

**COOPERATIVE AGREEMENT C003145**  
**FJORD TRAIL PROJECT DEVELOPMENT AGREEMENT**  
**PHASE ONE – PART A SUPPLEMENTAL AGREEMENT**  
**BREAKNECK BRIDGE DESIGN PHASE**  
**AND OPRHP CONSTRUCTION MANAGER**

This agreement, dated December 21, 2021 between the New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”), and Hudson Highlands Fjord Trail, Inc. (“HHFT”) a New York not-for-profit corporation, amends and supplements Cooperative Agreement C003145, dated April 1, 2021, between the same parties, as it may have been previously amended or supplemented (the “Cooperative Agreement”).

All defined terms not otherwise defined herein are used with their meanings set forth in the Cooperative Agreement.

**RECITALS:**

The Cooperative Agreement requires that, prior to commencing construction on each Phase of the Fjord Trail Project, the parties enter into a Supplemental Agreement with respect to that Phase that specifically identifies and defines such Phase, constitutes the capital project approval for such construction, and sets forth any and all terms and conditions, in addition to the terms and conditions set forth in the Cooperative Agreement, that shall govern the development and initial operation of such Phase (including, without limitation, any additional operating conditions applicable to such Phase required by OPRHP and provisions designed to satisfy the requirements of government units or public agencies who own real property interests relevant to such Phase).

The parties have mutually agreed that the Fjord Trail Project element known as Phase One - Breakneck Connector and Bridge will be divided into three sub-parts: Part A, encompassing the design and regulatory approval for the Breakneck Bridge and including the engagement of an OPRHP construction manager for the Breakneck Bridge; Part B, which will consist of procurement and construction of the Breakneck Bridge; and Part C, which will include the construction of all elements of the Breakneck Connector. The Breakneck Bridge will be designed by HHFT. OPRHP will be the contracting party for construction of the Bridge. The parties are now entering this Phase One – Part A Supplemental Agreement (i) to govern the planning and design of the Breakneck Bridge and (ii) to allow the immediate engagement, at HHFT’s cost, of a construction manager for OPRHP to participate in such planning and who eventually will serve as OPRHP’s construction manager for construction of the Breakneck Bridge. Elements of Phase One other than the Breakneck Bridge, including the Breakneck Connector and Upper Overlook, will be contracted for by HHFT.

Now, therefore, the parties agree as follows:

**Section 1. Contract Documents**

- (a) This agreement is comprised of the following documents:
  - (i) Supplemental Agreement

- (ii) Attachment A – Phase One – Part A Overview
- (iii) Attachment B – Identification of Phase One Real Property, Including Premises Map

(b) In the event of any inconsistency in or conflict between this agreement and the Cooperative Agreement, as it has been amended or previously supplemented, such inconsistency or conflict shall be resolved by giving precedence to this agreement, including its attachments.

## **Section 2. Phase One – Part A Designation; Scope of Work**

- (a) Part A of Phase One, covered by this Supplement Agreement, does not comprise or include approval for a capital project. HHFT has designated the design and approval phase work described in Attachment A as Phase One – Part A, in order to (i) govern design and approval work for the Breakneck Bridge and responsibility for the costs thereof, and (ii) to permit OPRHP to immediately hire its construction manager for Breakneck Bridge, so that party can participate in the design phase and then continue work once construction is commenced following signing of the Supplemental Agreement for Phase One – Part B. Attachment A also contains a more precise definition (solely for purposes of this Part A work) of the future capital project referred to herein as “Breakneck Bridge” (the definitive definition and scope of that project to be set forth in the Supplemental Agreement for Phase One – Part B covering the procurement and construction of that capital project).
- (b) For the avoidance of doubt, this agreement does not authorize HHFT to undertake any construction or other capital project work on any OPRHP Lands or designate any OPRHP Lands as Licensed OPRHP Lands.

## **Section 3. Materials Previously Provided to OPRHP In Connection with Breakneck Bridge**

HHFT represents that it has previously delivered to OPRHP, and OPRHP acknowledges delivery of an 80% design development set for the Breakneck Bridge project elements, dated May 3, 2021, and a preliminary Breakneck Bridge project schedule, prepared December 2, 2021.

