

# **CONTRACT NO. G5033**

## **ANNUAL FINANCIAL AUDITING SERVICES**

**[NAME OF CONSULTANT]**

### **PART I** **SPECIFIC TERMS**

HUDSON RIVER PARK TRUST (the “Trust”) and the consultant, contractor or party identified below (each a “Consultant”), in consideration of the mutual covenants contained in the Contract (as defined below) and other valuable and good consideration, do hereby agree to all of the terms and conditions set forth in (i) these Specific Terms (Part I) set forth immediately below, (ii) the General Terms and Conditions (Part II) annexed hereto and made a part hereof and (iii) the Appendices (Part III) annexed hereto and made a part hereof.

The Consultant shall provide the services (“Services”) described in Appendix B - Scope of Services and shall be compensated for the rendering of the Services in accordance with Part II Article II of the Contract and as provided in Appendix C - Fee and Cost Schedule. The Consultant must purchase and maintain insurance for the Term of the Contract as provided in Appendix D - Insurance. If Part I, Section 1.8 indicates that the Contract is subject to an M/WBE Percentage Goal, the Consultant must comply with the M/WBE requirements provided in Appendix E - M/WBE Requirements. If Part I, Section 1.9 indicates that the Contract is subject to an SDVOB Percentage Goal, the Consultant must comply with the SDVOB requirements provided in Appendix F - SDVOB Requirements. The term “State” as referenced in Appendix A shall mean the State of New York and the Trust. The term “Contractor” referenced in Appendix A shall mean the “Consultant” defined in Part I Section 2.2.

#### **1. The Contract**

**1.1 Contract:** These Specific Terms and Conditions (Part I), the General Terms and Conditions (Part II) and the Appendices (Part III)

**1.2 Contract No.** G5033

**1.3 Contract Date:** The date of the Contract is as of **[Insert Date]**

**1.4 Commencement Date:** **[ ]**

**1.5 Term:** 3 years

**1.6 Maximum Contract Price:** **XXXX**

**1.7 Project:** Annual Financial Auditing Services

**1.8 M/WBE Participation Goal:** **XXXX%**, as provided in Appendix E

**1.9 SDVOB Participation Goal:** **XXXX0%**, as provided in Appendix F

2. **Parties**

**2.1 The Trust:** Hudson River Park Trust, a public benefit corporation of the State of New York.

**2.2 The Consultant:** [Insert legal Name of Consultant], a New York [or if not NY, insert State] [Insert "individual", "Trust", "partnership", "corporation" or "limited liability company"], having an office at:  
[Insert Street Address]  
[Insert City, State and Zip Code]

**Federal Tax ID#** [Insert]

**2.3 Consultant's Contact Person:** [Insert Name and Title]

**2.4 Trust's Contact Person:** [Insert Name and Title]

3. **Notice Parties and Addresses**

Any notice, approval, consent, acceptance, request, bill, demand or statement required or permitted to be given hereunder ("**Notice**") from either party to the other shall be in writing and shall be deemed given when received by overnight mail or when deposited with the United States Postal Service in a postage prepaid envelope, certified or registered mail, addressed to the other party at the addresses set forth below.

**3.1 Notices to the Trust:**

Hudson River Park Trust  
353 West Street, Pier 40, 2<sup>nd</sup> Floor  
New York, N.Y. 10014  
Attn: General Counsel

with a copy to:

Hudson River Park Trust  
353 West Street, Pier 40, 2<sup>nd</sup> Floor  
New York, N.Y. 10014  
Attn: William Rettig, Senior Director of Facilities

**3.2 Notices to the Consultant:**

[Insert Name of Contactor]  
[Insert Street Address]  
[Insert City, State and Zip Code]  
Attn: [Insert Name and Title]

4. **Special Provisions.** The provisions set forth below are hereby added to and made part of, or deleted from the Contract, as indicated. In the event any conflict exists between any of the

General Terms and Conditions (Part II) of the Contract and these special provisions, these special provisions shall govern.

**4.1 A Workforce Utilization Report** is required for all non-construction contracts in excess of \$25,000 and for all construction contracts in excess of \$100,000. Once the Contract has been awarded, the Consultant and its Subcontractor(s) shall each submit a Workforce Utilization Report to the Trust with each payment requisition which shall indicate the actual workforce utilized in the performance of the Contract broken down by the specified categories including ethnic background, gender, and Federal occupational categories. The Trust shall provide the requisite forms to the Consultant. The Trust may withhold payments to the Consultant for any incomplete submissions.

**IN WITNESS WHEREOF, the parties hereto have executed the Contract as of the Contract Date here above written.**

**HUDSON RIVER PARK TRUST**

[INSERT CONSULTANT NAME]

By: \_\_\_\_\_ By: \_\_\_\_\_  
[Insert name of company officer] [Insert name of company officer]  
[Insert title of company officer] [Insert title of company officer]

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 2018 before me personally came \_\_\_\_\_ to me known, who being duly sworn, did depose and say that he/she is the [Insert Title] of the Hudson River Park Trust, and the said person described in and who executed the foregoing instrument, and he/she acknowledged that he/she executed same in his/her official capacity and for the purpose mention therein.

\_\_\_\_\_  
Notary Public

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

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me personally came \_\_\_\_\_ to me known, who being duly sworn, did depose and say that he/she is [Insert Title] of [Company], and the said person described in and who executed the foregoing instrument, and he/she acknowledged that he/she executed same in his/her official capacity and for the purpose mention therein.

