

**AGREEMENT BETWEEN
THE CITY OF NEW YORK AND
THE STATE OF NEW YORK FOR THE CONSTRUCTION OF A
DUAL-FUNCTION BRIDGE TO THE
HUDSON RIVER DRAINAGE CHAMBER**

THIS AGREEMENT (the “Agreement”) is made and entered into as of the **8th** day of **December, 2023**, by and between the **CITY OF NEW YORK** (the “City”), a municipal corporation of the State of New York, acting by and through the **NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION** (“DEP”), having its principal office at 59-17 Junction Boulevard, Flushing, New York 11373, and the **STATE OF NEW YORK** (the “State”), acting through its **OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION**, with an office at 625 Broadway, Albany, New York 12238 (“OPRHP”), (each a “Party,” and collectively, the “Parties”).

WHEREAS, DEP operates and maintains the City’s water supply system and is responsible for providing drinking water to the City and to its upstate customers; and

WHEREAS, DEP’s Hudson River Drainage Chamber (the “HRDC”) is located in the Town of Fishkill on the bank of the Hudson River near the Breakneck Tunnel, and is separated from New York State Route 9D (“Route 9D”) by Metro-North Commuter Railroad Company (“Metro-North”) tracks, rendering it inaccessible by vehicles and, therefore, makes it difficult for DEP to perform essential operations and maintenance work that is critical to the operation of the City’s water supply system (the “HRDC Rehabilitation”); and

WHEREAS, to ensure the long-term sustainability of its ability to supply water through the Delaware Aqueduct and Catskill Aqueduct, DEP has committed capital funds to make repairs and conduct rehabilitation work to both aqueducts; and

WHEREAS, in connection with DEP’s upstate capital repairs program and to permit DEP to conduct repairs and rehabilitation work thereto, the Catskill Aqueduct will need to be taken out of service for an extended period of time on multiple future occasions; and

WHEREAS, the necessary HRDC Rehabilitation includes the replacement of two gate valves and full facility rehabilitation that can only be done during a shutdown of the Catskill Aqueduct; and

WHEREAS, Hudson Highlands Fjord Trail, Inc. (“HHFT”) is a not-for profit environmental organization creating a seven-and-one-half mile shared-use trail (“Trail”) that will run, in part, between Route 9D and the Hudson River, known as the Hudson Highlands Fjord Trail project; and

WHEREAS, OPRHP, working with HHFT, is currently designing and plans to construct a shared-use bridge over the Metro-North as part of the Trail between Route 9D and the Hudson River, near the HRDC; and

WHEREAS, in accordance with the terms and conditions set forth herein, DEP is willing to provide partial funding for construction of the bridge in exchange for OPRHP upgrading the pedestrian bridge to a dual-function pedestrian and H10-rated vehicular bridge (“the Bridge”) to allow DEP vehicular access over the Metro-North tracks; and

NOW, THEREFORE, in consideration of the respective representations and agreements contained below, the Parties agree as follows:

1. Registration Required

This Agreement shall not take effect until it is registered pursuant to Section 328 of the New York City Charter. The term will commence on the date set forth in a Notice to Proceed sent by DEP after registration (the “Commencement Date”).

2. Expiration, Termination and Extension of Agreement

Unless otherwise extended in a writing signed by both Parties, with the approval of the DEP Agency Chief Contracting Officer (the “ACCO”) and OPRHP’s Commissioner or Executive Deputy Commissioner, this Agreement shall expire on December 31, 2027, unless terminated sooner pursuant to the terms of this Agreement.

3. General Project Services

a. The services to be completed by OPRHP pursuant to this Agreement shall include the

construction of the Bridge (the “Project”) in accordance with the specifications and requirements set forth in Attachment A.

- b. The Project shall be constructed pursuant to a design completed by HHFT. HHFT shall complete the design at no direct cost to either DEP or OPRHP, through HHFT’s own professional staff or through consultants who, if necessary, are licensed to practice engineering in the State. The design shall implement the conceptual plan, a copy of which is annexed hereto as Attachment B. The design of the Project shall include the preparation of plans and specifications that comply with all applicable standards set by the New York State Department of Transportation, DEP, New York City Public Design Commission, New York State Department of Environmental Conservation, Metro-North, United States Army Corps of Engineers, and with all applicable federal, State, and local laws. OPRHP shall fulfill all site requirements in carrying out the Project, including conditions of any DEP Land Use Permits.
- c. OPRHP shall secure for the City permanent deeded rights of access from Route 9D to and over the Bridge and its approaches (the “Project Site”), including rights (“MTA Easement”), from Metro-North/Metropolitan Transportation Authority (“MTA”), the State, and/or any future owner of the Bridge or the Project Site. Such access rights shall provide the City with rights, but not obligations, to maintain said access, and shall not be subject to any notice requirement and shall allow access 365 days a year with no time limitations, but the Parties shall each agree to use their reasonable best efforts to cooperate and coordinate with respect to shared access rights. All easements or other documents securing such rights shall be submitted to the City for review and approval prior to filing with the applicable county clerk. Said deeded rights shall be recorded as soon as practicable. The provisions of this sub-Section shall survive the expiration or termination of this Agreement.
- d. OPRHP shall manage the Project. OPRHP shall be responsible for ensuring that all necessary permits, consents, and approvals are obtained, for providing any and all notifications necessary to carry out the Project, and for making all necessary modifications to its existing permits that may be affected by the Project, in a timely manner to ensure that the Substantial Completion date in Attachment C is met. Upon request, OPRHP shall provide

DEP with a copy of any permit application. If OPRHP learns that it cannot obtain a necessary approval, consent, or permit prior to the date upon which such work must be undertaken to meet the Substantial Completion date set forth in Attachment C, OPRHP shall notify DEP immediately, in writing, in accordance with the provisions of Section 14, below.

OPRHP will be responsible for completing the Project on or before the Substantial Completion date set forth in Attachment C hereto. Failure to do so will give DEP the option to declare an event of default under this Agreement as set forth in Section 29. If OPRHP believes that an extension of a milestone identified in Attachment C is warranted, OPRHP may seek such an extension from the DEP Project Manager or Point of Contact, as identified in Section 14 below. If DEP agrees in writing to grant the requested extension, in its reasonable discretion, the milestone date set forth in Attachment C shall be deemed amended accordingly. Any such extension shall not require an amendment to this Agreement.

- e. In order to achieve Substantial Completion of the Project, the Parties agree to follow the course of action, order of deliverables, notices, and approvals set forth herein.

4. Design, Preconstruction and Public Letting of the Construction Contract

- a. HHFT, at its own cost and expense, shall procure design services for the Project, and OPRHP shall procure construction management services to ensure the Project is built in accordance with the 100% Construction Drawings and Specifications. DEP will not reimburse costs for either design or construction management services. OPRHP shall enter into a contract (“Construction Contract”) with a construction contractor to complete the Project.
- b. OPRHP shall be the contracting entity for the Project and shall conduct the related procurement(s) using “lowest bidder” methodology in accordance with New York’s State Finance Law.
- c. The Parties acknowledge OPRHP has shared, and will continue to share, with DEP design development plans and specifications.
- d. Prior to preparing and submitting to DEP the final bid solicitation for the Construction Contract, OPRHP shall seek DEP approval for the 90% Construction Drawings and

Specifications. DEP shall have fourteen (14) days after submission to either approve such 90% Construction Drawings and Specifications or provide comments. OPRHP shall address, and endeavor to incorporate, DEP's reasonable comments in revisions to be resubmitted to DEP. DEP shall have an additional fourteen (14) days after resubmission to approve the 90% Construction Drawings and Specifications or work together with OPRHP in good faith to finalize the 90% Construction Drawings and Specifications to their reasonable mutual satisfaction.

- e. After receiving DEP's approval of, and/or comments to, the 90% Construction Drawings and Specifications, OPRHP shall prepare and submit the final bid solicitation package that includes the 100% Construction Drawings and Specifications for DEP approval. DEP shall have seven (7) days after submission to either approve such final bid solicitation and 100% Construction Drawings and Specifications or provide comments. OPRHP shall address, and endeavor to incorporate, DEP's reasonable comments in a revised bid solicitation to be resubmitted to DEP. DEP shall have an additional seven (7) days after resubmission to approve the bid solicitation or work together with OPRHP in good faith to finalize the bid solicitation to their reasonable mutual satisfaction.
- f. After receiving DEP's approval of the final bid solicitation package, OPRHP shall publicly advertise the Construction Contract in accordance with the State Finance Law and guidelines.
- g. Promptly after the opening of the sealed bids, OPRHP shall provide DEP with a list of the bidders' names and the bid amounts.
- h. Within three business days of OPRHP providing such notice of bidders, DEP shall have the opportunity to provide notice to OPRHP that, in DEP's opinion, the lowest bidder does not have a satisfactory record of business integrity, would otherwise be found to be a non-responsible bidder by DEP, or that DEP has reason to believe such bidder will be unable to complete the relevant Construction Contract according to the applicable Plans and Specifications. If DEP does not provide notice of an objection to OPRHP within three business days, DEP shall waive its opportunity to object to award of a Construction Contract to the lowest bidder.

- i. OPRHP shall award one or more Construction Contract (which may allow for subcontracting) for the Construction Work, in compliance with the Wicks Law, if applicable. OPRHP shall notify DEP, in writing, within one business day, of any Construction Contract award.
- j. If, in DEP's opinion, the timing of the Project will interfere with the HRDC Rehabilitation, DEP shall have the right to require OPRHP to issue a stop work order ("Stop Work Order") to the Construction Contract.

5. Environmental Review, Permitting and Construction Work

- a. OPRHP shall not commence construction work in accordance with the approved 100% Construction Drawings and Specifications (the "Construction Work") unless and until the following conditions set forth below are met or achieved:
 - i. As lead agency, OPRHP completes review of the Project in compliance with the requirements set forth under the State Environmental Quality Review Act ("SEQRA"); and DEP, as an Involved Agency, reviews and deems the SEQRA review complete;
 - ii. OPRHP receives all required approvals and permits necessary under law or contract;
 - iii. OPRHP provides all prior notices that are necessary under law or contract;
 - iv. OPRHP secures the necessary bonds and proof of insurance pursuant to Section 11 herein;
 - v. OPRHP provides DEP a complete original set of the 100% Construction Drawings and Specifications as set forth in the bidding documents for the Construction Contract;
 - vi. OPRHP provides DEP with proof of adequate funds to complete the Project;
 - vii. DEP's Bureau of Police and Security provides security clearance for all individuals accessing DEP property;
 - viii. OPRHP obtains all necessary Land Use Permits, easements and other property rights from DEP and any other applicable entity; and

- ix. DEP provides written approval (or a Notice to Proceed) to commence Construction Work.
- b. OPRHP shall ensure that the Construction Work is prosecuted diligently and performed in an orderly, expeditious and workmanlike manner and in strict conformance with the 100% Construction Drawings and Specifications with the aim to meet the Substantial Completion date set forth in Attachment C. The engineer of record shall be required to certify that the Construction Work was completed in accordance with the approved 100% Construction Drawings and Specifications for the Project.
- c. DEP shall have the right (and OPRHP shall ensure that DEP shall have access to the work site as needed) to inspect the Construction Work from time to time to determine whether the Construction Work is being prosecuted in accordance with Section 5(b), above.
- d. OPRHP must provide DEP with written notice of any and all change orders under the Construction Contract prior to the approval thereof, unless necessitated by an emergency condition.
- e. Notwithstanding anything in this Section to the contrary, if DEP has exercised its right pursuant to Section 4(j), DEP may require OPRHP to issue a Stop Work Order to its construction contractors if, in DEP's opinion, the Project will interfere with the HRDC Rehabilitation.

6. Progress Reports

OPRHP shall keep the DEP apprised of the progress of all work, including securing deeded access rights for DEP, by submitting updated schedules of values associated with each of OPRHP's construction contractor(s)' requests for payment and meeting minutes of any Progress Meetings. OPRHP shall also submit to DEP a description of any aspect of the Project that OPRHP anticipates may be delayed such that the Substantial Completion date in Attachment C may not be met, and a description of any Construction Work that OPRHP anticipates may not be completed in accordance with the 100% Construction Drawings and Specifications.

