



**REQUEST FOR PROPOSALS
FOR
SUBMERGE FESTIVAL EQUIPMENT
RENTAL AND EVENT SERVICES
ARTICLE 15-A DISCRETIONARY
PROCUREMENT
CONTRACT NO. G5062**

RFP Issued: February 13, 2019

Submission Deadline: March 12, 2019

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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.

Respondents are required to disclose any conflict of interest(s) that may preclude them from participating in this solicitation, including participation in other Project contracts.

Subject to the availability of funds and the responses to this RFP, the Trust will select one or more consultants(s) to provide the Services. The consultants(s) shall be experienced in all aspects of the Services. The consultants(s) will commence the Services upon a written Notice to Proceed from the Trust or upon execution of the Contract by the consultants(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.**

2. RFP SUMMARY

2.1 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.

2.2 Specific Terms, Deadlines and Requirements

2.2.1 Project Information.

2.2.1.1 The Project: SUBMERGE Festival Equipment Rental & Event Services

2.2.1.2 The Project Site: Hudson River Park’s Pier 84

2.2.1.3 Type of Services: Festival equipment rental, installation, and breakdown and event production (the “Services”), as more specifically described in the Scope of Services (Appendix B of the Contract Draft)

2.2.2 The Consultant:

2.2.2.1 Type: Event Production

2.2.2.2 Minimum Experience Required: The Consultant must meet the following requirements: New York State certified MWBE and SDVOBs having three years of experience with outdoor events in New York City.

2.2.3 Contract Information

2.2.3.1 Anticipated Contract Date: April 15, 2019

2.2.3.2 Anticipated Contract Term: Three years

2.2.4 Questions Regarding RFP

2.2.4.1 Question/Clarification Submission Deadline:

(i) Date: February 26, 2019

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

2.2.4.2 Permitted Method: At Pre-Proposal Meeting, if one is conducted; otherwise in writing to Recipient at Recipient's Email Address as listed in Section 2.2.6 below only.

2.2.4.3 Question Response Date: March 5, 2019

2.2.4.4 Answers to Questions Available at www.hudsonriverpark.org (the "Website")

2.2.5 Proposal Submission Requirements

2.2.5.1 Label on Envelope:

2.2.5.2 Number of Sets of Proposals to be submitted: Three (3) hardcopies and one (1) electronic copy on USB or CD.

2.2.5.3 Submission Deadline:

(i) Date: March 12, 2019

(ii) Time: 3:00 pm

2.2.5.4 Method: By Hand, Express Mail or other nationally-known overnight courier

2.2.5.5 Submit to the following Recipient:

Carrie Roble, Director of Science & Stewardship

2.2.5.6 Recipient's Mailing Address:

Hudson River Park Trust
 Pier 40, 2nd Floor
 353 West Street, Rm. 201
 New York, NY 10014
 Attn: Carrie Roble, Director of Science & Stewardship

2.2.5.7 Recipient's E-mail address: croble@hrpt.ny.gov**2.2.6 M/WBE Participation Goal: 30%**

2.2.7 SDVOB Participation Goal: There is no SDVOB participation goal for the Contract; however, non-SDVOB contractors are encouraged to use SDVOBs for any subcontracting opportunities. SDVOB contractors are encouraged to participate in this RFP.

2.2.8 Selection Criteria The Trust will base its selection upon the following criteria:

- 40% The Respondent's experience in providing services similar to the Scope of Services described herein; the quality of the Respondent's management, reputation, and references; favorable history, if any, in contracting or doing business with the Trust.
- 30% Lump sum cost proposal (detailed in the Fee Schedule).
- 10% Quality of the written proposals
- 10% The Respondent's proposed plans for encouraging participation by minority and women-owned business enterprises in connection with the Services, including the Respondent's M/WBE Utilization Plan.
- 10% Ability to meet the Contract launch dates

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 croble@hrpt.ny.gov at least forty-eight (48) hours prior to the Submission Deadline and the Trust will make appropriate arrangements for such delivery.

3. 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 referenced in Part I, Section 2.2.5 of this RFP. If the Trust determines that a respondent did not submit the items/information required in the RFP, that respondent may be deemed "non-responsive" and may not be considered for contract award.

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

3.1 Envelope # 1. In one sealed envelope labeled as required by Part I, Section 2.2.5.1. complete and place the following:

3.1.1 Respondent's **Proposal Certification Form** attached hereto as Exhibit 1, and the certifications attached hereto in Exhibit 3 (Doing Business Data Form), Exhibit 4 (Lobbying Form), Exhibit 5 (Non-Collusion Form), Exhibit 6 (Iran Divestment Form) and Exhibit 7 (M/WBE, SDVOB and EO No. 177 Forms).

3.1.2 In addition to three hard copies, one electronic copy of the materials required above must also be provided (i.e., on a CD, flash drive, memory stick) and placed in the same Envelope #1.

3.1.3 At least three references, including the names and telephone numbers of contact persons at the client organizations.

3.1.4 A description of the Respondent's experience and expertise in all of the specific services contemplated under this RFP, including the resume of the proposed Consultant.

3.1.5 A description of the Respondent's history, if any, in contracting or doing business with the Trust or the City of New York (this can be in an appendix).

3.1.6 Fee Schedule in the form set forth in Exhibit 2.

3.2 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:

3.2.1 not enclosed in separate sealed envelopes as aforesaid;

3.2.2 not properly labeled;

3.2.3 received by a person other than the designated Recipient; and/or

3.2.4 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 selected 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 of the Contract Draft (EXHIBIT 8). **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 the Maximum Contract Price to be negotiated between the Trust and the selected 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 by the Trust, 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 by the Trust for background clearance, which is available on the PASSPort website at <https://www1.nyc.gov/site/mocs/systems/about-go-to-passport.page>, 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 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.

3.4 Contractor Requirements and Procedures for Participation for Participation by New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women.

3.4.1 New York State Law: Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations the Trust is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“M/WBEs”) and the employment of minority group members and women in the performance of the Trust contracts.

3.4.2 Business Participation Opportunities for MWBEs: For purposes of this solicitation, the Trust hereby establishes an overall combined goal of thirty percent (30%) for MWBE participation. The Consultant must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that the Trust may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required M/WBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Trust will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

3.4.3 The respondent understands that only sums paid to M/WBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be thirty percent (30%) of the total value of the contract.

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

3.4.5 By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however,

that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Trust.

3.4.6 Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. A Subcontractor Utilization Plan with their proposal. If Respondent's proposed Subcontractor Utilization Plan provides for less than the stated goal in the RFP, Respondents must also submit an Application for Waiver of MWBE Participation Goals in support of the proposed goal. Any modifications or changes to an accepted Subcontractor Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Subcontractor Utilization Plan and submitted to the Trust for review and approval. The Trust will review the submitted Subcontractor Utilization Plan and advise the respondent of the Trust acceptance or issue a notice of deficiency within 30 days of receipt.
- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Trust at Pier 40, 353 West Street, 2nd Floor Administration, New York, NY 10014, 212-627-2020, Attn.: General Counsel, 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 respondent and direct the respondent to submit, within five (5) business days of notification from the Trust, additional information to cure the noted deficiency. Failure to cure noted deficiency in a timely manner may be grounds for disqualification of the proposal.