\_\_\_\_\_  
Notary Public

**PART II**  
**GENERAL TERMS AND CONDITIONS**

**ARTICLE I**  
**PERFORMANCE OF SERVICES**

1. **Supervision by the Trust.** Services shall be subject to the general supervision and direction of the Trust or its authorized representative, whose decision shall be final and binding upon the Consultant as to all matters arising in connection with or relating to the Contract. Neither the Trust's exercise nor failure to exercise such supervision and direction shall relieve the Consultant of any of its obligations or responsibilities for its acts or failure to act with regards to the Contract. The Trust shall reasonably determine all matters relative to the fulfillment of the Contract on the part of the Consultant and such determination shall be final and binding on the Consultant.
2. **Approvals or Acceptance by the Trust.** Whenever action is to be taken, or approval or acceptance given by the Trust, such action, approval or acceptance shall be deemed to have been taken or given, only if so taken or given by the Trust's representative, by the official of the Trust who signed the Contract on behalf of the Trust, or by another officer or employee of the Trust duly designated by such signing officer to represent the Trust in connection therewith. The Trust shall notify the Consultant in writing of the giving or withholding of each such approval or acceptance within a reasonable period of time. The Trust's acceptance or approval of documents or other materials prepared by the Consultant hereunder shall in no way relieve the Consultant of responsibility for such materials.
3. **Consultant Cooperation.** The Consultant shall work with and exchange information with such entities or individuals in connection with the Services as the Trust shall designate from time to time, and agrees to meet with such entities or individuals at such times as the Trust may require in order to maintain an ongoing review process to expedite determinations and approvals required to be made in connection with the Services.
4. **Contact Persons.** The Trust will designate in writing an individual who will serve as the Trust's representative and normal point of contact for the Consultant with regards to the Contract and the Consultant's Services and obligations hereunder. The Consultant shall designate in writing to the Trust one individual, satisfactory to the Trust, who shall be responsible for coordinating all Services to be rendered by the Consultant and who shall be the Trust's normal point of contact with the Consultant on matters relating to such Services. Such individual shall be replaced upon the Trust's written request. The Trust and Consultant may from time to time change this designation by notification to the other party.
5. **Approval of Subcontractors and Subcontracts.** The Consultant shall not employ, contract with or use the services of any consultant, contractor, or other third party (collectively "**Subcontractor(s)**") in connection with the performance of its obligations under the Contract without the prior written consent of the Trust. The Consultant shall inform the Trust in writing of the name, proposed service to be rendered, and compensation of the Subcontractors, and of any interest it may have in the proposed Subcontractors. The Consultant shall be responsible for the performance of the Services of any Subcontractors engaged, including the maintenance of budgets, cost controls, and schedules, coordination of their work and resolutions of all differences between or among the Consultant and Subcontractors. It is expressly understood and agreed that all Subcontractors engaged by Consultant

hereunder shall at all times be deemed engaged by the Consultant and not by the Trust. The Consultant shall cause any Subcontractor employed by the Consultant in connection with the Contract to be bound to the terms and conditions of the Contract to the extent such terms and conditions are, or may be, applicable to such Subcontractors. All subcontracts held by the Consultant (“**Subcontracts**”) must include the following provisions:

- (a) there is no privity of contract between the Subcontractor and the Trust;
- (b) the Trust will not incur any liability by virtue of any act, omission, negligence, or obligation of the Subcontractor or the Consultant;
- (c) the Subcontractor shall indemnify, defend and hold harmless the Indemnitees (defined in Article V) against any and all claims, judgments or liabilities to which they may be subject (including, without limitation, any and all claims for injuries to persons (including death) and damage to property) because of any negligence or any fault or default of the Subcontractor, its agents, employees or subcontractors or the breach of the Subcontractor’s obligations under the Subcontract;
- (d) the Subcontractor’s payment requisitions shall conform to the same requirements for Consultant’s payment requisitions and include the representations and warranties set forth in Article III hereof;
- (e) the termination provisions for cause and convenience set forth in Article IV herein shall be included in the Subcontract;
- (f) the Subcontract may be assigned without the written consent of the Subcontractor to the Trust or any other corporation, agency or instrumentality having authority to accept the assignment; and
- (g) all services performed under the Subcontract shall strictly comply with the requirements of the Contract.

If the Consultant fails to include the provisions set forth in this Subsection 5 in any Subcontract, the Consultant hereby agrees to indemnify, defend and hold harmless the Trust and their representatives against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon the Trust and their representatives, including reasonable attorney fees, as a result of said failure.

- 6. Consultant as Independent Contractor.** Notwithstanding any other provisions of the Contract, the Consultant’s status (and that of any Subcontractor) shall be that of an independent contractor and not that of an agent or employee of the Trust. Accordingly, neither the Consultant nor any Subcontractor shall hold itself out as, or claim to be acting in the capacity of, an employee or agent of the Trust.
- 7. Consultant to Obtain Permits.** Except as otherwise instructed in writing by the Trust, the Consultant shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by the Trust or the Consultant in connection with the Contract.

8. **Consultant to Comply with Legal Requirements.** The Consultant, in performing its obligations and in preparing all documents required under the Contract, shall comply with all applicable laws and regulations to be included in the Contract. All applicable laws and regulations shall be deemed to be included in the Contract with the same effect as if set forth in full.
9. **Increase or Decrease in the Scope of Services.** The Trust shall have the right to make changes to, and/or increase or decrease the Scope of the Services or to extend the Term at any time and for any reason upon notice to Consultant specifying the nature and extent of such changes. In the event any such changes result in a reduction of the scope of services, the Maximum Contract Price will be correspondingly reduced to reflect the deleted services. In the event any such changes result in an additional expenditure of time by the Consultant or Subcontractors, the Trust and the Consultant shall negotiate an additional fee for such changes evidenced in an amendment to the Contract.

## **ARTICLE II** **PAYMENT OF SERVICES**

### **1. Payments.**

- (a) Subject to, and in accordance with this Article II, the Trust shall pay to the Consultant, and the Consultant agrees to accept in full consideration for the Services, and for all expenses of the Consultant in connection therewith, including Subcontractors' costs and reimbursable expenses, an amount not to exceed the Maximum Contract Price, payable in accordance with this Article II and as provided in Appendix C.
- (b) Requisitions shall be in a form reasonably acceptable to the Trust and shall be supported by any appropriate or necessary documentation or other evidence relating to the amounts set forth in the requisition as the Trust may reasonably require including, but not limited to invoices, receipts and vouchers from Subcontractors and suppliers, information related to M/WBEs, SDVOBs and Workforce Utilization Reports required under Appendix E and, where applicable, the time sheets and/or certified payroll reports of the Consultant's staff. Each requisition submitted to the Trust by the Consultant shall constitute a representation that, except as specifically set forth in the requisition, as of the date of the requisition, all representations and warranties made by the Consultant in Article III are true, complete and accurate as if made as of the date of the submission of the requisition. Thereafter, the Trust shall approve the requisition if the Services have been satisfactorily performed in accordance with the Contract.
- (c) The Consultant, with the Trust's prior approval, may exceed the maximum payment allocated to a particular portion of the Services if the Consultant by notice determines that the maximum payment initially allocated to the portion is insufficient to adequately perform the portion of the Services and if the Consultant demonstrates to the Trust a savings with respect to another portion of the Services which is at least equal to the amount of such excess. However, notwithstanding the above, in no event shall the Trust pay the Consultant more than the Maximum Contract Price.