7. Cost and Payment

a. Eligible Costs. Subject to the restrictions set forth in this Section 7, DEP agrees to pay OPRHP a total amount of up to \$14,000,00 (fourteen million dollars and 00/100) to partially cover the direct costs of the Project in accordance with the terms and conditions in this Agreement (“Eligible Costs”). If the Construction Contract winning bid is less than \$28,000,000 (twenty-eight million dollars and 00/100), then DEP shall pay a total amount equal to 50% of the bid amount. If the Construction Contract winning bid is \$28,000,00 (twenty-eight million dollars and 00/100) or greater, DEP shall pay a total amount of \$14,000,000 (fourteen million dollars and 00/100). The Eligible Costs will be paid as follows:

- i. **Initial Payment:** OPRHP shall submit a \$7,000,000 (seven million dollars and 00/100) invoice to DEP’s Point of Contact listed in Section 14 below following the Agreement’s registration with the City Comptroller, recordation of the MTA Easement, and DEP’s approval of 100% Construction Drawings and Specifications. DEP shall submit the Initial Payment to OPRHP within 90 (ninety days) of DEP’s receipt of an acceptable invoice.
- ii. **Second Payment:** If the Construction Contract winning bid is \$28,000,00 (twenty-eight million dollars and 00/100) or greater, DEP shall pay a total of \$2,000,000 (two million dollars and 00/100) to OPRHP upon reaching the 30% construction milestone.

If the Construction Contract winning bid is less than \$28,000,000 (twenty-eight million dollars and 00/100), DEP shall pay 30% of the remaining balance after reaching the 30% construction milestone.

OPRHP shall request the second payment via an invoice submitted to DEP’s Point of Contact listed in Section 14 below. DEP shall make payment within ninety (90) days of receiving an acceptable invoice.

- iii. **Third Payment:** If the Construction Contract winning bid is \$28,000,00 (twenty-eight million dollars and 00/100) or greater, DEP shall pay a total of \$2,000,000 (two million dollars and 00/100) upon reaching the 60% construction milestone.

If the Construction Contract winning bid is less than \$28,000,000 (28 million dollars and 00/100), DEP shall pay 30% of the remaining balance to OPRHP upon reaching the 60% construction milestone.

OPRHP shall request the third payment via an invoice addressed to DEP's Point of Contact listed in Section 14 of this Agreement. DEP shall make payment within ninety (90) days of receiving an acceptable invoice.

- iv. **Fourth Payment:** If the Construction Contract winning bid is \$28,000,00 (twenty-eight million dollars and 00/100) or greater, DEP shall pay a total of \$2,000,000 (two million dollars and 00/100) upon reaching the 90% construction milestone.

If the Construction Contract winning bid is less than \$28,000,000 (twenty-eight million dollars and 00/100), DEP shall pay 30% of the remaining balance to OPRHP upon reaching the 90% construction milestone.

OPRHP will request the fourth payment via an invoice submitted to DEP's Point of Contact listed in Section 14 of this Agreement. DEP shall make payment within ninety (90) days of receiving an acceptable invoice.

- v. **Fifth Payment:** If the Construction Contract winning bid is \$28,000,00 (twenty-eight million dollars and 00/100) or greater, DEP shall pay \$500,000 (five hundred thousand dollars and 00/100) after the Project reaches Substantial Completion. *See* Attachment C.

If the Construction Contract winning bid is less than \$28,000,000 (twenty-eight million dollars and 00/100), DEP shall pay 5% of the remaining balance to OPRHP after reaching Substantial Completion.

OPRHP shall request the fifth payment via an invoice submitted to DEP's Point of Contact listed in Section 14 below. DEP shall make payment within ninety (90) days of receiving an acceptable invoice.

- vi. **Final Payment:** If the Construction Contract winning bid is \$28,000,00 (twenty-eight million dollars and 00/100) or greater, DEP shall pay \$500,000 (five hundred

thousand dollars and 00/100) after the Project reaches “Final Completion.” Final Completion is deemed to have occurred when OPRHP has determined that all Construction Contract work, including punch list work, is complete.

If the Construction Contract winning bid is less than \$28,000,000 (twenty-eight million dollars and 00/100), DEP shall pay the remaining balance after reaching Final Completion.

OPRHP shall request the final payment via an invoice submitted to DEP’s Point of Contact listed in Section 14 below. DEP shall make payment within ninety (90) days of receiving an acceptable invoice.

- b. Total Eligible Costs. Notwithstanding anything to the contrary herein, the aggregate total of all Eligible Costs payable by DEP hereunder shall not exceed \$14,000,000 (fourteen million dollars and 00/100) (“Total Eligible Costs”). OPRHP shall be responsible for any and all Project costs above the Total Eligible Costs.

8. Payment Procedures

- a. DEP will release funds to OPRHP by electronic funds transfer to the arranged financial institution and/or account.
- b. Delays or Incomplete Work. If OPRHP is in material breach of the terms of this Agreement, including the failure to meet the Substantial Completion deadline set forth on Attachment C, in addition to any other rights or remedies available to it at law or in equity, DEP shall be entitled to withhold payment otherwise due to OPRHP in an amount that represents the cost to cure the breach and covers any reasonable damages resulting directly from such breach.
- c. DEP Funds for Eligible Costs Only. It is understood between the Parties that DEP’s payment under this agreement is intended to only cover OPRHP’s partial construction costs for the Bridge. OPRHP shall ensure that all funds released to it by DEP shall be used exclusively for Eligible Costs incurred in connection with Project as set forth herein.
- d. Payment Disputes. The Parties hereby agree to cooperate to the best of their abilities with respect to the resolution of payment disputes. In the event the Parties are unable to agree on

the resolution of a payment dispute at the staff level, each Point of Contact identified in Section 14 of this Agreement shall meet within ten (10) business days of either Party's request to resolve the dispute. In the event the Points of Contact are unable to resolve the payment dispute at this meeting, the payment dispute and supporting materials from both Parties shall be brought to the DEP Commissioner and the OPRHP Commissioner to attempt to resolve the payment dispute by mutual consent at the executive level. If requested by either Party's Commissioner, an informal conference with the Parties and any other designee of the respective Commissioners shall be convened to resolve the issue by mutual consent prior to the DEP Commissioner reaching a determination. The Commissioners may seek such technical or other expertise as they shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both Parties as they deem fit. The DEP Commissioner may make a final determination on whether the disputed items or services are reimbursable under this Agreement only after the process set forth above has occurred.

9. Maintenance of the Project Improvements

- a. The Project shall be owned and maintained by OPRHP or another governmental entity in such condition to allow use by DEP for a period of at least 40 years. The City shall not take title to, nor be responsible for, the repair or maintenance of the Bridge. The provisions of this Section shall survive the expiration or termination of this Agreement (except in the event of Parks' default of its obligations under the MTA Easement as set forth immediately below). If OPRHP defaults upon its maintenance obligations, or defaults upon its obligations under the MTA Easement in any other way, resulting in OPRHP's default as defined in the MTA Easement and termination of OPRHP's easement, OPRHP shall transfer title of the Bridge to the City within sixty (60) days of such default. The parties shall cooperate to draft and execute all agreements and other documents necessary to effectuate the transfer.

10. Independent Contractors

The State and the City agree that the State is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the State and its employees, officials, officers, and agents shall not, by reason of this Agreement or

any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the State, with respect to the City, that differs from or is inconsistent with that of independent contractor.

All persons who are employed by the State and all their contractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The State, and not the City, is responsible for their work, direction, compensation, and personal conduct while the State is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the State's employees, agents, contractors, or contractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the State, its employees or agents, its contractors, or its contractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, official, agent, or employee of the State or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The State and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the State, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, official, agent, or employee of the State or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

11. Insurance and Bonds

- a. Before commencing performance of any work on the Project, OPRHP shall require its contractors, other than HHFT, and subcontractors to procure insurance in the types and amounts set forth in Part II of Attachment D and shall require HHFT to procure all insurance required by the MTA Easement and require that such insurance be maintained during the entire period of their respective contracts to provide such services related to the Project. The City and the New York City Water Board, together with their respective officials and employees, shall be named as an additional insured (without a requirement of privity of contract) on such insurance required by Attachment D and MTA Easement. Before the Construction Work is commenced, OPRHP's prime contractor shall furnish to DEP proof of insurance as required in Attachment D and the MTA Easement.
- b. OPRHP shall cause its contractors to obtain any bonds, including, but not limited to, performance, payment, and bid bonds, required by law for the performance and completion of the Construction Work.

12. Indemnification

- a. Subject to availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, the State of New York, OPRHP, and their officers, employees, and agents shall hold the City, the New York City Water Board and their respective officials and employees (Indemnitees) harmless from and indemnify the Indemnitees for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of OPRHP, and their officers, employees, and agents when acting within the course and scope of their employment.
- b. The State shall include in each of its contracts for and related to this Agreement the following Statement, where "Contractor" shall refer to the entity with which the State is contracting, and "Contract" to the State's contract with such contractor:
 - i. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold the City of New York, the New York City Water Board, and their respective employees, and officials (the "City

Indemnitees”) harmless against any and all claims (including but not limited to claims asserted by any employee of the Contractor and/or its subcontractors) and costs and expenses of whatever kind (including but not limited to payment or reimbursement of attorneys’ fees and disbursements) allegedly arising out of or in any way related to the operations of the Contractor and/or its subcontractors in the performance of this Contract or from the Contractor’s and/or its subcontractors’ failure to comply with any of the provisions of this Contract or of the law. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of the City Indemnitees’ rights under this paragraph by way of cross-claim, third-party claim, declaratory action or otherwise. The parties expressly agree that the indemnification obligation hereunder contemplates (1) full indemnity in the event of liability imposed against the City Indemnitees without negligence and solely by reason of statute, operation of law or otherwise; and (2) partial indemnity in the event of any actual negligence on the part of the City Indemnitees either causing or contributing to the underlying claim (in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of law, or otherwise). Where partial indemnity is provided hereunder, all costs and expenses shall be indemnified on a pro rata basis.

- c. Indemnification under this Section or any other provision of this Agreement shall operate whether or not the State and its contractors or subcontractors have placed and maintained the insurance required under Section 11.
- d. The State waives, and shall cause its contractors to waive, all rights against the City for any damages or losses that are covered under any insurance required under this Agreement (whether or not such insurance is actually procured) or under any other insurance applicable to the operations of a contractor or subcontractor of the State.

- e. The provisions of this Section shall not be deemed to create any new right of action in favor of any third parties against the City.

13. Acceptance of Final Payment

- a. The acceptance by OPRHP, or by anyone claiming by or through it, of Final Payment as defined in Section 7 (a)(vi) of this Agreement, whether such payment be made pursuant to any judgment of any court or otherwise, shall constitute and operate as a release of the City from any and all claims of and liability to OPRHP for anything heretofore done or furnished by OPRHP relating to or arising out of any work done pursuant to the terms of this Agreement, excepting only a claim against the City for the amounts deducted or retained in accordance with the terms and provisions of this Agreement or law.

14. Notices and Points of Contact

- a. All notices required or permitted hereunder shall, unless otherwise specified, be in writing and be delivered by hand, or by overnight mail or by certified mail, return receipt requested, to the Parties' designated Points of Contact ("POC") at the following respective addresses:

To DEP:

New York City Department of Environmental Protection
71 Smith Avenue
Kingston, New York 12401
Attn: Emily Pereira (POC and Project Manager)

With a copy to:

New York City Department of Environmental Protection
Bureau of Legal Affairs
59-17 Junction Boulevard, 19th Floor
Flushing, New York 11373
Attn: General Counsel

To OPRHP:

The New York State Office of Parks, Recreation and Historic Preservation
625 Broadway
Albany, New York 12207
Attn: Matthew Davidson (POC and Project Manager)
Matthew.Davidson@parks.ny.gov

With a copy to:

The New York State Office of Parks, Recreation and Historic Preservation
625 Broadway
Albany, New York 12207
Attn: General Counsel
counsel@parks.ny.gov

Either Party may, from time to time, change its address(es) for notices or the designated Points of Contact by giving notice of such change to the other Party in the manner specified in this Section.

15. Compliance with Public Procurement Requirements

OPRHP shall, in soliciting or procuring contracts for any of the Project work, comply with all public procurement requirements that are applicable to OPRHP under State or local law, or that would be applicable to OPRHP under State or local law or any regulations thereunder if it were funding such work itself. The Construction Contract may permit subcontracting of the work under said contract provided that all subcontracts comply with applicable law and regulations for public works contracts.

16. Administration of Contracts

OPRHP shall be responsible for administering all contracts necessary to perform the services hereunder in such a manner as to ensure compliance with all applicable laws and regulations. Upon request, OPRHP shall provide DEP with a copy of any contract entered into by it with respect to any aspect of the services and of any subcontract entered into by its contractor.

OPRHP shall not in any way be relieved of any of its responsibilities, duties, and liabilities under this Agreement by virtue of entering into any contract for the performance of any portion of the services.