3.4.7 The Trust may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an Subcontractor Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If the Trust determines that the respondent has failed to document good faith efforts.

3.4.8 The successful respondent will be required to attempt to utilize, in good faith, any M/WBE identified within its Subcontractor 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.

3.4.9 The successful respondent will be required to submit a monthly Subcontractor Utilization Plan to the Trust.

3.4.10 Equal Employment Opportunity Requirements. By submission of a proposal in response to this solicitation, the respondent agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts

including Clause 12 - Equal Employment Opportunities for Minorities and Women OR Authority equivalent to Appendix A. The respondent is required to ensure that it and any subcontractors 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 of New York State.

3.4.11 If awarded a Contract, respondent shall submit a Workforce Utilization Form EEO-101 and shall require each of its Subcontractors to submit a Workforce Utilization Form EEO-101, in such format as shall be required by the Trust on a monthly basis during the term of the Contract. Further, pursuant to Article 15 of the Executive Law (the “NYS Human Rights Law”), Title 8 of the New York City Administrative Code, and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of actual or perceived age, race, creed, color, national origin, gender identity or expression, sexual orientation, predisposing genetic characteristics; military status, marital status, partnership status, domestic violence victim status, or alienage or citizenship status, and shall also follow the requirements of the NYS 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.

3.5 SDVOB Requirements. Contractor Requirements and Procedures for Participation of Service Disabled Veteran-Owned Business.

3.5.1 **SDVOB Requirements.** The Division of Service-Disabled Veterans' Business Development (“DSDVBD”) is housed within the New York State Office of General Services (“OGS”) and is tasked with promoting and encouraging the continuing economic development of Service-Disabled Veteran-Owned Businesses (“SDVOBs”). Through the DSDVBD, the State of New York aims to assist service-disabled veterans in playing a greater role in the economy of the state and to provide additional assistance and support to disabled veterans to better equip them to form and expand small businesses, thereby enabling them to realize the American dream they fought to protect. The Trust recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Trust contracts.

3.5.2 In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Respondents are expected to consider SDVOBs in the fulfillment of the

requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

3.5.3 New York State Law. New York State Executive Law Article 17-B governs requirements for the participation of SDVOBs in New York State contracting. The objective of Article 17-B is to expand opportunities for SDVOBs, primarily through increased participation in New York State contracting. The DSDVBD maintains a Directory of NYS Certified SDVOBs. The directory is updated regularly with the addition of any newly certified SDVOBs or necessary changes requested by the listed SDVOBs or DSDVBD staff. State personnel and other interested parties may contact the DSDVBD and request they be added to a distribution list to receive the directory and its regular updates via email. The Directory of NYS Certified SDVOBs is also posted on the OGS website.

3.5.4 Contract Goals. For purposes of this procurement, the Trust conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Consultant. Nevertheless, Respondents are encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>. Additionally, respondents are encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

3.6 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.

3.7 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.

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

3.9 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 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.

3.10 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.

3.10.1 Types of Protests. There are three types of procurement Protests:

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

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

3.10.1.3 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.

3.10.2 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:

3.10.2.1 A Pre-Proposal Protest must be submitted at least two (2) business days prior to the Submission Deadline set forth in Part I, Section 2.2.6.3 of the RFP;

3.10.2.2 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

3.10.2.3 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.

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

3.10.3.1 name, address and telephone number of the protester;

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

3.10.3.3 statement of the basis of the Protest;

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

3.10.3.5 form of relief requested.

3.10.4 Address for Submission of Protests:

Hudson River Park the Trust
Pier 40, 2nd Floor
353 West Street
New York, NY 10014
Attention: General Counsel

3.10.5 Method of Submission: Hand, Express Mail, or other nationally-known overnight courier

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

3.10.7 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 protester 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 protester in an untimely manner.

3.10.8 Determinations. The Trust’s General Counsel 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. PASSPort (Formerly, VENDEX).

The Procurement and Sourcing Solutions Portal (PASSPort) is the City's new online portal which moves VENDEX online and makes it easier to submit and keep disclosure documents up-to-date. PASSPort will become the primary platform to do business with the City of New York. Consultants must register on PASSPort with the Mayor's Office of Contracts for itself and Subcontractors for all contracts totaling \$100,000 or more. All contractors wishing to do business with the City and Hudson River Park Trust must create an account by clicking <https://www1.nyc.gov/site/mocs/systems/about-go-to-passport.page>.

5. 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.

6. 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 2.2.8 for an explanation of the criteria upon 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.
- (c) The Respondent has received the following Addenda receipt of which is hereby acknowledged:

Date	Number
_____	_____
_____	_____
_____	_____

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.

WHEREFORE, 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 in the form of the “Fee and Cost Schedule” on the following pages.
2. The submitted Fee and Cost Schedule should cover all Services and Tasks described in the RFP and the Contract Draft.

(See Fee and Cost Schedule on following page)

EXHIBIT 2
FEE AND COST SCHEDULE

The Consultant shall provide the following services to the Trust and shall be paid a lump sum fee (“Fee”) for the Tasks listed below. Pricing shall include all overhead and profit, including the cost of all materials and supplies, equipment, labor, administration, overhead, insurance, and taxes.

The Consultant shall be paid the Fee in three installments for each Year:

1. Upon execution of the Contract, and for Year Two (2020) and Year Three (2021) by April. (1/3 of the Fee)
2. On August 1st (1/3 of the Fee)
3. Final payment 30 Days after the Event, subject to successful completion of all Contract requirements, based on actual Subconsultant expenses submitted by the Consultant to the Trust.

For the purpose of completing this lump sum fee proposal, Respondent’s Maximum Contract Price should include a Subconsultant Budget that does not exceed \$12,000 annually. Consultant will bill the Trust for actual subconsultant and rental equipment expenses. Consultant must receive prior written approval from the Trust if it exceeds the itemized recommended budget for each subconsultant as outlined in the Scope of Services.

YEAR ONE (2019)		
Task	Services	Fee
Task 1	Rental Equipment, Installation and Breakdown	
Task 2	Event Production	
	Subconsultant Budget not to exceed amount	\$12,000
Year One Maximum Contract Price		

YEAR TWO (2020)		
Task	Services	Fee
Task 1	Rental Equipment, Installation and Breakdown	
Task 2	Event Production	
	Subconsultant Budget not to exceed amount	\$12,000
Year Two Maximum Contract Price (Consultant may include up to 3% escalation)		

YEAR THREE (2021)		
Task	Services	Fee
Task 1	Rental Equipment, Installation and Breakdown	
Task 2	Event Production	
	Subconsultant Budget not to exceed amount	\$12,000
Year Three Maximum Contract Price (Consultant may include up to 3% escalation)		

EXHIBIT 3
DOING BUSINESS DATA FORM
(SEPARATE ATTACHMENT)

To be completed by the City agency prior to distribution Agency _____ Transaction ID _____

Check One

Transaction Type (check one)

- Proposal Award Concession Economic Development Agreement Franchise Grant Pension Investment Contract Contract

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York, as will the organizations that own 10% or more of the entity. No other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's PASSPort registration or VENDEX requirements.**

Please return the completed Data Form to the City office that supplied it. Please contact the Doing Business Accountability Project at DoingBusiness@mocs.nyc.gov or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

Entity Information

If you are completing this form by hand, please print clearly.

