NEW YORK STATE THRUWAY AUTHORITY

CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

This AGREEMENT ("Agreement") is made this _____ day of _____, 2016 by and between the New York State Thruway Authority ("Authority"), a public corporation organized and existing pursuant to Article 2, Title 9 of the New York State Public Authorities Law, as amended, whose principal office is located at 200 Southern Boulevard, Albany, New York 12209 (Mailing Address: P.O. Box 189, Albany, New York 12201-0189), and _____("Plan Holder") a [corporation, partnership, LLC, LLP – circle one] duly organized and existing under the laws of the State of _____, whose principal office is located at _____ _____.

WITNESSETH:

WHEREAS, the Authority is statutorily responsible for financing, constructing, reconstructing, improving, developing, maintaining and operating a 570-mile superhighway system known as the Thruway; and

WHEREAS, in furtherance of these responsibilities, the Authority needs for certain construction work to be performed on the North Grand Island Bridges at Milepost N20.35 and N21.12; and

WHEREAS, to seek bids for the Project, the Authority must provide prospective bidders and other interested parties with plans and specifications for the Project; and

WHEREAS, the North Grand Island Bridges are designated as security sensitive bridges and thus the plans and specifications for the Project contain information which is classified as confidential; and

WHEREAS, Plan Holder will keep confidential and will not disclose such plans and specifications received from the Authority for the purposes of preparing its bid for the Project, in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties hereto do agree as follows:

1. **Term**. This Agreement shall commence upon execution by both parties and shall be binding on Plan Holder's officers, directors, employees, subcontractors, agents, heirs, successors and assigns until terminated by the Authority.

2. **Confidential Information.** "Confidential Information" means any information not generally known to the public, whether oral or written, that the Authority claims is confidential and discloses to Plan Holder for the purposes of soliciting bids to perform the work for the Project. Confidential Information may include, but is not limited to, information relating to bid documents, plans, drawings, specifications, reports, product information, data, security procedures, personnel and organizational data, and financial statements. The Authority will identify written Confidential Information by marking it with the word "Confidential" and will identify oral Confidential Information as confidential at the time of disclosure to Plan Holder.

3. **Exempt Materials.** Confidential Information does not include information which, at the time of the Authority disclosure to Plan Holder: (a) is already in the public domain or becomes publicly known through no act of Plan Holder; (b) is already known by Plan Holder free of any confidentiality obligations; (c) is information that the Authority has approved in writing for disclosure; or (d) is required to be disclosed by Plan Holder pursuant to law so long as Plan Holder provides the Authority with notice of such disclosure requirement and an opportunity to defend prior to any such disclosure.

4. **Permitted Use**.

   a) Except as provided in paragraph (b) below, Plan Holder may use Confidential Information solely for the purposes of developing its bid for the Project. Plan Holder may share Confidential Information with third parties that agree to the confidentiality provisions of this Agreement and are necessary to Plan Holder's development of its bid (e.g. subcontractors, suppliers and vendors). However, Plan Holder shall share only that Confidential Information that is necessary to the third party's development of its contribution to Plan Holder's bid for the Project. Further, Plan Holder must maintain a list of all such third parties with which Plan Holder has shared the Confidential Information and Plan Holder must provide the Authority with such list upon the Authority's request.

   b) The Authority's disclosure of Confidential Information to Plan Holder shall not convey to Plan Holder any right to or interest in such Confidential Information and the Authority shall retain all right and title to such Confidential Information at all times.

5. **Protections**. Plan Holder shall hold Confidential Information confidential to the maximum extent permitted by law. Plan Holder shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices and procedures that Plan Holder uses to maintain its own confidential information.

6. **Images.** Plan Holder shall not take any photographs, videotapes, or other recorded images of the South Grand Island Bridges.

7. **Return and Destruction of Confidential Information**. If Plan Holder does not submit a bid for the Project, then by the date when bids are due Plan Holder shall: return all written Confidential Information to the Authority; provide the list of all third parties with which the Plan Holder shared the Confidential Information; destroy any copies Plan Holder has made of the such Confidential Information; and notify all third parties with which Plan Holder shared Confidential Information that such third parties must immediately destroy all written Confidential Information in their possession. If Plan Holder does submit a bid for the Project, then upon receipt of notice from the Authority that it has awarded a contract for the Project and Plan Holder is not the recipient of such award, Plan Holder must immediately: return all written Confidential Information to the Authority; provide the list of all third parties with which the Plan Holder shared the Confidential Information; destroy any copies it has made of such Confidential Information; and notify all third parties with which Plan Holder shared Confidential Information that such third parties must immediately destroy all written Confidential Information in their possession.

8. **Liability.** Plan Holder shall be responsible for all damage to life and property due to Plan Holder's disclosure of Confidential Information. Further, it is expressly understood that Plan Holder shall indemnify and save harmless the Authority and/or the State of New York, as their interests may appear, from claims, suits, actions, damages and costs of every name and description resulting from Plan Holder's disclosure of Confidential Information, and such indemnity shall not be limited by reason of any insurance coverage. However, Plan Holder shall

not be required to indemnify the Authority for that portion of any claim, suit, action, damage or cost which arises due to the negligent act or omission of the Authority and shall not be required to indemnify the State of New York for that portion of any claim, suit, action, damage or cost which arises due to the negligent act or omission of the State. The provisions of this section shall survive the expiration or termination of this Agreement.

9. **Media Releases.** Plan Holder shall not provide media releases or make public announcements or disclosures about any aspect of this Agreement or the Project.

10. **Governing Law**. This Agreement shall be governed by the laws of the State of New York.

11. **No Waiver of Provisions.** The Authority's failure to exercise or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Authority of any right or remedy under this Agreement shall be effective unless made in a writing duly executed by an authorized representative of the Authority and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy.

12. **Entire Agreement**. This Agreement constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This Agreement may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto executed this Agreement on the date first above written.

NEW YORK STATE THRUWAY AUTHORITY

By:_____

Name:_____

Title:_____

PLAN HOLDER

By:_____

Name:_____

Title:_____

Firm Name:_____

Federal Tax Identification #: _____

CORPORATE ACKNOWLEDGMENT

STATE OF }
: **SS.:**
COUNTY OF }

On the _____ day of _____in the year 2016, before me personally appeared: _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at _____, Town of _____, County of _____, State of _____; that he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

_____

Notary Public

PARTNERSHIP ACKNOWLEDGMENT

STATE OF }
: **SS.:**
COUNTY OF }

On the _____ day of _____in the year 2016, before me personally appeared: _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at _____, Town of _____, County of _____, State of _____; that he is the _____ of _____, the partnership described in said instrument; that, by authority of the Partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

_____

Notary Public

INDIVIDUAL ACKNOWLEDGMENT

STATE OF }
: **SS.:**
COUNTY OF }

On the _____ day of _____in the year 2016, before me personally appeared: _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at _____, Town of _____, County of _____, State of _____;and that he executed the foregoing instrument in his/her name and on his/her own behalf.

_____

Notary Public