

New York State Office of Parks, Recreation, and Historical Preservation
Contract for Construction Management Services
Hudson Fjord Trail Bridge
TACONIC STATE PARK REGION
CONTRACT D005899

Agreement for the procurement of professional services in the field of construction management (hereinafter "Contract"), by and between the State of New York, acting by and through the Office of Parks, Recreation & Historic Preservation (hereinafter referred to as "Parks" or "State"), with offices located at 625 Broadway, Albany, New York 12238 and, Henningson, Durham & Richardson, Architecture and Engineering, P.C. with offices located at 711 Westchester Avenue, Suite 103, White Plains, NY 10604 (hereinafter referred to as the "Construction Manager").

WITNESSETH:

WHEREAS, Parks is charged by law with the construction, maintenance and operation of New York State parks, historic sites, marine facilities and other recreational facilities and desires to obtain technical and professional term services as specified in this Contract, and is authorized to engage such services in accordance with the provisions of the Parks, Recreation and Historic Preservation Law of the State of New York.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties do hereby agree as follows:

I. CONSULTANT SERVICES

- A. The Construction Manager accepts the professional relationship established between it and Parks by this Contract. It covenants to furnish its professional skill, judgment, and cooperation in furthering the interests of the project. It agrees to furnish agreed-upon tasks and to use its professional efforts to complete the Contract in a professional, expeditious, and economical manner consistent with the interest of the project. The Construction Manager represents and agrees that its officers, employees, agents, consultants, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties they perform hereunder.

- B. The Construction Manager shall perform all of the services and comply with all of the requirements set forth in this Contract for a period of thirty-six (36) months from the date of approval of this Contract by the Office of the New York State Comptroller (hereinafter "Office of the State Comptroller") for the duration of the project, for a total compensation not to exceed \$5,000,000 and 00/100 dollars (Maximum Cost).

C. DEFINITIONS

1. The term “Commissioner” shall mean the Commissioner of the New York State Office of Parks, Recreation and Historic Preservation.
2. The term “Deputy Commissioner for Capital” shall mean the Deputy Commissioner for Capital of the New York State Office of Parks, Recreation and Historic Preservation.
3. The term “Director” or “Director, Capital Program” shall mean the Director of Capital of the New York State Office of Parks, Recreation and Historic Preservation.
4. The term “District Manager” shall mean the applicable manager of the corresponding District, with managerial oversight over Capital projects assigned in Regions to each District, so designated by the New York State Office of Parks, Recreation and Historic Preservation.
5. The term “Director’s Representative” shall mean an employee of the Office designated by the Director as the Director’s authorized representative. Under the Director, the Director’s Representative shall have complete charge of the Work and shall exercise full supervision and direction of the Work. Except where noted, the Contract Documents specifically designate a person to perform a function or duty, it shall mean the Director’s Representative but only for the performance of that function or duty. Where the word “directed” appears in the Contract Documents, the words “by the Director’s Representative” shall be deemed inserted thereafter in each case except where it is obviously inappropriate in context.
6. The term “day” shall mean calendar day, unless otherwise specifically designated.
7. The terms “sub-consultant” or “subconsultant” or “sub-contractor” or “subcontractor” shall mean any firm working for and under the Construction Manager who will assist with the tasks outlined in the Scope of Services fulfilling the requirements agreed to in this Contract.

D. CONTRACT DOCUMENTS

1. The rights and obligations of the parties to this Contract shall be subject to and governed by the documents identified as follows (“Contract Documents”), all of which are attached hereto and made part hereto. In the event of any inconsistency in or conflict among the document elements of the future contract identified herein, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the order set forth below:
 - a. Appendix A – “Standard Clauses For New York State Contracts”;
 - b. Contract – “New York State Office of Parks, Recreation, and Historical Preservation Contract for Professional Design Services”;

- c. Appendix B1 – “Hourly Rate Schedule with Multipliers”;
 - d. Appendix B2 – “Terms of Payment”;
 - e. Appendix C – “Professional Design Service Procedures Manual Drawing Standards”;
 - f. New York State Office of Parks, Recreation and Historic Preservation Term Contracting Manual for Professional Design Services;
 - g. Construction Manager Disclosure and Reporting Requirements (Form A);
 - h. An Approved MWBE Utilization Plan, if required;
 - i. All Addenda, if applicable; and
 - j. Request for Qualifications (RFQ), including the Construction Manager’s Response to the RFQ and all other associated Appendices, Attachments, and Questions and Answers.
2. The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, either written or oral, including bidding documentation, pertinent to this contract.
 3. This Contract constitutes the entire Contract between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid, and this Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto and approved in the same manner as this Contract.