Entity EIN/TIN _____ Entity Name _____

Filing Status

(Select One)

NEW: Data Forms submitted now must include the listing of **organizations**, as well as individuals, with 10% or more ownership of the entity. Until such certification of ownership is submitted through a change, new or update form, a no change form will not be accepted.

- Entity has never completed a Doing Business Data Form. Fill out the entire form.
 Change from previous Data Form dated _____. Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.
 No Change from previous Data Form dated _____. Skip to the bottom of the last page.

Entity is a Non-Profit Yes No

Entity Type Corporation (any type) Joint Venture LLC Partnership (any type) Sole Proprietor Other (specify) _____

Address _____

City _____ State _____ Zip _____

Phone _____ E-mail _____

Provide your e-mail address in order to receive notices regarding this form by e-mail.

Principal Officers

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced..." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

Chief Executive Officer (CEO) or equivalent officer

This position does not exist

The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CEO _____ on date _____

Chief Financial Officer (CFO) or equivalent officer

This position does not exist

The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CFO _____ on date _____

Chief Operating Officer (COO) or equivalent officer

This position does not exist

The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former COO _____ on date _____

Principal Owners

Please fill in the required identification information for all individuals or organizations that, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual or organization owners exist, please check the appropriate box to indicate why and skip to the **Senior Managers** section. If the entity is owned by other companies that control 10% or more of the entity, those companies must be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals or organizations that are no longer owners at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

- The entity is not-for-profit
- The entity is an individual
- No individual or organization owns 10% or more of the entity

Other (explain) _____

Individual Owners (who own or control 10% or more of the entity)

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

Organization Owners (that own or control 10% or more of the entity)

Organization Name _____

Organization Name _____

Organization Name _____

Remove the following previously-reported Principal Owners

Name _____ Removal Date _____

Name _____ Removal Date _____

Name _____ Removal Date _____

Senior Managers

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. At least one senior manager must be listed, or the Data Form will be considered incomplete. If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

Senior Managers

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

Remove the following previously-reported Senior Managers

Name _____ removal date _____

Name _____ removal date _____

Certification

I certify that the information submitted on these two pages and _____ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.

Name _____ Title _____

Entity Name _____ Work Phone # _____

Signature _____ Date _____

EXHIBIT 4

DISCLOSURE OF NON-RESPONSIBILITY DETERMINATIONS FORM

(SEPARATE ATTACHMENT)



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:

Person Submitting this Form:

Name:

Title:

Contract Procurement Number:

Date:



Disclosure of Prior Non-Responsibility Determinations

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?

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: _____ 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: _____

Name: _____ Title: _____

Contractor Name:

Contractor Address:

EXHIBIT 5
NON-COLLUSION CERTIFICATION FORM
(SEPARATE ATTACHMENT)



CERTIFICATION AND SIGNATURE FORM
AFFIDAVIT OF NON-COLLUSION

Name of Respondent:

Business Name:

Business Address:

Phone:

Fax:

Email:

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
(SEPARATE ATTACHMENT)



IRAN DIVESTMENT ACT AFFIDAVIT OF INDIVIDUAL OR ENTITY

STATE OF NEW YORK)
SS:
COUNTY OF NEW YORK)

, BEING DULY SWORN, DEPOSES AND SAYS THAT:

- 1. I am responding to a competitive procurement to provide services and/or supplies on behalf of , to the HUDSON RIVER PARK TRUST pursuant to competitive procurement 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: _____

Signature

Title

Subscribed to and sworn to before me
This day of , 20

Notary Public

EXHIBIT 7**M/WBE and EO No. 177 FORMS**

- 1. Subcontractor Utilization Plan (includes M/WBE Utilization Plan)**
- 2. Minority and Women-Owned Business Enterprise and Equal Opportunity Policy Statement**
- 3. EO 177 Form – Certification of Policies Against Harassment & Discrimination**

Please note that these forms are available on the Website at <https://hudsonriverpark.org/about-us/bids-business-opportunities>.

M/WBE and SDVOB Waiver Application Forms are also available on the Website, if applicable.

COMBINED PROPOSED SUBCONTRACTOR UTILIZATION PLAN

TO BE INCLUDED WITH ALL RFP and BID SUBMISSIONS

Contract # Project Description Project Location

Contractor: Contact Person Phone # E-Mail

Prime Contractor NYS Certification Status			Contractor's Proposed Utilization Plan	
	Certification #	Approved Commodity Code(s)		
MBE	<input type="text"/>	<input type="text"/>	MBE	0.0%
WBE	<input type="text"/>	<input type="text"/>	WBE	0.0%
SDVOB	<input type="text"/>	<input type="text"/>	Total M/WBE	0.0%
			SDVOB	0.0%

Subcontractors and/or Suppliers Breakout

Company Name	City & State	Federal ID #:	SFS Vendor ID	Classification of Work to be Performed	Description of Work to be Performed	Commodity Code(s) for work to be Performed	Utilization Plan Designation	Anticipated Start Date	Anticipated Completion Date	Percentage of Total Contract Value
				Construction Services			WBE			

Pursuant to Executive Law Articles 15-A and 17-B, my firm will engage in good faith efforts to achieve the M/WBE and SDVOB goals on this contract. I understand that failure to make good faith efforts can result in the contract being awarded to another contractor. I understand that all listed subcontractors will be contacted for verification of solicitation. I further understand that utilization of certified Minority and Women Business Enterprises and/or Service Disabled Veteran Owned Businesses for non-commercially useful functions may not be counted towards utilization of certified M/WBEs and SDVOB as identified in this utilization plan.

Contractor's Signature & Date Name and Title

The Freedom of Information Law requires public disclosure of certain records held by HRPT. Based upon the foregoing, you are hereby notified that this document, and related documents, constitute "records" that fall under the scope of the Freedom of Information Law. Therefore, such documents may be made available to the public, including posting for public review on HRPT's website.



