Request for Proposals

Hudson RiverStage Concert Production Services

Contract # G4698

Date Issued: December 4, 2015
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PART I
INTRODUCTION

1. INVITATION TO SUBMIT PROPOSAL

Hudson River Park Trust (the “Trust”) is pleased to invite you to submit a proposal in response to this Request for Proposals ("RFP"). The Services to be performed, the Project and the Project Site are outlined in the RFP Summary below (Part I, Section 2), along with such other information as the anticipated dates for the execution of a Contract with the Consultant, if one is selected pursuant to this RFP, and the anticipated Contract Term. All undefined capitalized terms set forth in this RFP shall have the same definitions as set forth in the draft Contract (the “Contract Draft”) annexed to this RFP as Exhibit 8.

Subject to the availability of funds and the responses to this RFP, the Trust will select one or more Consultant(s) to provide the Services. The Consultant(s) shall be experienced in all aspects of the Services. The Consultant(s) will commence the Services upon a written Notice to Proceed from the Trust or upon execution of the Contract by the Consultant(s) and the Trust substantially in the form of the Contract Draft. You should review the Contract Draft and be familiar with all of the terms and conditions set forth therein prior to submitting your proposal. However, please note that the General Terms and Conditions (Part II) and the Appendices (Part III), other than Appendix B and Appendix C, are not negotiable.

RFP SUMMARY

1.1 In General. This summary of terms, deadlines and requirements specific to this RFP is set forth for your immediate reference and convenience only. It does not set forth all of the requirements of this RFP, but should be read in conjunction with the Requirements (Part II) of this RFP. You should review and become familiar with all parts of this RFP prior to submitting your proposal.

1.2 Specific Terms, Deadlines and Requirements

1.2.1 Project Information:

1.2.1.1 The Project: Hudson RiverStage Concert Production Services

1.2.1.2 The Project Site: Hudson River Park’s:

- Pier 97 - West 57th St. and West St.

  Pier 97 measures approximately 598 feet long and 116 feet wide (69,368 square feet) with an additional approximate 11,000 square feet found at the bulkhead entrance area. There is no electric or water supply, nor is there a storage facility located on the pier.

1.2.1.3 Type of Services: Concert promotion/production (the “Services”). The Trust envisions two (2) festival-style concerts (the “Concerts”) during June, July and/or August, incorporating a musical theme and related food element. Examples of musical
themes/styles that HRP would like to pursue for the 2016 season are “soul” and “Americana”. Expected attendance is at least 5,000 people per show, subject to venue capacity based on approved site plans. The Scope of Services is more specifically described in (Appendix B of the Contract Draft).

1.2.2 **The Consultant(s):**

1.2.2.1 **Type:** Concert Production Services

1.2.2.2 **Experience Required:**

A) With respect to *the Concerts*, the Consultant shall be able to

- Specify, source and procure all event-related equipment and services including staging, sound, lighting, tents, trailers, tables, chairs, toilets, power source(s), and communications equipment. All equipment must be installed on a temporary basis.
- Provide on-site management, provide all necessary production and operations staff, and oversee technical coordination of shows.
- Oversee set-up, operation and breakdown of all staging, audio and lighting.
- Generate production schedule and run-of-show timeline, which must be provided to HRPT in a timely fashion for approval.
- Manage load-in and load-out.
- Coordinate with HRPT to hire an additional clean-up crew.
- Design site layout, with final approval by HRPT. Site layout should include but is not limited to the following components: stage, backstage, amenities (i.e. food, restrooms), standing/seating areas, VIP area, emergency lanes, barricade placement, lighting and audio placement, and front gate configuration.
- Coordinate with HRPT staff and other agencies/officials as required, on all site usage and public safety issues.
- Coordinate with HRPT regarding security staffing, site security plan and crisis management procedures.
- Obtain all necessary permits.
- Submit a Certificate of Liability Insurance reflecting a minimum of $2,000,000 liability coverage and naming, amongst others, HRPT, the State of New York and the City of New York and their respective agencies, directors, and employees as additional insureds by written endorsement pursuant to the insurance requirements provided with this Discretionary Procurement. A complete list of required liability and other insurance coverage is detailed further in the attached Appendix D of the Contract Draft, Exhibit 8.

B) With respect to the **food concessions**, Consultant shall:

- Work with HRPT to coordinate onsite concessions, including hiring, staffing and management of bar vending area.
- Negotiate and book no less than three (3) reputable New York area restaurants –
with the option to book four (4) restaurants should Concert logistics allow for it. Restaurants should provide food at the Concert to consumers for a nominal fee (not to exceed $15.00 for a full meal including sides). HRPT reserves the right to approve all restaurants, menus and pricing.

- Selected respondent will be responsible for all event staff meals and beverages, excluding HRPT staff.
- Arrange and budget for VIP food and beverage with HRPT staff approval.
- Secure all permits necessary for the execution of the Concert, including but not limited to those permits issued by the New York City Department of Health (health permit/caterers license), and provide copies to HRPT. Producer must accept any vendors independently obtained by HRPT.

HRPT is interested in receiving proposals that intend to have restaurants at the Concerts. Ideally, the restaurant vendors will offer cuisines that thematically match the talent on the stage.

1.2.2.3 **Contract Information**

1.2.2.4 **Anticipated Contract Execution Date:** January 29, 2016

1.2.2.5 **Anticipated Contract Term:** Up to Five (5) one year terms, based solely on Trust approval and annual renewal

1.2.3 **Questions Regarding RFP**

1.2.3.1 **Question/Clarification Deadline:**

   (i) **Date:** December 21, 2015

   (ii) **Time:** 5:00 p.m.

1.2.3.2 **Permitted Method:** Questions may be sent in writing to Recipient at Recipient’s Mailing Address or Email Address as listed in Section 1.2.5.6 or 1.2.3.5 below only.

1.2.3.3 **Question Response Date:** December 24, 2015

1.2.3.4 **Answers to Questions Available at** [www.hudsonriverpark.org](http://www.hudsonriverpark.org) (the “Website”) on December 24, 2015

1.2.3.5 **Recipient’s E-mail address:** RiverStageProduction@hrpt.ny.gov

1.2.4 **Optional Tour**
1.2.4.1 Date: December 15, 2015

1.2.4.2 Time: 10:30 a.m.

1.2.4.3 Meeting Place: Pier 97 (at W. 57th Street)

1.2.4.4 Confirmation Contact: Respondent must confirm attendance by sending an email to the Email address listed in Section 1.2.3.5 below. Attendance must be confirmed by not later than 3pm the day prior (12/14/15).

1.2.5 Proposal Submission Requirements

1.2.5.1.1 Label on Sealed Envelope:

“Proposal for Hudson RiverStage Concert Production Services”

1.2.5.2 Number of Sets of Proposals to be submitted: Three (3)

1.2.5.3 Submission Deadline:

(i) Date: January 4, 2016

(ii) Time: 5:00 p.m.

1.2.5.4 Method: Proposals may ONLY be submitted either By Hand or by Express Mail (using a nationally-known overnight courier). Proposal Submissions may NOT be made via fax or e-mail.

1.2.5.5 Submit to the following Recipient:

Ian Kaley
Director of Marketing & Events

1.2.5.6 Recipient’s Mailing Address:

Hudson River Park Trust
Pier 40, 2nd Floor
353 West Street, Rm. 201
New York, NY 10014
Attn: Ian Kaley

1.2.5.7 Submission MUST include the following components:

1. Name, address, telephone number and e-mail address of contact person.
2. Name and address of business entity proposed for this engagement, including applicable Federal EIN number.
3. (a) M/WBE certification information or
(b) M/WBE Utilization Plan, as referenced below (section V-9).