2. **Acceptance of Final Payment/Release and Discharge.** The acceptance by Consultant of the final payment under the Contract, or any final payment due on earlier termination of the Contract under Article IV, shall constitute a full and complete waiver and release of the Trust from any and all claims, demands and causes of action whatsoever that the Consultant, and/or its successors and assigns, have, or may have, against the Trust under the provisions of the Contract, unless a detailed

and verified statement of claim is served upon the Trust not later than fifteen (15) days after the making of the final payment. In the absence of a verified statement of claim, if the Consultant performs Services that involve maintenance, repairs or minor construction, the Consultant must supply the Trust with lien waivers for itself and its Subcontractors along with its request for final payment. It is expressly understood and agreed that the Trust's or Consultant's termination of the Contract pursuant to Article IV hereof shall not give rise to any claims against the Trust for damages, compensation, or otherwise as a result of such termination, and that under such circumstances, the Trust's liability to make payments to Consultant on account of any and all Services shall be limited to the payments set forth in this Article II and as provided in Appendix C.

### **ARTICLE III** **REPRESENTATIONS AND WARRANTIES**

#### **1. Representations and Warranties.**

- (a) The Consultant represents and warrants to the Trust that:
  - (i) no public official is directly or indirectly interested in the Contract, or in the supplies, materials, equipment, work, labor or Services to which it relates or in any of the profits thereof;
  - (ii) except as set forth in the Contract, the Consultant has, and shall have, no interest, direct or indirect, in the project to which the Services relate;
  - (iii) to the best of its knowledge, upon due inquiry, no officer, member, partner or employee of the Consultant has, prior to the date of the Contract, been called before a grand jury, head of a state agency, head of a city department or other city agency to testify in an investigation concerning any transaction or contract had with the State of New York, any political subdivision thereof, a public authority, or with any public department, agency or official of the State of New York or any political subdivision thereof and refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract; and
  - (iv) it has not employed any person, trust or partnership to solicit or procure the Contract, and has not made, and will not make, any payment or agreement for the payment of any commission, percentage, brokerage, or contingent fee, or other compensation in connection with the procurement of the Contract.
  
- (b) The Consultant represents and agrees that:
  - (i) recognizing that time for completion of the Services is of the essence, the Consultant shall perform all of its obligations hereunder in a prompt, efficient and professional and/or workman like manner with the skill and care of similarly licensed professionals and in accordance with the time periods for the Services set forth herein;
  - (ii) The Consultant, its personnel assigned to perform the Services, and any Subcontractors engaged by the Consultant in the performance of the Consultant's obligations hereunder are qualified in all respects for such assignment and have the experience and expertise in projects of similar scope and complexity to the Services. All such assigned personnel and Subcontractors are subject to approval by the Trust, which approval shall not be unreasonably withheld, and the Trust may direct the Consultant to replace assigned personnel at any time; the Consultant's personnel assigned to perform the Services shall



- be available to the Trust during normal working hours and at other times as may be additionally needed upon notice from the Trust for project meetings, public meetings, site supervision, field visits and inspections;
- (iii) The Consultant, in the performance of its obligations hereunder, shall utilize efficient available methodology and technology for the purpose of reducing the cost and time of such performance;
  - (iv) The Consultant shall use good faith efforts to protect and further the Trust's interests in performing such Services recognizing the need for trust and confidence in the relationship between the Consultant and the Trust with regards to the Services to be performed hereunder;
  - (v) The Consultant shall comply with the provisions of all Federal, State and local statutes, laws, rules, ordinances and regulations that are applicable to the performance of the Contract;
  - (vi) The Consultant shall diligently render to the Trust any and all assistance which may be required by the Trust should any claim be made or any action be brought against the Trust which states a cause of action related to the Services; and
  - (vii) The Consultant shall not commit its personnel to, nor engage in, any other projects during the term of the Contract to the extent that such projects may adversely affect the quality or efficiency of the Services or would otherwise be detrimental to the conduct and completion of the Services, and the Consultant shall provide sufficient numbers of qualified personnel as shall be required to perform the Services in the time requested by the Trust.

**2. Conflict of Interest.** Consultant represents and warrants that:

- (a) Consultant has not now, and will not, for a period of one (1) year following expiration of the Contract, acquire any interest, direct or indirect, present or prospective, in the project to which the Consultant's work relates or the real estate which is the subject of the project, has not employed and will not knowingly employ in connection with work to be performed hereunder any person or entity having any such interest during the Term of the Contract.
- (b) Consultant shall not knowingly permit any officer, employee, agent or director of the Trust or any of its subsidiaries to share in any benefits that arise from the Consultant's work.
- (c) Consultant shall not knowingly permit any officer, employee, agent or director of the Trust, or any of its subsidiaries to participate in any decision relating to the Contract that affects the personal interest of the aforementioned individuals, or the interests of any Trust, partnership, or association in which those individuals are directly or indirectly interested; nor shall any officer, agent, director or employee of the Trust, or any of its subsidiaries be permitted by the Consultant to have any interest, direct or indirect, in the Contract or the proceedings thereof.
- (d) Consultant shall cause, for the benefit of the Trust, every contract or agreement with any Subcontractor to include the representations contained in subsections (a), (b), and (c) of this Subsection 2. The Consultant shall take such action in enforcing such provisions as the Trust may direct, or, at Consultant's option, assign such rights as it may have to the Trust for enforcement by the Trust.