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

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

MWBE

EEO

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

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

(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) This organization will include the provisions of sections (a) through (c) 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



**CERTIFICATION OF INSTITUTING POLICIES
AGAINST HARASSMENT & DISCRIMINATION**

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Contractor:
(Business name): _____

By
(Authorized signatoryⁱ): _____

Title: _____

Date: _____

ⁱ Form to be signed by an individual officially authorized to sign on behalf of business

EXHIBIT 8
CONTRACT DRAFT
(SEPARATE ATTACHMENT)

CONTRACT NO. G5062**SUBMERGE FESTIVAL EQUIPMENT RENTAL AND EVENT SERVICES****[NAME OF CONSULTANT]****PART I**
SPECIFIC TERMS

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

The Consultant shall provide the services (“**Services**”) described in Appendix B - Scope of Services and shall be compensated for the rendering of the Services in accordance with Part II Article II of the Contract and as provided in Appendix C - Fee and Cost Schedule. The Consultant must purchase and maintain insurance for the Term of the Contract as provided in Appendix D - Insurance. If Part I, Section 1.7 indicates that the Contract is subject to an M/WBE Percentage Goal, the Consultant must comply with the M/WBE requirements provided in Appendix E - M/WBE Requirements. If Part I, Section 1.8 indicates that the Contract is subject to an SDVOB Percentage Goal, the Consultant must comply with the SDVOB requirements provided in Appendix F - SDVOB Requirements. The term “State” as referenced in Appendix A shall mean the State of New York and the Trust. The term “Contractor” referenced in Appendix A shall mean the “Consultant” defined in Part I Section 2.2.

1. The Contract

- 1.1 Contract:** These Specific Terms and Conditions (Part I), the General Terms and Conditions (Part II) and the Appendices (Part III)
- 1.2 Contract No.** G5062
- 1.3 Contract Date:** The date of the Contract is as of [Insert Date]
- 1.4 Term:** 3 years
- 1.5 Maximum Contract Price:**
- 1.6 Project:** SUBMERGE Festival Rental and Event Services
- 1.7 M/WBE Participation Goal:** 30%, as provided in Appendix E
- 1.8 SDVOB Participation Goal:** There is no SDVOB participation goal for the Contract; however, non-SDVOB contractors are encouraged to use SDVOBs for any subcontracting opportunities.

2. Parties

- 2.1 The Trust:** Hudson River Park Trust, a public benefit corporation of the State of New York.
- 2.2 The Consultant:** [Insert legal Name of Consultant], a New York [or if not NY, insert State] [Insert “individual”, “Trust”, “partnership”, “corporation” or “limited liability company”], having an office at:
[Insert Address]

Federal Tax ID# [Insert]

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

2.4 Trust's Contact Person: Carrie Roble, Director of Science & Stewardship

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
Attn: Carrie Roble, Director of Science & Stewardship

3.2 Notices to the Consultant:

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

4. **Special Provisions** The provisions set forth below are hereby added to and made part of, or deleted from the Contract, as indicated. In the event any conflict exists between any of the General Terms and Conditions (Part II) of the Contract and these special provisions, these special provisions shall govern.

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

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

HUDSON RIVER PARK TRUST

[INSERT CONSULTANT NAME]

By: _____
[Insert name of company officer]
[Insert title of company officer]

By: _____
[Insert name of company officer]
[Insert title of company officer]

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

On this ____ day of _____, 201__ before me personally came _____ to me known, who being duly sworn, did depose and say that he/she is the [Insert Title] of the Hudson River Park Trust, and the said person described in and who executed the foregoing instrument, and he/she acknowledged that he/she executed same in his/her official capacity and for the purpose mention therein.

Notary Public

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

On this ____ day of _____, 201__, before me personally came _____ to me known, who being duly sworn, did depose and say that he/she is [Insert Title] of [Company], and the said person described in and who executed the foregoing instrument, and he/she acknowledged that he/she executed same in his/her official capacity and for the purpose mention therein.

Notary Public

PART II
GENERAL TERMS AND CONDITIONS

ARTICLE I
PERFORMANCE OF SERVICES

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

to be bound to the terms and conditions of the Contract to the extent such terms and conditions are, or may be, applicable to such Subcontractors. All subcontracts held by the Consultant (“**Subcontracts**”) must include the following provisions:

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

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

- 6. Consultant as Independent Contractor.** Notwithstanding any other provisions of the Contract, the Consultant’s status (and that of any Subcontractor) shall be that of an independent contractor and not that of an agent or employee of the Trust. Accordingly, neither the Consultant nor any Subcontractor shall hold itself out as, or claim to be acting in the capacity of, an employee or agent of the Trust.
- 7. Consultant to Obtain Permits.** Except as otherwise instructed in writing by the Trust, the Consultant shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by the Trust or the Consultant in connection with the Contract.
- 8. Consultant to Comply with Legal Requirements.** The Consultant, in performing its obligations and in preparing all documents required under the Contract, shall comply with all applicable laws and regulations to be included in the Contract. All applicable laws and regulations shall be deemed to be included in the Contract with the same effect as if set forth in full.

- 9. Increase or Decrease in the Scope of Services.** The Trust shall have the right to make changes to, and/or increase or decrease the Scope of the Services or to extend the Term at any time and for any reason upon notice to Consultant specifying the nature and extent of such changes. In the event any such changes result in a reduction of the scope of services, the Maximum Contract Price will be correspondingly reduced to reflect the deleted services. In the event any such changes result in an additional expenditure of time by the Consultant or Subcontractors, the Trust and the Consultant shall negotiate an additional fee for such changes evidenced in an amendment to the Contract.

ARTICLE II **PAYMENT OF SERVICES**

1. Payments.

- (a) Subject to, and in accordance with this Article II, the Trust shall pay to the Consultant, and the Consultant agrees to accept in full consideration for the Services, and for all expenses of the Consultant in connection therewith, including Subcontractors' costs and reimbursable expenses, an amount not to exceed the Maximum Contract Price, payable in accordance with this Article II and as provided in Appendix C.
- (b) Requisitions shall be in a form reasonably acceptable to the Trust and shall be supported by any appropriate or necessary documentation or other evidence relating to the amounts set forth in the requisition as the Trust may reasonably require including, but not limited to invoices, receipts and vouchers from Subcontractors and suppliers, information related to M/WBEs, SDVOBs and Workforce Utilization Forms required under Appendix E and, where applicable, the time sheets and/or certified payroll reports of the Consultant's staff. Each requisition submitted to the Trust by the Consultant shall constitute a representation that, except as specifically set forth in the requisition, as of the date of the requisition, all representations and warranties made by the Consultant in Article III are true, complete and accurate as if made as of the date of the submission of the requisition. Thereafter, the Trust shall approve the requisition if the Services have been satisfactorily performed in accordance with the Contract.
- (c) The Consultant, with the Trust's prior approval, may exceed the maximum payment allocated to a particular portion of the Services if the Consultant by notice determines that the maximum payment initially allocated to the portion is insufficient to adequately perform the portion of the Services and if the Consultant demonstrates to the Trust a savings with respect to another portion of the Services which is at least equal to the amount of such excess. However, notwithstanding the above, in no event shall the Trust pay the Consultant more than the Maximum Contract Price.
- 2. Acceptance of Final Payment/Release and Discharge.** The acceptance by Consultant of the final payment under the Contract, or any final payment due on earlier termination of the Contract under Article IV, shall constitute a full and complete waiver and release of the Trust from any and all claims, demands and causes of action whatsoever that the Consultant, and/or its successors and assigns, have, or may have, against the Trust under the provisions of the Contract, unless a detailed and verified statement of claim is served upon the Trust not later than fifteen (15) days after the making of the final payment. In the absence of a verified statement of claim, if the Consultant performs Services that involve maintenance, repairs or minor construction, the Consultant must supply the Trust with lien waivers for itself and its Subcontractors along with its request for final payment. It is expressly understood and agreed that the Trust's or Consultant's termination of the Contract pursuant to Article IV hereof shall not give rise to any claims against the Trust for damages, compensation, or otherwise as a result of such termination, and that under such circumstances, the

Trust's liability to make payments to Consultant on account of any and all Services shall be limited to the payments set forth in this Article II and as provided in Appendix C.