II. **SCOPE OF SERVICES**

A. PHASES

1. Typical phases and their requirements are:
 - a. Pre-construction. This phase generally consists of constructability reviews, construction budgeting and estimating and construction scheduling at selected milestones during the design of the project. The Construction Manager will work as part of a team with the designer of record, the Director’s Representative, other Parks staff, and others. The constructability reviews will generally include, but not be limited to, plan & specification, code compliance, logistics and coordination, and value engineering. The construction budgeting and estimating services will generally include, but not be limited to, the establishment of project construction cost based on the design, schedule, and prevailing market, and value engineering analysis. The construction scheduling services will generally include, but not be limited to, the development of a detailed and realistic construction schedule. The Construction Manager will develop bid strategies based on the information gathered during this phase. The Construction Manager will assist in the Bid and Award of the construction contract.

The list of Preconstruction services may include, but not be limited to, the following:

- i. Develop Project Master Schedule accounting for design, approval, and construction activities illustrating pertinent milestones; maintain and upgrade the schedule.
 - ii. Work with the designer of record to develop, maintain, and update Master Budget and construction contract estimates.
 - iii. Develop site logistic plan.
 - iv. Identify potential project safety issues relative to specific and unique construction.
 - v. Work with the designer of record and the Director's Representative to prepare Division 01 specifications.
 - vi. Perform design reviews for constructability.
 - vii. Perform value engineering reviews.
 - viii. Study hazardous materials abatement scopes of work.
 - ix. Develop construction phasing plans; identify and specify temporary facilities and controls.
 - x. Develop bid strategies and marketing plans for the construction contract(s)
 - xi. Conduct pre-bid conferences.
 - xii. Assist in bid review; conduct analysis and advise the Director's Representative with respect to making award recommendations.
- b. Construction Phase. This phase shall generally consist of the management and the administration of construction contracts with special emphasis on managing multi-prime contractors under State Finance Law §135 (Wicks Law) requirements. The services required will generally include, but not be limited to, construction inspection, safety compliance, progress payments, receiving, maintaining, and providing all records to the Director's Representative, and document maintenance, submittal control, Quality Control/Quality Assurance, cost control, schedule control, and active communication.

The list of construction services may include, but not be limited to, the following:

- i. The Construction Manager shall assist the Director's Representative in the field during the construction phase of the project, supervising daily construction activities in the absence of the Director's Representative.
- ii. Manage and coordinate all changes to the construction contract documents, for review and approval by the Director's Representative.
- iii. Coordinate all Field Orders and Change Orders, for review and approval by the Director's Representative.
- iv. Assist the Director's Representative in developing the project schedule and manage the project within the allotted budget.
- v. Maintain project schedule and budget and report on same (monthly at minimum).
- vi. Prepare and maintain daily activity reports.
- vii. In conjunction with schedule and budget reports issue monthly progress reports.
- viii. Develop corrective action plans, as needed.

- ix. Receive, maintain, and submit to the Director's Representative all submittals related to the project.
 - x. Conduct bi-weekly construction meetings with Parks and provide minutes of the meeting to the Director's Representative.
 - xi. Coordinate facility plans and operations with construction activities.
 - xii. Maintain daily contact with the Director's Representative.
 - xiii. Monitor and coordinate hazardous material abatement activities.
 - xiv. Perform safety inspections and safety monitoring.
 - xv. For each thirty-day period receive and provide to the Director's Representative the contractor's and sub-contractor's certified payrolls and maintain all documentation on site and alert the Director's Representative to any instance where the contractor or any sub-contractor fails to provide certified payrolls.
 - xvi. Monitor contractor's compliance with New York State Department of Labor, Occupation Safety and Health Administration, and other required job site postings.
 - xvii. Provide overall contract administration and maintain all project records.
 - xviii. Manage all contractor disputes and claims and prepare recommendations for the Director's Representative, as needed.
 - xix. Manage, maintain, and file all required guarantees and warranties. Prepare project guarantee/warranty manual for submittal to the Director's Representative at project's conclusion.
 - xx. Develop, manage, coordinate, and confirm completion of all punch lists.
 - xxi. Perform contract close out in conformance with the General Conditions.
- c. Post Construction Phase. The Construction Manager services shall generally consist of but not be limited to contract close-out, as-built and record drawing maintenance, and claim and settlement issues.