17. Construction Contract

- a. The Construction Contract for the Project and any subcontract(s) thereunder shall contain the following:
 - i. a requirement that the contractor or subcontractor, as applicable, perform such work in accordance with the terms hereof, and with all applicable federal, State, and local laws and regulations;
 - ii. the provision, set forth in Section 12(b) above, requiring the contractor or subcontractor, as applicable, to indemnify the City, the New York City Water Board, and their respective officials and employees;
 - iii. a provision requiring the contractor or subcontractor, as applicable, to waive all rights against the City for any damages or losses that are covered under any insurance required under this Agreement (whether or not such insurance is actually procured) or under any other insurance applicable to the operations of a contractor or subcontractor of the State;
 - iv. a provision stating that nothing in such contract or subcontract shall be deemed to create any contractual relationship between the consultant or contractor and the City;
 - v. a provision stating that nothing contained in such contract or subcontract shall impair the rights of the City under this Agreement;
 - vi. a requirement that the contractor or subcontractor, as applicable, obtain insurance upon the terms and conditions and in the amounts set forth in Section 11, Attachment D, and the MTA Easement;
 - vii. a statement that the contractor or subcontractor, as applicable, has not engaged and will not engage in any unlawful discrimination based upon actual or perceived race, color, creed, religion, religious practice, political beliefs or affiliations, ancestry, national origin, sex, sexual orientation, gender identity or expression, disability or other handicap, predisposing genetic characteristics, pregnancy, age, veteran or military status, marital/familial status, partnership status, arrest or conviction record, status as a victim of domestic violence, stalking or sex offenses, unemployment

- status, or status with regard to public assistance or any other class protected by federal, state or local law with respect to all employment decisions, including but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoffs, termination, and all other terms and conditions of employment;
- viii. a provision providing that contract or subcontractor shall comply with all applicable provisions of this Agreement;
 - ix. a provision requiring that the contractor or subcontractor, as applicable, fully comply with all applicable prevailing wage requirements and all other applicable requirements of Section 220 of the State Labor Law; and
 - x. a provision making any subcontracting or sub-subcontracting by the consultant or contractor, as applicable, subject to approval by OPRHP.
- b. OPRHP agrees that, before it assigns or transfers to another entity the performance of its obligations under this Agreement, in whole or in part, it will obtain prior written approval from DEP.
 - c. The Parties agree that the City is intended to be, and shall have the rights of, a third-party beneficiary under the Construction Contract.

18. The State's Representations and Warranties

- a. The State represents and warrants that:
 - i. it has all requisite power and authority to execute, deliver and perform this Agreement;
 - ii. this Agreement has been duly authorized by all necessary action on the part of the State, has been duly executed and delivered by the State and, assuming due execution and delivery by the City, and registration pursuant to Section 328 of the City Charter, constitutes the legal, valid and binding agreement the State, enforceable in accordance with its terms; and
 - iii. the execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation or default under any provision of applicable law, charter, ordinance or regulation or to the extent of the State's knowledge, of any material agreement, judgment, injunction order, decree or other instrument binding upon the State.

- b. Acceptance by the State of funds from the City hereunder shall be deemed at such time to be a reaffirmation of the foregoing representations and warranties.

19. City's Representations and Warranties

DEP represents and warrants that this Agreement will, when executed by the City and registered pursuant to Section 328 of the City Charter, and assuming the due execution and delivery by the State, constitute the legal, valid, and binding agreement of the City, enforceable in accordance with its terms.

20. No Discrimination

OPRHP agrees that it has not and will not, in connection with the performance of this Agreement, engage in any unlawful discrimination based upon actual or perceived race, color, creed, religion, religious practice, political beliefs or affiliations, ancestry, national origin, sex, sexual orientation, gender identity or expression, disability or other handicap, predisposing genetic characteristics, pregnancy, age, veteran or military status, marital/familial status, partnership status, arrest or conviction record, status as a victim of domestic violence, stalking or sex offenses, unemployment status, or status with regard to public assistance or any other class protected by federal, state or local law with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoffs, termination, and all other terms and conditions of employment.

21. Compliance with Law

OPRHP agrees that it will comply with all federal, State and local laws, rules and regulations in performing its obligations hereunder and in prosecuting and ensuring the completion of the Project.

22. Incorporation of Applicable Laws

The Parties agree that each and every provision of federal, State or local law, rule, regulation or order applicable to this Agreement, that is required to be included in this Agreement, is incorporated herein by this reference. Furthermore, it is hereby stipulated that every such provision is to be deemed inserted herein, and if, through mistake or otherwise, any such provision is not inserted or is not inserted in correct form, then this Agreement shall forthwith,

upon the application of either Party, be amended by any such insertion so as to comply strictly with such law, rules, regulation or order and without prejudice to the rights of either Party.

23. Cooperation with Investigations

The Parties agree to cooperate fully and faithfully with any investigation, audit or inquiry relating to the subject matter of this Agreement conducted by a State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency or entity that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry. Any breach or violation of the foregoing may be deemed a breach or violation of a material provision of this Agreement.

24. Copyrights and Access to Information

The City shall have the right to use all written materials, documents, data and information that are gathered or prepared pursuant to the Agreement for any purpose deemed appropriate by the City. In furtherance thereof, the State hereby grants to the City a royalty-free, worldwide, non-exclusive, perpetual, irrevocable license to use, execute, reproduce, make, modify, adapt, display, perform and create derivative works of all written material, documents, data and information that are gathered or prepared pursuant to this Agreement, including, but not limited to, all designs, plans, specifications and models created hereunder.

25. No Claim Against Officers, Agents or Employees

No claim whatsoever shall be made by either Party against any individual officer or employee of the other Party in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

26. Waiver

Neither Party shall be deemed to have waived the observance or performance of any term or provision of this Agreement, or any default hereunder, except pursuant to a written instrument of waiver signed by such Party. No waiver of the observance or performance of any term or provision of this Agreement, or of any default hereunder, shall be deemed to be a waiver of any subsequent failure to observe or perform this Agreement, or of any subsequent default hereunder.

27. Retention of Records and Audit

- a. The State agrees to retain all books, records, and other documents relevant to this Agreement for six years after the final payment under, or termination of, this Agreement, whichever is later. City, State and federal auditors and any other persons duly authorized by DEP or the State shall have full access to and the right to examine any of said materials during said period, including ensuring that any funds administered under this Agreement were applied in accordance with the terms and conditions herein. The Parties shall have the right, at any time during normal business hours, to inspect, examine and/or make copies of any such books, records or other documents. The same right shall be afforded to representatives of the State Comptroller or the City Comptroller, or any other person duly authorized by DEP or the State.
- b. All receipts, management and disbursements of funds provided by the City pursuant to this Agreement, and the records and accounts evidencing such receipts, management and disbursements, shall be subject to audit by the State Comptroller and by the City, including the City Comptroller and DEP's Office of Engineering Audit, pursuant to the rights and powers of such officials as conferred upon them by State and City law. Such audits may include examination and review of the source and application of all funds, whether from the City, the State, the federal government, private sources or otherwise. OPRHP agrees to cooperate with any such audits of this Agreement.
- c. OPRHP shall prepare and maintain its records and accounts of receipts, management and disbursements of funds under this Agreement in accordance with generally accepted government accounting standards and shall provide a summary of such records and accounts to DEP as requested.

28. Early Termination

The City may terminate this Agreement upon written notice if:

- a. any litigation has been filed and served upon OPRHP that would, in DEP's reasonable opinion, materially, adversely affect OPRHP's ability to fulfill the obligations herein and meet the Substantial Completion date set forth in Attachment C, upon fifteen days' written notice to the OPRHP and failure by OPRHP to cure within such period, except in the event

the DEP or City has commenced such litigation.

- b. OPRHP has failed to meet, or in DEP's reasonable opinion OPRHP's progress reports indicate that it is likely to fail to meet the Substantial Completion date set forth in Attachment C, upon fifteen days' written notice to OPRHP and failure by OPRHP to cure within such period, except in the event the DEP has caused such delay; or
- c. the City determines there has been a material default under any provision hereof and such breach has not been cured by OPRHP in accordance with Section 29 of this Agreement.

29. Default

- a. If either Party defaults in the observance or performance of any material term of this Agreement, and such default continues for more than fifteen calendar days after written notice of such default is received by the defaulting Party from the non-defaulting Party, the non-defaulting Party may, in addition to any other rights or remedies available at law or in equity, suspend its performance or terminate this Agreement by written notice of suspension or termination to the defaulting Party, specifying a date of suspension or termination which shall not be less than five business days from the date such notice is sent. However, if such default cannot reasonably be cured within fifteen calendar days, the Agreement may not be terminated under this Section if:
 - i. the defaulting Party commences appropriate actions to cure the default prior to the end of the fifteen-day period,
 - ii. such actions have been approved in writing by the non-defaulting Party, and
 - iii. the defaulting Party thereafter diligently prosecutes the actions necessary to cure the default to the complete satisfaction of the non-defaulting Party.
- b. In addition to any other right or remedy available to DEP at law or in equity, if OPRHP defaults in the observance or performance of any material term of this Agreement, including compliance with the Substantial Completion date set forth in Attachment C hereto (which shall be deemed a default of a material term of this Agreement), and such default continues for more than fifteen calendar days after written notice of such default is received by OPRHP from DEP, DEP may withhold payment to OPRHP. However, if such default cannot reasonably be cured within fifteen calendar days, the Agreement may not be terminated if:
 - i. OPRHP commences appropriate actions to cure the default prior to the end of the fifteen-

day period,

- ii. such actions have been approved in writing by DEP, such approval not to be delayed, and
- iii. OPRHP thereafter diligently prosecutes the actions necessary to cure the default to the complete satisfaction of DEP.

30. Force Majeure

The period of time during which either Party is prevented or delayed in any performance or fulfilling of any obligation under this Agreement due to unavoidable delays caused by fire, catastrophe, strikes or labor trouble, civil commotion, Acts of God, pandemics or public health emergencies, prohibition by a governmental agency of proper jurisdiction enacted or issued after the date of execution of this Agreement (not including a failure to obtain a necessary approval), acts of the public enemy or acts of terrorism, shall not be considered a basis for default under this Agreement. Notwithstanding the occurrence of such a *force majeure* event, in the event that DEP determines that OPRHP will not be able to meet the Substantial Completion date set forth in Attachment C hereto, or in the event of a prohibition by a governmental agency, DEP may terminate this Agreement in accordance with the terms herein. As a condition to OPRHP's right to avail itself of a *force majeure* defense, it must give DEP written notice of such claimed force majeure event not later than three business days following the occurrence of such *force majeure* event.

31. Amendments

This Agreement may not be modified or amended except by an instrument in writing signed by both Parties and approved as to form and certified as to legal authority by the Office of the City's Corporation Counsel. This Agreement can be terminated by mutual agreement with the written consent of both Parties.

32. No Third-Party Beneficiaries

This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the Parties.

33. Assignment

This Agreement may not be assigned, in whole or in part, except pursuant to a written instrument signed by both Parties.

34. Cooperation; Obligation to Provide Documents

Both Parties acknowledge and agree that during the term of this Agreement each shall cooperate with the other and provide each other promptly with all documentation, reports, and information that may be necessary to carry out their respective obligations under this Agreement.

35. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the State. To the fullest extent permitted by law, the Parties consent to the jurisdiction of the Supreme Court of the State of New York, County of New York or federal courts located in the County of New York in connection with any action by either Party against the other pursuant to this Agreement.

36. Severability; Entire Agreement

If any provision of this Agreement or its application is determined to be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications hereof shall not in any way be affected or impaired.

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements with respect to such subject matter, whether written or oral.

37. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.


IN WITNESS WHEREOF, the Commissioner of the New York City Department of Environmental Protection, or his or her designee, on behalf of the City, and the Commissioner of the New York State Office of Parks, Recreation and Historical Preservation, or his or her designee, on behalf of the State of New York, have executed this Agreement in triplicate, one part to be filed with the Comptroller of the City of New York, one part to be retained by the Department of Environmental Protection and one part to be delivered to OPRHP.

THE CITY OF NEW YORK
Department of Environmental
Protection

NEW YORK STATE
Office of Parks, Recreation
and Historic Preservation

BY: 

Name: Joseph P. Murin
Title: Chief Financial Officer
Dated: December 8th, 2023

BY: 

Name: Erik Kulleseid
Title: Commissioner
Dated: Nov 28, 2023

Approval as to Form and Certification
as to Legal Authority:

Acting Corporation Counsel of the
City of New York

Dated: _____

Approved as to Form:

ATTORNEY GENERAL

Thomas P. DiNapoli
State Comptroller

By: _____

By: _____

Date: _____

Date: _____



ACKNOWLEDGMENTS

State of New York)

ss.:

County of Albany)

On the 28 day of November, in the year 2023, before me, the undersigned, personally appeared Erik Kalleseid, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or person upon behalf of which the individual(s) acted, executed the instrument.