ARTICLE III **REPRESENTATIONS AND WARRANTIES**

1. Representations and Warranties.

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

- (v) The Consultant shall comply with the provisions of all Federal, State and local statutes, laws, rules, ordinances and regulations that are applicable to the performance of the Contract;
- (vi) The Consultant shall diligently render to the Trust any and all assistance which may be required by the Trust should any claim be made or any action be brought against the Trust which states a cause of action related to the Services; and
- (vii) The Consultant shall not commit its personnel to, nor engage in, any other projects during the term of the Contract to the extent that such projects may adversely affect the quality or efficiency of the Services or would otherwise be detrimental to the conduct and completion of the Services, and the Consultant shall provide sufficient numbers of qualified personnel as shall be required to perform the Services in the time requested by the Trust.

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

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

ARTICLE IV
DELAYS, SUSPENSION OF SERVICES, TERMINATION

- 1. Notice of Overruns and Delays.** The Consultant shall promptly give written notice to the Trust representative of the occurrence of an event or action, the discovery of a condition or the failure of an event or action to occur or a condition to exist as anticipated, that may result in an increase in (a) the compensation due Consultant; (b) reimbursable expenses and/or; (c) the number of hours necessary to perform the work or which may delay completion of the work (or extend the completion date). For purposes of this provision, "promptly" shall mean as soon as possible but in no event more than (3) business days after Consultant's discovery of the occurrence, condition or failure which gives rise to the subject increase and/or delay.

2. **Disputes.** If at any time the Consultant believes that there is: (1) a condition that will entitle it to additional compensation; (2) a change in the schedule for completion of the Services; or (3) another issue arising out of terms, conditions, or the respective parties' fulfillment of their obligations under the Contract ("**Dispute**"), within fifteen (15) days after the Consultant has knowledge or should have known of the occurrence of a Dispute, the Consultant shall deliver a written notice to the Trust stating the general nature of such Dispute. Senior executives of the parties shall negotiate in good faith to resolve any Disputes. Pending the resolution of any Dispute, the Consultant shall diligently continue to perform all Services under the Contract, including the Services that are the subject of such Dispute. Written notification and good faith negotiation shall be a condition precedent to the maintenance of any legal proceeding. The Consultant shall represent that it has complied with the condition precedent in its initial notice and pleading in any legal proceeding instituted by the Consultant or by the Trust.
3. **Suspension of Services.** The Trust may, at any time and for any reason and by written notice thereby ("**Suspension Notice**"), direct the Consultant to delay or suspend the services or any part thereof under the Contract for a period of time not to exceed ninety (90) days. The Suspension Notice shall specify the period during which such services are to be delayed or suspended. The Contract shall automatically terminate after ninety (90) days' suspension or delay unless the Trust and the Consultant agree in writing to continue the Contract upon the same or newly negotiated terms, and the Trust and the Consultant execute a "Release of Claims" with regards to the period of suspension or delay. The Consultant shall resume such services upon the date the Trust may thereafter specify in writing upon reasonable notice to Consultant. If the Contract is delayed, suspended or terminated, the Consultant shall be entitled upon such delay, suspension or termination to payment of that portion of the fee and reimbursable costs that have not been paid to Consultant commensurate with the Services actually and satisfactorily performed by the Consultant prior to the date of delay, suspension or termination. The Consultant shall not be entitled to any fee during the period of delay or suspension unless the Trust, in its sole and absolute discretion, decides that the payment (and amount) of a fee is reasonable under the particular circumstances that gave rise to the suspension or delay.
4. **Termination for Convenience.** The parties acknowledge that the Trust may, at any time for the Trust's convenience and without cause, terminate the Contract without incurring any penalty or damages on account of such termination upon seven (7) days' written notice to the Consultant. In the event of such termination, the Trust shall pay the Consultant for services actually and satisfactorily performed by Consultant up to the date of such termination plus Trust-approved out-of-pocket expenses incurred by the Consultant. The Consultant agrees to cause any agreement or contract entered into by the Consultant with any Subcontractors to contain a termination for convenience clause consistent with the provisions of this Subsection 4.
5. **Default by Consultant.** The Trust may terminate the Contract for cause, including:
- (a) a material breach of any covenant or agreement contained in the Contract;
 - (b) if the Consultant shall default in the timely performance of any of its obligations under the Contract and such default shall continue for a period of three (3) days after written notice from the Trust specifying the occurrence, omission or failure giving rise to such default, or if in the opinion of the Trust, by reason of the nature of such default, such default cannot be cured within such three (3) day period and the Consultant has not promptly prosecuted the curing of such default;
 - (c) any representation or warranty made or deemed to have been made under the Contract by the Consultant shall prove to be untrue in any material respect; or
 - (d) the Consultant shall make a general assignment for the benefit of its creditors, or a receiver or trustee shall have been appointed on account of Consultant's insolvency, or Consultant

otherwise shall be or become insolvent, or an order for relief shall have been entered against Consultant under Chapter 7 or Chapter 11 of Title 11 of the United States Bankruptcy Code.

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

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

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

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

ARTICLE V
INDEMNIFICATION AND INSURANCE

- 1. Indemnification.** Notwithstanding anything to the contrary contained herein, the Consultant shall be responsible for all injuries to persons, including death, or damage to property sustained while performing or resulting from the Services under the Contract, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or Subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by Consultant pursuant to the Contract. Consultant agrees to defend, indemnify and hold the Trust, the State of New York, the New York State Office of Parks, Recreation and Historic Preservation, the New York State Department of Environmental Conservation, the City of New York, the New York City Department of Parks and Recreation and each of their respective commissioners, directors, officers, agents and employees (collectively the "**Indemnitees**") harmless from any and all claims, judgments and liabilities, including but not limited to claims, judgments and liabilities for injuries to persons (including death) and damage to property if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or its Subcontractors, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the

Indemnitees by reason of claims against Consultant or its Subcontractors, or their employees, agents, servants, independent contractors and subcontractors for any matter whatsoever in connection with the Services performed under the Contract, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the Indemnitees for reasonable attorney's fees incurred in connection with the above. Consultant shall be solely responsible for the safety and protection of all its Subcontractors, or the employees, agents, servants, independent contractors, or subcontractors of Consultant or its Subcontractors, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Consultant, its Subcontractors, or their respective agents, employees, servants, independent contractors or subcontractors.

