

PROMPT PAYMENT POLICY

(statutory authority: Public Authorities Law, §§ 2880; Hudson River Park Act, 1998 Laws of New York, ch. 592, § 10.4)

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§ 1. Statement of policy and purpose.

The Hudson River Park Trust is a body corporate and politic, constituting a public benefit corporation, established by the Hudson River Park Act, chapter 592 of the Laws of 1998 of the State of New York. This prompt payment policy is adopted pursuant to section 2880 of the Public Authorities Law, requiring each public benefit corporation to promulgate rules and regulations detailing its policy with respect to making prompt payment to contractors.

§ 2. Definitions.

For the purposes of this Part, the following terms shall have the following meanings unless the context shall clearly indicate otherwise:

- (a) *Trust* shall mean the Hudson River Park Trust.
- (b) *Contract* shall mean an enforceable agreement entered into by the Trust and a contractor, including purchase orders.
- (c) *Contractor* shall mean any person, partnership, private corporation or association providing or performing any of the following pursuant to a contract:
 - (1) selling materials, equipment or supplies or leasing property or equipment to the Trust;
 - (2) constructing, reconstructing, rehabilitating or repairing buildings, streets or other improvements for or on behalf of the Trust; or
 - (3) rendering or providing services to the Trust.
- (d) *Designed payment office* shall mean that department within the Trust to which a proper invoice is to be submitted by a contractor; unless otherwise specified, the designated payment office shall be:

Office of the Treasurer
Attn: Accounts Payable
Hudson River Park Trust
Pier 40, 2nd Floor
West Street @ West Houston Street
New York, N.Y. 10014

- (e) *Prompt payment* shall mean payment of a debt due and owing by the Trust pursuant to a contract before interest accrues thereon pursuant to the provisions of this Part.
- (f) *Proper invoice* shall mean a written request or invoice for contract payment setting forth the description, price and quantity of goods, property or services provided by a contractor, such request or invoice being both in accordance with the terms of the contract and in such form, and supported by such other substantiating documentation, as the Trust may reasonably require.
- (g) *Receipt of a proper invoice* shall mean either:
 - (1) the date on which a proper invoice is received by the designated payment office; or
 - (2) the date on which the Trust receives the purchased goods, property or services covered by the proper invoice, whichever is later.
- (h) *Set-off* shall mean the reduction by the Trust of a payment due to a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the Trust.

§ 3. Applicability.

This Part shall apply to all contracts entered into by the Trust on or after April 5, 1999.

§ 4. General Provisions

- (a) *Payment request procedure.* Contractors owed money by the Trust shall deliver a proper invoice to the designated payment office. The designated payment office will log the receipt date of each invoice, and send it to the department unit within the Trust that received the goods, property or services from the contractor for review and verification of the contractor's performance in accordance with the contract. Contractors with contracts which provide for payment at specific dates or intervals shall also be required to provide a proper invoice which certifies that the obligations required under such contract have been performed prior to such date(s) or during such interval(s), and review and verification of the work of these contractors will take place upon receipt of such proper invoice; payment shall be made in accordance with the terms of such contracts.
- (b) *Prompt payment schedule.* The schedule of the time in which the Trust will make prompt payment under a contract is as follows:
 - (1) Except as provided in paragraphs (2) or (3) of this subdivision, payment will be made by the Trust within 30 calendar days, excluding legal holidays, after receipt of a proper invoice.
 - (2) For contracts which provide for payment at one or more specific dates or intervals, payment will be made in accordance with the terms of such contracts, but interest shall only be payable if payment is not made within the time provided in paragraph (1) of this subdivision.
 - (3) This schedule will not apply in those instances where payment is being delayed by reason of any of the exceptions listed in subdivision (d) of this

subpart, or where the time in which to make payment is being tolled for any of the reasons listed in subdivision (e) of this subpart, in which cases the time for payment shall be as there provided.

(c) *Interest computation.*

(1) If the Trust fails to make payment in accordance with the prompt payment schedule set forth in subdivision (b) of this subpart, the Trust will pay interest to the affected contractor at the rate equal to that set by the State Tax Commission for corporate taxes pursuant to section 1096(e) of the Tax Law.

(2) The Trust shall not be liable for payment of interest when such interest as computed pursuant to the provisions of paragraph (1) of this subdivision is less than ten dollars.