4. Descriptions of at least three examples of recent large-scale concert production services. Please provide examples of the following:

   (a) Talent coordination
   (b) Production and operations
   (c) Promotion

   Please make specific note of any experience working for the City of New York, the State of New York or any not-for-profit organizations in New York State. Please provide reference contact information for each experience listed.

5. Description of any experience in the last five (5) years coordinating with food and beverage concessions

6. Banking reference(s) of business entity.

7. Pricing for the initial term and for each additional one year term, up to five (5) total. Costs should be broken down by line item. Please provide details related to the talent line item (bearing in mind that Trust budget for talent may increase depending on external funding). Please do not request a budget as this is a bidding process.

8. At least three (3) relevant professional references.

9. Disclosure of violations, if any, with New York State Department of Environmental Conservation, New York City Department of Environmental Protection, United States Environmental Protection Agency and the United States Occupational Safety and Health Administration for the preceding five (5) years.

10. Statement of ability to commence services upon Contract execution.

11. The enclosed forms, completed.

12. An identical electronic copy of Respondent’s Proposal on a flash drive or DVD and in PDF format (all financial documents to be provided in Microsoft Excel format) must be included in Respondent’s sealed Proposal. The Trust reserves the right to hold Respondent to the most favorable Proposal in the event of discrepancies between the print and electronic versions of the Proposal.

1.2.6 **M/WBE Participation Goal** : 49%. See Appendix E to the Contract Draft (Exhibit 8) for further details.

1.2.7 **Selection Criteria** the Trust will base its selection upon the following criteria:

30% The respondent’s experience in providing services similar to those identified in the Scope of Services (see Appendix B to Contract Draft, Exhibit 8) described herein, including experience in:
• proven track record of successfully producing concerts;
• experience negotiating talent performances;
• experience working with outdoor venues; and
• experience coordinating with food and beverage concessions.

25% The respondent’s history, if any, in contracting or doing business with the City and/or State of New York and/or not-for-profit corporations located in the State of New York; history, if any, doing business with Hudson River Park Trust; and assessment of professional references.

25% The proposed fee and cost schedules.

15% The respondent’s earliest committed project start date and time to complete the work described in the Scope of Services herein; the respondent’s commitment to agreed-upon schedules. Respondent must be able to commence services by no later than February 1, 2016.

5% Respondent’s proposed utilization plans for M/WBE participation (Ex.7).

If you have a physical disability and cannot deliver your proposal as provided in this RFP, please contact Nicole Steele at (212) 627-2020 or email RiverStageProduction@hrpt.ny.gov at least forty-eight (48) hours prior to the Submission Deadline and the Trust will make appropriate arrangements for such delivery.

2. RESPONSIVENESS DETERMINATION

A respondent is deemed “responsive” when it submits a proposal containing the required items/information in the form required and as listed in the RFP by the Submission Deadline referenced in Part I, Section 1.2.5.3 of this RFP. If the Trust determines that a respondent did not submit the items/information required in the RFP, that respondent will be deemed “non-responsive” and will not be considered for contract award.

In order to be considered responsive, your proposal must be organized and include all of the items as listed below.

2.1 Envelope. In one sealed envelope labeled as required by Part I, Section 1.2.5.1.1 complete and place the following:

2.1.1 Respondent’s Proposal attached hereto as Exhibit 1, and the certifications attached hereto in Exhibits 3 (Doing Business Data Form), Exhibit 4 (Lobbying Form), Exhibit 5 (Non-Collusion Form), and Exhibit 6 (Iran Divestment Form).

2.1.2 A statement of your approach to the Services that clearly demonstrates your understanding of the Scope of Services and your ability to manage and complete the Concerts in a timely and cost-efficient manner. The proposal must include a detailed statement of your approach and ability to
provide the required Services and Work Product including, but not limited to, a schedule for completing all aspects of the Services. It is imperative that the proposal includes a list and detailed explanation of the extent of all work or services to be performed by Subcontractors, if applicable.

2.1.3 The proposal should contain a description of the respondent’s organization, including a history of the firm, a description of all subsidiaries and affiliates, an organization chart indicating the level of responsibility of all personnel who are expected to provide Services, and the name and location(s) of business of the respondent. This should be accompanied by, to the extent known, the names and resumes of all individuals and entities that will be performing the Services under the Contract including, without limitation, all personnel, Subcontractors and other entities or individuals performing and/or supervising the Services, and the respondent’s proposed staffing schedule. Please include the addresses, phone and fax numbers, e-mail addresses, designated roles, and relevant experience and expertise for the same.

2.2 **Intentionally Omitted**

2.3 **Non-compliant Proposals.** Non-compliant proposals may, in the Trust's sole discretion, be considered “not responsive” and may be rejected by the Trust including, without limitation, proposals that are:

2.3.1 not enclosed in a sealed envelope as aforesaid;
2.3.2 not properly labeled;
2.3.3 intentionally omitted
2.3.4 missing any information, certifications, supplemental forms or other documentation required by this RFP or by applicable law.

**PART II**

**REQUIREMENTS**

1. **SERVICES TO BE PERFORMED AND WORK PRODUCT**

The Consultant shall perform all work and services and deliver all of the Services specifically described in and required by the Scope of Services annexed as Appendix B in Part III of the Contract Draft. Prior to submitting your proposal, please be sure that you review and fully understand the Scope of Services.

2. **COMPENSATION**

Subject to and in accordance with the final terms of the Contract, the Trust shall compensate the selected Consultant as follows:

2.1 **In General.** Under the Contract, the Trust will agree to pay to the Consultant an amount not
to exceed a Maximum Contract Price to be negotiated between the Trust and the Consultant based upon its response to this RFP. The Maximum Contract Price shall be the maximum compensation for all of the Services provided by the Consultant pursuant to the Contract and all expenses of the Consultant in connection therewith, including costs of any Subcontractors. The Maximum Contract Price shall be payable as provided in Article II of the Contract and Appendix C of the Contract.

2.2 **Sales and Use Tax.** The Trust is exempt from state and local sales and use tax. SUCH TAX IS NOT TO BE INCLUDED IN PROPOSALS or in invoices submitted under the Contract. The Trust will provide the selected Consultant with an appropriate “sales and use tax exemption certificate”.

3. **GENERAL CONDITIONS, TERMS, LIMITATIONS AND REQUIREMENTS**

3.1 **Proposal as Offer to Contract.** Unless a specific exception is noted, submission of a proposal in response to this RFP shall constitute an offer on the part of the successful respondent to execute the Contract substantially in the form annexed hereto as Exhibit 8. Any supporting documents or other items attached as exhibits to this RFP shall be incorporated into the Contract. The successful respondent shall cooperate in supplying any information as may be required with respect to the Vendex Clearance Forms, and any other government review and approval forms. Respondent’s proposal shall remain open for acceptance by the Trust and shall remain firm and binding upon the respondent for at least sixty (60) days after the date on which the proposals are received by the Trust, except that the Trust may by written notice to the respondent extend that date for an additional forty-five (45) days.

3.2 **Freedom of Information Law.** All proposals submitted to the Trust in response to this RFP may be disclosed in accordance with the standards specified in the Freedom of Information Law, Article 6 of the Public Officers Law of the State of New York (“FOIL”). A respondent may provide in writing, at the time of its submission, a detailed description of the specific information contained in its submission which it has determined is a trade secret and which, if disclosed, would substantially harm such entity’s competitive position. This characterization shall not be determinative, but will be considered by the Trust when evaluating the applicability of any exemptions in response to a FOIL request.