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

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

ARTICLE VI DOCUMENTS, CONFIDENTIALITY AND RECORDS

1. Ownership of Documents.

- (a) All originals, negatives, and electronic copies of all plans, drawings, reports, photograph, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Consultant under the Contract including drafts and reproduction copies thereof ("**Documents**"), shall be and remain the exclusive property of the Trust, and the Trust shall have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specification and other documents without payment of any additional royalty, charge or other compensation to the Consultant. If the Documents are altered by the Trust or its agents, the Trust holds the Consultant harmless from any liability for such use.
- (b) The Consultant agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under the Contract, use or reuse all or any part of the Documents, excluding the Consultant's "**Underlying Intellectual Property**" (as defined hereinafter), without the prior written approval of the Trust, except that the Consultant may retain copies of such reports and other documents for general reference use.
- (c) The Consultant's Underlying Intellectual Property means the analytical concepts, approaches, methodologies, or formats developed by the Consultant's staff, and other materials not prepared for delivery to the Trust and also includes any derivatives, improvements, enhancements or extensions of the Consultant's Underlying Intellectual Property conceived, reduced to practice, or developed during the Term of the Contract that are not uniquely applicable to the Documents prepared for the Trust under the Contract.
- (d) The Consultant represents and warrants that, except for material which is in the public domain and non-original material, the Documents:
 - (i) shall be wholly original material not published elsewhere, except for Underlying Intellectual Property included therein;
 - (ii) shall not violate any copyright, trademark or other applicable law; and

- (iii) shall not, to the best of Consultant's knowledge, constitute a defamation or invasion of the right of privacy or publicity, or an infringement of any kind, of any rights of any third party.
- (e) The Consultant shall not make any unauthorized use of copyrighted, trademarked or other protected materials or intellectual property and agrees to defend, indemnify and hold harmless the Trust and their respective officers, officials, agents, members, directors, and employees against any damage or liability arising out of the Consultant's infringement or unauthorized use of any such material or property.
2. **Confidentiality**. The Consultant hereby agrees that all documents, data, recommendations, reports and other materials developed in the course of the Services authorized by the Contract are strictly confidential between the Consultant and the Trust and the Consultant may not at any time reveal or disclose such materials in whole or in part to any third party without first obtaining written permission from the Trust. Notwithstanding the preceding sentence, the Consultant shall cooperate fully with such third parties as the Trust may designate by written request.
3. **Maintenance, Audit and Examination of Records**. Pursuant to Section 10 of the Standard Clauses for NYS Contracts (attached hereto as Appendix A), the Consultant and its Subcontractors must maintain their respective books and records for examination and audit as specifically detailed therein. In the event of non-compliance thereof, the Trust shall not pay the Consultant any portion of the fee then due or becoming due, as the case may be, with respect to such non-compliance, and if such fee has already been paid, the Trust may require the Consultant to refund such fee. In addition, the Consultant shall be responsible for any audit costs incurred by the Trust as a result of such non-compliance.
4. **PASSPort (formerly, VENDEX)**. The Consultant shall provide the Trust with a list of all Subcontractors employed for the performance of the Services whose subcontract amount totals \$25,000 or more. The Consultant will furnish each such Subcontractor whose subcontract amount totals \$100,000 or more with the information for creating an account on and submitting information through the Mayor's Office of Contracts Services Procurement and Sourcing Solutions Portal (PASSPort). The Consultant shall cause each such Subcontractor to complete the required PASSPort background and disclosure submissions in a timely fashion but in no event later than the commencement of the Services performed by such Subcontractor pursuant to its subcontract.

ARTICLE VII **OTHER STANDARD PROVISIONS**

1. **No Waiver**. Failure by the Trust to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach shall constitute a waiver of any such breach or such term or condition. No term or condition of the Contract to be performed or complied with by Consultant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the Trust. No waiver of any breach shall affect or alter the Contract, but each and every term and condition of the Contract shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. Consultant hereby waives any and all rights and remedies to which Consultant might otherwise be or become entitled to because of any wrongful act or omission of the Trust saving only Consultant's right to money damages.
2. **Provisions Required by Law Deemed Inserted**. Each and every provision of law and governmental regulation required by law to be inserted in the Contract shall be deemed to be inserted therein and

the Contract shall read and enforced as though so included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall be deemed to be amended to make such insertion or correction. If the Contract contains any unlawful provision, the same shall be deemed of no effect and shall, upon the application of either party, be deemed stricken from the Contract without affecting the binding force of the remainder.

3. **Reimbursement of Legal Fees.** In the event that Consultant and the Trust are involved in a legal proceeding relating to any part of the Contract, Consultant shall reimburse the Trust for all costs associated with said legal proceeding, including, but not limited to, court costs and reasonable attorney's fees incurred by the Trust where: (1) during said legal proceeding, a final determination by a neutral third party finds the Consultant to have materially breached the terms of the Contract; or (2) Consultant initiates said legal proceedings against the Trust and/or its directors, officers, or employees and Consultant does not prevail in such action.
4. **Assignment by the Trust.** The Trust may transfer and assign any and all of its rights and obligations under the Contract, including transferring and assigning its rights to the Consultant's performance of any portion of the Services provided for herein, together with the Trust's obligations and rights pertaining to such portion of Services, to any partnership, trust, governmental agency or department or other entity that the Trust determines has undertaken or will undertake any part of the Contract. The Trust shall provide the Consultant written notice of any such transfer and assignment. Such transfer and assignment shall relieve the Trust of any further liability or obligation hereunder.
5. **Entire Agreement/Amendment.** The Contract constitutes the entire agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, express or implied, which is not contained in the Contract shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.
6. **Interests of Others.** Nothing in the Contract shall be construed to give any person other than the Trust and Consultant any legal or equitable right, remedy or claim. The Contract shall be held to be for the sole and exclusive benefit of the Trust and Consultant.
7. **Modification.** No change, termination or attempted waiver of any of the provisions of the Contract shall be binding unless evidenced in a writing signed by both parties.
8. **Severability.** If any term or provision of the Contract or the application thereof to any person or in any circumstance shall to any extent be determined to be invalid or unenforceable, the remaining provisions of the Contract, or the application of such terms or provisions to persons or circumstances other than those as to which it is found to be invalid or unenforceable, shall in no way be affected thereby, and each term and provision of the Contract shall be valid and binding upon the parties, and enforced to the fullest extent permitted by law.
9. **Counterparts and Captions.** The Contract may be executed in one or more counterparts, each of which shall be deemed to be an original. Captions contained in the Contract are inserted only as a matter of convenience and shall not affect the construction or interpretation of any of the provisions hereof.

PART III
APPENDICES

APPENDIX A STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

APPENDIX B SCOPE OF SERVICES

APPENDIX C FEE AND COST SCHEDULE

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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, licenser, licensee, lessor, lessee or any other party):

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

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

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

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section

239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or Trust has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

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

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

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State.