(d) *Extension of payment time.* Any of the following facts, conditions or situations are determined by the Trust to be exceptions to the prompt payment schedule set forth in subdivision (b) of this subpart, and to justify extensions of the time by which payment must be made (the amount of time of such extension being as established by the Trust's treasurer consistent with this Part, with notice provided to the contractor):

(1) statutory or contract provisions requiring an inspection period or an audit prior to payment in order to determine the resources applied or used by a contractor in fulfilling the terms of the contract;

(2) the absence of a State appropriation which is necessary to authorize payment;

(3) a requirement of Federal government examination and approval of a proper invoice prior to payment;

(4) extraordinary delay between the time of the provision of goods, property or services by a contractor and the receipt of a proper invoice by the Trust;

(5) failure by a contractor to submit documents required by the contract or reasonably required by the Trust prior to payment;

(6) time is taken in the processing of an invoice by the State Department of Taxation and Finance, the State Division of the Budget, the Office of the State Comptroller, the City of New York Office of Management and Budget, the Office of the New York City Comptroller, or any other entity external to the Trust that is or may be required by statute, regulation or contract to approve or process Trust payments; or

(7) such date by which contract payment must be made is modified in accordance with subdivision (e) of this subpart.

(e) *Defects or improprieties.*

(1) The following facts or conditions toll the prompt payment schedule set forth in subdivision (b) of this subpart:

(i) a reasonable belief by the Trust in the existence of any defect(s), including any incompleteness or failure of compliance with the terms of the contract, in or with respect to the goods, property or services delivered;

(ii) a reasonable belief by the Trust in the existence of any defect(s) in the invoice; or

(iii) a reasonable belief by the Trust in suspected impropriety of any kind.

(2) In order to toll the prompt payment schedule without penalty, the Trust has 15 calendar days after receipt of an invoice to send a contractor notification of such defects or improprieties. Trust notification shall be by letter to the contractor setting forth any such defect or impropriety in reasonable detail, sent to the address indicated for notices under the contract or, if no such address is provided, sent to the address set forth in the invoice; provided that, in the event that the Trust fails to so notify the contractor within such 15 days, the sole effect of such failure to so notify the contractor shall be that the number of days allowed for payment shall be reduced by the number of days between such 15th day and the date of the Trust's transmitting such notification. In the event that the Trust fails to provide reasonable grounds for its contention that any such defect or impropriety exists, the date by which contract payment shall be made shall be calculated from the date of receipt of an invoice.

§ 5. Annual Report.

- (a) The Trust shall prepare an annual report on the scope and implementation of this prompt payment policy. The report shall include, but not be limited to, the following:
- (1) a listing of the types or categories of contracts which the Trust entered into during the 12-month fiscal year covered by the report with an indication whether each such type or category of contract was subject to this prompt payment policy, and if it was not, the reason(s) why not;
 - (2) the number and amounts of interest payments made for contracts, arranged according to each such type or category;
 - (3) the number of interest chargeable days, and the total number of days taken to process each late contract payment; and
 - (4) a summary of the principal reasons why such late payments occurred.
- (b) Within 90 days after the completion of each such fiscal year, copies of this annual report shall be filed with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.
- (c) Copies of its annual report shall be made available to the public upon reasonable request at the Trust's main office.

§ 6. Miscellaneous provisions.

- (a) *Amendment.* The Trust shall have the power to amend this by promulgating amended rules and regulations at any time, and within 30 days of the adoption of any such amendments hereto, the Trust shall file copies with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.

- (b) *Contract incorporation.* The policy statement in effect at the time that a contract is entered into is hereby incorporated into and made a part of that contract.
- (c) *Public access.* The Trust shall make copies of this policy statement available to the public upon reasonable request at the Trust's main office. The Trust shall also provide a copy of this policy statement to each contractor at or prior to the time a contract is entered into.
- (d) *Inapplicability.* This policy is not applicable to payments due and owing by the Trust:
 - (1) under the eminent domain procedure law;
 - (2) as interest on judgments rendered by a court against the Trust pursuant to any other provision of law than contained in this subpart;
 - (3) to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government including, but not limited to, counties, cities, towns, villages, school districts, special districts, or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity; or
 - (4) in situations where the Trust exercises a legally authorized set-off against all or part of a payment due a contractor.
- (e) *Court action or other legal processes.* The Trust is under no liability to pay interest pursuant to this policy for any period after a contractor has filed a claim, given notice of an intention to file a claim or commenced legal action seeking any payment of interest; interest during such period shall only be paid as directed by the court in accordance with such other provisions of law as may be applicable.
- (f) *Interpretation.* This Part shall be interpreted consistent with and to fulfill the purposes of section 2880 of the Public Authorities Law.