3.3 **Prevailing Wages.** All employees of the Consultant whose prevailing wage is required to be fixed pursuant to Section 220, et seq. and Section 230, et seq. of the New York State Labor Law shall be paid such prevailing wage.

3.4 **Participation by New York State Business Enterprises.** Respondents are strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Respondents must therefore demonstrate their commitment to the use of NYS businesses by indicating whether they will use New York State businesses in the performance of the Contract. If Respondents do intend to use NYS businesses, kindly identify those NYS businesses that will be used and attach identifying information.

**Minority & Women-owned Business Participation (“M/WBE”) Requirements.** The Trust generally requires a 30% goal for participation by M/WBEs in procurement contracts awarded by the Trust for purchases of commodities/services greater than twenty five thousand dollars ($25,000) and for
construction and construction-related contracts greater than one hundred thousand dollars ($100,000) (the “Article 15-A Threshold”). All contracts above the Article 15-A Threshold, unless exempted or excluded, must be assessed M/WBE goals. **THE M/WBE GOAL FOR THIS PROCUREMENT IS 49%.** Waiver requirements for a reduction of elimination of the M/WBE goals are outlined in 5 NYCCR Part 142.7 and include a demonstration of the Consultant’s good faith efforts and due diligence by the Consultant and the Trust. Additional M/WBE information, including the M/WBE Utilization Plan and M/WBE Utilization and Reporting Responsibilities are posted on the Trust’s website at [http://www.hudsonriverpark.org/about-us/bids-business-opportunities/mwbe/](http://www.hudsonriverpark.org/about-us/bids-business-opportunities/mwbe/).

3.5 **Costs.** The Trust shall not be liable for any cost incurred by the respondent in the preparation of its proposal or for any work or services performed by the respondent prior to the execution and delivery of the Contract. The Trust is not obligated to pay any costs, expenses, damages or losses incurred by any respondent at any time unless the Trust has expressly agreed to do so in writing.

3.6 **The Trust Rights.** This is a “Request for Proposals” and not a “Request for Bids”. The Trust shall be the sole judge of whether a proposal conforms to the requirements of this RFP and of the merits and acceptability of the individual proposals. Notwithstanding anything to the contrary contained herein, the Trust reserves the right to take any of the following actions in connection with this RFP: amend, modify or withdraw this RFP; waive any requirements of this RFP; require supplemental statements and information from any respondents to this RFP; award a contract to as many or as few or none of the respondents as the Trust may select; accept or reject any or all proposals received in response to this RFP; extend the deadline for submission of proposals; negotiate or hold discussions with one or more of the respondents; permit the correction of deficient proposals that do not completely conform with this RFP; waive any conditions or modify any provisions of this RFP with respect to one or more respondents; reject any or all proposals and cancel this RFP, in whole or in part, for any reason or no reason, in the Trust's sole discretion. the Trust may exercise any such rights at any time, without notice to any respondent or other parties and without liability to any respondent or other parties for their costs, expenses or other obligations incurred in the preparation of a proposal or otherwise. All proposals become the property of the Trust.

3.7 **Proposals From Principals.** Only proposals from principals and authorized officers will be considered responsive.

3.8 **Disclaimer.** The Trust and its respective officers, directors, agents, members and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, the Trust does not warrant or make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or any other facet of this RFP once it has been downloaded or printed from this or any server, and hereby disclaim any liability for any technical errors or difficulties of any nature that may arise in connection with the Website on which this RFP is posted, or in connection with any other electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.

3.9 **Protest Procedures.** The procedures set forth in this section shall apply to all protests (collectively, “Protests” and each individually, a “Protest”) related to this procurement. The Trust will not entertain any Protest that is untimely or fails in any manner to comply fully with the procedures set forth in this section.
3.9.1 Types of Protests. There are three types of procurement Protests:

3.9.1.1 Pre-Proposal Protest: A protest submitted prior to the Submission Deadline to challenge the notice procedures followed by the Trust;

3.9.1.2 Pre-Award Protest: A protest submitted after the Submission Deadline but before Contract execution; and

3.9.1.3 Post-Award Protest: A protest submitted after the Contract has been executed, but only to the extent that the protest is based on newly discovered information that was not available prior to execution of a Contract.

3.9.2 Submission of Protests/Deadlines. All Protests must be in writing and must be submitted in accordance with the following timeline for the following types of Protests:

3.9.2.1 A Pre-Proposal Protest must be submitted at least two (2) business days prior to the Submission Deadline set forth in Part I, Section 1.2.5.3 of the RFP;

3.9.2.2 A Pre-award Protest must be submitted five (5) business days from the later of receipt of Notice of the Trust’s contingent award of the Contract and the date proposals are made publicly available; and

3.9.2.3 A Post-award Protest must be submitted five (5) working days from the date the protesting party knew or should have known the newly discovered evidence that serves as the grounds of its Protest.

A Protest will be considered submitted when the Protest is received by the Trust.

3.9.3 Contents of Protest: The Protest should include, without limitation, the following information:

3.9.3.1 name, address and telephone number of the protester;

3.9.3.2 appropriate identification of the procurement, including the Contract Number;

3.9.3.3 statement of the basis of the Protest;

3.9.3.4 supporting exhibits and documentary evidence to substantiate the grounds for the Protest; and

3.9.3.5 form of relief requested.

3.9.4 Address for Submission of Protests:

Hudson River Park the Trust
Pier 40, 2nd Floor
3.9.5 **Method of Submission:** By Hand or U.S. Mail

3.9.6 **Envelope:** The envelope enclosing the Protest must be clearly labeled “PROTEST” and must list the Contract Number to which the Protest relates.

3.9.7 **Additional Information:** The Trust may request that the protestor submit additional information that it may need in order to consider the Protest. Any additional information requested by the Trust must be submitted within the time period established by the Trust in order to expedite consideration of the Protest. Failure of the protestor to comply with a request for information within the specified time period will result in a resolution of the Protest without consideration of any information subsequently submitted by the protestor in an untimely manner.

3.9.8 **Determinations.** The President or his/her designee has the authority to make a final determination. The Trust will respond to each substantive issue in the Protest. The Trust may, in its sole discretion, meet with the protesting respondent and any affected party to discuss the Protest. The Trust shall have the right to take such appropriate action as may be in the best interests of the Trust and the City in light of the determination.

The Trust’s determination shall be final. The respondent shall have been deemed to have received the Trust’s determination notice no later than five (5) days from the date of mailing or upon delivery, if delivered by hand of the Trust’s determination.

4. **INTERVIEWS**

Interviews may be held with any or all of the respondents after the receipt of proposals. Interviews with the Trust will be scheduled after its initial review of proposals.

5. **SELECTION**

The Trust will review each respondent’s proposal in its totality. The selected respondent, if any, will be a respondent whose proposal is most advantageous to the Trust’s goals. See Part I, Section 1.2.7 for an explanation of the criteria on which the Trust will base a selection.
EXHIBIT 1
RESPONDENT’S PROPOSAL CERTIFICATION FORM
Submitted by

[Insert Name of Respondent] (The “Respondent”)

Respondent, in accordance with and subject to all of the terms and conditions of the Request for Proposals pursuant to which this proposal (the “Proposal”) is being submitted, agrees that it will provide in consideration of the price(s) set forth in the Fee and Cost Schedule, all of the Services set forth in the Scope of Services in accordance with the Contract, and to accept in full compensation therefore (including without limitation all overhead, profit, taxes and other charges and expenses applicable thereto), the price(s) stated in the Fee and Cost Schedule. The Fee and Cost Schedule, is simultaneously being delivered to you in a separate sealed envelope and is incorporated herein and made part hereof.