The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
 Division for Small Business
 Albany, New York 12245
 Telephone: 518-292-5100
 Fax: 518-292-5884
 email: opa@esd.ny.gov

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

NYS Department of Economic Development
 Division of Minority and Women's Business Development
 633 Third Avenue
 New York, NY 10017
 212-803-2414
 email: mwbecertification@esd.ny.gov
<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

Submerge Festival, the “Event,” is a one-day free public festival dedicated to celebrating our coastal waters through hands-on science. The 2018 Submerge Festival welcomed 8,500 attendees and hosted 40 science partner groups. The 2019 Submerge Festival will be a free event at Hudson River Park’s Pier 84, located on the mid-town Manhattan waterfront, on Saturday, September 28, 2019, from 11 am to 4 pm (with a rain date on Sunday, September 29, 2019 from 11 am to 4 pm). The Event offers the public the opportunity to engage with scientists, technology, and Hudson River activities like fishing, kayaking, and vessel tours.

One feature of the Event is scheduled science-themed performances. The Submerge Festival requires approximately 4-5 performers (collectively, the “Talent”). The selected Respondent (“Consultant”) will contract with, manage and pay the Talent of the Submerge Festival with guidance and approval from the Trust.

The “Research Stations” at the Submerge Festival represent the bulk of the exhibits and occupied space of the event. Research Stations are tables operated by various science partner groups that volunteer their time and resources to share their current marine research through interactive demonstrations. The Consultant will contract with and manage the volunteers of the Research Stations with guidance and approval from the Trust.

Additionally, the Consultant will identify, contract with, and manage food trucks (minimum of 3 food vendors providing a diversity of kid-friendly food options) and must be able to supply (secure the rental of) all necessary chairs, tables, tents, and basic stage platform required for the Submerge Festival.

The Consultant shall provide the following services:

Task 1: Rental Equipment, Installation and Breakdown

The Consultant shall provide the following rental equipment for the Event on Saturday, September 28, 2019, from 11 am to 4 pm (with a rain date on Sunday, September 29, 2019 from 11 am to 4 pm):

Description	Quantity
20' x 20' High Peak White Frame Tent, 8' Legs (weights included)	14
30' x 20' Losberger Tent to cover stage (weights included)	1
28' x 20' Stage, elevated 2' high with 3 step stairs and hand rails	1
Folding Plastic Chairs, white	250
6' x 30" Rectangular Tables	110

The above rental equipment reflects the historical numbers used and may be modified based on Research Station needs, field conditions, and the final layout. The Consultant shall deliver and install the rental equipment to Pier 84 (the “Event Site”) or such other site as may be determined by the Trust on Friday, September 27, 2019 during normal business hours, and shall thereafter breakdown and pick up the rental equipment by Saturday, September 28, 2019 at 11:59pm unless the event is moved to the rain date and then by Sunday, September 29, 2019 at 11:59pm. **All vehicles utilized by the Consultant that weigh over 16,000 lbs. must use protective paver barriers (approved by the Trust) to protect 550’ of Park pavers. Be sure to include the cost of securing protective barriers for this purpose if you anticipate using large vehicles (over 16,000 lbs.) to set up and break-down tents and other rental equipment.**

Task 2: Event Production

The Consultant shall provide the following event production services:

- Provide a detailed overall strategy, signage plan, and layout plan for the Event.
 - Provide on-site supervision of the delivery and pick-up of all rental equipment.
 - Manage relationships with approximately 40 participating organizations including:
 - Receiving and processing participant applications;
 - Handling correspondence regarding insurance, parking, and resource needs;
 - Scheduling and managing on-site arrival and departure of participating organizations; and
 - Managing any other miscellaneous questions or requests from participating organizations.
 - Identify, contract with, and manage food vendors, such as food trucks, adequate to support a 7,000 person event at a public park. A minimum of three food vendors is required. Food vendors must offer a diversity of kid-friendly food options (e.g. sandwiches, hamburgers, hot dogs, tacos, dumplings, pizza, chicken fingers, French fries, fruit smoothies, ice cream).
 - Provide a minimum of three Consultant staff members to support the Trust’s Event team with onsite production, including pre-event setup support, day of event support, and event break down support.
 - Write the Event day “Run of Show” and oversee the “Run of Show” schedule at the Event.
 - Create a scaled floor plan for festival at Hudson River Park’s Pier 84, including electrical needs for participating organizations (The Pier is approximately 680’ long by 130’ wide). There are no hard wired electric connections at Pier 84. The Trust will supply generator/generators and supporting outlets and wiring, but will require Consultant to establish a plan for distributing available electrical services based upon participating organizations pre-identified electrical needs.
1. **Performance Subconsultants.** A main attraction of the Submerge Festival is the scheduled science-themed performances. Consultant shall book, contract with, pay and manage relationships with approximately 4-5 science-themed performers (collectively referred to as the “Talent.”) – The Trust will pre-identify proposed Talent subconsultants to perform at the Science Festival that are of a similar quality and scope to those retained for past Submerge Festivals. The Consultant shall:
 - Enter into agreements with the Trust-identified performers limited to a total Talent budget not to exceed \$6,000, unless the Consultant receives written approval from the Trust.
 - Handle correspondence with the Talent regarding insurance, parking, and resource needs.
 - Schedule and manage the Talent’s arrival and departure on day of the Event
 - Manage any other miscellaneous questions or requests from the Talent.
 2. **Parking Subconsultant.** Identify and contract with a public parking garage within three blocks of the festival site to accommodate parking needs for certain Research Station groups and the Talent that must drive to the festival. Based on past demands, the Trust anticipates

- the Consultant will need to reserve approximately 20-25 parking spaces and as such, Consultant should estimate a budget of \$800 for these spaces. The Consultant will bill the Trust based upon Consultant's actual expenditure to the parking garage for this service. Consultant must receive written approval from the Trust in the event that parking garage expenditures exceed \$800.
3. **Security Guard Subconsultant.** Book and manage one security guard to secure rental equipment on Pier 84 during overnight hours when the Consultant is not on site. Pier 84 is a public pier. The sections of the pier used for the Event will be sectioned off with French barricades. To ensure timely event-setup, the tents, tables, and chairs should be in place by Friday evening, September 27, 2019. To ensure the security of such rental equipment from Friday evening through the Event crew arrival on the day of the Event, Consultant will need to secure the services of an overnight security guard. The Consultant should not exceed \$500 for these services unless it receives prior written approval from the Trust.
 4. **Volunteer Food Vendor Subconsultant** Book and manage a light breakfast (bagel, fruit, coffee and tea) and bag lunch (sandwich, snack and beverage) for 250 Festival volunteers limited to a budget not to exceed \$3,000, unless the Consultant receives written approval from the Trust.
 5. **T-Shirt Subconsultant.** Design and print, with the Trust's pre-approval, 125 staff and volunteer Submerge Festival t-shirts limited to a budget not to exceed \$1,700, unless the Consultant receives written approval from the Trust.

Respondent's Maximum Contract Price should include a Subconsultant Budget that does not exceed \$12,000 annually.

APPENDIX C
FEE AND COST SCHEDULE

The Consultant shall provide the following services to the Trust and shall be paid a lump sum fee ("Fee") for the Tasks listed below. Pricing shall include all overhead and profit, including the cost of all materials and supplies, equipment, labor, administration, overhead, insurance, and taxes.