Katie Lynn Beeman

Notary Public

Katie Lynn Beeman
Notary Public, State of New York
Reg No 01BE6424916
Qualified in Schenectady County
Commission Expires May 16, 2026

State of New York)

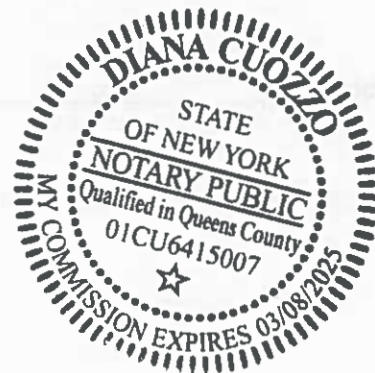
ss.:

County of Queens)

On the 8th day of December, in the year 2023 before me, the undersigned, personally appeared Joseph Murin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or person upon behalf of which the individual(s) acted, executed the instrument.

Diana Cuozzo

Notary Public



ATTACHMENT A

Project Specifications & Requirements

Design Requirements

- a. DEP Site Operational & Security Requirements/Limitations for Bridge Design
- i. The Bridge must be rated as H-10 and have a minimum height clearance of 13 feet 0 inches above the walking/driving surface to accommodate DEP vehicles.
 - ii. The Bridge shall have lockable a gate on the entrance end (Route 9D side) adjacent to State Route 9D for security to prevent unauthorized vehicular access.
 - iii. Upon Substantial Completion, OPRHP and DEP shall agree upon and memorialize a security and access procedure regarding the lockable gates described above in Section (a)(ii).
 - iv. Any soil cuts or soil import is subject to written DEP approval and must comply with guidelines in Appendix B of this Attachment A.
 - v. Proposed Bridge slope shall comply with requirements of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.*, and all other applicable rules, laws, and regulations. Any changes to the proposed Bridge slope shall be approved by DEP in writing.
 - vi. Railings on Bridge must comply with all Metro-North requirements, including, but not limited to, fall protection and drop screening requirements. Any changes to railing heights shall be approved by DEP in writing.
 - vii. Setback distance for Bridge footings/piers must be a minimum of 10 feet from DEP’s HRDC underground stilling chamber:
 1. DEP shall have review and approval authority regarding the proposed means and methods for excavation and footing/pier construction and fill near the DEP’s HRDC.

- viii. Structural borings on City property drilled to inform design must meet DEP requirements/boring checklist (see Appendix C of this Attachment A).
- ix. Bridge design must demonstrate compliance with Metro-North Rail requirements.

Construction Requirements

a. *Land Access and Permitting Requirements*

- i. DEP Land Use Permit (LUP) must be obtained by the State, its contractors or subcontractors before any construction can commence on City property. The LUP would be for the purposes of construction/staging and operation/maintenance, a portion of the Bridge any additional assets that may be needed on City property, and site restoration following completion. The process for obtaining a LUP is:
 1. Continue to meet with DEP during design to pre-draft all of the below submissions.
 2. Permittee (OPRHP) to submit LUP application and supporting documents (plans, surveys, etc.) (Attachment D).
 3. After receiving a complete application, which includes DEP-approved plans and all required submissions, DEP issues a LUP within 60 to 90 days. DEP may have additional comments and questions after receiving an application.
 4. Prior to issuing a LUP, DEP issues the Permittee a LUP Offer Letter, which includes permit conditions and required submissions.
 5. Permittee signs and returns signed Certificate of Acknowledgement at the end of the Offer Letter with the required submissions. Required submissions may include:
 - a. Health and Safety Plan/ Safe Work Plan
 - b. Insurance indemnifying the City of New York
 - c. City security clearances
 - d. Copies of all non-DEP permits required for construction, including:
 - i. Proof of recorded MTA Easement
 - ii. Proof of SEQRA compliance
 6. Once all required submissions are submitted, reviewed and approved by DEP, a LUP is issued for a term of up to five years, and is renewable in five- year increments.

7. As built record drawings with all points, in electronic pdf and dwg. format with all points in ASCII points file (P,N,E,Z,D format) showing precise location size (dimensions) and specifications of facility, improvements, structures and appurtenances occupying City land under the LUP, with metes and bounds descriptions on tax map designations by Section, Block and Lot of City lands and verifiable boundaries of property occupied must be provided to DEP.
8. New York City Public Design Commission (PDC) review is required for structures built on NYC property. Note that all submissions to PDC must be submitted for review to DEP's PDC liaison a minimum 3 weeks prior to the PDC submission deadline and may be rejected. A summary of the PDC process follows and submission requirements are presented as Attachment E and can also be found via the PDC website here:
<https://www1.nyc.gov/site/designcommission/review/requirements/structures.page>
9. Metro-North must approve in writing the location and design of the Bridge and compliance with Metro-North permitting is required.
10. The State, its contractors or subcontractors must also comply with all applicable permitting and site approval requirements by the New York State Department of Transportation, New York State Department of Environmental Conservation, US Army Corps of Engineers, and any other applicable agency.

b. DEP Requirements for Bridge Construction

- i. Driving piles, sheeting, or hoe rams/jack hammers and drilling and blasting is a concern near DEP's critical water supply infrastructure. Therefore, contractor's means and methods must be submitted for DEP's written approval to ensure vibrations to the chamber are minimized. The project consultants should establish vibration thresholds and require vibration monitoring in the contract documents.

- ii. Bridge construction and staging on City property must be limited to the area that is granted to OPRHP under the LUP. OPRHP must adhere to all conditions of the LUP.
- iii. Installation of temporary fencing and gate to prevent unintended public access onto City property.

Attachment A -Appendix A – Gates Specifications

Attachment A- Appendix B – Fill Importation/Exportation Guidelines

ATTACHMENT A

Fill Importation/Exportation Requirements for DEP Revocable Land Use Permits

The Permittee must obtain approval from DEP prior to importation and/or exportation of fill from City-owned land. Approval is contingent upon the Permittee's ability to certify and document compliance with the applicable condition(s) detailed below. For the purposes of this document, the term "fill" includes all excavated geologic resources including, but not limited to, soil and sand including virgin material, beneficial reuse soil¹, topsoil, gravel, rock and stone. Excess fill generated from City property that cannot be reused onsite must be exported off-site for reuse or disposal.

- I. IMPORTATION of fill: Imported fill shall not contain putrescible (i.e. material subject to rot or decay) or deleterious debris such as asphalt, brick and other construction and demolition (C&D) debris, and must not have any historical evidence of impacts, or exhibit any visual, or other indication (e.g. odors, etc.) of chemical or physical contamination.

Approval of imported fill is based on physical and chemical analysis and source information. DEP reserves the right to reject importation of any fill prior to use or upon delivery if the material is deemed unsuitable when visually inspected (e.g. incorrect or unapproved material is delivered, material contains C&D, material exhibits signs of contamination, etc.). If material is deemed unsuitable for use, the Permittee is responsible for its complete removal from City property. Figure 1 provides a summary of the submittal requirements for importation of fill; depending on the material to be imported requirements differ.

- A. Soil or sand: All imported soil or sand must undergo characterization sampling and analysis regardless of source location. In addition, the Permittee must provide adequate background information on the source of the material.

1) Characterization sampling and analysis

- a. Characterization sampling is required for each soil type proposed to be imported. Where soils are visibly heterogeneous, samples shall be obtained to represent each visually different soil type.
- b. All required analytical analyses must be performed by a New York State Department of Health (NYSDOH) Environmental Laboratory Approval Program (ELAP) certified laboratory.
- c. Characterization sampling requires a combination of discrete and composite samples (see table 1). All composite samples shall consist of 3-5 individual grab samples collected from discrete locations within the stockpile or area of fill material. The individual grab samples shall be spatially distributed so as to be representative of the entire stockpile/area being proposed for importation. The individual grab samples shall be homogenized (i.e. thoroughly mixed together) before being placed into sample containers.

¹ In addition to meeting DEP requirements for import/export of fill material, the LUP holder must meet all requirements of NYSDEC regulations for beneficial reuse of soil found at 6 NYCRR Part 360.13.

ATTACHMENT A

Fill Importation/Exportation Requirements for DEP Revocable Land Use Permits

- d. Sampling frequency:
 - i. For virgin soil or sand from an NYSDEC-permitted, or equivalent, mine or pit, a minimum of one set of characterization samples shall be collected from the initial 100 cubic yards.
 - ii. For material from unpermitted locations and excess fill generated from construction or maintenance for beneficial reuse on City property, the sampling frequency shall follow 6 NYCRR Part 360-13(e)(1):

Table 1: Minimum Analysis Frequency for Fill Material (6 NYCRR Part 360-13(e)(1))

Soil Volume (cubic yards)	Minimum Number of Discrete Samples for Volatile Organic Compounds	Minimum Number of Composite Samples for All Other Parameters
0 – 300	2	1
301 – 1,000	4	2
1,001 – 10,000	6	3
10,001+	Two for every additional 10,000 cubic yards or fraction thereof.	One per every additional 10,000 cubic yards or fraction thereof.

- e. Parameters for analysis shall follow 6 NYCRR Part 360-13(e)(2) and at a minimum include:
 - metals, polychlorinated biphenyls (PCBs), pesticides, and semi-volatile organic compounds (SVOCs) listed in 6 NYCRR Part 375-6.8(b);
 - asbestos if demolition of structures has occurred on the site; and
 - volatile organic compounds (VOCs) listed in Part 375-6.8(b), if their presence is possible based on site events such as an historic petroleum spill, odors, photoionization detector meter or other field instrument readings.
- f. In general, if analytical results for proposed fill meet the Unrestricted Use Soil Cleanup Objectives (SCOs) listed in 6 NYCRR Part 375-6.8(a), the proposed fill is considered acceptable for use on City property.

If analytical results for proposed fill meet the lesser of the Residential Use SCOs and Protection of Groundwater SCOs as listed in 6 NYCRR Part 375-6.8(b), the proposed fill may be considered for use by DEP depending on the proposed placement location on City property. **Placement on undeveloped land or agricultural cropland is not permitted.**

ATTACHMENT A

Fill Importation/Exportation Requirements for DEP Revocable Land Use Permits

- g. Additional samples may be required by DEP depending on results of the initial characterization and proposed placement location on City property.
- 2) Documentation verifying the origination of the source material is required.
- a. For soil or sand originating from permitted mines or pits, the Permittee shall provide the following information:
- the name and address of the permitted mine or pit;
 - a copy of the facility's current NYSDEC permit, or out-of-state equivalent; and
 - plans/drawings indicating the proposed placement location on DEP property.
- b. For material from unpermitted locations and excess fill generated from a construction or maintenance for beneficial reuse on City property, the Permittee shall provide the following information:
- source property owners' name and address;
 - full street address where the excess fill was generated;
 - proposed volume of material to be imported;
 - plans/drawings indicating the proposed placement location on DEP property; and
 - narrative detailing the source property's current and prior uses, including any knowledge of reported spills or dumping in the area of the proposed beneficial reuse material.
- B. Gravel, rock, or stone: Virgin gravel, rock or stone from an NYSDEC-permitted, or equivalent, mine or quarry may be imported onto site without chemical testing provided that a sieve analysis is submitted documenting that no more than 10% by weight would pass through a size 80 sieve.
- 1) If the gravel, rock or stone does not meet the grain size distribution requirements, then the material will be treated as soil/sand and must meet the criteria listed in above in Section I(A) – Soil or sand.
- 2) Recycled concrete aggregate (RCA) or other recycled construction and demolition debris (C&D) is not permitted.

The Permittee shall also provide the name and address of the permitted mine or quarry and a copy of the facility's current NYSDEC permit, or out-of-state equivalent.

ATTACHMENT A

Fill Importation/Exportation Requirements for DEP Revocable Land Use Permits

II. EXPORTATION of fill material: The Permittee must obtain DEP approval prior to exporting any excess fill generated from City property for disposal or reuse. DEP reserves the right to reject any proposed exportation options. Figure 2 provides a summary of the submittal requirements for exportation of fill.

- 1) Exportation of fill for disposal: Material to be exported from City property for disposal must be managed, transported, and disposed in accordance with all applicable Federal, State and local regulations. When required by regulation for transport and/or disposal, Permittee must provide copies of all required permits and documentation to DEP including but not limited to:
 - current copies of all NYSDEC required transporter and disposal permits;
 - copies of all analytical data as required by the disposal facility in order to receive approval;
 - manifests or bills of lading which must be approved by DEP prior to off-site shipment; and
 - counter-signed manifests must be submitted to DEP within 10 business days of export.

- 2) Exportation of fill material for reuse: The Permittee must submit a proposal to DEP for the exportation of fill from City property for beneficial reuse. Fill material proposed for beneficial reuse must be evaluated, managed, and reused in accordance with 6 NYCRR Part 360-1.13 and material transported in accordance with 6 NYCRR Part 364. Permittee must provide the following supporting documentation as part of their proposal:
 - a. Based on Permittee's diligent effort, information regarding source material and the proposed final use including:
 - full address of the source property (i.e. address of DEP property);
 - history or prior uses of the source property;
 - proposed volume of material to be exported for reuse;
 - location on property that the material is to be removed from (written description or located on site map is acceptable);
 - receiving property owners' name and address;
 - street address of the proposed placement location;
 - proposed use of the exported material;
 - proposed placement location on the property (description or site map); and
 - documentation from the property owner agreeing to accept the material.