Respondent makes the following statements and representations as part of its Proposal:

(a) That the Respondent has examined all parts of the RFP, including the Contract Draft and the Scope of Services, and all terms and conditions hereof.

(b) That the Respondent agrees to obtain all necessary approvals, permits and/or licenses required by law or regulation of the performance of the Services.

In order to induce the Trust to accept this Proposal, Respondent hereby agrees to abide by all of the terms and conditions of the Contract including, without limitation, all representation and warranties set forth therein.

WHERFORE, the Respondent submits this Proposal to the Trust.

[INSERT NAME OF RESPONDENT]

Signed by: _____________________________________________
Printed Name: ___________________________________________
Title: ___________________________________________________
Respondent’s Address: _____________________________________
Notice Address (if different from above): ________________________
Respondent’s Telephone Number: _____________________________
Respondent’s Fax Number: _________________________________
Respondent’s E-mail Address: ________________________________
Respondent’s Tax I.D. Number: _______________________________
EXHIBIT 2
FEE AND COST SCHEDULE

1. The Respondent shall complete and submit a Fee and Cost Schedule that is detailed and provides line items for all aspects of the work to be performed, consistent with the Scope of Services attached to Exhibit 8, Contract Draft, Appendix B.

2. The submitted Fee and Cost Schedule should cover all Services and Tasks described in the RFP and the Contract Draft.

3. The submitted Fee and Cost Schedule should provide prices for the Term, i.e., up to five (5) one year periods.
EXHIBIT 3
DOING BUSINESS DATA FORM, ENCOURAGING USE OF NYS BUSINESSES IN CONTRACT PERFORMANCE FORM AND NYS SMALL BUSINESS ACKNOWLEDGEMENT FORM

The Consultant shall complete and submit a Doing Business Data Form which can be found at: http://www.hudsonriverpark.org/assets/content/general/Doing_Business_Form.pdf

The text of said section provides as follows:

Local Law 34 of 2007 (LL 34) requires the creation of a database containing information about entities that do business with the City as defined by the law, and principal officers, owners and senior managers of these entities. This information will be collected on Doing Business Data Forms that are distributed, collected and reviewed by agencies, and forwarded to the Doing Business Accountability Project (DBAP) at MOCS for processing. Collected data will be used to identify entities and people who are subject to LL 34’s limitations on campaign contributions in municipal elections.

If you have any questions or concerns, please contact the Doing Business Accountability Project at 212-788-8104 or DoingBusiness@cityhall.nyc.gov.
ENCOURAGING USE OF NEW YORK STATE BUSINESSES
IN CONTRACT PERFORMANCE

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor’s optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract?  

Yes  No

If yes, identify New York State businesses that will be used and attach identifying information.
NYS SMALL BUSINESS ACKNOWLEDGEMENT

CONTRACT # G4698

The Trust is required to track contract and purchase order awards made to New York State Small Businesses.

A “New York State Small Business” is defined under New York State Finance Law §160(8) as a business that is resident in New York State, independently owned and operated, not dominant in its field and employs one hundred persons or less.

Please check one of the boxes below, sign and date this Acknowledgement and return this Acknowledgement with your executed contract or purchase order.

☐ I AM NOT A NEW YORK STATE SMALL BUSINESS

☐ I AM A NEW YORK STATE SMALL BUSINESS

[INSERT NAME OF CONTRACTOR]

By: ____________________________

Print Name: _____________________

Title: ___________________________

Date: ___________________________
EXHIBIT 4
LOBBYING FORMS
Disclosure of Prior Non-Responsibility Determinations

Background:

New York State Finance Law §139-k(2) obligates Hudson River Park Trust to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address:

Name and Title of Person Submitting this Form:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):
   - No
   - Yes

If yes, please answer the next questions:
HRPT Contract Procurement Number: ____________________ Date: ____________________

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):
   No                        Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):
   No                        Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

   Governmental Entity: ____________________________________________________________

   Date of Finding of Non-responsibility: __________________________________________

   Basis of Finding of Non-Responsibility: __________________________________________

   _____________________________________________________________________________

   (Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):
   No                        Yes

6. If yes, please provide details below.

   Governmental Entity: ____________________________________________________________

   Date of Termination or Withholding of Contract: _________________________________

   Basis of Termination or Withholding: ______________________________________________

   _____________________________________________________________________________

   (Add additional pages as necessary)

Offerer certifies that all information provided to Hudson River Park Trust with respect to State Finance Law §139-k is complete, true and accurate.

By (Print) : ______________________________________ Date: _______________________

Signature: __________________________________________
Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6)(b)

___________________________ hereby affirms that it understands and agrees to comply with the procedures of the Hudson River Park Trust relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6)(b).

Signed: ____________________________ Date:______________________

Print Name: ________________________________ Title: ________________________________

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

________________________________________________________________________

Address:

________________________________________________________________________
EXHIBIT 5
NON-COLLUSION FORM
CERTIFICATION AND SIGNATURE FORM
AFFIDAVIT OF NON-COLLUSION

Name of Respondent: _______________________________________________

Business Address:________________________________________________________________________

Phone No.:_________________________ Fax No.:__________________________

I hereby attest that I am the person responsible within my company for the final decision as to the prices(s) and amount of this bid/proposal or, if not, that I have written authorization form that person to make the statements set out below on his or her behalf and on behalf of my company.

I further attest that:

1. The prices in this bid/proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other respondent or with any other competitor.

2. The respondent prior to the opening has disclosed neither the price(s) nor the amount of this proposal.

3. No attempt has been made to solicit, cause or induce any company or person to refrain from bidding on this project, or to submit a bid/proposal higher than the bid/proposal of this firm, or any intent ally high or non-competitive bid/proposal or other form of complementary bid/proposal.

4. The bid/proposal of my company is made in good faith and not pursuant to any agreement or discussion with, or inducement from any company or person to submit a complementary bid/proposal.

5. My company has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any other company or person, or offered, promised or paid case or anything of value to any company or person, whether in connection with this or any other project, in consideration for an agreement or promise by a company or person to refrain from bidding or to submit a complementary bid/proposal.

6. I have made a diligent inquiry of all members, officers, employees, and agents of my company with responsibilities relating to the preparation, approval or submission of my company’s bid/proposal on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this affidavit.

7. By submission of this bid/proposal I certify that I have read, am familiar with and will comply with any and all segments of these specifications.

The person signing this bid/proposal, under the penalties of perjury, affirms the truth thereof.

_______________________________________   __________________________
Signature & Company Position                            Date Signed

_______________________________________   __________________________
Print Name & Company Name                     Federal ID number
EXHIBIT 6

IRAN DIVESTMENT FORM
STATE OF NEW YORK     )
SS:
COUNTY OF NEW YORK   )

______________________________, BEING DULY SWORN, DEPOSES AND SAYS THAT:

1. I am submitting a bid to provide services and/or supplies on behalf of
   ________________________, to the HUDSON RIVER PARK TRUST pursuant to competitive bidding
   rules and regulations.
2. The address of the company or individual submitting the proposal is:
   ____________________________________________________________________.
3. The affidavit is submitted pursuant to the Iran Divestment Act of 2012 (Act), Chapter 1 of the
   2012 Laws of New York, and New York State Finance Law (SFL), Section 165-a, effective April
   12, 2012, and the regulations promulgated thereunder. It is made under penalty of perjury, for
   the purpose of showing that the respondent has no “investment activities in Iran”.
4. The respondent’s taxpayer identifications number is: ____________________________.
5. The respondent/contractor does hereby certify that it is not engaged in “investment activities in
   Iran” as defined by the laws of the State of New York; nor will it invest or participate in such
   activities during the terms of the contract.