The Consultant shall be paid the Fee in three installments for each Year:

1. Upon execution of the Contract, and for Year Two (2020) and Year Three (2021) by April. (1/3 of the Fee)
2. On August 1st (1/3 of the Fee)
3. Final payment 30 Days after the Event, subject to successful completion of all Contract requirements, based on actual Subconsultant expenses submitted by the Consultant to the Trust.

For the purpose of completing this lump sum fee proposal, Respondent's Maximum Contract Price should include a Subconsultant Budget that does not exceed \$12,000 annually. Consultant will bill the Trust for actual subconsultant and rental equipment expenses. Consultant must receive prior written approval from the Trust if it exceeds the itemized recommended budget for each subconsultant as outlined in the Scope of Services.

YEAR ONE (2019)		
Task	Services	Fee
Task 1	Rental Equipment, Installation and Breakdown	
Task 2	Event Production	
	Subconsultant Budget not to exceed amount	\$12,000
Year One Maximum Contract Price		

YEAR TWO (2020)		
Task	Services	Fee
Task 1	Rental Equipment, Installation and Breakdown	
Task 2	Event Production	
	Subconsultant Budget not to exceed amount	\$12,000
Year Two Maximum Contract Price (Consultant may include up to 3% escalation)		

YEAR THREE (2021)		
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Task	Services	Fee
Task 1	Rental Equipment, Installation and Breakdown	
Task 2	Event Production	
	Subconsultant Budget not to exceed amount	\$12,000
Year Three Maximum Contract Price (Consultant may include up to 3% escalation)		

HUDSON RIVER PARK TRUST REIMBURSABLE POLICY

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

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

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

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

C. PRINTING / PHOTOGRAPHY.

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

D. TELEPHONE.

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

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

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

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

H. NON-REIMBURSABLES.

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

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

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

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

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

K. GENERAL.

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

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

I. LODGING

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

II. TRANSPORTATION ALLOWANCES

A. PERSONAL CAR MILEAGE

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

B. CAR RENTAL

Actual

C. AIRLINE & OTHER PUBLIC TRANSPORTATION

Actual - evidenced by receipt.

E. TAXI FARES

Actual - evidenced by receipt.

APPENDIX D
INSURANCE

- a) Upon the execution date of the Contract or as of the date indicated in a “Notice to Proceed”, the Consultant shall provide the Trust with (i) Certificates of Insurance naming the Additional Insureds set forth below and, (ii) at the request of the Trust, the “Schedules of Forms and Endorsements” and copies of the Forms and Endorsements evidencing compliance with all coverage requirements contained in this Appendix D. Such certificates and Schedules of Forms and Endorsements shall be in form and substance acceptable to the Trust. Acceptance and/or approval of such certificates and/or Schedules of Forms and Endorsements and copies of the Forms and Endorsements by the Trust do not, and shall not, be construed to relieve the Consultant of any obligations, responsibilities or liabilities under this Appendix D.
- b) All insurance required by this Appendix D shall include the following as “Additional Insured” if such coverage is available under such insurance policies: Hudson River Park Trust, the State of New York, the New York State Office of Parks, Recreation and Historic Preservation, the New York State Department of Environmental Conservation, the City of New York, and the New York City Department of Parks and Recreation. The Trust offices are located at Pier 40 - 353 West Street, Suite 201, New York, NY 10014 - Attn: Insurance Manager. The Additional Insured protection on the General Liability policy shall be provided on form CG 20 10 11 85 or its equivalent, or may be obtained through a combination of CG 20 10 07 04 and CG 20 37 07 04 or their equivalents. Additional Insured coverage must apply to direct and vicarious liability for both on-going and completed operations.
- c) Consultant shall require that any subcontractors or sub-subcontractors that perform work for the Consultant under this Contract in a sub-contract amount of **Five Thousand Dollars (\$5,000)** or more carry insurance with the same limits and provisions provided herein unless otherwise approved by the Trust on a case-by-case basis. All subcontractor insurance policies must include ISO Endorsement CG 20 38 or its equivalent to ensure additional insured protection is afforded the Trust without regard to privity of contract.
- d) Each insurance carrier must be rated at least “A-” Class “VII” in the most recently published A.M. Best’s Insurance Report. If, during the term of the policy, a carrier’s rating falls below “A-” Class “VII”, the insurance policy must be replaced no later than the renewal date of the policy with an insurer acceptable to the Trust and rated at least “A-” Class “VII” in the most recently published A.M. Best’s Insurance Report.
- e) Consultant shall cause all insurance to be in full force and effect as of the execution date of the Contract, or as of the date indicated in a “Notice to Proceed” if issued by the Trust, and to remain in full force and effect throughout the Term of the Contract and as further required by this Appendix D. Consultant shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Coverage shall:
1. Be primary and non-contributing to any insurance or self-insurance maintained by the Trust.

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

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

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

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

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

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

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

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

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

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

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

- i. The NY State Workers Compensation Board guideline regarding these requirements is available at: <http://www.wcb.ny.gov/content/main/forms/AllForms.jsp>
- ii. If Exempt from Worker Compensation please refer to the following link and provide proof on the CE200 form issues by the NY State Workers Compensation Board: http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp
- iii. If the Consultant is not a NY State based business, then the Consultant must provide a copy of its Workers' Compensation policy's Declarations Page to show that New York is listed in Part 3A and to confirm the policy provides statutory Employer's Liability coverage applicable in NYS.

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

APPENDIX E
M/WBE REQUIREMENTS

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

I. General Provisions

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

II. Contract Goals

- A.** For purposes of this Contract, the Trust hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified minority-owned business enterprise (“MBE”) participation and 15 percent for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B.** For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

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

- C.** The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. **FOR CONSTRUCTION**

CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be sixty percent (60%) of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE. FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be twenty five percent (25%) of the total value of the contract.

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

III. Equal Employment Opportunity (“EEO”)

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

- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- C. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Subcontractor Utilization Plan (MWBE)

- A. The Contractor represents and warrants that the Contractor has submitted a Subcontractor Utilization Plan, or shall submit a Subcontractor Utilization Plan at such time as shall be required by the Trust.
- B. The Contractor agrees to adhere to such Subcontractor Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such Subcontractor 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.

V. Waivers

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the Trust. Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the Trust shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If the Trust, upon review of the monthly Actual Subcontractor Utilization Plan or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, the Trust may issue a notice of deficiency to the Contractor. The Contractor must respond to the

notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Monthly Subcontractor Utilization Plan

The Contractor is required to submit monthly Actual Subcontractor Utilization Plan using the form provided by the Trust during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

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

SAMPLE FOR REFERENCE ONLY

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

M/WBE AND EEO POLICY STATEMENT

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

M/WBE

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

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

EEO

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

sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also

follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

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

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

M/WBE Contract Goals

_____percent Minority and Women’s Business Enterprise Participation

_____percent Minority Business Enterprise Participation

_____percent Women’s Business Enterprise Participation

(Authorized Representative)

Title: _____

Date: _____