**ARTICLE IV**  
**DELAYS, SUSPENSION OF SERVICES, TERMINATION**

1. **Notice of Overruns and Delays.** The Consultant shall promptly give written notice to the Trust representative of the occurrence of an event or action, the discovery of a condition or the failure of an event or action to occur or a condition to exist as anticipated, that may result in an increase in (a) the compensation due Consultant; (b) reimbursable expenses and/or; (c) the number of hours necessary to perform the work or which may delay completion of the work (or extend the completion date). For purposes of this provision, “promptly” shall mean as soon as possible but in no event more than (3) business days after Consultant’s discovery of the occurrence, condition or failure which gives rise to the subject increase and/or delay.
2. **Disputes.** If at any time the Consultant believes that there is: (1) a condition that will entitle it to additional compensation; (2) a change in the schedule for completion of the Services; or (3) another issue arising out of terms, conditions, or the respective parties’ fulfillment of their obligations under the Contract (“**Dispute**”), within fifteen (15) days after the Consultant has knowledge of the occurrence of a Dispute, the Consultant shall deliver a written notice to the Trust stating the general nature of such Dispute. Senior executives of the parties shall negotiate in good faith to resolve any Disputes. Pending the resolution of any Dispute, the Consultant shall diligently continue to perform all Services under the Contract, including the Services that are the subject of such Dispute. Written notification and good faith negotiation shall be a condition precedent to the maintenance of any legal proceeding. The Consultant shall represent that it has complied with the condition precedent in its initial notice and pleading in any legal proceeding instituted by the Consultant or by the Trust.
3. **Suspension of Services.** The Trust may, at any time and for any reason and by written notice thereby (“**Suspension Notice**”), direct the Consultant to delay or suspend the services or any part thereof under the Contract for a period of time not to exceed ninety (90) days. The Suspension Notice shall specify the period during which such services are to be delayed or suspended. The Contract shall automatically terminate after ninety (90) days’ suspension or delay unless the Trust and the Consultant agree in writing to continue the Contract upon the same or newly negotiated terms, and the Trust and the Consultant execute a “Release of Claims” with regards to the period of suspension or delay. The Consultant shall resume such services upon the date the Trust may thereafter specify in writing upon reasonable notice to Consultant. If the Contract is delayed, suspended or terminated, the Consultant shall be entitled upon such delay, suspension or termination to payment of that portion of the fee and reimbursable costs that have not been paid to Consultant commensurate with the Services actually and satisfactorily performed by the Consultant prior to the date of delay, suspension or termination. The Consultant shall not be entitled to any fee during the period of delay or suspension unless the Trust, in its sole and absolute discretion, decides that the payment (and amount) of a fee is reasonable under the particular circumstances that gave rise to the suspension or delay.
4. **Termination for Convenience.** The parties acknowledge that the Trust may, at any time for the Trust’s convenience and without cause, terminate the Contract without incurring any penalty or damages on account of such termination upon seven (7) days’ written notice to the Consultant. In the event of such termination, the Trust shall pay the Consultant for services actually and satisfactorily performed by Consultant up to the date of such termination plus Trust-approved out-of-pocket expenses incurred by the Consultant. The Consultant agrees to cause any agreement or contract entered into by the Consultant with any Subcontractors to contain a termination for convenience clause consistent with the provisions of this Subsection 4.

**5. Default by Consultant.** The Trust may terminate the Contract for cause, including:

- (a) a material breach of any covenant or agreement contained in the Contract;
- (b) if the Consultant shall default in the timely performance of any of its obligations under the Contract and such default shall continue for a period of three (3) days after written notice from the Trust specifying the occurrence, omission or failure giving rise to such default, or if in the opinion of the Trust, by reason of the nature of such default, such default cannot be cured within such three (3) day period and the Consultant has not promptly prosecuted the curing of such default;
- (c) the Consultant shall fail to diligently, timely and expeditiously perform its obligations set forth in the Contract;
- (d) any representation or warranty made or deemed to have been made under the Contract by the Consultant shall prove to be untrue in any material respect; or
- (e) the Consultant shall make a general assignment for the benefit of its creditors, or a receiver or trustee shall have been appointed on account of Consultant's insolvency, or Consultant otherwise shall be or become insolvent, or an order for relief shall have been entered against Consultant under Chapter 7 or Chapter 11 of Title 11 of the United States Bankruptcy Code.

In addition to any other remedies or claims that the Trust may have with respect to such representation or such default, the Trust may terminate the Contract immediately upon three (3) days' written notice to the Consultant. In the event of such termination, the Trust, without waiving any such remedy or claims, (including consequential damages) shall pay the Consultant that portion of the fee and reimbursable costs, not paid to the Consultant, commensurate with those Services actually and satisfactorily performed by the Consultant up to the date of such termination, provided, however, that the Trust shall deduct from any amounts due to the Consultant for additional costs and expenses that the Trust may incur in connection with the completion of the Services by another contractor(s) or consultant(s).

The Consultant agrees to cause any agreement or contract entered into by the Consultant with any Subcontractors to contain a termination for default clause consistent with the provisions of this Subsection 5.

**6. Discontinuance of Services Upon Termination.** Upon termination of the Contract the Consultant shall:

- (a) discontinue all its Services from and after the date of the notice of termination, except as may be required to complete any item or portion of services to a point where discontinuance will not cause unnecessary waste or duplicative work or cost as directed by the Trust;
- (b) cancel, or if so directed by the Trust, assign to the Trust any and all commitments and agreements made by the Consultant relating to the Services to the extent same are cancelable or assignable by the Consultant.
- (c) transfer to the Trust in the manner, to the extent, and at the time directed by the Trust, all supplies, materials and other property produced (including warranties) as a part of, or acquired in, the performance of the Services; and

(d) take any other actions as the Trust may reasonably direct.

**ARTICLE V**  
**INDEMNIFICATION AND INSURANCE**

1. **Indemnification.** Notwithstanding anything to the contrary contained herein, the Consultant shall be responsible for all injuries to persons, including death, or damage to property sustained while performing or resulting from the Services under the Contract, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or Subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by Consultant pursuant to the Contract. Consultant agrees to defend, indemnify and hold the Trust, the State of New York, the New York State Office of Parks, Recreation and Historic Preservation, the New York State Department of Environmental Conservation, the City of New York, the New York City Department of Parks and Recreation and each of their respective commissioners, directors, officers, agents and employees (collectively the “**Indemnitees**”) harmless from any and all claims, judgments and liabilities, including but not limited to claims, judgments and liabilities for injuries to persons (including death) and damage to property if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or its Subcontractors, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the Indemnitees by reason of claims against Consultant or its Subcontractors, or their employees, agents, servants, independent contractors and subcontractors for any matter whatsoever in connection with the Services performed under the Contract, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the Indemnitees for reasonable attorney’s fees incurred in connection with the above. Consultant shall be solely responsible for the safety and protection of all its Subcontractors, or the employees, agents, servants, independent contractors, or subcontractors of Consultant or its Subcontractors, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Consultant, its Subcontractors, or their respective agents, employees, servants, independent contractors or subcontractors.