 - b. If sampling is required per 6 NYCRR 360-1.13(d), the Permittee shall provide

ATTACHMENT A

Fill Importation/Exportation Requirements for DEP Revocable Land Use Permits

copies of the sampling program designed and implemented by the Permittee's qualified environmental professional (QEP) including all analytical results and certification by the QEP as required at 6 NYCRR 360-1.13(e).

- c. Copies of any other recordkeeping documentation required by 6 NYCRR 360-1.13(g), such as notification to NYSDEC.

Figure 1
Importation of fill material
 Submittal Requirements
Refer to text for detailed requirements

Soil or Sand

Virgin gravel, rock or stone from a permitted mine or quarry

Soil or sand for beneficial reuse

Virgin soil or sand from a permitted mine or pit

- 1) Analytical results from characterization sampling as compared to 6 NYCRR Part 375-6.8 Soil Cleanup Objectives (SCOs). Parameters for analysis shall, at a minimum, include:
 - Part 375 metals, PCBs, pesticides, and SVOCs;
 - asbestos if demolition of structures has occurred on the site; and
 - Part 375 VOCs, if their presence is possible based on site history
 Analytical results for material meeting the Unrestricted Use SCOs listed in Part 375-6.8(a) is generally considered acceptable for use on City property. Analytical results meeting the lesser of the Residential Use SCOs and Protection of Groundwater SCOs listed in Part 375-6.8(b) may be considered by DEP depending on the proposed placement location on City property.
- 2) Source information:
 - source property owners' name and address;
 - full street address where the excess fill was generated;
 - proposed volume of material to be imported;
 - map showing proposed placement location on DEP property; and
 - narrative detailing the source property's current and prior uses, including any knowledge of reported spills or dumping in the area of the proposed beneficial reuse material.
- 3) Note, LUP holder shall also meet all requirements of NYSDEC regulations for beneficial reuse found at 6 NYCRR Part 360.13.

- 1) Analytical results from characterization sampling as compared to 6 NYCRR Part 375-6.8(a) Unrestricted Use SCOs. Parameters for analysis shall include:
 - Part 375 Metals, PCBs/Pesticides, and SVOCs.
 - Part 375 VOCs
- 2) Source information:
 - the name and address of the permitted mine or pit,
 - a copy of the facility's current NYSDEC permit, or out-of-state equivalent
- 3) map showing proposed placement location on DEP property

- 1) Sieve analysis showing that no more than 10% by weight passes through a No. 80 sieve.
 If material fails to meet the grain size requirement, it must be treated as sand or soil.
- 2) Source information:
 - name and address of the permitted mine or pit, and
 - current copy of the facility's permit to operate.
- 3) map showing proposed placement location on DEP property

Figure 2
Exportation of fill material
Submittal Requirements

Refer to text for detailed requirements

Disposal off-site

Reuse off-site

1) Documentation showing proper management transportation and disposal of wastes:

- Current copies of all NYSDEC required transporter and disposal permits
- Copies of all analytical data as required by the disposal facility in order to receive approval.
- Manifests or bills of lading to be approved by DEP **prior to shipment** off-site.
- Counter-signed manifests to DEP within 10 business days of export of material.

1) Information regarding source material and proposed final use:

- Full address of the source property (i.e. address of DEP property),
 - History or prior uses of the source property,
 - Proposed volume of material to be exported for reuse,
 - Location on property that the material is to be removed from (written description or located on site map is acceptable),
 - Receiving property owners' name and address,
 - Street address of the proposed placement location,
 - Proposed use of the exported material,
 - Proposed placement location on the property (description or site map),
 - Documentation from the property owner agreeing to accept the material.
- 2) Copies of sampling plans and laboratory analytical reports, if required.
- 3) Copies of any other recordkeeping documentation, if required.
- 4) Note, fill material proposed for beneficial reuse must be evaluated, managed, and reused in accordance with 6 NYCRR Part 360-1.13 and material transported in accordance with 6 NYCRR Part 364.

Attachment A - Appendix C – Drilling and Boring Checklist



Drilling and Boring Environmental Health and Safety Checklist

Project Name:

This form shall be completed and endorsed by the drilling contractor (DLR), the Engineer of Record (EOR), the Construction Manager (CM), and the NYCDEP Portfolio Manager (PM) Designee, with copies, including all required justifications and emergency contact lists, given to all parties stipulated in the checklist, prior to commencing drilling activities. If no CM responsibilities, default to the EOR. Appropriate parties shall be selected based upon the phase of the work. All parties shall attend a pre-drilling/boring conference to discuss this checklist and assign the responsibility of each item to an agreed party. Documentation by a registered land surveyor may not be a requirement.

Each box will be checked to show its responsible party. If any box is determined to be N/A, a brief justification must be provided in the NOTES column and supporting documents shall be submitted as an attachments to this checklist, in accordance with all contract specifications and requirements as well as applicable Laws and Codes.

No.	Description	DLR	EOR	CM/RE	PM Designee	N/A	NOTES
Drilling on Land and Marine							
Permits, Approvals, and Drilling Program Plans (DPP) for Drilling on Land							
1	All necessary permits/permissions/plans have been identified and obtained (e.g. right of entry, water well pre-notification to NYSDEC, mining drilling permit, aggregate drilling permit, DOT and fire hydrant use permits, plans for working around active eagle permits, etc.).						
2	A list of all permits, notification requirements, and expiration dates shall be prepared and submitted to NYCDEP prior to commencement of drilling. A copy will also be maintained on-site.						
3	The public (e.g. schools, stores and residents in the immediate vicinity of the drilling) will be notified of the drilling schedule (e.g. 3 to 4 weeks, 7am to 3pm).						
4	Drawings, maps, well logs and boring logs have been obtained and reviewed to determine previously encountered subsurface conditions (e.g. artesian), utilities, aqueducts, boundaries of a corridor, etc.						
5	Provisions according to USFWS and NYSDEC protocol and/or necessary permits to perform work around the presence of endangered and/or protected species, such as bald eagles, have been identified and obtained.						
Drilling Program Plans (DPP) for Drilling in the vicinity of Dams, Dikes, Aqueducts and Levees for Land and Marine							
6	For drilling and boring in the vicinity of dams, dikes, aqueducts and levees, a comprehensive Drilling Program Plan (DPP) shall be developed prior to any drilling, sampling, grouting, of any other invasive in-situ testing or exploration. Field activities shall be performed in full compliance with U.S. Army Corps of Engineers' Regulation No. 1110-1-1807, titled "Drilling in Earth Embankment Dams and Levees," and Appendix B - Drilling Program Plan, both dated 31 December 2014. When circumstances arise that may warrant performance outside of the aforementioned regulation, contracted parties must receive prior written approval from DEP.						
7	The Hollow Stem Auger (HAS) and/or other open drilling methods are not permitted near dams, dikes, aqueducts and levees. Drilling in these proximities shall be fully encased, unless otherwise approved by DEP and incorporated into the DPP.						
8	Contractor must receive prior approval for any form of hydraulic fracturing that they desire to implement on the project. Excessive pressures from water, air, drilling fluid, or grout can fracture embankment and foundation materials. All DPPs for dams, dikes, aqueducts and levees should strive to minimize the need for any drilling fluid such as air, gas, water, mud, polymers, slurries, or any other drilling fluid that could pressurize the borehole soils. If drilling fluids must be used due to the drilling objective or the subsurface conditions, the DPP must contain an analysis of the potential to cause damage and a plan that covers the measures that will be used to minimize risk and respond to incidents that may occur.						
9	Contractor shall review and understand established thresholds of concern in the DPP, including both physical conditions that can be recognized on-site as well as instrumentation limit values and the appropriate courses of action to take should these conditions arise. These thresholds and appropriate courses of action shall be thoroughly reviewed with all pertinent parties and individuals during the pre-drilling/boring conference. DEP shall increase the frequency of monitoring potential indicators of impending problems and shall also enhance instrumentation readings and establish alarm thresholds as appropriate. Examples of issues requiring immediate DEP notification include turbid discharge down-gradient, artesian conditions, problems during borehole closure and ground heave.						
10	Drilling and boring schedule shall be coordinated with DEP mowing efforts. DEP shall mow surrounding areas just prior to the start of drilling and boring efforts and shall continue on a more frequent basis to accommodate a greater level of visibility monitoring. Tall grass and weeds along leading edge areas around water may need to be trimmed with weed-wackers and/or other methods so that observation of waters is accommodated.						
11	All boreholes and other penetrations in and around dams, dikes, aqueducts and levees must be sealed after completion. Backfilling with drill cuttings or general imported fill material is not acceptable. All boreholes and similar penetrations in the impervious portions of an embankment dam or levee must be backfilled by tremie placed cement-bentonite grout or bentonite pellets/chips. The DPP shall address the potential presence of confined and separate ground water aquifers and describe how the work will be safely completed (e.g. by utilizing double-cased boreholes) and prevent cross-contamination and leakage. The DPP shall address how artesian conditions will be handled and mitigated if they are encountered and the materials and equipment to implement these measures shall be on site prior to drilling. All grout shall be designed to obtain strength equal to or greater than the soil. Contractors must provided detailed submittals for their intended cement-bentonite grout or bentonite pellets/chips for DEP review and approval. Note: Materials and equipment for addressing potential artesian conditions are only required to be on-site when drilling in proximity to dams, dikes, aqueducts, and levees.						
Marine Specific Drilling Permits and Approvals							
12	The ownership of the lands underwater have been identified through correspondence with NYSOGS prior to drilling. If the State owns the land, then a permit authorizing drilling within State lands is required. If the lands are private, a notification to the owner is necessary.						
13	The NYSDEC does not require a permit to drill in navigable waterways. However, if the intent is to collect environmental samples to support a future permit application, then a permit is required and a sampling and analysis plan (SAP) is needed. If required, the SAP is attached to this document.						



Drilling and Boring Environmental Health and Safety Checklist

Project Name:

This form shall be completed and endorsed by the drilling contractor (DLR), the Engineer of Record (EOR), the Construction Manager (CM), and the NYCDEP Portfolio Manager (PM) Designee, with copies, including all required justifications and emergency contact lists, given to all parties stipulated in the checklist, prior to commencing drilling activities. If no CM responsibilities, default to the EOR. Appropriate parties shall be selected based upon the phase of the work. All parties shall attend a pre-drilling/boring conference to discuss this checklist and assign the responsibility of each item to an agreed party. Documentation by a registered land surveyor may not be a requirement.

Each box will be checked to show its responsible party. If any box is determined to be N/A, a brief justification must be provided in the NOTES column and supporting documents shall be submitted as an attachments to this checklist, in accordance with all contract specifications and requirements as well as applicable Laws and Codes.