B. GENERAL ADMINISTRATION OF CONTRACT

- 1. The Construction Manager is advised that monthly payment forms are self-balancing and indicate the full status of the issued Task Orders and their respective sub-tasks, and encumbered funds. When a Task Order is issued, the Construction Manager shall, on the next monthly invoice, list all issued Task Orders and sub-tasks and the estimated not to exceed cost of that Task Order and sub-tasks. On a monthly basis, the Construction Manager shall prepare a separate internal spreadsheet that shall list each issued Task Order and sub-task by sequential number; provide a summary description of the Scope of Work (title/description); the Task Order and sub-task value; funds expended to date; percentage of completion; target completion date; current estimated completion date; final cost when completed, and a remarks column. This spreadsheet shall be distributed to the District Manager and the Director, Capital Programs. This distribution may be accomplished electronically.

C. GENERAL STANDARDS FOR SERVICES

- 1. As-Built Drawings. The Construction Manager, on a periodic basis, shall insure

that as-built conditions are recorded and transmitted to the designer of record who will prepare a final coordinated set of as-built documents. The Construction Manager shall insure that as-built conditions are recorded by the contractor. The contractor shall prepare a coordinated set of as-built documents, as described in the specifications.

2. Duties and Responsibilities of the Construction Manager.

- a. Review the progress schedules, schedule of shop drawing submittals and schedule of values prepared by the contractor; consult with the Director's Representative for acceptability.
- b. Attend meetings with the contractor and the Director's Representative, such as pre-construction conferences, bi-weekly progress meetings, job conferences and other project related meetings; prepare and circulate copies and minutes of same.
- c. Serve as Parks liaison with the contractors, working principally through the contractor's superintendent and assist in understanding of the construction contract documents. Assist in obtaining from the Director's Representative and/or the designer of record additional details or information as needed for the proper execution of the work.
- d. Maintain a current file of Shop Drawings and Samples approved by the designer of record on site.
- e. Receive samples furnished at the site by the contractor and notify the Director's Representative and the designer of record of availability for examination.
- f. Provide all submittals, Shop Drawings, and samples to the designer of record for review and obtain written approval from the Director's Representative prior to incorporating any change to the Project resulting from any submittal, Shop Drawing, or sample. The Construction Manager shall also save within the Project files the written notification from the Director's Representative to the contractor that orders the contractor to proceed with construction while any Change Order resulting from the submittals, Shop Drawings, or sample is being reviewed by the Director's Representative or the Director.
- g. Conduct on-site observations of the Work in progress to assist Parks in determining if the Work is proceeding in accordance with the construction contract documents. Immediately advise the Director's Representative if work is not proceeding in accordance with the Contract Documents.
- h. Report to the Director's Representative whenever the Construction Manager believes that any work will not produce a completed Project

that conforms generally to the construction contract documents or will compromise the integrity of the design concept of the completed Project as a functioning whole as indicated in the construction contract documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise the Director's Representative of Work that the Construction Manager believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

- i. Verify that test, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel and that the contractors maintain adequate records thereof; and observe record and report to the Director's Representative and the designer of record, appropriate details relative to the test procedures and start-ups.
- j. Accompany the Director's Representative, visiting inspectors representing public or other agencies having jurisdiction over the project, and record the result of these inspections and report same to the Director's Representative.
- k. Report to, and coordinate with, the designer of record when interpretations of the construction contract documents are required. Obtain those interpretations in writing and transmit to the contractors and the Director's Representative all clarifications and interpretations as issued by the designer of record.
- l. Consider and evaluate contractor's suggestions for modifications in Drawings and Specifications and report and make recommendations to the designer of record and the Director's Representative. Transmit to the contractors in writing, all decisions issued by the designer of record and accepted by the Director's Representative.
- m. Maintain at the job site orderly files for correspondence, reports of job meetings, Shop Drawings and Samples, reproductions of original construction contract documents including all field orders, change orders, Addenda, and additional drawings issued subsequent to the execution of the Contract, designer of record clarifications and interpretations of the construction contract documents, progress reports, Shop Drawings submittals received from and delivered to the contractors and other Project related documents.
- n. When a contractor is on-site, prepare a daily report recording the contractor's hours on the job site, weather conditions, data relative to Change Orders, Field Orders, changed conditions, list of job site visitors, daily activity, decisions, observations in general, and specific observations in more detail as warranted, and results of test procedures. Record the number and type of contractor's personnel and equipment. At the end of

each week, send copies of each daily report for the preceding work week to the Director's Representative.