This Subsection 1 shall survive the expiration or earlier termination of the Contract.

2. **Insurance.** At all times during the performance of the Services or for such other time periods as the Trust may require, the Consultant, at its sole cost and expense, shall purchase and maintain the insurance described in Appendix D unless the Trust determines, in its sole and absolute discretion, that such insurance limits warrant a reduction due to a material change in the Project or the Services.

**ARTICLE VI**  
**DOCUMENTS, CONFIDENTIALITY AND RECORDS**

1. **Ownership of Documents.**

(a) All originals, negatives, and electronic copies of all plans, drawings, reports, photograph, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Consultant under the Contract including drafts and reproduction copies thereof (“**Documents**”), shall be and remain the exclusive property of the Trust, and the Trust shall have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specification and other documents without payment of any additional royalty,

charge or other compensation to the Consultant. If the Documents are altered by the Trust or its agents, the Trust holds the Consultant harmless from any liability for such use.

- (b) The Consultant agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under the Contract, use or reuse all or any part of the Documents, excluding the Consultant's "**Underlying Intellectual Property**" (as defined hereinafter), without the prior written approval of the Trust, except that the Consultant may retain copies of such reports and other documents for general reference use.
- (c) The Consultant's Underlying Intellectual Property means the analytical concepts, approaches, methodologies, or formats developed by the Consultant's staff, and other materials not prepared for delivery to the Trust and also includes any derivatives, improvements, enhancements or extensions of the Consultant's Underlying Intellectual Property conceived, reduced to practice, or developed during the Term of the Contract that are not uniquely applicable to the Documents prepared for the Trust under the Contract.
- (d) The Consultant represents and warrants that, except for material which is in the public domain and non-original material, the Documents:
  - (i) shall be wholly original material not published elsewhere;
  - (ii) shall not violate any copyright, trademark or other applicable law; and
  - (iii) shall not, to the best of Consultant's knowledge, constitute a defamation or invasion of the right of privacy or publicity, or an infringement of any kind, of any rights of any third party.
- (e) The Consultant shall not make any unauthorized use of copyrighted, trademarked or other protected materials or intellectual property and agrees to defend, indemnify and hold harmless the Trust and their respective officers, officials, agents, members, directors, and employees against any damage or liability arising out of the Consultant's infringement or unauthorized use of any such material or property.

2. **Confidentiality.** The Consultant hereby agrees that all documents, data, recommendations, reports and other materials developed in the course of the Services authorized by the Contract are strictly confidential between the Consultant and the Trust and the Consultant may not at any time reveal or disclose such materials in whole or in part to any third party without first obtaining written permission from the Trust. Notwithstanding the preceding sentence, the Consultant shall cooperate fully with such third parties as the Trust may designate by written request.

3. **Maintenance, Audit and Examination of Records.** Pursuant to Section 10 of the Standard Clauses for NYS Contracts (attached hereto as Appendix A), the Consultant and its Subcontractors must maintain their respective books and records for examination and audit as specifically detailed therein. In the event of non-compliance thereof, the Trust shall not pay the Consultant any portion of the fee then due or becoming due, as the case may be, with respect to such non-compliance, and if such fee has already been paid, the Trust may require the Consultant to refund such fee. In addition, the Consultant shall be responsible for any audit costs incurred by the Trust as a result of such non-compliance.

4. **PASSPort (formerly, VENDEX).** The Consultant shall provide the Trust with a list of all Subcontractors employed for the performance of the Services whose subcontract amount totals \$25,000 or more. The Consultant will furnish each such Subcontractor whose subcontract amount totals \$100,000 or more with the information for creating an account on and submitting information through the Mayor's Office of Contracts Services Procurement and Sourcing Solutions Portal (PASSPort). The Consultant shall cause each such Subcontractor to complete the required PASSPort background and disclosure submissions in a timely fashion but in no event later than the commencement of the Services performed by such Subcontractor pursuant to its subcontract.

## **ARTICLE VII** **OTHER STANDARD PROVISIONS**

1. **No Waiver.** Failure by the Trust to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach shall constitute a waiver of any such breach or such term or condition. No term or condition of the Contract to be performed or complied with by Consultant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the Trust. No waiver of any breach shall affect or alter the Contract, but each and every term and condition of the Contract shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. Consultant hereby waives any and all rights and remedies to which Consultant might otherwise be or become entitled to because of any wrongful act or omission of the Trust saving only Consultant's right to money damages.
2. **Provisions Required by Law Deemed Inserted.** Each and every provision of law and governmental regulation required by law to be inserted in the Contract shall be deemed to be inserted therein and the Contract shall read and enforced as though so included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall be deemed to be amended to make such insertion or correction. If the Contract contains any unlawful provision, the same shall be deemed of no effect and shall, upon the application of either party, be deemed stricken from the Contract without affecting the binding force of the remainder.
3. **Reimbursement of Legal Fees.** In the event that Consultant and the Trust are involved in a legal proceeding relating to any part of the Contract, Consultant shall reimburse the Trust for all costs associated with said legal proceeding, including, but not limited to, court costs and reasonable attorney's fees incurred by the Trust where: (1) during said legal proceeding, a final determination by a neutral third party finds the Consultant to have materially breached the terms of the Contract; or (2) Consultant initiates said legal proceedings against the Trust and/or its directors, officers, or employees and Consultant does not prevail in such action.
4. **Assignment by the Trust.** The Trust may transfer and assign any and all of its rights and obligations under the Contract, including transferring and assigning its rights to the Consultant's performance of any portion of the Services provided for herein, together with the Trust's obligations and rights pertaining to such portion of Services, to any partnership, trust, governmental agency or department or other entity that the Trust determines has undertaken or will undertake any part of the Contract. The Trust shall provide the Consultant written notice of any such transfer and assignment. Such transfer and assignment shall relieve the Trust of any further liability or obligation hereunder.

