



FORM OF CONTRACT NO. F5360

**ANNUAL FINANCIAL AUDITING
SERVICES**

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.

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

1.4 Term: Three (3) years, with two (2) one-year renewal options

1.5 Maximum Contract Price:

1.6 Project: Annual Financial Auditing Services

1.7 M/WBE Participation Goal: 30%, as provided in Appendix E

1.8 SDVOB Participation Goal: 0%, as provided in Appendix F

2. Parties

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

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

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

2.4 Trust’s Contact Person: Sikander Zuberi

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: Sikander Zuberi

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 the Contract. 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 will either (i) provide the requisite forms to the Consultant for Consultant and its Subcontractor(s) to submit electronically to email address EEO101@hrpt.ny.gov or (ii) direct the Consultant and its Subcontractor(s) to submit the information directly onto the New York State Contract system.

4.2 This Contract is subject to section 2879-a of the Public Authorities Law entitled, Comptroller Approval of Contracts.

5. **Execution.** This Contract may be executed and delivered in counterparts, including execution by digital or electronic signature, each of which so executed and delivered, when taken together, shall be deemed a fully-executed instrument. The Consultant acknowledges that it has carefully examined the entire Contract and thoroughly understands the same.

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: _____
Noreen Doyle
President & CEO

By: _____
Name:
Title:

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. In addition, Consultant shall further comply (and cause each Subcontractor to comply) with all applicable New York State and

New York City Department of Health requirements related to preventing the spread of the COVID 19 virus.

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 Appendices E and F 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 of 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 to the 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 City of New York, and each of their offices, departments, agencies, officials, directors 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. To the maximum extent permitted by law, the defense and indemnity set forth in herein includes all liability, damages, loss, claims, subrogation efforts, demands and actions on account of personal injury, bodily injury (including injury to Contractor's employees) including death or property or economic loss (other than the Work itself) to any Indemnitee, any of the Indemnitees' employees, agents, licensees or invitees, or to any other persons or property, whether based upon, or claimed to be based upon, statutory (including Worker's Compensation), contractual, tort or other liability of Indemnitee.

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, photographs, 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. **Consultant Promotional Materials**. Unless specifically directed to the contrary by the Trust, Consultant shall identify its location for the performance of the Services herein as being within Hudson River Park in all literature, brochures, handouts, and promotional materials of any kind respecting the Event as set forth in the Scope of Services.
5. **Vendor Responsibility**. The Consultant shall provide the Trust with a list of all Subcontractors employed for the performance of the Contract Work whose subcontract amount totals \$25,000 or more. The Consultant will require any Subcontractor whose subcontract amount totals \$100,000 or more to provide it a copy of its Vendor Responsibility Determination, which may either be a copy of its submission on the Mayor's Office of Contracts Services Procurement and Sourcing Solutions Portal (PASSPort) or the copy of its submission to the State's VendRep system or as a hard copy using the Vendor Responsibility form that the Trust has provided to the Consultant. Such submissions by the Subcontractor to the Consultant shall occur in a timely fashion but in no event later than the commencement of the Contract Work 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 be 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. **Captions**. 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

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, 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 \$25,000, 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 § 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, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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 corporation 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 (2 NYCRR § 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 Part 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 clause. 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 corporation. 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 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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;

(a) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(b) 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

(c) 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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 §§ 139-j and 139-k, by signing this agreement the contractor

certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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 § 5-a, if the contractor fails to make the certification required by Tax Law § 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 Agreement, 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: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012> 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.

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.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

APPENDIX B
SCOPE OF SERVICES

THE SERVICES

1. SCOPE OF WORK:

The Trust is requesting an auditing firm to provide annual audited financial statements beginning with the annual audit of FY 2024 ending on March 31st, 2024, and each year thereafter that the contract is in effect in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants. The auditing firm shall prepare all statements and disclosures required by generally accepted accounting principles and required legal statements and disclosures of all funds. The audit shall be conducted, and the report shall be rendered in accordance with Generally Accepted Auditing Standards, Government Auditing Standards, and requirements of the federal Single Audit Amendments of 1996 and OMB Circular No. A-133.

The audit shall be sufficient in scope to enable the auditor to express opinions on the Trust's financial statements and compliance with laws, regulations, contracts, and grants applicable to major State, City, and Federal programs.