- o. Record names, addresses, and telephone numbers of all contractors and sub-contractors. Issue Project specific 24-hour call out list of phone numbers and contacts to the Director's Representative.
- p. Furnish to Director's Representative and the designer of record periodic reports detailing the progress of the Work and the contractor's compliance with the schedule and the schedule of Shop Drawings and Sample submissions.
- q. Notify the designer of record and the Director's Representative in advance of scheduled major tests, inspections, or start of critical phases of work.
- r. Draft proposed Field Orders and Change Orders and obtain all required supportive backup material from the contractors. Make recommendations to the Director's Representative regarding the merits of proposed Field Orders and Change Orders.
- s. Immediately report to the Director's Representative, the District Manager, and State Park Police any and all accidents occurring on the site.
- t. Review Applications for Payment with the contractors for compliance with established procedures for their submission and forward with recommendations to the Director's Representative, notifying particularly the relationship of the payment request to the schedule of values, Work completed, and materials and equipment delivered to the site but not yet incorporated in the Work.
- u. During the course of the work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by the contractors are applicable to the items actually installed and in accordance with the construction contract documents, and have this material delivered to the Director's Representative for review and acceptance prior to final payment for the work.
- v. Submit to the Director's Representative and the contractor a list of observed items requiring completion or correction. This list is the initial punch list.
- w. Observe whether the contractors have performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.

- x. Conduct a final inspection in the company of the Director's Representative and the designer of record. Prepare a final punch list of items to be completed or corrected.
- y. Observe whether all items on the final punch list have been completed or corrected and make recommendations to the Director's Representative concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. **LIMITATIONS OF AUTHORITY OF THE CONSULTANT**

1. The Construction Manager in performing the Construction Management duties:
 - a. Shall not authorize any deviation from the construction contract documents or substitute materials or equipment (including as-equal items), unless authorized in writing by the Director's Representative upon recommendation by the designer of record.
 - b. Shall not exceed limitations of authority as set forth in the Agreement or construction contract documents.
 - c. Shall not undertake any of the responsibilities of the contractor, subcontractors, suppliers, or contractor's superintendent.
 - d. Shall not advise on, or issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures of construction unless such advice or directions are specifically required by the construction contract documents and authorized in writing by the Director's Representative.
 - e. Shall not advise on, issue directions regarding, or assume control, over safety precautions and programs of the contractors in connection with the Work.
 - f. Shall not accept Shop Drawings or Sample submittals from anyone other than the contractors, without written authorization from the Director's Representative.

III. **GENERAL CONDITIONS**

A. **PHASE APPROVAL AND SEQUENCE**

1. Except as otherwise expressly provided in the Contract or directed by Parks in writing, the services to be furnished by the Construction Manager shall be rendered in the same sequence as enumerated in the Task Orders.
2. Except as otherwise expressly provided in the Contract or directed by Parks in writing, the services to be furnished by the Construction Manager shall be

rendered in conformance with the Task Orders and any associated sub-tasks.

B. CONSULTANT'S TIME SCHEDULES

1. The Construction Manager shall promptly prepare for the Project a progress time schedule, including completion dates, for approval by Parks. The Construction Manager shall adhere to such approved time schedule.
2. The Construction Manager shall advise Parks periodically of the progress of the Project and any delays which the Construction Manager anticipates.
3. Parks shall promptly furnish the approvals, comments, and direction necessary to permit the Construction Manager to adhere to such approved time schedules.
4. All time limits set forth in this Contract through Task Orders and sub-tasks are of the Essence. Failure by the Construction Manager to meet the Contract deadlines shall be cause for Parks to assess Liquidated Damages.

C. PROJECT REPRESENTATIVE AND PERSONNEL

1. The Construction Manager shall, prior to commencing service pursuant to this Contract, submit to Parks for approval the name of a competent representative who shall coordinate all the Construction Manager's work required by this Contract, and who shall be available to Parks at all reasonable times.
2. The representative shall be approved by Parks, in writing, and no substitute shall be appointed by the Construction Manager for the project representative's work without prior written approval of Parks.
3. All personnel assigned to the Project by the Construction Manager shall be required to cooperate fully with personnel assigned to the Project by Parks. In the event the Construction Manager's personnel fail to cooperate, the Construction Manager shall relieve them of their duties on the Project upon request of Parks.

Parks reserves the right to conduct a security background check or otherwise approve any employee, subcontractor, or agent furnished by the Construction Manager and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work, or change in security status or non-compliance with Parks' security or other requirements. Such approval shall not relieve the Construction Manager of the obligation to perform all work in compliance with the Contract terms or Task Order terms. Parks reserves the right to reject and bar, from any facilities owned, operated, or leased by Parks, an employee or agent of the Construction Manager.

