	
	Coordinate with sub (1 parcels @ 1 hr ea)																0.0	0.0
5.10	Relocation Assistance																	
	Administer Relocation Assistance	NA															0.0	
	Oversee Relocation and vacating properties																0.0	0.0
5.11	Property Management																	
	Prepare & Inventory all Improvements Acquired	NA															0.0	
	Prepare & Deliver all Rental Notices, Permits, & Rental Information																0.0	
	Collect Rentals and Payments for Salvaged Items																0.0	
	Maintain improvements in safe & secure manner																0.0	
	oversee removal of improvements by owners or 3rd party purchasers																0.0	
	Demolish improvements wher available prior to project construction																0.0	
	Disposal of excess ROW																0.0	0.0
	PART 5 - Right-of-Way	0.0	5.0	0.0	4.0	0.0	0.0	0.0	30.0	0.0	0.0	12.0	0.0	0.0	0.0	0.0	51.0	51.0