No.	Description	DLR	EOR	CM/RE	PM Designee	N/A	NOTES
14	The USACE authorizes drilling in navigable waterways through a Nationwide Permit Number 6 (disposal of drilling muds is not authorized). If drilling will be conducted in navigable waterways, then the Nationwide Permit Number 6 has been obtained and attached.						
15	An advance notice to mariners shall be conducted prior to drilling.						
16	A confirmation of the presence/absence of submerged utilities has been conducted.						
17	Approval from the DEP or Portfolio Manager Designee will be obtained for any deviation from the pre-approved drilling spot. Identify alternate locations prior to drilling.						
Documentation							
18	A plan has been developed by a Land Surveyor licensed to practice in New York State that includes borehole/well location, ground surface elevation of borehole, a narrative describing proposed methods to measure deviation from vertical and azimuth of borehole/well, the purpose of the drilling (geothermal well, soil borehole, rock coring), proposed drilling commencement date and anticipated date of completion.						
19	Well or boring logs will be completed for this project. The format and turn-around time of these reports shall be established with DEP prior to the commencement of field activities.						
20	Means for collecting, storing, and labeling cores and drill cuttings on site have been provided. (core boxes, plastic collection bags, labels, etc.)						
21	Emergency contact information for the drilling contractor has been filed with NYCDEP prior to conducting drilling. Copies must be provided as an attachment to this checklist to the responsible Portfolio Manager.						
22	An emergency contact list has been provided, listing the engineering firm in-charge and the DEP's PM team in-charge 24/7, contact information (and sequence of order to be contacted), in case of an emergency situation. Copies must be provided as an attachment to this checklist to the responsible Portfolio Manager.						
23	Copies of this endorsed/approved checklist with all supporting justifications and emergency contact information have been provided to the responsible Portfolio Manager. Copies must be provided before work can commence.						
Environmental							
24	The engineer has investigated the location of critical infrastructure in proximity to the bore hole/well and positioned the bore hole/well so that such surrounding infrastructure will not be harmed. Please provide documentation, as an attachment to this checklist describing, the investigations that were performed to determine the location of critical pieces of infrastructure. NO work can commence until this documentation has been attached, and endorsed separately by, each of the signatories to this checklist.						
25	The driller has investigated the location of critical infrastructure in proximity to the bore hole/well and positioned the bore hole/well so that such surrounding infrastructure will not be harmed. Please provide documentation that a call to the Dig Safe and/or One Call Center was made and that a utility mark out was conducted in advance of the drilling. NO work can commence until this documentation has been attached, and endorsed separately, by each of the signatories to this checklist.						
26	The drilling will be conducted such that any part of the borehole/well will be within 250 feet of a tunnel/aqueduct/dam or other critical piece of infrastructure. If this is the case please provide, as an attachment to this checklist, a protocol for how the driller will ensure that surrounding infrastructure will not be harmed. NO work can commence until this protocol is attached, and endorsed separately, by each of the signatories to this checklist.						
27	A written inventory has been prepared for all chemicals to be brought on-site. This includes diesel fuel, gasoline, hydraulic oil, decontamination fluids, (e.g. nitric acid) etc., and an up-to-date inventory must be available on-site as long as these materials remain on-site.						
28	Provisions have been made to ensure flammable liquids are stored in a safety can container or in the original container while on-site. If the original container is glass, the glass container shall be placed into a non-breakable container for use on-site.						
29	Safety Data Sheets (SDSs) have been compiled for all chemicals brought on-site. Copies must be available at all times while on-site. SDS for all fuels, lubricants and other liquids in addition to chemicals, must be available at all times while on-site.						
30	The materials brought on-site could change over the course of a project. Procedures are documented for keeping the inventory current at all times, and updated throughout the project.						
31	Adequate amount of absorbent booms, pads and loose absorbent material have been obtained to be able to confine and absorb the contents of the liquid chemicals from the largest container that are on-site should it be spilled. A containment boom, such as harbor boom, will be required for work over or near a water body surface, such as a reservoir.						
32	Spill response equipment such as non-sparking tools, shovels, brooms, and overpack drums, to accommodate the largest containers have been obtained to be able to respond to flammable, combustible, reactive, etc. compounds brought on-site.						
33	Open-top 55 gallon or 85 gallon drums have been obtained to containerize absorbent materials used to absorb flammable, combustible, reactive or toxic materials that may be spilled on-site. These must be available on-site as long as hazardous materials are stored or used on-site.						
34	Secondary containment sufficient to contain 110% of the largest tank has been procured for tanks and hazardous materials storage. Drip pans should also be used beneath any hose connections that may leak hazardous materials.						



Drilling and Boring Environmental Health and Safety Checklist

Project Name:

This form shall be completed and endorsed by the drilling contractor (DLR), the Engineer of Record (EOR), the Construction Manager (CM), and the NYCDEP Portfolio Manager (PM) Designee, with copies, including all required justifications and emergency contact lists, given to all parties stipulated in the checklist, prior to commencing drilling activities. If no CM responsibilities, default to the EOR. Appropriate parties shall be selected based upon the phase of the work. All parties shall attend a pre-drilling/boring conference to discuss this checklist and assign the responsibility of each item to an agreed party. Documentation by a registered land surveyor may not be a requirement.

Each box will be checked to show its responsible party. If any box is determined to be N/A, a brief justification must be provided in the NOTES column and supporting documents shall be submitted as an attachments to this checklist, in accordance with all contract specifications and requirements as well as applicable Laws and Codes.

No.	Description	DLR	EOR	CM/RE	PM Designee	N/A	NOTES
35	Provisions have been made to ensure that all waste containers will be properly labeled. At a minimum, waste characterization must be conducted to satisfy RCRA requirements. If the waste is stored on-site prior to its disposal, then secondary containment and security provisions must also be provided at the storage site.						
36	For marine applications, provisions have been made for proper lighting for fog or other low visibility conditions.						
37	A written work plan has been developed, including a complete description of the work activities to be conducted in the field along with the SOPs to be used, to ensure that these activities are conducted in such a way that minimizes the risk of an environmental spill or incident. A copy of this plan shall be available on-site during all drilling activities.						
38	The health and safety plan includes emergency contact information for people available to assist site personnel within 30 minutes of a call.						
39	Procedures have been developed to ensure that the site will be maintained free of garbage, tripping hazards, etc. Garbage should be removed on a daily basis.						
40	Spill notification procedures are clearly communicated to and accessible to all site personnel.						
41	Measures to identify and monitor for potential fugitive drilling fluids into nearby water bodies have been established. Attach monitoring procedures. All discharges must be reported to DEC.						
42	Provision for water that may be needed for drilling and boring operations has been identified. Contractors may have access to available on-site water, given DEP's prior review and approval of the planned means and methods. Any apparatus that is proposed to come in contact with an on-site water source may require steam cleaning.						
Safety							
43	Vehicle entrance and exit locations from each worksite, and traffic safety procedures, have been determined and marked for each work area location.						
44	A written health and safety plan, including a job hazard analysis of work activities to be conducted on-site, and an emergency response plan have been developed. A copy of these plans shall be available on-site during all drilling.						
45	An on-site Site Safety Representative (SSR) has been assigned to this project. An alternate(s) has been selected should the SSR be unavailable. Additionally, if 24 hour operation is necessary, SSR or alternates must be provided for each shift.						
46	Provisions have been prepared for hot work permits for any activities that produce heat or sparks including use of torches, grinders, and portable heaters (salamanders), etc.						
47	Provisions have been made to maintain a minimum safe walking clearance of 5' for pedestrians.						
48	Procedures have been established to secure water hoses away from pedestrian areas.						
49	Procedures have been established to cease operations during a rain or thunderstorm event.						
50	Procedures have been established for working safely in weather that is excessively cold or hot.						
51	There is an easily accessible, fully charged fire extinguisher available on each drill rig in the immediate vicinity of the driller.						
52	Ice melt or some other environmentally friendly de-icer will be available on-site when temperatures fall below 32°F to reduce ice slip and fall hazards.						
53	There will be a functioning emergency stop positioned at the driller's station/controls.						
54	Workers have been instructed to maintain 3 points of contact while climbing onto or off of rig.						
55	Workers have been trained to ensure that loads shall not be lifted or positioned over the ground crew.						
56	Workers have been trained not to wrap hoist lines around a load in place of a sling or chain.						
57	If drilling indoors or in areas where poor ventilation exists, provisions will be made to monitor exhaust gases from rigs that may accumulate in the workers breathing zone or within the indoor area.						
58	Mechanical ventilation will be provided if necessary.						
59	The drill rig will be operated within manufacturers guidelines. The downward force and rotational forces shall not exceed manufacturers recommendations.						
60	Soil air knifing/vacuuming or hand augering will be conducted where the potential exists to encounter underground utilities.						
61	Handles on drill rigs are insulated per manufacturers specifications.						
62	Means for effective communication from the project site to pertinent off-site DEP representatives shall be identified as part of the drilling plan. If there is no cellular service at the project site, means of radio communication shall be pursued. If both means of wireless communication are not possible, protocol for using the nearest available DEP land-line shall be established at the very minimum.						
63	The advancement of casings slightly deeper than engineered depths is permitted <u>with prior DEP coordination</u> , when it is intended for the safety of workers handling these components. It is recognized that it is industry practice to adjust the above grade casing break points for safe handling. When it is not permissible to set casings beyond their engineered depths, drillers shall use above grade platforms to elevate workers closer to the casing break points.						
Personal Protective Equipment							
64	All site workers have been issued hard hats for use during drilling activities.						
65	All site workers have been issued safety boots for use during drilling.						
66	All site workers have been issued appropriate gloves for use during drilling.						
67	All site workers have been issued safety glasses for use during drilling.						
68	Goggles / face shields have been issued to all site workers who may be exposed to flying dust or chemical spray.						



Drilling and Boring Environmental Health and Safety Checklist

Project Name:

This form shall be completed and endorsed by the drilling contractor (DLR), the Engineer of Record (EOR), the Construction Manager (CM), and the NYCDEP Portfolio Manager (PM) Designee, with copies, including all required justifications and emergency contact lists, given to all parties stipulated in the checklist, prior to commencing drilling activities. If no CM responsibilities, default to the EOR. Appropriate parties shall be selected based upon the phase of the work. All parties shall attend a pre-drilling/boring conference to discuss this checklist and assign the responsibility of each item to an agreed party. Documentation by a registered land surveyor may not be a requirement.

Each box will be checked to show its responsible party. If any box is determined to be N/A, a brief justification must be provided in the NOTES column and supporting documents shall be submitted as an attachments to this checklist, in accordance with all contract specifications and requirements as well as applicable Laws and Codes.

No.	Description	DLR	EOR	CM/RE	PM Designee	N/A	NOTES
69	All site personnel have been told to wear long pants and a shirt while drilling. No loose clothing, hair, jewelry, etc. that can be caught by rotating or moving parts shall be worn while drilling.						
70	Chemical protective gloves, suits, boot covers and respiratory protection have been provided and will be available on-site, to allow for an immediate response from on-site personnel to a chemical incident, if the contractor is expected to respond to an incident. This may occur at a contaminated land site.						
71	Hearing protection has been provided to persons conducting drilling on-site and to persons working nearby.						
Utility Location and Marking							
72	All underground utilities including electrical, telephone, cable, natural gas, oil, communication, water and sewer lines have been located and marked prior to conducted drilling activities. The drill rig shall be moved to a safe distance from these utilities. All utilities markings should be fresh to minimize the risk of errors.						
73	Any necessary private utility companies in the area have been contacted if they have infrastructure in the drilling area. In some cases they will require a representative be on site during work around their infrastructure. Also, those utilities should confirm the exact locations of their utilities.						
74	Prior to performing any subsurface activity (excavation, boring, mining, pipe jacking, etc.) underground infrastructure must be located and marked on the surface. Location of the infrastructure must be performed by survey if possible. If survey data is not available, the location must be determined by the best available technology.						
75	Location marking must show the centerline and extents of any linear subsurface infrastructure. If the infrastructure is not linear, the extents must be marked on the surface. For nonlinear infrastructure, if boundary is irregular and the mark out is intermittent, consideration should be given to ensure points closest to the work are identified.						
76	If markings are lost prior to the start of the work, they must be reestablished prior to commencing the work						
77	If markings are lost during the work, work must be stopped and markings must be reestablished immediately.						
78	Consideration needs to be given to determine how, from the work involved, the structures are to be marked out. For example, a boring may be deep and boreholes can drift, so infrastructure that is far from the work may need to be marked out. A section view(s) of the work should be developed so that potential conflicts can be identified. The need for a borehole deviation survey during operations should also be investigated before starting work. Allowable borehole deviation and polling interval for survey should have been established to ensure the risk to hitting infrastructure is mitigated. If it is determined that a borehole deviation survey is necessary, DEP may require boring Contractor to employ a Professional Geologist to sign off on borehole deviation survey.						
79	All overhead electrical lines have been identified. The drill rig must remain at least 10 feet from any power lines rated 50Kv or below. For power lines over 50kV, minimum clearance must be 10 feet plus 0.4 inches for every 1kV over 50kV, or twice the length of the line insulator.						
80	All overhead hazards, such as piping, process equipment, trees, structures, etc. have been identified. All hazards have been mitigated or addressed in the HASP.						
First Aid/CPR							
81	More than one member of the drilling crew has been trained in First Aid/CPR.						
82	A First Aid Kit will be available on-site at all times and it will be complete and up-to-date.						
83	Eye wash bottles full of eye wash solution or an eye wash station will be available on-site during drilling/sampling. Supplies will be checked and replenished as required.						
84	An ambulance service and a hospital with trauma care capabilities has been identified in the health and safety plan along with a clear one-page map from the site to the hospital to facilitate a driver needing to quickly transport someone to the hospital.						
Siting the Rig							
85	The drill rig will be setup on level ground. If not, provisions have been made to make the rig as level as possible.						
86	The drill rig will be made level on outriggers or jacks to stabilize the rig prior to raising the mast or derrick of the rig. The rig jacks or outriggers shall be placed onto stable materials which may include blocking which at a minimum is 24" by 24" blocks constructed of two layers of 4" by 8" boards each 24" long with three in a row at 90 degree orientation to the other three with the two layers bolted together with countersunk 3/4" bolts. Mats may also be used.						
87	Provisions have been made to use guy wires if the drill rig must be set up on wet, loose, partially frozen soils or on soils likely to cave-in due to erosion, slopes or excavations, or if the rig will be subject to windy conditions.						
Maintenance							
88	All of the hydraulic lines have been inspected and worn or leaking lines replaced prior to use. They should also be inspected daily while in use on-site.						
89	All wire ropes have been inspected and replaced as necessary.						
90	All fluid levels will be checked by the driller prior to use each day.						
91	All guards have been checked to ensure that they are adequate and are in-place prior to use on-site. Protocol is in-place to ensure that the drill rig will not be operated with guards removed.						
92	All pneumatic hose fittings (e.g. Chicago fittings) will be pinned during use.						