D. SUBCONSULTANTS

1. Other than the sub-consultants approved in the Contract, the Construction Manager shall not employ, contract with, or use the services of any consultant or contractor without obtaining the prior written approval of Parks. The process outlined in this part and the New York State Office of Parks, Recreation and Historic Preservation Term Contracting Manual for Professional Design Services, shall apply to the introduction of a new sub-consultant to the Contract.
2. If an assigned project requires professional services that are not possessed or fall outside of the experience and expertise of the existing Construction Manager team, then a new sub-consultant can be proposed by the Construction Manager for review and approval by Parks. The Construction Manager shall demonstrate that either the proposed sub-consultant has been assigned similar work in the past and successfully completed the work or the Construction Manager shall solicit qualification submittals from at least three interested firms. The Construction Manager shall review the submittals and recommend the most qualified firm to Parks. The Construction Manager shall document these selection factors used and provide Parks with the documentation in addition to maintaining in their files. Parks reserves the rights to reject a sub-consultant or request further proof of qualification.
3. No provision of the Contract shall, however, be construed as a Contract between Parks and any consultant to the Construction Manager or with any person, firm or corporation employed by, contracted with or whose services are utilized by the Construction Manager.

E. CHANGES IN ASSIGNMENTS

1. The Construction Manager shall be provided with written approval and a Scope of Services from Parks for each individual Task Order before proceeding. The Construction Manager will advise Parks if there is any change from the approved budget or Scope of Services for each Task Order. A written approval must be obtained for any authorized deviations from the approved budget or schedule.
2. At any time during the term of this Contract the Construction Manager shall, if so directed in writing by Parks, change or modify approved studies, drawings, specification, estimates or other documents for the Project and the Construction Manager shall be compensated for such changes and modifications in accordance with terms of this Contract. No such direction shall be deemed to constitute a breach of this Contract. Parks reserves the option to request the Construction Manager to perform additional services on a Project within the scope of the current Contract. The option shall only be exercised by a written agreement.

3. The Construction Manager shall revise and correct any and all drawings, specifications, and estimates without additional compensation until the same shall be approved and accepted by Parks. However, if the Construction Manager is of the opinion that any work they have been directed to perform is beyond the scope of this Contract and constitutes extra work, they shall proceed in accordance with the Disputes clause as outlined in this Contract.

F. WORK WITHIN BUDGET

All contract work performed, and the cost estimate thereof prepared, by the Construction Manager for the contract work pursuant to this Contract shall be within the Maximum Cost set thereof by Parks. The sum of all payments under this Contract, including Compensation and Additional Compensation, shall not exceed the Maximum Cost; the Construction Manager would assume any cost attempted to be billed to Parks beyond the Maximum Cost. Any revisions to the Maximum Cost must be approved in writing by Parks.

G. ATTENDANCE AND MINUTES

The Construction Manager shall attend all conferences required by Parks and shall take, prepare, and distribute minutes of all such conferences for the Project.

H. OWNERSHIP OF DOCUMENTS AND LICENSE FOR DESIGN

1. All drawings, specifications computations, sketches, test data, survey results, reports and other documents including models, photographs, renderings, and other material prepared for or relating to the Project, including any material furnished by Parks are the property of Parks.

2. Parks is granted a perpetual, irrevocable, royalty free, fully paid, non-transferable, nonexclusive license to use the schematic designs, design concepts, Project drawings, and related design documents, including, but not limited to CAD/BIM drawing files, specifications, renderings, photographs, calculations, and reports, in subject and/or subsequent Project without restrictions. The license granted to Parks herein allows Parks to reuse the schematic designs, design concepts, Project drawings, and related design documents, including, but not limited to CAD/BIM drawing files, specifications, renderings, photographs, calculations and reports, without obtaining consent from the Construction Manager and without additional payment to the Construction Manager, to modify and reproduce the schematic designs, design concepts, Project drawings, and related design documents, including, but not limited to CAD/BIM drawing files, specifications, renderings, photographs, calculations and reports, to the extent required for Parks' purposes. Any reuse or modification of such Documents for purposes other than those intended by the Consultant in its scope of services shall be at

Park's sole risk and without liability to the Consultant. Any reuse or modification of such Documents for purposes other than those intended by the Consultant in its scope of services shall be at Park's sole risk and without liability to the Consultant.