DATED: ____________________

________________________________________
Name

________________________________________
Title

Subscribed to and sworn to before me
This ______ day of _____________, 20__

________________________________________
Notary Public
EXHIBIT 7
M/WBE FORMS
CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A, the Hudson River Park Trust ("the Trust") recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of Trust contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises ("MWBE") in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that the Trust establishes goals for maximum feasible participation of New York State Certified MWBEs and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, the Trust hereby establishes an overall goal of 49% for MWBE participation. A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that the Trust may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: http://www.esd.ny.gov/mwbe.html.

For guidance on how the Trust will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and the Trust may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling 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.

By submitting a bid or proposal, a bidder on the Contract ("Bidder") agrees to submit the following documents and information as evidence of compliance with the foregoing:

A. Bidders are required to submit a MWBE Utilization Plan with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Trust.

B. The Trust will review the submitted MWBE Utilization Plan and advise the Bidder of the Trust's
acceptance or issue a notice of deficiency within 30 days of receipt.

C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Trust at 353 West Street, New York, NY 10014, Fax- 212 627 2021, 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 and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

D. The Trust may disqualify a Bidder as being non-responsive under the following circumstances:
   a) If a Bidder fails to submit a MWBE 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.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE 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.

Contractors are required to submit a Contractor’s Quarterly MWBE Contractor Compliance & Payment Report to the Trust, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

**Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over $25,000 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, shall undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the Trust, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will 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.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement
proceedings as allowed by the Contract.
HUDSON RIVERSTAGE CONCERT PRODUCTION SERVICES

[INSERT NAME]

PART I
SPECIFIC TERMS

HUDSON RIVER PARK TRUST (the “Trust”) and the consultant, contractor or party identified below ("Contractor"), 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 and Conditions (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 Contractor 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 Contractor must purchase and maintain insurance for the Term of the Contract as provided in Appendix D - Insurance. The term “State” as referenced in Appendix A and Appendix E shall mean the State of New York and the Trust.

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. _G4698_
1.3 Contract Date: The date of the Contract is as of January 29, 2016
1.4 Commencement Date: January 29, 2016
1.5 Term: Up to five (5) one year contracts, annually renewed in the sole discretion of the Trust
1.6 Maximum Contract Price: $_______
1.7 Project: Hudson RiverStage Concert Production Services
1.8 M/WBE Participation Combined Goal: 49%
2. **Parties**

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

2.2 The Contractor: _______, a _________ corporation, with an office at:

[Insert Street Address]

[Insert City, State and Zip Code]

Federal Tax ID# [Insert]

2.3 Contractor’s Contact Person: [Insert Name and Title]

2.4 Trust’s Contact Person: Thomas H. Lindon, VP

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, 2nd Floor

New York, N.Y. 10014

Attn: General Counsel

with a copy to:

Hudson River Park Trust

353 West Street, Pier 40, 2nd Floor

New York, N.Y. 10014
3.2  **Notices to the Contractor:**

[INSERT NAME].

[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.
IN WITNESS WHEREOF, the parties hereto have executed the Contract as of the date first above written.

HUDSON RIVER PARK TRUST

By: ____________________________
[Insert name of company officer]
[Insert title of company officer]
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 Contractor 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 Contractor 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 Contractor and such determination shall be final and binding on the Contractor.

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 Contractor 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 Contractor hereunder shall in no way relieve the Contractor of responsibility for such materials.

3. Contractor Cooperation. The Contractor 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 Contractor with regards to the Contract and the Contractor's Services and obligations hereunder. The Contractor 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 Contractor and who shall be the Trust's normal point of contact with the Contractor on matters relating to such Services. Such individual shall be replaced upon the Trust's written request. The Trust and Contractor may from time to time change this designation by notification to the other party.

5. Approval of Subcontractors and Subcontracts. The Contractor 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 Contractor 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 Contractor 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 Contractor and Subcontractors. It is expressly understood and agreed that all Subcontractors engaged by Contractor hereunder shall at all times be deemed engaged by the Contractor and not by the Trust. The Contractor shall cause any Subcontractor employed by the Contractor 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 Contractor ("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 Contractor;

(c) the Subcontractor shall indemnify, defend and hold harmless the Trust, its agents, employees, members, directors, officials and officers 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 Contractor’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.

(i) If the Contractor fails to include the provisions set forth in this Subsection 5 in any Subcontract, the Contractor 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. Contractor as Independent Contractor. Notwithstanding any other provisions of the Contract, the Contractor’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 Contractor 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. Contractor to Obtain Permits. Except as otherwise instructed in writing by the Trust, the Contractor 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 Contractor in connection with the Contract.

8. Contractor to Comply with Legal Requirements. The Contractor, 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 Contractor 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 Contractor or Subcontractors, the Trust and the Contractor 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 Contractor, and the Contractor agrees to accept in full consideration for the Services, and for all expenses of the Contractor in connection therewith, including Subcontractors’ costs, 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 required under Appendix E and, where applicable, the time sheets and/or certified payroll reports of the Contractor's staff. Each requisition submitted to the Trust by the Contractor 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 Contractor 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 Contractor, with the Trust’s prior approval, may exceed the maximum payment allocated to a particular portion of the Services if the Contractor 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 Contractor 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 Contractor more than the Maximum Contract Price.

2. Acceptance of Final Payment/Release and Discharge. The acceptance by Contractor 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 Contractor, 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 Contractor performs Services that involve maintenance, repairs or minor construction, the Contractor 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 Contractor’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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor represents and agrees that:

(i) recognizing that time for completion of the Services is of the essence, the Contractor 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 Contractor, its personnel assigned to perform the Services, and any Subcontractors engaged by the Contractor in the performance of the Contractor’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 Contractor to replace assigned personnel at any time; the Contractor’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 Contractor, 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 Contractor 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 Contractor and the Trust with regards to the Services to be performed hereunder;
(v) The Contractor 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 Contractor 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 Contractor 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 Contractor 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. Contractor represents and warrants that:

(a) Contractor 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 Contractor’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) Contractor 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 Contractor’s work.

(c) Contractor 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 Contractor to have any interest, direct or indirect, in the Contract or the proceedings thereof.

(d) Contractor 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 Contractor shall take such action in enforcing such provisions as the Trust may direct, or, at Contractor’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. Intentionally Omitted

2. Disputes. If at any time the Contractor 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 Contractor has knowledge of the occurrence of a Dispute, the Contractor 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 Contractor 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 Contractor shall represent that it has complied with the condition precedent in its initial notice and pleading in any legal proceeding instituted by the Contractor 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 Contractor 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 Contractor agree in writing to continue the Contract upon the same or newly negotiated terms, and the Trust and the Contractor execute a “Release of Claims” with regards to the period of suspension or delay. The Contractor shall resume such services upon the date the Trust may thereafter specify in writing upon reasonable notice to Contractor. If the Contract is delayed, suspended or terminated, the Contractor shall be entitled upon such delay, suspension or termination to payment of that portion of the fee that have not been paid to Contractor commensurate with the Services actually and satisfactorily performed by the Contractor prior to the date of delay, suspension or termination. The Contractor 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 Contractor. In the event of such termination, the Trust shall pay the Contractor for services actually and satisfactorily performed by Contractor up to the date of such termination plus Trust-approved out-of-pocket expenses incurred by the Contractor. The Contractor agrees to cause any agreement or contract entered into by the Contractor with any Subcontractors to contain a termination for convenience clause consistent with the provisions of this Subsection 4.