Work includes:

1. Review, examine, and report on the Trust's accounting procedures to ensure its adherence to accounting policies in accordance with Generally Accepted Accounting Principles and GASB pronouncements.
2. Review, examine, and report on the Trust's compliance with investment guidelines, including New York State Office of the Comptroller Investment Guidelines for Public Authorities and Section 2925(3)(f) of the State of New York Public Authorities Law - Investments of Public Authorities.
3. Hire a sub-consultant to provide an actuarial valuation for postemployment health benefits as required by GASB45.

2. AUDIT TIMELINE:

The audit must be conducted in a timely manner. The audit plan should consist of the following:

- A. A pre-planning conference in April or May as agreed upon by the auditing firm and the Trust;
- B. Compliance audit work initiated prior to May 31st of each audit year, and field work consisting of attestation of the financial statements.

APPENDIX B
SCOPE OF SERVICES

3. TIME REQUIREMENTS:

The audit shall be complete by June 10th of each audit year. The final audit must be completed and reports rendered by June 15th. If the Trust is unable to provide schedules/documents and requested work papers prepared by its Finance Department staff by the agreed-upon scheduled time, then the above time frame will be appropriately extended. The audit activities will also include the preparation of a letter disclosing and discussing informal/non-material comments (not included in the management letter); a management letter presentation to the Trust's Finance Committee, Chief Executive Officer, Chief Financial Officer, and the Vice President of Finance; and prior to submission of the completed report, the auditor shall review a draft of each proposed report with the Trust staff.

4. DELIVERABLES:

- A. Upon completion of the audit, an audit report consisting of those elements described in the respective audit guides and standards shall be issued. The auditor shall then submit the audited financial statements with audit opinions to the Trust's Chief Financial Officer and the Finance Committee. The Trust requires the submission of 20 bound hard copies of the audit report and financial statements as well as an electronic copy of the same.
- B. The auditing firm shall prepare schedules to satisfy the Trust's fixed asset management reporting requirements.

5. WORK PAPERS:

The auditing firm shall retain the audit work papers for six (6) years after the audit report date and make these work papers available for review, inspection, and reproduction at the request of the Trust.

6. ADDITIONAL WORK:

The consultant shall not provide additional services shall without a written change order for services issued by the Trust.

7. ADD ON ITEM:

The Trust may also require, at a time designated by the Trust, audits of the records of its tenants as authorized by the lease agreements held by the Trust. The basis for additional fees should the Trust request such services should be included in the RFP response.

APPENDIX B
SCOPE OF SERVICES



The Trust is requesting an auditing firm to provide annual audited financial statements beginning with the annual audit of FY 2024 ending on March 31st, 2024, and each year thereafter that the contract is in effect in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants. The auditing firm shall prepare all statements and disclosures required by generally accepted accounting principles and required legal statements and disclosures of all funds. The audit shall be conducted, and the report shall be rendered in accordance with Generally Accepted Auditing Standards, Government Auditing Standards, and requirements of the federal Single Audit Amendments of 1996 and OMB Circular No. A-133.

The audit shall be sufficient in scope to enable the auditor to express opinions on the Trust's financial statements and compliance with laws, regulations, contracts, and grants applicable to major State, City, and Federal programs.

Work includes:

4. Review, examine, and report on the Trust's accounting procedures to ensure its adherence to accounting policies in accordance with Generally Accepted Accounting Principles and GASB pronouncements.
5. Review, examine, and report on the Trust's compliance with investment guidelines, including New York State Office of the Comptroller Investment Guidelines for Public Authorities and Section 2925(3)(f) of the State of New York Public Authorities Law - Investments of Public Authorities.
6. Hire a sub-consultant to provide an actuarial valuation for postemployment health benefits as required by GASB45.

C. AUDIT TIMELINE:

The audit must be conducted in a timely manner. The audit plan should consist of the following:

D. A pre-planning conference in April or May as agreed upon by the auditing firm and the Trust;

E. Compliance audit work initiated prior to May 31st of each audit year, and field work consisting of attestation of the financial statements.

F. TIME REQUIREMENTS:

The audit shall be complete by June 10th of each audit year. The final audit must be completed and reports rendered by June 15th. If the Trust is unable to provide schedules/documents and requested work papers prepared by its Finance Department staff by the agreed-upon scheduled time, then the above time frame will be appropriately extended. The audit activities will also include the preparation of a letter disclosing and discussing informal/non-material comments (not included in the management letter); a management letter presentation to the Trust's Finance Committee, Chief Executive Officer, Chief Financial Officer, and the Vice President of Finance; and prior to submission of the completed report, the auditor shall review a

draft of each proposed report with the Trust staff.