I. MISCELLANEOUS PROVISIONS

1. Unless specifically authorized in writing by Parks, the Construction Manager shall not specify or require any patented article, design, or process.
2. The Construction Manager agrees not to use Park's name, logos, images, or any data or results arising from this Contract as a part of any commercial advertising without prior written approval by Parks.
3. The Construction Manager shall render any assistance which Parks may require with respect to any claim or action in any way relating to the Construction Manager's services during or subsequent to the design or construction of the Project including, without limitation, review of claims, preparation of technical reports and participation in negotiations both before and after they have otherwise completed performance of this Contract.
4. The captions contained in this Contract are intended for convenience and reference purposes only and shall not be deemed to define, limit, or describe the scope or intent of this Contract, or any provision thereof, nor in any way affect this Contract.
5. Incorporation by Reference of Applicable Provisions. Each and every provision required by law to be included in this Contract shall be deemed to be included herein and this Contract shall be read and enforced as though such provisions were included herein at length. In the event any such provision is not included in this Contract or not correctly included, then, upon the application of either party to the other, this Contract shall forthwith be amended to make such addition or correction. In the event either party denies such an application; the other party may apply to a court of competent jurisdiction for enforcement of this provision.
6. Parks reserves the right to employ other consultants in connection with this work.
7. Notices. Whenever it is provided in this Contract that a notice or other communication is to be given or directed to either party, the same shall be given or directed to the respective party at its address as specified at the beginning of this Contract, or at such other addresses as either party may, from time to time, designate by written notice to the other.
8. Captions. The captions contained in this Contract are intended for convenience and reference purposes only and shall be in no way deemed to define, limit, or

describe the scope or intent of this Contract, or any provision thereof, nor in any other way affect this Contract.

9. Prohibition Against Assignment. This Contract is intended to secure the services of the Construction Manager because of their ability or reputation, and this Contract shall not be assigned, sublet, or transferred by the Construction Manager without the prior written consent of Parks.
- 10 Approval of Contract. This Contract shall not be deemed executed, valid or binding unless and until approved in writing by the Office of the New York State Office of the Attorney General (hereinafter "Attorney General") and Office of the State Comptroller.
11. Modification/Integration Clause. This Contract shall not be materially amended, changed, or otherwise modified except in writing signed by both parties and approved by the Attorney General and Office of the State Comptroller. Except to the extent that documents are incorporated herein by reference, this Contract constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection therewith. No covenant, representation or condition not expressed herein shall be effective to interpret, change or restrict the express provisions of this Contract.
12. Contract Term. The Term of this contract shall run for thirty-six (36) months following approval of this Contract by the Office of the State Comptroller.
13. Governing Law. This Agreement shall be construed according to the laws of the State of New York, without regard to conflict of law provisions, and shall be deemed to have been executed with the State of New York. Any litigation shall be brought to an appropriate court within the State of New York.
14. Severability: If any provision, term or condition of this Contract is held to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Contract and the remaining parts of this Contract shall be enforced as if the invalid, illegal or unenforceable provisions, terms or conditions are not contained herein.

J. COMPENSATION

As Compensation, the Construction Manager shall be paid for its Costs of doing business, which Costs shall be those actual, reasonable, and necessary expenditures for:

1. Direct Labor. All wages, wage supplements, taxes and insurances imposed on Employers by Law or this Contract, paid to or on behalf of principals, officers or employees of the Construction Manager or subconsultants for the labor devoted to the actual performance of the categories of services specified in Appendix A and at the rate of compensation therefor.
2. Direct Labor Cost. The Cost is determined by multiplying the Direct Labor, as

specified in Appendix B1 appended hereto, by the applicable approved project multiplier, as outlined in the Contract, for fringe benefits, overhead and profits. Chargeable hours shall be determined as follows:

- a. Actual rate paid. Charges for the time of employees shall not exceed the regular hourly rate actually paid to such employees, consistent with the provisions of Appendix B1, for the number of hours devoted to the performance of such professional and technical services.
 - b. Salaried Employees. Compensation on other than an hourly basis shall be computed on the basis of a forty (40) hour work week, by dividing the yearly salary by 2,080 hours.
 - c. Principals or Officers. Compensation shall be computed on the basis of the rate chargeable for the services listed in Appendix B1 performed.
 - d. All other expenses associated with salary, but not actually paid such personnel, shall be excluded from the computation of Direct Labor Costs.
 - e. Overtime shall be charged at the regular (straight time) rate unless previously authorized by Parks in writing, in which case the Construction Manager shall be paid straight time plus the overtime differential for overtime hours. The overtime differential is calculated at 50% of such personnel's hourly charge. The approved project multiplier shall ONLY be applied to the straight time portion and shall NOT be applied to the overtime differential portion of the overtime hours.
3. Not to Exceed (NTE). The fee offered for this Contract is based on timecard, wage rates, and multiplier submissions. Direct Labor Costs and allowable reimbursable expenses must be submitted and reviewed for payment authorization. No liability shall be incurred by the State beyond the NTE amount.
 4. Services. The cost of non-professional services, including but not limited to, testing, sampling, borings, monitoring, collections, and similar services in support of the Project shall be reimbursed to the Construction Manager. The cost shall be the actual, reasonable, and necessary cost incurred, supported by necessary documentation. There shall be no additional markups for these items.
 5. Reimbursables. Expenses for printing and copying, travel, equipment, materials, and supplies will be considered eligible for reimbursement. The cost of printing and copying is eligible only if specifically provided for in the Task Order Scope of Work. The cost of travel (meals, lodging and mileage) shall be based on the Office of the State Comptroller's policy for "Maximum Allowable Rates for Travel Expense Reimbursement" and is incorporated by reference. The cost of equipment, materials, and supplies rented or purchased at the direction of or with prior approval of Parks, expressly for and used directly and exclusively on the Project shall be eligible. All such equipment, material, and supplies so