## **Section 4. Responsibilities of the Parties**

- (a) HHFT Responsibilities
  - (i) HHFT shall continue to be responsible at its own cost for the general administration and management of the design and planning for the Breakneck Bridge. For the avoidance of doubt, HHFT’s responsibility for the design and planning work covered by this Phase One – Part A Supplemental Agreement includes:
    - (a) Developing design and construction drawings, calculations, and schematics required to achieve the final, code-compliant designs for Breakneck Bridge including at minimum an amended 80% design development set, a 100% design development set, and, in consultation with OPRHP and the OPRHP Construction Manager, a set of 100% construction documents consisting of bid ready documents inclusive of drawings and technical specifications;
    - (b) Providing, prior to the onboarding of the OPRHP Construction Manager, cost estimates for the Breakneck Bridge;
    - (c) Coordinating and attending design review meetings with stakeholder and permitting agencies, including Metro-North Commuter Railroad, New York State Department of

Transportation, US Army Corps of Engineers, New York State Department of Environmental Conservation, and New York City Department of Environmental Protection (NYCDEP), providing such agencies with progress drawings, and providing OPRHP with meeting minutes or summaries; and

- (d) Preparing necessary topographical and geophysical site surveys, including any necessary geotechnical borings.
  - (ii) HHFT shall provide OPRHP will copies of all surveys, environmental studies, and engineering, architectural, and other documents that OPRHP may reasonably require.
  - (iii) HHFT shall provide OPRHP with the 100% construction drawing set referenced above by the earliest possible date.
  - (iv) In accordance with Section 6, HHFT shall make timely payments to OPRHP to cover the cost of the OPRHP Construction Manager, as defined below.
  - (v) HHFT shall cause Breakneck Bridge design consultant team to provide OPRHP with timely responses to all requests by OPRHP or the OPRHP Construction Manager for further development of the design or construction documents (within such team members' scope of work), such requests to be directed to and coordinated by HHFT's Owner's Representative.
- (b) OPRHP Responsibilities
- (i) OPRHP shall, directly and through the OPRHP Construction Manager, provide timely review and comment on all correspondence, surveys, studies, and documents provided by HHFT in connection the design and permitting of Breakneck Bridge.
  - (ii) OPRHP is selecting a consultant to provide construction management services for Phase One, inclusive of both design and construction stages (the "**OPRHP Construction Manager**"). OPRHP shall engage such OPRHP Construction Manager as soon as practicable in accordance with applicable procurement laws and guidelines and provide to HHFT its approved, executed contract with such OPRHP Construction Manager together with the scope of services and budget for work thereunder "**Budget**").
  - (iii) During the life of such contract for the OPRHP Construction Manager, OPRHP shall, in a timely manner, provide HHFT with (i) any proposed amendment to such contract or Budget, or change in scope that would result in a change in budget or total cost thereunder, and (ii) copies of all cost-related documentation in accordance with Section 6 and, unless otherwise mutually agreed to in writing by the parties in this agreement or elsewhere, shall use HHFT's payment under this agreement only to pay the OPRHP Construction Manager.
  - (iv) OPRHP shall, as set forth in Section 7 below, engage in negotiations with MNR and NYCDEP, among others, to secure the easements necessary for the construction and operation of Breakneck Bridge.

## **Section 5. Environmental Review and Permitting**

- (a) This agreement for the planning and design of Breakneck Bridge is a Type II Action under SEQRA. The future Supplemental Agreement for Phase One – Part B (to construct Breakneck Bridge) would be an action subject to SEQRA. At the time of signing, OPRHP and HHFT are engaged in a SEQRA

review of Breakneck Bridge for which, consistent with the Cooperative Agreement, OPRHP is the lead agency and HHFT has engaged an environmental consultant at its own cost.

## **Section 6. Costs**

- (a) Except for the cost of the OPRHP Construction Manager, each of OPRHP and HHFT shall bear the costs of its own staff, consultants and contractors engaged to perform their respective responsibilities as outlined in this agreement.
- (b) HHFT agrees to make contributions to OPRHP equal to OPRHP's actual costs payable to the OPRHP Construction Manager under the OPRHP Construction Manager Contract. OPRHP represents to HHFT that the contract for the OPRHP Construction Manager has an estimated cost to it of \$5,000,000. In lieu of reimbursement against presentation of paid invoices, HHFT shall pre-pay for such costs payable by OPRHP under the OPRHP Construction Manager Contract by delivering US\$5,000,000 to OPRHP by December 31, 2021. OPRHP shall deposit, such funds into an account separate from OPRHP's capital appropriation and hold any unexpended funds in such account until expended.

Should OPRHP propose at any time to modify the OPRHP Construction Contract or budgets thereunder that would reasonably be expected to result in total amounts payable thereunder exceeding \$5,000,000, OPRHP and HHFT shall consult with one another regarding whether such increase is reasonably required and what additional amount, if any, HHFT would agree to contribute (and on what schedule). HHFT acknowledges that OPRHP will need at least a portion of any such additional funds in hand prior to making any change or agreement with the OPRHP Construction Manager that would result in costs exceeding \$5,000,000.