G. DELIVERABLES:

A. Upon completion of the audit, an audit report consisting of those elements described in the respective audit guides and standards shall be issued. The auditor shall then submit the audited financial statements with audit opinions to the Trust's Chief Financial Officer and the Finance Committee. The Trust requires the submission of 20 bound hard copies of the audit report and financial statements as well as an electronic copy of the same.

B. The auditing firm shall prepare schedules to satisfy the Trust's fixed asset management reporting requirements.

H. WORK PAPERS:

The auditing firm shall retain the audit work papers for six (6) years after the audit report date and make these work papers available for review, inspection, and reproduction at the request of the Trust.

I. ADDITIONAL WORK:

In the event that circumstances arise during the audit that require work to be performed above the original estimate, as indicated in the above Scope and Deliverables, the basis for additional fees should the Trust request such services must be included in the RFP response. No additional services shall be provided without a change order for services.

J. REQUIREMENTS:

A. The auditing firm shall:

1. Be a licensed CPA able to practice public accounting in the State of New York;
2. Be independent from Trust's staff and activities;
3. Have demonstrated knowledge of New York State Finance Law and New York Public Authorities Law as applicable to the auditing services;
4. Have experience conducting audits for New York State agencies, public authorities, and local agencies;
5. Affirm that it is registered with the NY Board of Accountancy;
6. Certify that it meets the independent standards of the American Institute of Certified Public Accountants Code of Professional Ethics and the independent standards outlined in the GAO Standards and
7. Affirm that lead staff assigned to the Trust audit are certified public accountants.

K. ADD ON ITEM:

The Trust may also require, at a time designated by the Trust, audits of the records of its tenants as authorized by the lease agreements held by the Trust. The basis for additional fees should the Trust request such services should be included in the RFP response.

APPENDIX C
FEE AND COST SCHEDULE

The Consultant shall be paid pursuant to the Fee Schedule annexed hereto as Appendix C-1 in a total amount not to exceed \$_____. The Fee shall accrue and be paid as detailed below.

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

APPENDIX C-1

EEE SCHEDULE

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**. 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**.
- b) All insurance required by this **Appendix** 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 City of New York, and each of their offices, departments, agencies, officials, directors and employees. 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**. 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.

All required insurance must:

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 **Twenty-Five Thousand (\$25,000)** per claim unless otherwise approved by the Trust. General liability and umbrella/excess policies shall contain no deductibles in excess of **Twenty-Five Thousand Dollars (\$25,000)** 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**, 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**, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):
 - (1) **Commercial General Liability Insurance** with a limit of not less than **Three Million Dollars (\$3,000,000) 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. This requirement applies only to the General Liability policy, it does not apply to the Umbrella Liability policy.

- (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 Consultant's operations and required by law. Proof of Workers Compensation coverage must be presented on the NYS WCB C-105.2 or equivalent form; proof of Disability coverage must be provided on a DB-120.1 form.
- a. The NY State Workers Compensation Board guideline regarding these requirements is available at: <http://www.wcb.ny.gov/content/main/forms/AllForms.jsp>
 - b. If Exempt from Worker Compensation please refer to the following link and provide proof on the CE200 form issues by the NY State Workers Compensation Board: http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp
 - c. If the Consultant is not a NY State based business, then the Consultant must provide a copy of its Workers' Compensation policy's Declarations Page to show that New York is listed in Part 3A and to confirm the policy provides statutory Employer's Liability coverage applicable in NYS.
- (4) If Consultant is providing or subcontracting professional services, Consultant shall certify that that the Consultant and/or its consultant(s) and sub-consultant(s) maintain **Errors and Omissions Liability Insurance** with coverage of not less than **Three Million Dollars (\$3,000,000)** per claim and as an aggregate annual limit. Policy limits must be adequate to cover both the cost of defense and damages arising out of any resulting judgments and court costs.
- a. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by the Contract.
 - b. If coverage is written on a claims-made policy, Consultant warrants that any applicable retroactive date precedes the effective date of the Contract; and that continuous coverage will be maintained, or an extended period exercised for not less than three (3) years and shall cover third party claims resulting from invasion of privacy, theft of data, data corruption and restoration.
- (5) **Cyber Liability, Information (or Data) Security Insurance** coverage, or equivalent coverage or endorsement under an approved policy, with a limit of not less than **Two Million Dollars (\$2,000,000)** per each claim; such insurance policies shall include coverage for the unauthorized access, accidental or deliberate disclosure of any person or organization's confidential or personal information or data exchanged through oral, written or electronic means. Coverage shall apply to any data or information disclosure related liability arising from access or use of any confidential or personal information; including but not limited to trade secrets, processing methods, customer lists, financial information, credit card information or any other nonpublic information accessed or disclosed as indicated. Coverage shall also cover third party claims resulting from invasion of privacy, theft of data, data corruption and data restoration.