5. **Entire Agreement/Amendment.** The Contract constitutes the entire agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, express or implied, which is not contained in the Contract shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.
6. **Interests of Others.** Nothing in the Contract shall be construed to give any person other than the Trust and Consultant any legal or equitable right, remedy or claim. The Contract shall be held to be for the sole and exclusive benefit of the Trust and Consultant.
7. **Modification.** No change, termination or attempted waiver of any of the provisions of the Contract shall be binding unless evidenced in a writing signed by both parties.
8. **Severability.** If any term or provision of the Contract or the application thereof to any person or in any circumstance shall to any extent be determined to be invalid or unenforceable, the remaining provisions of the Contract, or the application of such terms or provisions to persons or circumstances other than those as to which it is found to be invalid or unenforceable, shall in no way be affected thereby, and each term and provision of the Contract shall be valid and binding upon the parties, and enforced to the fullest extent permitted by law.
9. **Counterparts and Captions.** The Contract may be executed in one or more counterparts, each of which shall be deemed to be an original. Captions contained in the Contract are inserted only as a matter of convenience and shall not affect the construction or interpretation of any of the provisions hereof.



**PART III**  
**APPENDICES**

<b>APPENDIX A</b>	<b>STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS</b>
<b>APPENDIX B</b>	<b>SCOPE OF SERVICES</b>
<b>APPENDIX C</b>	<b>FEE AND COST SCHEDULE</b>
<b>APPENDIX D</b>	<b>INSURANCE REQUIREMENTS</b>
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**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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## STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by 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 Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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 or 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, Contractor agrees that neither it nor its subcontractors 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 contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (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 contract. Contractor 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 contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. 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 Contractor'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, Contractor and its subcontractors 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. 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 Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or Trust 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 Contractor, or any of the aforesaid affiliates of Contractor, 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 State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal

employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and

regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit Trust. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884

email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT.** By entering into this Contract, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.



**APPENDIX B**  
**SCOPE OF SERVICES**

**APENDIX C**  
**FEE AND COST SCHEDULE**

**PAYMENTS BASED UPON TASKS COMPLETED**

The Consultant shall be paid pursuant to the Fee Schedule annexed hereto as Appendix C-1 plus “Reimbursable Expenses” in accordance with the Trust’s Reimbursable Policy set forth below in a total amount not to exceed \$\_\_\_\_\_. The Fee shall accrue and be paid as detailed below.

- (a) The maximum payment for each portion of the Services shall be the respective amounts set forth in the Fee Schedule. Interim payments shall be made to the Consultant in an amount equal to the percentage of completion of each portion of the tasks multiplied by the maximum payment for each task performed during the billing period plus Reimbursable Expenses.
- (b) The Consultant shall submit written requests for payment in a format determined by the Trust on or about the first (1st) day of each calendar month for Services actually performed during the immediately preceding calendar month (“**Payment Requisition**”). The Payment Requisition shall contain detailed monthly invoices that include a description of the Services performed, the percentage of completion for each task performed by the Consultant during the billing period, the amount of partial payment requested, Subcontractor costs incurred during the billing period, and any M/WBE, SDVOBs and Workforce Utilization Reports reporting requirements associated with Subcontractor payments. The Trust shall pay the Consultant within thirty (30) days of the submittal of the Payment Requisition except as provided in Subsection (d) below.
- (c) Each Payment Requisition submitted to the Trust by the Consultant shall constitute a representation that, except as specifically set forth in the Payment Requisition, as of the date of the Requisition, all representations and warranties made by the Consultant under the Contract are true, complete and accurate as if made as of the date of the submission of the Payment Requisition.
- (d) The Trust may withhold payment of a Payment Requisition, in whole or in part, to the extent necessary for the following reasons:
  - (i) Failure of the Consultant to make payments properly and promptly to its Subcontractors;
  - (ii) Failure of the Consultant to comply with M/WBE, SDVOBs and Workforce Utilization Reports requirements;
  - (iii) For lien(s) filed in connection with Services, except where the lien(s) has been discharged by bond or otherwise;
  - (iv) Reasonable evidence that the Services cannot be completed due to the Consultant’s negligent performance for such Services; or
  - (v) The Consultant’s failure to perform in accordance with the terms of the Contract.

## HUDSON RIVER PARK TRUST REIMBURSABLE POLICY

A. The Consultant must submit detailed documentation in support of the Consultant's request for reimbursement. All invoices and their accompanying documentation must be forwarded along with a completed copy of the attached sample INVOICE SUMMARY and a letter of transmittal as a part of the monthly application for payment to:

Hudson River Park Trust  
Project Management Field Office  
353 West Street, Pier 40 - 2<sup>nd</sup> Floor  
New York, New York 10014

Invoices should be submitted monthly and include the Trust's contract and project numbers, if any. The Consultant should also include federal identification number with the first invoice.

B. Out-of-pocket expenses should be delineated on any invoices by general category. The Consultant must submit supporting documentation for each individual expense category.

### C. PRINTING / PHOTOGRAPHY.

- (a) Internal printing, photography, Xeroxing, blueprinting or other reprographic work in performance of the scope of services is not reimbursable.
- (b) Outside printing, photography, Xeroxing, blueprinting, or other reprographic work performed will be reimbursed **only to the extent work is specifically requested by the Trust in writing**, and at cost evidenced by a receipt.

### D. TELEPHONE.

- (a) All phone calls are part of Consultant's overhead costs and are not reimbursable.
- (b) Calls between Consultant's office(s) and its employees are not reimbursable.

E. TRANSPORTATION. Only authorized out-of-town travel in connection with the Project is to be reimbursed in accordance with the Trust Schedule of Reimbursable Allowances below, and **only to the extent that the work is specifically requested by the Trust in writing** and as evidenced by a receipt.

F. LODGING. Hotel/motel costs in connection with authorized out-of-town travel are to be reimbursed in accordance with the Trust Schedule of Reimbursable Allowances and **only to the extent that the work is specifically requested by the Trust in writing** and as evidenced by a receipt.

G. OVERNIGHT DELIVERY, MESSENGER. All messenger and delivery costs associated with the performance of the scope of services are part of the Consultant's overhead costs and are not reimbursable. Deliveries between Consultant's office(s) and its employees are not reimbursable. All messenger and delivery costs associated with out of scope services shall be reimbursed at receipted cost of such service without any handling or other Consultant add-on fee and **only to the extent that such work is specifically requested by the Trust in writing.**

### H. NON-REIMBURSABLES.

- (a) Flight insurance.
- (b) Valet Services.

- (c) Personal expenses of any type.
- (d) Delivery charges associated with delivery of Consultant payment vouchers.
- (e) Public transportation, personal vehicle, and/or taxi to any Trust office or meeting.
- (f) Parking or toll charges associated with travel to Trust offices or meetings.