Drilling and Boring Environmental Health and Safety Checklist

Project Name:

This form shall be completed and endorsed by the drilling contractor (DLR), the Engineer of Record (EOR), the Construction Manager (CM), and the NYCDEP Portfolio Manager (PM) Designee, with copies, including all required justifications and emergency contact lists, given to all parties stipulated in the checklist, prior to commencing drilling activities. If no CM responsibilities, default to the EOR. Appropriate parties shall be selected based upon the phase of the work. All parties shall attend a pre-drilling/boring conference to discuss this checklist and assign the responsibility of each item to an agreed party. Documentation by a registered land surveyor may not be a requirement.

Each box will be checked to show its responsible party. If any box is determined to be N/A, a brief justification must be provided in the NOTES column and supporting documents shall be submitted as an attachments to this checklist, in accordance with all contract specifications and requirements as well as applicable Laws and Codes.

No.	Description	DLR	EOR	CM/RE	PM Designee	N/A	NOTES
93	Provisions have been made to ensure that all drill cuttings will be promptly removed and contained to reduce slip and fall hazards from within the drilling area.						
94	Provisions have been made to ensure that the drill rig will be clear of debris, mud, ice, snow and clutter.						
95	Procedures are in-place to ensure that the drill rig drive mechanisms are to be placed into neutral when the driller leaves the drillers station/controls or the engine will be shut down.						
96	A procedure is in-place to ensure that drilling will stop when lightning is present.						
97	A procedure is in-place to ensure that workers climbing the mast or derrick of the drill rig will wear full-body harnesses and be tied off at all times.						
98	Workers will be wearing full body harnesses and be tied off to prevent them from falling into holes that have been drilled when they are large enough in diameter so that workers could fall into them (e.g. 36").						
Security							
99	Provisions have been made to ensure that unauthorized personnel shall be restricted from the work area.						
100	Provisions have been made to ensure that all chemicals, tools, fuels, etc. will be placed into locked containers such as job boxes to prevent tampering when the rig is left unattended.						
101	Provisions have been made to ensure that all open holes will be properly secured each night.						
Training/Experience							
102	Each worker has completed the 40-hour HAZWOPER course with appropriate annual refreshers when drilling into known or potential environmentally contaminated soils.						
103	All workers will be trained in Hazard Communication, safe work practices and environmental spill response.						
104	All workers have been trained in safe excavation and trenching.						
105	All workers have been trained in traffic work zone safety.						
106	All workers have been trained in hearing conservation.						
107	All workers have been trained in hazard marking and color coding.						
108	All workers have been trained in personal protective equipment use and care.						
109	Drill rig operators must have a minimum of three (3) years experience drilling with the equipment and procedures described in the drilling scope/program. The drill rig operator must also be familiar with the provisions of DEP's Drilling & Borings Checklist, and for drilling and boring in the vicinity of dams, the drill rig operator must be familiar with applicable requirements of the U.S. Army Corps of Engineers' Regulation No. 1110-1-1807, titled "Engineering and Design: Drilling in Earth Embankment Dams and Levees, dated 31 December 2014.						
Supervision							
110	Provisions have been made for an on-site inspector, independent of the driller, to document all the drilling operations. The on-site inspector shall also attend the pre-drilling/boring conference and make record of the key points that were reviewed and discussed by issuance of formal meeting minutes. Additionally, the inspector shall make a thorough record (written and via photographs) of site conditions on the day of the pre-drilling/boring conference, prior to contractors mobilizing and the commencement of field activities.						
111	Provisions have been made for on-site inspector to submit daily reports at the end of each day to on-site supervisor, independent of the driller, and to the NYCDEP Portfolio Manager Designee and Engineer of Record. Besides including a written record of the daily activities, conditions, etc., these shall include photographs as well.						
112	For drilling and boring in the vicinity of dams, dikes, aqueducts and levees, the designated on-site field engineer must possess a New York State Professional Engineer (P.E.) license, or be a licensed professional geologist, and possess at least three (3) years of geotechnical experience. The on-site field engineer shall be responsible for fully enforcing the provisions and requirements of the DPP and Drilling & Borings Checklist, as well as the requirements of the U.S. Army Corps of Engineers' Regulation No. 1110-1807, titled "Engineering and Design: Drilling in Earth Embankment Dams and Levees, dated 31 December 2014. This designated field engineer shall be the primary responsible person in charge of the on site drilling. The designated field engineer shall be familiar with the physical site, as-built or contract drawings, applicable instrumentation and records, site history, site geology and previous applicable incidents. This designated field engineer shall conduct a review of the D&B checklist with the contractor personnel on site prior to commencing the drilling and boring operations.						
Communication							
113	Provisions have been made for the field crew to be able to immediately summon emergency services.						
114	Provisions have been made for crews to be able to quickly notify others in the immediate area of emerging hazards.						
115	Are workers relying upon outside emergency responders to assist with emergency situations? If yes, they have been notified to verify that such assistance will be available.						
116	Provisions have been made for inspectors to have the proper communication equipment (cell phones, radio) in case of an emergency.						
Artesian Aquifers							



Drilling and Boring Environmental Health and Safety Checklist

Project Name:

This form shall be completed and endorsed by the drilling contractor (DLR), the Engineer of Record (EOR), the Construction Manager (CM), and the NYCDEP Portfolio Manager (PM) Designee, with copies, including all required justifications and emergency contact lists, given to all parties stipulated in the checklist, prior to commencing drilling activities. If no CM responsibilities, default to the EOR. Appropriate parties shall be selected based upon the phase of the work. All parties shall attend a pre-drilling/boring conference to discuss this checklist and assign the responsibility of each item to an agreed party. Documentation by a registered land surveyor may not be a requirement.

Each box will be checked to show its responsible party. If any box is determined to be N/A, a brief justification must be provided in the NOTES column and supporting documents shall be submitted as an attachments to this checklist, in accordance with all contract specifications and requirements as well as applicable Laws and Codes.

No.	Description	DLR	EOR	CM/RE	PM Designee	N/A	NOTES
117	The DPP should include an investigation of the project site for any historical records of artesian conditions. Findings of the investigation should be included within the DPP and shall influence the drilling and borings methods and procedures of the plan accordingly.						
118	Provisions have been made to ensure that at all times a functional stuffing box and a pneumatic packer and any necessary ancillary equipment will be available on-site. A technician that is trained in the installation of stuffing box / packer will be on-site.						
119	Provisions have been made to ensure that grouting contractors shall maintain sufficient quantities of tubing, nitrogen bottles and galvanized steel pipe on-site. Provisions have been made for additional cement grout to be on-site during plugging / grouting activities in addition to the calculated amount (e.g. twice the calculated amount) to account for any unforeseen demand due to fissures or large underground water pathways, etc.						
Additional Marine Work Considerations							
120	The drilling plan must include provisions to mitigate the risk of any floating platforms or boats becoming in danger of being washed over or pinned against actively spilling spillways or reservoir diversion or release intake chambers.						
121	Boats and/or personnel will be available to immediately place floating booms completely around a spill to confine the spill. A harbor boom should be placed in the water prior to placing a drill rig, or any piece of equipment, on the reservoir surface. Once equipment is on the water surface, the ends of the harbor boom should be locked together, enclosing the equipment within the containment. Sufficient boom length should be deployed to surround the rig and maintain a minimum buffer distance of 100 feet. Once the rig has been secured in the drilling area, the harbor boom should be anchored to maintain the minimal 100 foot containment area between the boom and the rig.						
122	Provisions have been made to use non-toxic, biodegradable hydraulic fluid in rigs and boats.						
123	Coolant will be propylene glycol rather than ethylene glycol for marine operations.						
124	Provisions have been made to comply with NYCDEP requirements for wearing personal floatation devices (PFD) whenever workers are within close proximity (e.g. 40 feet) of water.						
125	All personnel working over water have an appropriate PFD.						
126	Provisions have been made to incorporate the requirements listed in Bureau Memorandum 2005-07 and the Boating Pollution Prevention Guidelines AOP-5270.						
127	The on-site Site Safety Representative will conduct daily safety meetings required by the NYCDEP.						
128	An adequate amount of absorbent boom has been obtained to confine and absorb contents of a chemical spill on water. Absorbent boom is not designed to contain floating product. The harbor boom is necessary to accomplish the stated precautionary measures. The absorbent boom, as well as pads, are necessary to deploy between the harbor boom and rig, if necessary. They will absorb product from the water surface.						
129	An adequate number of ring buoys will be available on-site to respond in case for workers to fall into the water.						
130	Cold water gear will be available if working over cold waters.						
131	Procedures have been developed to ensure that all chemicals used during drilling while adjacent to or over water are kept to the minimum amount required.						
132	Provisions have been made to have secondary containment and non-breakable containers for use with all hazardous materials used adjacent to or over water.						
133	Fall protection will be provided for workers working over water.						
134	All barges and boats will be equipped with first aid kits, fire extinguishers and eyewash stations.						
135	Provisions have been made to report spills to the National Spill Response Center.						
136	Provisions have been made to ensure compliance with USCG and OSHA requirements for work near or over water.						



Drilling and Boring Environmental Health and Safety Checklist

Project Name: _____

This form shall be completed and endorsed by the drilling contractor (DLR), the Engineer of Record (EOR), the Construction Manager (CM), and the NYCDEP Portfolio Manager (PM) Designee, with copies, including all required justifications and emergency contact lists, given to all parties stipulated in the checklist, prior to commencing drilling activities. If no CM responsibilities, default to the EOR. Appropriate parties shall be selected based upon the phase of the work. All parties shall attend a pre-drilling/boring conference to discuss this checklist and assign the responsibility of each item to an agreed party. Documentation by a registered land surveyor may not be a requirement.

Each box will be checked to show its responsible party. If any box is determined to be N/A, a brief justification must be provided in the NOTES column and supporting documents shall be submitted as an attachments to this checklist, in accordance with all contract specifications and requirements as well as applicable Laws and Codes.

No.	Description	DLR	EOR	CM/RE	PM Designee	N/A	NOTES
-----	-------------	-----	-----	-------	-------------	-----	-------

I confirm that a pre-drilling/boring conference has been held, and that I have been made aware of and have agreed to my responsibilities, as described in the contract documents and the attached checklist. In addition, to the best of my knowledge, this completed checklist with the attached supporting documentation satisfies the pre-drilling/boring pre-requisites, as identified by each and all items listed.

Signature of Drilling Contractor Company Officer Printed Name and Role Date

I confirm that a pre-drilling/boring conference has been held, and that I have been made aware of and have agreed to my responsibilities, as described in the contract documents and the attached checklist. In addition, to the best of my knowledge, this completed checklist with the attached supporting documentation satisfies the pre-drilling/boring pre-requisites, as identified by each and all items listed.

Signature of Prime/JV Contractor Printed Name and Role Date

I confirm that a pre-drilling/boring conference has been held, and that I have been made aware of and have agreed to my responsibilities, as described in the contract documents and the attached checklist. In addition, to the best of my knowledge, this completed checklist with the attached supporting documentation satisfies the pre-drilling/boring pre-requisites, as identified by each and all items listed.

Signature of SSR Printed Name and Role Date

I confirm that a pre-drilling/boring conference has been held, and that all responsible parties have been made aware of and have agreed to their responsibilities, as described in the contract documents and the attached checklist. I acknowledge that each of the items listed in this drilling/boring checklist has been reviewed with both the Contractor and Engineer of Record. In addition, to the best of my knowledge, this completed checklist with the attached supporting documentation satisfies the pre-drilling/boring pre-requisites, as identified by each and all items listed.



Drilling and Boring Environmental Health and Safety Checklist

Project Name:

This form shall be completed and endorsed by the drilling contractor (DLR), the Engineer of Record (EOR), the Construction Manager (CM), and the NYCDEP Portfolio Manager (PM) Designee, with copies, including all required justifications and emergency contact lists, given to all parties stipulated in the checklist, prior to commencing drilling activities. If no CM responsibilities, default to the EOR. Appropriate parties shall be selected based upon the phase of the work. All parties shall attend a pre-drilling/boring conference to discuss this checklist and assign the responsibility of each item to an agreed party. Documentation by a registered land surveyor may not be a requirement.

Each box will be checked to show its responsible party. If any box is determined to be N/A, a brief justification must be provided in the NOTES column and supporting documents shall be submitted as an attachments to this checklist, in accordance with all contract specifications and requirements as well as applicable Laws and Codes.