5. Default by Contractor. 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 Contractor 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 Contractor has not promptly prosecuted the curing of such default;
(c) the Contractor 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 Contractor shall prove to be untrue in any material respect; or
(e) the Contractor shall make a general assignment for the benefit of its creditors, or a receiver or trustee shall have been appointed on account of Contractor's insolvency, or Contractor otherwise shall be or become insolvent, or an order for relief shall have been entered against Contractor 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 Contractor. In the event of such termination, the Trust, without waiving any such remedy or claims, (including consequential damages) shall pay the Contractor that portion of the fee, not paid to the Contractor, commensurate with those Services actually and satisfactorily performed by the Contractor up to the date of such termination, provided, however, that the Trust shall deduct from any amounts due to the Contractor 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 Contractor agrees to cause any agreement or contract entered into by the Contractor 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 Contractor 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 Contractor relating to the Services to the extent same are cancelable or assignable by the Contractor.

(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 Contractor 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 Contractor or Subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by Contractor pursuant to the Contract. Contractor 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 City State Parks, Recreation and Historic Preservation Commission, the New York State Department of Environmental Conservation, the City of New York, the New York City Department of Parks and Recreation and each their respective directors, officers, agents and employees (collectively the “Indemnities”) 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 Contractor or its Subcontractors, or their agents, employees, servants, independent contractors and subcontractors from any claims against, or liability incurred by the Indemnities by reason of claims against Contractor 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 Indemnities for reasonable attorney’s fees incurred in connection with the above. Contractor shall be solely responsible for the safety and protection of all its Subcontractors, or the employees, agents, servants, independent contractors, or subcontractors of Contractor 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 Contractor, 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 Contractor, at its sole cost and expense, shall purchase and maintain the insurance described in Appendix D.

ARTICLE VI
DOCUMENTS, CONFIDENTIALITY AND RECORDS

1. Ownership of Documents.

(a) All originals, negatives, and electronic copies of all plans, drawings, reports, photograph, charts, URLs, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Contractor 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 Contractor. If
the Documents are altered by the Trust or its agents, the Trust holds the Contractor harmless from any
liability for such use.

(b) The Contractor 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
Contractor’s “Underlying Intellectual Property” (as defined hereinafter), without the prior written approval
of the Trust, except that the Contractor may retain copies of such reports and other documents for
general reference use.

(c) The Contractor’s Underlying Intellectual Property means the analytical concepts, approaches,
methodologies, or formats developed by the Contractor’s staff, and other materials not prepared for
delivery to the Trust and also includes any derivatives, improvements, enhancements or extensions of
the Contractor’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 Contractor 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 Contractor’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.
(iv) The Contractor 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 Contractor’s infringement or unauthorized use of any such material or property.

2. Confidentiality. The Contractor 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 Contractor and the Trust and the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor to refund such fee. In addition, the Contractor shall be responsible for any audit costs
incurred by the Trust as a result of such non-compliance.
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 Contractor, 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. Contractor hereby waives any and all rights and remedies to which Contractor might otherwise be or become entitled to because of any wrongful act or omission of the Trust saving only Contractor’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 Contractor and the Trust are involved in a legal proceeding relating to any part of the Contract, Contractor 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 Contractor to have materially breached the terms of the Contract; or (2) Contractor initiates said legal proceedings against the Trust and/or its directors, officers, or employees and Contractor 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 Contractor’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 Contractor 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 Contractor 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 Contractor.
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

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
e-mail: 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
e-mail: 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

The Trust envisions two (2) festival-style concerts during June, July and/or August of each year during the Term and any renewals, incorporating a musical theme and related food element. Examples of musical themes/styles that HRP would like to pursue for the 2016 season are “soul” and “Americana”. However musical genres considered suitable for future Hudson RiverStage Festivals can include rock, pop, soul, hip-hop, world, reggae, folk, etc. HRPT reserves the right to approve all talent. All concerts should feature at least three opening performances which fit into the overall theme of the event. All talent must be confirmed by not later than April 1, 2016. Expected attendance is at least 5,000 people per show, subject to venue capacity based on approved site plans. Hudson RiverStage will take place on Saturday afternoons. Specific dates will be determined at a later date at HRPT’s sole discretion.

Consultant shall:

- Negotiate with, book and finalize performances of local, regional and national talent.
- Manage all talent contracts, including payments and coordination and fulfillment of any talent contract riders, including travel and technical requirements, and on-site hospitality.
- Provide promotional materials, in a timely fashion, to HRPT event’s publicist and marketing department.
- Coordinate promotion of Events with local, regional and national news and media outlets
- Arrange pre-Event promotional appearances with talent (when possible).

A) With respect to the Concerts, the Consultant shall be able to

- Specify, source and procure all event-related equipment and services including staging, sound, lighting, tents, trailers, tables, chairs, toilets, power source(s), and communications equipment. All equipment must be installed on a temporary basis.
- Provide on-site management, provide all necessary production and operations staff, and oversee technical coordination of shows.
- Oversee set-up, operation and breakdown of all staging, audio and lighting.
- Generate production schedule and run-of-show timeline, which must be provided to HRPT in a timely fashion for approval.
- Manage load-in and load-out.
- Coordinate with HRPT to hire an additional clean-up crew.
- Design site layout, with final approval by HRPT. Site layout should include but is not limited to the following components: stage, backstage, amenities (i.e. food,
restrooms), standing/seating areas, VIP area, emergency lanes, barricade placement, lighting and audio placement, and front gate configuration.

- Coordinate with HRPT staff and other agencies/officials as required, on all site usage and public safety issues.
- Coordinate with HRPT regarding security staffing, site security plan and crisis management procedures.
- Obtain all necessary permits.
- Submit a Certificate of Liability Insurance reflecting a minimum of $2,000,000 liability coverage and naming, amongst others, HRPT, the State of New York and the City of New York and their respective agencies, directors, and employees as additional insureds by written endorsement pursuant to the insurance requirements provided with this Discretionary Procurement. A complete list of required liability and other insurance coverage is detailed further in the attached Appendix D.

B) With respect to the food concessions, Consultant shall:

- Work with HRPT to coordinate onsite concessions, including hiring, staffing and management of bar vending area.
- Negotiate and book no less than three (3) reputable New York area restaurants – with the option to book four (4) restaurants should Event logistics allow for it. Restaurants should provide food at the Event to consumers for a nominal fee (not to exceed $15.00 for a full meal including sides). HRPT reserves the right to approve all restaurants, menus and pricing.
- Details of the restaurant negotiations to include: each restaurant shall sign a vending agreement with HRPT, restaurants will keep the proceeds from all Event sales but will provide HRPT with a concession fee in advance of the Event. The amount of the concession fee will be determined at a later date in an amount that is mutually agreed upon. We look for your recommendations on a fair rate for this.
- Consultant will be responsible for all event staff meals and beverages, excluding HRPT staff.
- Arrange and budget for VIP food and beverage with HRPT staff approval.
- Secure all permits necessary for the execution of the Event, including but not limited to those permits issued by the New York City Department of Health (health permit/caterers license), and provide copies to HRPT. Producer must accept any vendors independently obtained by HRPT.