purchased shall remain with and become the property of Parks upon completion of the Project. There shall be no additional markups for these items.

5. Direct Labor Rates. The Direct Hourly Labor Rates for the Construction Manager and each Subconsultant are specified in Appendix B1 for the term of this Contract. The rates in Appendix B1 are calendar year specific for Task Order Proposals and Payment applications. Requests for revisions (changes, additions, or amendments) shall be submitted to Parks for written authorization and acceptance.

K. ADDITIONAL COMPENSATION

Any cost not specifically allowed the Construction Manager pursuant to this section dealing with Additional Compensation is intended to be included in the section dealing with Basic Compensation.

1. If Parks directs the Construction Manager to obtain the services of another consultant or firm, Parks shall reimburse the Construction Manager for the actual, reasonable, and necessary costs, including administrative costs, incurred for such services as defined and limited by Paragraph J above. There shall be no additional markup for this reimbursement.
2. If Parks directs the Construction Manager to change or modify approved studies, drawings, specifications, estimates or other documents during any phase of design due to a program change by Parks, the Construction Manager's services in making such changes or revisions shall be paid for by Parks on the basis of the Construction Manager's Direct Labor Cost, as defined in this Contract.
3. Design Contingency Services during project Construction phase, in preparing or modifying documents as outlined in Scope of Services herein above as well as attendance at Project meetings related thereto, as directed pursuant to Change Orders/Field Orders issued to the contractors with the approval of Parks which:
 - a. are due to a program change by Parks; or
 - b. are due to conditions which, in the judgment of Parks could not reasonably have been anticipated by the Construction Manager; or
 - c. in the judgment of Parks are not otherwise due to any errors or omissions of the Construction Manager, shall be paid for by Parks on the basis of Construction Manager's Direct Labor Cost as outlined in Compensation above.

4. If Parks directs the Construction Manager in writing to furnish extra services for the Project not provided for by this Contract, including extra services as a result of damage to the Project during construction not caused by the Construction Manager, Parks may require such services to be performed by the Construction Manager on the basis of the Construction Manager's Direct Labor Cost as outlined in Compensation above.
5. When services for which the Construction Manager would be entitled to additional compensation are, with the written consent of Parks, furnished by a person, firm or corporation other than the Construction Manager, their employees, Principals, Officers or members of their firm, Parks in lieu of the payments which would have been made hereunder if such services had been furnished by the Construction Manager shall pay the Construction Manager for such services only the actual, reasonable, and necessary costs incurred for such services, by the person, firm or corporation. There shall be no additional markup for this payment.
6. The Construction Manager, as a reimbursable expense, shall furnish the reproductions of drawings, specifications, reports and other data and documents pertaining to the Project for use by themselves, their consultants and Parks. The Construction Manager, as a reimbursable expense, shall furnish Parks with reproductions of any and all of the foregoing for each approval stage as outlined in the New York State Office of Parks, Recreation and Historic Preservation Term Contracting Manual for Professional Design Services (hereinafter "A/E Services Manual") provided by Parks. The Construction Manager shall submit one (1) set of approved documents in the form of "reproducibles" and electronic format satisfactory to Parks.

L. TIME OF PAYMENT

Contract Payments. The Construction Manager shall provide complete and accurate billing invoices to Parks in order to receive payment. Billing invoices submitted to Parks must contain all information and supporting documentation required by the Contract, Parks, and the Office of the State Comptroller. Payment for invoices submitted by the Construction Manager shall only be rendered electronically unless payment by paper check is expressly authorized by Parks and the Office of the State Comptroller, at Parks sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Construction Manager shall comply with the Office of the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the Office of the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us. or by telephone at 518-474- 4032. Construction Manager acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the Office of the State Comptroller's electronic payment procedures, except where Parks has expressly authorized payment by paper check as set forth above.