**I. EQUIPMENT AND SUPPLIES.** All costs for equipment and supplies are part of the Consultant's overhead costs and are not reimbursable. **Where the Trust specifically requests** equipment or supplies not covered by the scope of services, the Consultant must supply the following detailed documentation:

- (a) Receipts of suppliers' invoices for costs of commodities, equipment and supplies, or other reimbursable items. Invoices must show quantity, description and price (less applicable discounts and purchasing agent's commission).
- (b) Title to all equipment purchased pursuant to the Contract is vested in the Trust. The Trust has the option of claiming any or all of such equipment.

**J. NO REIMBURSEMENT FOR SALES TAX.** The Trust is a public benefit Trust and as such is exempt from all sales taxes in New York State. The Trust will not reimburse the Consultant for sales or use taxes over ten dollars (\$10.00) incurred in connection with the Contract. If the Consultant purchases goods or services that involve sales or use taxes in excess of over ten dollars (\$10.00), the Consultant must, in advance of making such purchases, obtain a sales tax certification from the Trust so that no such taxes are incurred.

**K. GENERAL.**

- (a) All receipts must be legible. Illegible receipts will not be reimbursed.
- (b) Original receipts should be presented for reimbursement whenever possible.
- (c) At any time or times until three (3) years after completion of Consultant's services or earlier termination of the Contract by the Trust, the Trust may audit the vouchers and statements related to cost. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher that are found on the basis of such audit to not constitute reimbursable costs. Any such payment may be reduced for overpayments or increased for underpayment, as the case may be.

**HUDSON RIVER PARK TRUST  
SCHEDULE OF REIMBURSABLE ALLOWANCES**

**I. LODGING**

See:

<http://www.gsa.gov/portal/category/100120> for permissible allowances

**II. TRANSPORTATION ALLOWANCES**

**A. PERSONAL CAR MILEAGE**

\$.51 per mile; actual for trips, site visits, out-of-town meetings and to/from airport (not for travel to meetings in Manhattan and/or five boroughs of New York City).

**B. CAR RENTAL**

Actual

**C. AIRLINE & OTHER PUBLIC TRANSPORTATION**

Actual - evidenced by receipt.

**E. TAXI FARES**

Actual - evidenced by receipt.

**APPENDIX C-1**

**FEE SCHEDULE**

[INSERT APPROPRIATE FEE SCHEDULE HERE]

**APPENDIX D**  
**INSURANCE**

a) Upon the execution date of the Contract or as of the date indicated in a “Notice to Proceed”, the Consultant shall provide the Trust with (i) Certificates of Insurance naming the Additional Insureds set forth below and, (ii) at the request of the Trust, the “Schedules of Forms and Endorsements” and copies of the Forms and Endorsements evidencing compliance with all coverage requirements contained in this Appendix D. Such certificates and Schedules of Forms and Endorsements shall be in form and substance acceptable to the Trust. Acceptance and/or approval of such certificates and/or Schedules of Forms and Endorsements and copies of the Forms and Endorsements by the Trust do not, and shall not, be construed to relieve the Consultant of any obligations, responsibilities or liabilities under this Appendix D.

b) All insurance required by this Appendix D shall include the following as “Additional Insured” if such coverage is available under such insurance policies: Hudson River Park Trust, the State of New York, the New York State Office of Parks, Recreation and Historic Preservation, the New York State Department of Environmental Conservation, the City of New York, and the New York City Department of Parks and Recreation. The Trust offices are located at Pier 40 - 353 West Street, Suite 201, New York, NY 10014 - Attn: Insurance Manager. The Additional Insured protection on the General Liability policy shall be provided on form CG 20 10 11 85 or its equivalent, or may be obtained through a combination of CG 20 10 07 04 and CG 20 37 07 04 or their equivalents. Additional Insured coverage must apply to direct and vicarious liability for both on-going and completed operations.

c) Consultant shall require that any subcontractors or sub-subcontractors that perform work for the Consultant under this Contract in a sub-contract amount of **Five Thousand Dollars (\$5,000)** or more carry insurance with the same limits and provisions provided herein unless otherwise approved by the Trust on a case-by-case basis. All subcontractor insurance policies must include ISO Endorsement CG 20 38 or its equivalent to ensure additional insured protection is afforded the Trust without regard to privity of contract.

d) Each insurance carrier must be rated at least “A-” Class “VII” in the most recently published A.M. Best’s Insurance Report. If, during the term of the policy, a carrier’s rating falls below “A-” Class “VII”, the insurance policy must be replaced no later than the renewal date of the policy with an insurer acceptable to the Trust and rated at least “A-” Class “VII” in the most recently published A.M. Best’s Insurance Report.

e) Consultant shall cause all insurance to be in full force and effect as of the execution date of the Contract, or as of the date indicated in a “Notice to Proceed” if issued by the Trust, and to remain in full force and effect throughout the Term of the Contract and as further required by this Appendix D. Consultant shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Coverage shall:

1. Be primary and non-contributing to any insurance or self-insurance maintained by the Trust.

2. Be obtained at the sole cost and expense of Consultant or its respective subcontractor(s), and shall be maintained with insurance carriers authorized to do business in New York State and acceptable to the Trust.

3. Provide written notice to the Trust, at least thirty (30) days prior to the termination, cancellation or non-renewal or material alteration of such insurance policies; notice shall be sent, via express or certified mail to:

Hudson River Park Trust  
Attn: Insurance Manager  
353 West Street  
Pier 40, Second Floor  
New York, NY 10014

4. Be solely responsible for the payment of their respective deductibles and self-insured retentions to which such insurance policies are subject. Self-Insured Retentions may not exceed **Ten Thousand (\$10,000)** per claim unless otherwise approved by the Trust. General liability and umbrella/excess policies shall contain no deductibles in excess of **Ten Thousand Dollars (\$10,000)** per claim unless otherwise approved by the Trust.

f) Under no circumstances shall any insurance policies exclude coverage for claims that result from the imposition of New York Labor Law or for any Public Open Space or any portions of the premises used or for Public Access and Public Benefit Uses.

g) Upon the renewal date of any insurance policies, the Consultant shall supply the Trust with updated replacement proofs of coverage on Certificates of Insurance.

h) Consultant shall cause to be included in each of its insurance policies a waiver of the insurer's right of subrogation against the Trust and/or any Additional Insureds.

i) Consultant, throughout the Term of the Contract, or as otherwise required by this Appendix D, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Appendix D, or as required by law, whichever is greater (limits may be provided through a combination of endorsements, primary and umbrella/excess policies):

**(1) Commercial General Liability Insurance** with a limit of not less than **One Million Dollars (\$1,000,000)** per occurrence. Such insurance shall be written on ISO Form CG 00 01 12 07 or substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, personal and advertising injury, cross liability coverage, blanket contractual liability (including tort liability of another assumed in a contract), extended bodily injury coverage, and damage to rented premises. If such insurance includes an aggregate limit, it shall apply separately on a per project or per location basis. If the Consultant's work includes construction activities of any kind, then the [Contractor] must include a completed Acord 855 NY form when providing evidence of insurance.