- (c) All sums paid by HHFT to OPRHP hereunder shall be considered donor-restricted contributions by HHFT to OPRHP, to be used solely to pay amounts due by OPRHP to the OPRHP Construction Manager in connection with the construction of Breakneck Bridge or as otherwise directed by HHFT in writing. OPRHP shall provide a copy of monthly invoices and an accounting, in reasonable detail, of how HHFT contributions have been used. Upon termination of the OPRHP Construction Manager Contract, any such contributions that have not been paid over to the OPRHP Construction Manager shall be applied solely to meet capital costs payable in connection with Breakneck Bridge construction, to be applied to such costs prior to application of any other HHFT funds then payable under the Supplemental Agreement for construction of Breakneck Bridge. Should any funds paid over this contract be left unexpended at the conclusion of the Breakneck Bridge project, OPRHP shall retain such funds in a separate account from its capital appropriation until the parties have mutually agreed to an expenditure plan in writing.
- (d) For the avoidance of doubt, this Supplemental Agreement for Phase One – Part A covers work and costs during the life of the OPRHP Construction Manager Contract, notwithstanding that this Supplemental Agreement otherwise covers only design and permitting work for Breakneck Bridge, and not the actual construction thereof.

## **Section 7. Real Property Interests**

- (a) The construction of Breakneck Bridge will require the following Other Interests in order to be constructed and operated, the approximate limits of which are shown on the maps in Attachment B:
  - (i) Permanent easement from Metropolitan Transportation Authority for lands and through air space over the tracks

- (ii) Easement and interim land use permit from NYCDEP
- (iii) Long-term Occupancy and Use permit, if required by, DOT

(b) The parties intend that OPRHP shall hold such real property interests and to be the primary negotiator of such agreements. OPRHP shall share progress drafts with HHFT for comment during the course of negotiation and make all reasonable efforts to incorporate HHFT's comments therein.

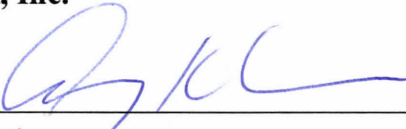
#### **Section 8. Miscellaneous**

(a) Phase One (Breakneck Connector and Bridge) of the Fjord Trail Project is being designed, engineered, and permitted as an integrated whole. Any design change or change order affecting one part of Phase One has the potential to affect facilities or activities covered by another part. Accordingly, and without limiting the more specific requirements of this and future individual Supplemental Agreements, once construction work has commenced (and regardless of which of them is party to the construction contract(s) for such work) each party will (and will cause its respective contractors) to (i) provide regular construction progress and budget reports to the other party, (ii) consult with the other party before agreeing to any proposed design or budget change, (iii) otherwise fully coordinate with each other so that Phase One has the same design/engineering/program integrity it would have were it construction managed by a single party.

(b) For the avoidance of doubt, as an agreement supplementing and amending the Cooperative Agreement, all of the provisions of Articles Seven, Eight and Nine of the Cooperative Agreement (in addition to the Standard Clauses for New York State Contracts set forth in Appendix A), shall apply to this agreement as well as to the Cooperative Agreement as amended and supplemented hereby.

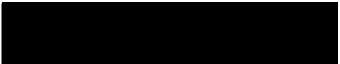
**In witness whereof**, the parties are signing this agreement on the date stated in the introductory clause.

**Hudson Highlands Fjord Trail, Inc.**

Approved By:  \_\_\_\_\_

Name: Amy Kacala

Title: Executive Director

Federal EIN: 

**State of New York, Office of Parks, Recreation and Historic Preservation**

Recommendation by Linda Cooper, Regional Director:

\_\_\_\_\_

Approved By:  \_\_\_\_\_

Name: Tom Alworth

Title: Executive Deputy Commissioner

**\*Attachments Follow\***

Attachment A

**PHASE ONE – PART A OVERVIEW**

1. Design and permitting work

Design and permitting of the proposed capital project known as “Breakneck Bridge,” including the roles of both parties and allocation of costs therefor.

2. OPRHP Construction Manager

Engagement of the OPRHP Construction Manager under the OPRHP Construction Manager Contract, and administration of such contract over its life, including the making of contributions from HHFT to OPRHP to permit OPRHP to make the payments due thereunder.

3. Definition of “Breakneck Bridge” for purposes of Part A Work

The operative scope of the Breakneck Bridge capital project will be defined in the Phase One – Part B Supplement Agreement covering construction of such bridge. Solely for the purposes of reference in this Supplement Agreement, “Breakneck Bridge” means all of the structural elements within the MNR bridge easement, the DEP land use permit and components needed for the connection to Route 9D.

Attachment B

**IDENTIFICATION OF REAL PROPERTY, INCLUDING PREMISES MAP**

As the work covered by this Phase One – Part A Supplemental Agreement is not a capital project, there is no construction activity occurring hereunder on real property or requiring real property rights.

The work covered by this Phase One – Part A Supplemental Agreement does, however, include negotiations and other work to secure real property rights anticipated to be available for construction of the Breakneck Bridge, including:

- (i) Permanent easement from Metropolitan Transportation Authority
- (ii) Easement and interim land use permit from NYCDEP