HRPT is interested in receiving proposals that intend to have restaurants at the Events. Ideally, the restaurant vendors will offer cuisines that thematically match the talent on the stage.
C. Sponsorship/Marketing

The Trust may develop marketing partnership agreements with certain third parties pursuant to which particular commercial brands are designated as endorsed products or services of the Trust or the Park. If and to extent the Trust enters into such marketing partnership agreements, the Trust may require the Consultant to sell the specific products or services so identified in such agreements if the Consultant sells goods or provides services in that product or service category. Under such circumstance, and if so directed by the Trust, the Consultant shall be required to purchase said products, or secure said services, from specified product distributors or service providers which are marketing partners of the Trust. Marketing partnership agreements may require exclusive use of a brand/product.
APPENDIX D

INSURANCE

(a) Within ten (10) days of the date hereof, the Contractor shall provide the Trust with Certificates of Insurance and, if requested by the Trust, copies of the insurance policies required hereunder evidencing compliance with all requirements contained in this Appendix D. Such Certificates and policies shall be of form and substance acceptable to the Trust. Acceptance and/or approval by the Trust do not, and shall not, be construed to relieve Contractor of any obligations, responsibilities or liabilities under this Appendix D.

(b) All insurance required by this Appendix D shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State and acceptable to the Trust; shall be primary and non-contributing to any insurance or self-insurance maintained by the Trust; shall be endorsed to provide written notice be given to the Trust at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; and shall be sent to:

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

(c) All insurance required by this Appendix D shall include the following as “Additional Insured”: Hudson River Park Trust, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City of New York, and the New York City Department of Parks. Additionally, the Hudson River Park Trust shall be named a Certificate Holder on the Contractor’s insurance policies; the Trust offices are located at Pier 40 - 353 West Street, Suite 201, New York, NY 10014 - Attn: Insurance Coordinator. Additional Insured endorsement shall be on form CG 20 10 11 85 or its equivalent, or may be obtained through a combination of CG 20 10 07 01 and CG 20 37 07 01. Additional Insured coverage must apply to direct and vicarious liability to both on-going and completed operations.

(d) Contractors shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. the Trust must approve deductibles and self-insured retentions. Such approval shall not be unreasonably withheld.
(e) Contractor shall require that any Subcontractors or sub-subcontractors hired by the Contractor carry
insurance with the same limits and provisions provided herein unless approved by the Trust on a case-by-case
basis.

(f) 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 Best’s Insurance Report.

(g) Contractor shall cause all insurance to be in full force and effect as of the commencement date of the
Contract and to remain in full force and effect throughout the Term of the Contract and as further required by this
Appendix D. Contractor 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.

(h) Not less than thirty (30) days prior to the expiration date or renewal date of the policies, Contractor shall
supply the Trust with updated replacement Certificates of Insurance and amendatory endorsements.

(i) Contractor, 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 coverage with a limit of not less than $2,000,000.00 per
occurrence. Such liability shall be written on the CG 00 01 12 07, must include a broad form
comprehensive general liability endorsement, or substitute form providing equivalent coverage
and shall cover liability arising from premises operations, independent contractors, products-
completed operations, broad form property damage, personal and advertising injury, cross
liability coverage, blanket contractual liability (including tort liability of another assumed in a
contract), and extended bodily injury coverage, fire legal liability (property), and explosion,
collapse & underground coverage; If such insurance is on an aggregate limit, it shall apply
separately on a per job, per location basis;

2. As applicable for Construction related activity, an Owners and Contractor’s Protective Liability
Policy issued to, and in the name of Hudson River Park Trust with limits of not less than
$1,000,000.00 per occurrence and $1,000,000.00 in the aggregate. Such liability shall be
written to include CG 29 35–Additional Insured–State or Governmental Agency or Subdivision
or Political Subdivision–Permits or Authorizations.

3. Workers Compensation, Employers Liability, Disability Benefits as required by New York State.
If employees will be working on, near or over navigable waters, US Long Shore and Harbor
Workers Compensation Act endorsement must be included. If applicable, Jones Act Insurance
with a limit not less than ($1,000,000. as required); proof of Workers Compensation coverage
must be presented on the NYS WCB C-105.2 or equivalent form, proof of Disability Benefits
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 issued by the NY State Workers Compensation Board: http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp

c. Proof of Employer Liability is required.

(4) Comprehensive Business Automobile Liability Insurance with a limit of not less than $1,000,000.00 each accident. Such insurance shall cover liability arising out of any Automobile, Specialty Use vehicle or Mobile Equipment; including owned, leased, hired and non-owned automobiles; shall cover bodily injury, property damage, medical payments and uninsured motorists or operators.

a. All operators of Hudson River Park Trust vehicles or mobile equipment will be required to submit a NYSDMV MV-15GC form for evaluation by Hudson River Park Trust staff prior to being authorized to operate Trust Vehicle’s, all drivers will then be entered into the Hudson River Park Trust’s NYSDMV License Event Notification System Account. [As applicable]

b. Damage to HRPT vehicles caused by authorized Permittee’s staff shall be reimbursed to cover the full extent of damage. HRPT vehicles and property shall be repaired or replaced to full working condition resulting from any cause of loss due to the operation by Permittee’s staff. [As applicable]

(5) As applicable for temporary structures or temporary construction related activity, if during the performance of any construction work, restoration or alteration, "All Risk" Builder’s Risk completed value form covering the perils insured under the ISO special causes of loss form extended coverage, including fire, vandalism, malicious mischief, collapse, water damage, and transit and theft of building materials, with deductible reasonably approved by the State, in non reporting form, covering the total value of work performed and equipment, supplies and materials at the location of the job as well as at any off-site storage location used with respect to the Project. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation. The Parties acknowledge that the services to be provided in connection to structures are assemblage only and not considered construction for the purposes of this contract;

(6) As applicable, if the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, or if Permittee intends to use Porto-Sans during Load In, Event Days and Load Out, the Permittee shall maintain, or if subcontracting these services shall certify that subcontractor maintain, in full force and effect throughout the term hereof, Pollution Legal Liability insurance with limits of not less than $3,000,000.00 providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against HRPT arising from Permittees work;
a. If coverage is written on a claims-made policy, the Permittee warrants that any applicable retroactive date precedes the effective date of this Agreement; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than 2 years from the time work under this Agreement is completed;

b. If the Agreement includes disposal of materials from the job site, the Permittee must furnish HRPT with evidence of pollution legal liability insurance in the amount of $3,000,000.00 maintained by the disposal site operator for losses arising from the disposal site accepting waste under this Agreement;

(7) As applicable for Professional Services (Architect or Engineering services, or other professional services hired by Permittee for related activity), or if providing professional services, Permittee shall maintain, or if subcontracting professional services shall certify that subcontractor maintain, Errors and Omissions liability insurance with coverage of not less than $1,000,000 per claim and as an aggregate annual limit. Policy limits must be adequate to cover both the cost of defense and damages arising out of any resulting judgments and court costs;

   a. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Agreement and man not exclude opinions, nonperformance, negligent oversell, fraud, breach of contract, allegations of copyright infringement and intellectual property infringement, advertising injury, vicarious liability and personal injury – against claims of libel, slander, and invasion of privacy.

   b. If coverage is written on a claims-made policy, Permittee warrants that any applicable retroactive date precedes the effective date of this Agreement; and that continuous coverage will be maintained, or an extended period exercised for not less than 3 years; and

(8) As Applicable, Permittee shall maintain, or if subcontracting these services shall certify that subcontractor maintain, Liquor Liability (Caterers, Special Event) insurance with a limit of not less than $2,000,000.00 per occurrence. Such Insurance shall provide coverage at a minimum for loss of life, bodily injury, property damage, and third-party liability, such insurance shall be written on the CG 21 50 09 89 or substitute form providing equivalent coverage and shall cover liability arising out of the sale or distribution of alcoholic beverages; and shall cover losses arising from serving or furnishing alcoholic beverages for a charge/financial gain to any person, or serving or furnishing alcoholic beverages without a charge. If a license is legally required for such activity by state and/or local law, Permittee is required to provide proof of authorization.