(2) **Comprehensive Business Automobile Liability Insurance** with a limit of not less than **One Million Dollars (\$1,000,000)** Combined Single Limit. Such insurance shall cover owned, leased, hired and non-owned automobiles; shall cover bodily injury, property damage and medical payments, and include uninsured and underinsured motorists' coverage.

(3) **Workers Compensation, Employers Liability and Disability Benefits Insurance** at statutory limits as applicable to the CONTRACTOR'S operations and required by law. Proof of Workers Compensation coverage must be presented on the NYS WCB C-105.2 or equivalent form; proof of Disability coverage must be provided on a DB-120.1 form.

a. The NY State Workers Compensation Board guideline regarding these requirements is available at:

<http://www.wcb.ny.gov/content/main/forms/AllForms.jsp>

b. If Exempt from Worker Compensation please refer to the following link and provide proof on the CE200 form issues by the NY State Workers Compensation Board:

[http://www.wcb.ny.gov/content/ebiz/wc\\_db\\_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)

c. If the Consultant is not a NY State based business, then the Consultant must provide a copy of its Workers' Compensation policy's Declarations Page to show that New York is listed in Part 3A and to confirm the policy provides statutory Employer's Liability coverage applicable in NYS.

The Trust and the Consultant shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of loss, and each party shall execute and deliver such proofs of loss and other instruments that may be required for the purpose of obtaining the recovery of any such insurance proceeds. Consultant's obligations as set forth in this Appendix D shall survive the expiration or earlier termination of the Contract.

**APPENDIX E**  
**M/WBE REQUIREMENTS**

**PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:**  
**REQUIREMENTS AND PROCEDURES**

**I. General Provisions**

- A. The Hudson River Park Trust (“Trust”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor/consultant to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Trust, to fully comply and cooperate with the Trust in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to the Trust pursuant to the Contract and applicable law.

**II. Contract Goals**

- A. For purposes of this Contract, the Trust hereby establishes an overall goal of 30 percent for MWBE participation, (“MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. **FOR CONSTRUCTION CONTRACTS** – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be sixty percent (60%) of the total

value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE. FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be twenty five percent (25%) of the total value of the contract.

- D.** The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
  2. Any responses by MWBEs to the Contractor’s outreach;
  3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
  4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Trust with MWBEs; and,
  5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

### **III. Equal Employment Opportunity (“EEO”)**

- A.** The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B.** In performing the Contract, the Contractor shall:
1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  2. The Contractor shall submit an EEO policy statement to the Trust within seventy-two (72) hours after the date of the notice by the Trust to award the Contract to the Contractor.
  3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, the Trust may require the Contractor or subcontractor to adopt a model statement (see Equal Employment Opportunity Policy Statement attached hereto).
  4. The Contractor’s EEO policy statement shall include the following language:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
    - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment

opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

- c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

#### **C. Form EEO101 - Workforce Utilization Report**

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the Trust on a monthly basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.

- D.** The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### **IV. MWBE Utilization Plan**

- A.** The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by the Trust, through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided however, that the Contractor may arrange to provide such evidence via a non-electronic method to the Trust, either prior to, or at the time of, the execution of the Contract.
- B.** The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C.** The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Trust shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

#### **V. Waivers**

- A.** If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the Trust. Such waiver request must be supported by evidence of

the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the Trust shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.

- B.** If the Trust, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, the Trust may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

## **VI. MWBE Contractor Compliance Report**

The Contractor is required to submit a monthly MWBE Contractor Compliance Report during the term of the Contract.

## **VII. Liquidated Damages - MWBE Participation**

- A.** Where the Trust determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the Trust liquidated damages.
- B.** Such liquidated damages may be calculated as an amount no greater than the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C.** In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Trust, the Contractor shall pay such liquidated damages to the Trust within sixty (60) days after they are assessed; provided however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL  
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

I, \_\_\_\_\_, the (awardee/contractor)\_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered at \_\_\_\_\_

**M/WBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from the Trust and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO**

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_

By \_\_\_\_\_

Print: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison  
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

\_\_\_\_\_percent Minority and Women’s Business Enterprise Participation

\_\_\_\_\_percent Minority Business Enterprise Participation

\_\_\_\_\_percent Women’s Business Enterprise Participation

\_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX F**  
**SDVOB REQUIREMENTS**

**ATTACHMENT A – SDVOB GOALS**

**PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”) thereby further integrating such businesses into New York State’s economy. The Trust recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Trust contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

**I. Contract Goals**

- i. The Trust hereby establishes an overall goal of 0% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf). Questions regarding compliance with SDVOB participation goals should be directed to the Lupe Franttini at [lfrattini@hrpt.ny.gov](mailto:lfrattini@hrpt.ny.gov). Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- ii. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

**II. SDVOB Utilization Plan**



- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the Trust.
- C. The Trust will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of the Trust acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the Trust a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Trust to be inadequate, the Trust shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by the Trust, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. The Trust may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
- (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If the Trust determines that the Bidder has failed to document good faith efforts.

- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Trust shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

### **III. Request for Waiver**

- A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at the Trust for guidance.**
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the Trust at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, the Trust shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the Trust, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If the Trust, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, the Trust may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the Trust.

### **IV. Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by the Trust with certified SDVOBs whom the Trust determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

#### **V. Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to the Trust during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 which will be made available by the Trust and should be completed by the Contractor and submitted to the Trust, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: Lupe Frattini at [lfrattini@hrpt.ny.gov](mailto:lfrattini@hrpt.ny.gov).

#### **VI. Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

**ATTACHMENT B – SDVOB NO GOALS**

**PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”); thereby further integrating such businesses into New York State’s economy. The Trust recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Trust contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, the Trust conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.