No.	Description	DLR	EOR	CM/RE	PM Designee	N/A	NOTES
<hr/> <div style="display: flex; justify-content: space-between;"> Signature of NYCDEP Portfolio Manager Designee Printed Name Date </div>							

Attachment B

Conceptual Plan

Attachment C

Substantial Completion and Final Completion Dates

<p>Substantial Completion of Project, which includes:</p> <p>(a) the Bridge is available and deemed safe by DEP engineer inspection for DEP to use for its work on the HRDC,</p> <p>(b) HRDC’s Project engineer has inspected the Bridge and has made a written determination (“Substantial Completion Determination”) that it is substantially complete. HRDC must provide DEP with the Resident Engineer’s Substantial Completion Determination within ten (10) days of Substantial Completion.</p> <p>(b) OPRHP has obtained the property rights set forth in Section 3(c) of the Agreement, or, if such rights are not yet secured, rights sufficient to allow DEP use of the Bridge to perform the HRDC Rehabilitation, and</p> <p>(3) all of the contractors’ and subcontractors’ materials and tools have been demobilized from DEP property.</p>	<p>December 31, 2025</p>
--	--------------------------

Final Completion	On or before October 31, 2026
------------------	-------------------------------

Attachment D

Insurance Requirements

Note: All certificate(s) of insurance submitted pursuant to Section 11 of the Agreement must be accompanied by a Certification of Insurance Broker or Agent consistent with the form at the end of this Attachment D and include the following information:

For each insurance policy, the name and NAIC number of issuing company, number of policy, and effective dates;

Policy limits consistent with the requirements listed below;

Additional insureds or loss payees consistent with the requirements listed below; and

The name of this Agreement and the number assigned to it by the City (in the “Description of Operations” field).

All such certificate(s) of insurance (including Certification(s) of Insurance Broker or Agent, where required) must be sent to:

For insurance required from the State itself:

NYCDEP

Office of the ACCO

ATTN: Contract Management Unit (Insurance)

59-17 Junction Blvd., 17th Floor

Flushing, New York 11373

For insurance required from the State's consultants/contractors:

NYCDEP

Bureau of Water Supply

ATTN: Project Manager (Dan Michaud Emily Pereira)

71 Smith Avenue

Kingston, New York 12401

Specific Types of Insurance Coverage the State Must Require Its Contractors and Consultants to Maintain (Agreement, Section 11):

- Worker's Compensation Statutory per New York State Law
without regard to jurisdiction
(See Part III(1), below)

- Employer's Liability Statutory (See Part III(2), below)

- Disability Benefits Insurance Statutory (See Part III(1), below)

- Additional Insureds:

The City and the New York City Water Board, together with their respective officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37

Additional Insureds:

The City and the New York City Water Board, together with their respective officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37

(See Part III(3), below)

- Commercial Automobile Liability \$1,000,000 per accident combined single limit

If vehicles are used for transporting hazardous materials, the contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90

(See Part III(4), below)

- Professional Liability Insurance \$1,000,000 per claim
(for all professional services contracts) (See Part III(5), below)

- Builders' Risk 100% of the value of the Construction Work
(for construction contracts only; The City and the New York City Water Board, together with their respective officials and employees should be named as "loss payee as its

may be maintained by the State or interests may appear" and additional insured the State's contractors) (See Part III(6), below)

III. General Provisions Applicable to Insurance Coverage:

In each case below, the reference to “Contractor” shall mean the party required to maintain insurance coverage, and the reference to “Contract” shall mean the contract pursuant to which the consultant or contractor is providing services to the State pursuant to this Agreement, or, in the case of the State’s obligation to provide insurance, this Agreement itself.

Section 1 Worker’s Compensation and Disability Benefits Insurance:

Before performing any work under the Contract, the Contractor shall procure Worker’s Compensation and Disability Benefits Insurance in accord with the laws of the State of New York on behalf of all employees who are to provide labor or services under the Contract.

Section 2 Employer’s Liability Insurance:

Before performing any work under the Contract, the Contractor shall procure Employer’s Liability Insurance affording compensation due to bodily injury by accident or disease sustained by any employee arising out of and in the course of his or her employment under the Contract.

Section 3 Commercial General Liability:

The Contractor shall provide Commercial General Liability Insurance covering claims for property damage and/or bodily injury, including death, which may arise from any of the operations under the Contract. Coverage under this insurance shall be at least as broad as that provided by the latest edition of Insurance Services Office (“ISO”) Form CG 00 01. Such insurance shall be “occurrence” based rather than “claims-made.” No Commercial Liability

Insurance policy shall contain exclusions that are not included in ISO Form CG 00 01 (whether by exception, exclusion, endorsement, script, or other modification) unless approved in writing by DEP, including but not limited to exclusions of any of the following attributes: (i) contractual liability insuring the contractual obligations of the insured; (ii) employer's liability coverage for liability assumed by the Contractor under an "insured contract"; (iii) coverage for claims arising under New York Labor Law; (iv) independent contractors; (v) explosion, collapse and underground (XCU); and (vi) the applicability of Commercial General Liability Insurance coverage to the City and the New York City Water Board, together with their respective officials and employees, as Additional Insured in respect of liability arising out of claims against the Additional Insured by employees of Contractor. Such insurance shall contain a "per project" aggregate limit, as specified above, that applies separately to operations under the Contract. Such Commercial General Liability Insurance shall name the City and the New York City Water Board, together with their respective officials and employees as an Additional Insured. Coverage for the City and New York City Water Board shall specifically include their officials and employees, be at least as broad as the latest edition of ISO Form CG 20 26 and provide completed operations coverage at least as broad as the latest edition of ISO Form CG 20 37. Coverage under the policy, including ISO Form CG 20 37, shall be maintained at least three years after completion of Contract work. Additional insured endorsements provided by any entity other than the State shall not include a privity of contract requirement.

Section 4 Commercial Automobile Liability:

(a) The Contractor will provide Commercial Automobile Liability Insurance covering liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with the Contract. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01.

(b) If vehicles are used for transporting hazardous materials, the Commercial Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.

Section 5 Professional Liability Insurance

(a) If professional services are provided pursuant to the Contract, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under the Contract in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall cover the liability assumed by the Contractor under the Contract arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

(b) All subcontractors of the Contractor providing professional services under the Contract for which Professional Liability Insurance is reasonably commercially available shall also maintain Professional Liability Insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to DEP, before such subcontractor begins providing services, evidence of such Professional Liability Insurance on forms acceptable to DEP.

(c) Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

Section 6 Builders Risk Insurance

The State or the State's construction contractor shall procure and maintain Builders Risk Insurance on special causes of loss and completed value forms through completion of construction. Unless waived by DEP, such insurance shall include coverage, without limitation, for terrorism, windstorm (including named windstorm), water (other than flood-related), storm surge, and earth movement. It shall include coverage for collapse in the course of construction and ordinance and law, including coverage for loss to the undamaged portion of the building, demolition cost coverage, and increased cost of construction coverage. Such insurance shall cover, without limitation, (a) all buildings and/or structures involved in the Construction Work, as well as

temporary structures at the work site, and (b) any property that is intended to become permanent part of such building or structure, whether such property is on the work site, in transit or in temporary storage. Policies shall name the State and/or the State's construction contractor as Named Insured and list the City and the New York City Water Board, together with their respective officials and employees as both an Additional Insured and a Loss Payee as its interest may appear.

Section 7 Miscellaneous Requirements for Insurance Coverage and Policies

(a) All required insurance policies shall be procured from companies that may lawfully issue such policies and have an A.M. Best rating of at least A-/VII, a Standard & Poor's rating of at least A, a Fitch Ratings rating of at least A-, a Moody's Investors Service rating of at least A3, or a similar rating by any other nationally recognized statistical rating organization acceptable to the Office of the New York City Corporation Counsel unless prior written approval is obtained from the Office of the New York City Corporation Counsel.

(b) All insurance policies (except professional liability insurance, workers' compensation/employer's liability insurance, and disability benefits insurance) shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

(c) The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

(d) There shall be no self-insurance program with regard to any insurance required under this Agreement unless approved in writing by DEP. Any such self-insurance program shall provide the City, including its officials and employees, with all rights that would be provided by traditional insurance required under this Attachment D, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies.

(e) The City's limits of coverage for all types of insurance required under this Agreement shall be the greater of (i) the minimum limits set forth above in this Attachment D or (ii) the limits provided to the Contractor, or subcontractor, as applicable, as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

(f) The Contractor may satisfy its insurance obligations under this Agreement through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(g) Unless waived by DEP, policies of insurance provided pursuant to this Agreement, other than professional liability insurance and disability benefits insurance shall include a waiver of the right of subrogation with respect to the City of New York, including its officials and employees.

Section 8 Proof of Insurance

(a) For all types of insurance required by this Agreement, the Contractor shall file proof of insurance in accordance with this Section 8 within ten (10) days of award of the Contract.

(b) For policies provided pursuant to Sections 1 and 2, above, the Contractor shall submit one of the following forms: C-105.2 Certificate of Workers' Compensation Insurance; U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to DEP. ACORD forms are not acceptable.

(c) For policies provided pursuant to all of this Attachment D other than Sections 1 and 2, above, the Contractor shall submit one or more Certificates of Insurance on forms acceptable to DEP. All such Certificates of Insurance shall certify (a) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits (b) for insurance secured pursuant to Section 3, that the City and the New York City Water Board, together with their respective officials and employees are an Additional Insured with coverage at least as broad as the most recent edition of ISO Forms CG 20 26 and CG 20 37, as applicable; (c) the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number);

and (d) the number assigned to this Agreement by the City. All such Certificates of Insurance shall be accompanied by either a duly executed “Certification by Insurance Broker or Agent” in the form contained in this Attachment D or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

(d) Documentation confirming renewals of insurance shall be submitted to DEP prior to the expiration date of coverage of policies required under the Contract. Such proofs of insurance shall comply with the requirements of subsections (b) and (c), immediately above.

(e) The Contractor shall provide, and shall cause each subcontractor to provide, the City with a copy of any policy of insurance provided pursuant to this Agreement upon the demand for such policy by DEP or the Office of the New York City Corporation Counsel.

Section 9 Operations of the Contractor:

(a) The Contractor shall not commence the Contract work unless and until all required proof of insurance has been submitted to and accepted by DEP. Acceptance of such proof does not excuse the Contractor from providing, and causing its subcontractors to provide, insurance consistent with all provisions of the Contract or of any liability arising from its failure to do so.

(b) The Contractor shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by the Contract and shall be authorized to perform Contract work only during the effective period of all required coverage.

(c) In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Contractor shall immediately stop all

Contract work, and shall not recommence work until authorized in writing to do so. Contract time shall continue to run during such periods and no extensions of time will be granted. The Contractor may be declared to be in default for failure to maintain required insurance.

(d) In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Attachment D shall be cancelled or terminated (or has been cancelled or terminated) for any reason, the Contractor shall immediately forward a copy of such notice to DEP and (if the Contractor in question is the State itself) the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Notwithstanding the foregoing, the Contractor shall ensure that there is no interruption in any of the insurance coverage required under this Attachment D.

(e) Whenever notice of loss, damage, occurrence, accident, claim or suit to an insurance company is required under a policy maintained in accordance with this Attachment D (whether on behalf of the Contractor as Named Insured or the City and the New York City Water Board, together with their respective officials and employees Additional Insured), the Contractor shall provide timely notice thereof. Such notice shall comply with all of the following requirements:

The Contractor shall send written notice of any such event to all insurance carriers that issued potentially responsive policies (including commercial general liability insurance carriers for events relating to the Contractor's own employees) as soon as practicable after the event and again as soon as practicable after the initiation of any claim and/or suit resulting therefrom. Such notice shall contain the following information to the extent known: the number of the insurance policy, the name of the Named Insured, the date and location of the incident, and the identity of the persons injured or property damaged. For any policy on which the City and New York City Water Board are Additional Insured and/or Loss Payee, such notice shall expressly specify that "this notice is being given on behalf of the City and the New York City Water Board, together with their respective officials and employees [and Loss Payee, as applicable], as well as the Named Insured."

Whenever such notice is sent under a policy on which the City and New York City Water Board are Additional Insured, the Contractor shall provide copies of the notice to the Comptroller, DEP and the City Corporation Counsel. The copy to the Comptroller shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, New York 10007. The copy to DEP shall be sent to the address set forth at the beginning of this Attachment D. The copy to the City Corporation Counsel shall be sent to Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(iii) If the Contractor fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the Contractor shall indemnify the City, including its officials and employees, for all losses, judgments, settlements, and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City, including its officials and employees.

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

(1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

(2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

CITY OF NEW YORK

CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

Sworn to before me this

_____ day of _____, 20__

NOTARY PUBLIC

Attachment E

Appendix A - Standard Clauses for New York State Contracts

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

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: mwb certification@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:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, 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>

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.