(9) As Applicable, Permittee shall maintain, or if subcontracting these services shall certify that subcontractor maintain, Caterers Liability with a limit not less than $1,000,000.00 per occurrence. Covering Loss due to liability from food services, negligent handling of food, causing food poisoning or transmitting a disease, food contamination endorsement.

(j) Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage, or destruction by fire or other insured casualty a waiver of in the insurer’s right of subrogation against the Trust or any of the other additional insured identified above, or if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against the Trust or other such additional insured identified above or (ii) any other form of permissions for the release of the Trust or other such additional insured identified above.
APPENDIX E

MWBE REQUIREMENTS

Your MWBE Utilization and Reporting Responsibilities

Under Article 15-A

The New York State Contract System ("NYSCS") is your one stop tool compliance with New York State’s MWBE Program. It is also the platform New York State uses to monitor state contracts and MWBE participation.

GETTING STARTED

To access the system, you will need to login or create a user name and password at https://ny.newnycontracts.com. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to your contract’s project manager. For verification, in the email, include your business name and contact information.

VENDOR RESPONSIBILITIES

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MWBE percentage goals stated in your solicitation, incentive proposal or contract documents. NYSCS is the tool that New York State uses to monitor MWBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process, but to access them, you need to first be registered within the NYSCS. Once you log onto the website, click on the Help & Support >> link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on all features of the NYSCS. You may also click on the HelpAndTools icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the “Knowledge Base” through the Forum link, and submit feedback to help improve future enhancements to the system. Technical assistance is always available through the Contact Us & Support link on the NYSCS website (https://ny.newnycontracts.com).
For more information, contact your project manager.
APPENDIX E

MWBE REQUIREMENTS

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN
WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

A. The Trust is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") 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 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. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for 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") or other applicable federal, state or 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 withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix E or enforcement proceedings as allowed by the Contract.

II. Contract Goals

A. For purposes of this procurement, the Trust hereby establishes an overall goal of 49% for Minority and Women-Owned Business Enterprises ("MWBE") participation, based on the current availability of qualified 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 New York State Certified MBWEs found at the following internet address: https://ny.newnycontracts.com.

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

C. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR §142.8, the Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Trust for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

A. The Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. The Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and the 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 Subcontractor does not have an existing EEO policy statement, the Trust may provide the Contractor or Subcontractor a model statement (see Appendix E-1 – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).

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. Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. INTENTIONALLY OMITTED

E. 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.

IV. MWBE Utilization Plan

A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan, by submitting evidence thereof 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. See Appendix E-2 for additional information.

B. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Appendix E.

C. The Contractor further agrees that a failure to submit and/or use 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 of the Contractor non-responsiveness.

V. Waivers

A. For Waiver Requests, the Contractor should use the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to the Trust.

B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Trust shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

C. If the Trust, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports 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. Quarterly MWBE Contractor Compliance Report

The Contractor is required to submit a Quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that Contractor may arrange to provide such evidence via a non-electronic method to the Trust by the 10th day following each end of quarter over the Term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation
A. Where the Trust determines that the Contractor is not in compliance with the requirements of the Contract 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 shall be calculated as an amount equaling 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 by the Trust unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Trust.
APPENDIX E-1

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

MWBE 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 ___________________________________________________________________________________.

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 MWBE contractor associations.
2. Request a list of State-certified M/WBEs from AGENCY 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 MWBE contractors to enhance their participation.
5. Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Consultant will also maintain records of actions that its subcontractors have taken toward meeting MWBE 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 bonding and other credit requirements are waived or appropriate alternatives developed to encourage MWBE participation.

(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 Consultant shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Consultant 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

49% Minority and Women’s Business Enterprise Participation

________% Minority Business Enterprise Participation

________% Women’s Business Enterprise Participation
____________________________________________
(Authorized Representative)

Title: ______________________________________

Date: ______________________________________
COMPLIANCE WITH THE STATE UTILIZATION MANAGEMENT PROGRAM

I. Background

A. The NYSCS manages the State Utilization Management Program (“SUMP”) to track the advertising, reporting and compliance of MWBE contracts. All contracts involving the purchase of commodities/services greater than $25,000 and construction contracts greater than $100,000 must be entered and tracked through SUMP. The MWBEs utilization goal is applicable to subcontracted services, materials, equipment and supplies.

B. Awardees must register and create a SUMP account to submit their MWBE utilization plan, request subcontractors (if required), record payments to subcontractors, and communicate with the Trust’s project manager throughout the term of the contract.

B. An awardee may utilize SUMP for the outreach of prospective MWBE subcontractors or to obtain a list of certified MWBE subcontractors that specialize in specific trades.

C. Upon contract award, an awardee must enter its MWBE utilization plan into SUMP. The awardee may contact the Trust and arrange to meet with a Trust representative at the Trust offices where the awardee will log into SUMP and the Trust representative will manually enter the awardee’s approved utilization plan into SUMP. The awardee will be solely responsible for the information and MWBE commitments identified in the utilization plan.

D. As a condition precedent to contract execution, the awardee must provide the Trust with: (a) documentation that it will meet the 49% MWBE participation goal or (b) appropriate backup and good faith efforts documented to support the grant of an MWBE waiver. The Trust will apply for this waiver on behalf of the awardee; however, the awardee is responsible for justifying the waiver exception and maintaining the approved participation goal. Acceptable documentation to support the granting of a waiver includes: a SUMP Vendor List with view log and outreach statistics; relevant supporting documentation justifying the “good faith efforts” made to comply with the contract MWBE goals, which may include fax or email solicitations and explicit responses, or documentation that a targeted firm is no longer doing business.

E. The Trust will provide assistance to awardees with regards to the MWBE program in general and the processing of information into SUMP.

II. Compliance Reporting

A. Prior to the commencement of contract services, the awardee must provide the Trust with a material purchase order, copy of a subcontract, or a letter from each MWBE subcontractor confirming an award (or negotiations of an award) of a subcontract.

B. SUMP utilizes a “Total Dollar Value Utilization Report” to track MWBE participation throughout the term of the contract. The Total Dollar Value Utilization Report must be updated and submitted with each payment made by the Trust to the awardee. Payments should indicate the dollar
amount of payments made to MWBEs and include cancelled checks or signed waivers from MWBE subcontractors for each payment period of reported activity. The awardee’s failure to update the report, or provide appropriate backup, may be result in a non-compliance determination. The Trust will provide the awardee appropriate training and support to facilitate the awardee’s performance of these tasks. Alternatively, the Trust may, on behalf of the awardee, enter the payment information into SUMP.

C. The Trust may notify subcontractors of payments made by the Trust to the awardee or seek confirmation of payments that awardee claims to have made to MWBE subcontractors.

D. New subcontractors may be added during the term of the contract, as required. If the MWBE percentage goal is reduced during the term of a contract (by a reduction in scope or by the removal of an MWBE subcontractor), the awardee must either replace that MWBE with a similar MWBE or seek a waiver as provided in Section I.D above.

III. Contract Closeout

Prior to contract closeout, the awardee must supply the Trust with final lien waivers from each subcontractor that supplied goods and/or services for the project. The dollar amounts indicated on each “MWBE Waiver and Lien Release” (supplied by the Trust) must meet or exceed the projected participation goal indicated on the most recently approved MWBE utilization plan; otherwise, the awardee must seek a waiver as provided in Section I.D. above.