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** 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 thirty percent (30%) for MWBE participation, ___ percent (X%) for New York State-certified minority-owned business enterprise (“MBE”) participation and ___ percent (X%) 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. The portion of a contract with an MWBE

serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be twenty five percent (25%) of the total value of the contract.

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

III. Equal Employment Opportunity (“EEO”)

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

or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- C. Form EEO101 - Workforce Utilization Report**
- 1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the Trust on a monthly basis during the term of the Contract.
 - 2. Separate forms shall be completed by the Contractor and any subcontractors.
- D.** The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. 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: _____

APPENDIX E-1

COMPLIANCE WITH THE STATE UTILIZATION MANAGEMENT PROGRAM

I. Background

- A. The NYSCS manages the State Utilization Management Program (“SUMP”) to track the advertising, reporting and compliance of MWBE contracts. All contracts involving the purchase of commodities/services greater than \$25,000 and construction contracts greater than \$100,000 must be entered and tracked through SUMP. The MWBEs utilization goal is applicable to subcontracted services, materials, equipment and supplies.
- B. The Trust may require Contractor to register and create a SUMP account to submit their MWBE utilization plan, request subcontractors (if required), record payments to subcontractors, and communicate with the Trust’s project manager throughout the term of the contract.
- B. An awardee may utilize SUMP for the outreach of prospective MWBE subcontractors or to obtain a list of certified MWBE subcontractors that specialize in specific trades.
- C. Upon contract award, an awardee must enter its MWBE utilization plan into SUMP. The awardee may contact the Trust and arrange to meet with a Trust representative at the Trust offices where the awardee will log into SUMP and the Trust representative will manually enter the awardee’s approved utilization plan into SUMP. The awardee will be solely responsible for the information and M/WBE commitments identified in the utilization plan.
- D. As a condition precedent to contract execution, the awardee must provide the Trust with: (a) documentation that it will meet the 30% MWBE participation goal or (b) appropriate backup and good faith efforts documented to support the grant of an MWBE waiver. The Trust will apply for this waiver on behalf of the awardee; however, the awardee is responsible for justifying the waiver exception and maintaining the approved participation goal. Acceptable documentation to support the granting of a waiver includes: a SUMP Vendor List with view log and outreach statistics; relevant supporting documentation justifying the “good faith efforts” made to comply with the contract MWBE goals, which may include fax or email solicitations and explicit responses, or documentation that a targeted firm is no longer doing business.
- E. The Trust will provide assistance to awardees with regards to the MWBE program in general and the processing of information into SUMP.

II. Compliance Reporting

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

- B. SUMP utilizes a “Total Dollar Value Utilization Report” to track MWBE participation throughout the term of the contract. The Total Dollar Value Utilization Report must be updated and submitted with each payment made by the Trust to the awardee. Payments should indicate the dollar amount of payments made to MWBEs and include cancelled checks or signed waivers from MWBE subcontractors for each payment period of reported activity. The awardee’s failure to update the report, or provide appropriate backup, may be result in a non-compliance determination. The Trust will provide the awardee appropriate training and support to facilitate the awardee’s performance of these tasks. Alternatively, the Trust may, on behalf of the awardee, enter the payment information into SUMP.
- C. The Trust may notify subcontractors of payments made by the Trust to the awardee or seek confirmation of payments that awardee claims to have made to MWBE subcontractors.
- D. New subcontractors may be added during the term of the contract, as required. If the MWBE percentage goal is reduced during the term of a contract (by a reduction in scope or by the removal of an MWBE subcontractor), the awardee must either replace that MWBE with a similar MWBE or seek a waiver as provided in Section I.D above.

III. Contract Closeout

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

APPENDIX F
SDVOB REQUIREMENTS

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

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB") thereby further integrating such businesses into New York State's economy. The Trust recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Trust contracts.

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

New York State Law. New York State Veterans' Services Law Article 3 governs requirements for the participation of SDVOBs in New York State contracting. The objective of Article 3 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.

Contract Goals. The Trust hereby establishes an overall goal of 0% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Respondent should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>.

Additionally, following Contract execution, the selected Consultant is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