1. The Compensation for the Project shall be paid in Interim Phase Payments drawn every thirty (30) days. Such payments shall bear the same proportional relationship to the total compensation for the Contract as the amount of the Construction Manager's work for which an interim payment is sought bears to the total amount of Construction Manager's work to be performed. Such proportional relationships shall be supported by appropriate documentation and as determined by Park's appraisal of the Construction Manager's work.
2. All applications for payment, whether for Compensation or Additional Compensation, shall be made upon standard New York State vouchers and shall be itemized, supported by accurate documentation including receipted bills for expenditures made by the Construction Manager, and employee time sheets, and shall extend all hours and rates into dollar amounts. The standard New York State voucher shall be provided to the consultant with the first assignment. Payment will be made in accordance with the provisions of New York State Finance Law.

The Construction Manager shall submit all authorized applications for payment to the Designated Contract Specialist indicated in the Task Order.

3. Final payment by Parks to the Construction Manager shall be conclusive as to Park's performance of this Contract and that the Construction Manager has no unsettled claims of any kind against Parks. A Certificate of Completion shall be issued by Parks to denote the satisfactory completion of each Task Order.

M. PERSON AUTHORIZED TO ACT

Unless otherwise indicated, whenever in this Contract action is to be taken or approval given by Parks, such action or approval may be taken or given only by the Deputy Commissioner for Capital, Director, District Manager, or designated Project Manager.

N. DISPUTES

The Construction Manager specifically agrees to submit any dispute or disagreement relating to the performance of this Contract to the Project Manager, who shall render a decision in writing and furnish a copy thereof to the Construction Manager. The Construction Manager must request such decision in writing by certified mail no more than twenty (20) days after the Construction Manager knew or ought to have known of the facts which are the basis of the dispute or disagreement.

Such writing shall: identify the nature of the dispute or disagreement; identify the person who rendered the decision or interpretation involved and the date of the decision or interpretation with which the Construction Manager disputes or disagrees, attaching a copy of such decision or interpretation; contain a

statement of the contractual basis for the decision or disagreement; and identify the relief sought.

The Deputy Commissioner for Capital may cause an investigation to be made of the circumstance involving the dispute or disagreement and may cause a fact-finding proceeding to be conducted before rendering the decision.

Insofar as it is determined that any such contention of the Construction Manager is valid, the Construction Manager shall be awarded equitable compensation in accordance with the terms of this Contract. The Construction Manager shall support any such contention at all stages of the protest with such documentary and other evidence as may be required by Parks. Pending the final determination of any protest, the Construction Manager shall continue to perform all services required by Parks, without further order.

The Construction Manager agrees that the decision of the Deputy Commissioner for Capital shall be final and conclusive. Nothing in this Contract shall be construed as making final the decision of any administrative official upon question of law.

O. INDEPENDENT CONTRACTOR AND LIMITATIONS ON LIABILITY

1. The relationship of the Construction Manager to OPRHP is that of an independent contractor, and the Construction Manager, in accordance with its status as such, covenants and agrees that it will conduct itself in a manner consistent with such status, that it will not hold itself out as an agent of Parks by reason of this agreement, and that no employee of the Construction Manager, by reason of this agreement, will claim to be an officer or employee of Parks or make any claim, demand, or application for any benefit, right, or privilege applicable to employees of the State of New York.
2. Nothing in this Contract or the performance thereof by the Construction Manager shall impose any liability or duty whatsoever on the State or Parks including, but not limited to, any liability for taxes, compensation, commissions, unemployment insurance, workers' compensation, disability benefits, social security or other employee benefits for any person or entity.
3. Nothing contained in this Contract shall create or give to third parties any claim or right of action against the Construction Manager or Parks beyond such as may legally exist without regard to this Contract.

P. INDEMNIFICATION, LIABILITY OF CONSULTANT

The Construction Manager agrees to indemnify and hold the State of New York, the New York State Office of Parks, Recreation and Historic Preservation, and its officers, employees and agents (Indemnitees) harmless from all claims for bodily injury

or property damage that may arise from and as a result of any negligent act or omission of the Construction Manager, its employees, agents, assigns, subcontractors and subconsultants in the performance of this Contract.

In addition to any liability or obligation that may exist under any other provision of this Contract, by statute, or otherwise, the Construction Manager shall be liable to and hereby agrees to hold harmless and to indemnify the Indemnitees from and against any damages, lawsuits, claims, liabilities and expenses, including reasonable attorney's fees and court costs, which the Indemnitees may sustain, be subject to or be caused to incur by virtue of or as a result of any settlement approved by the Construction Manager or of an adverse determination of any claim, demand, suit, proceeding, action or cause of judicial or administrative action for:

1. Any negligent act or omission of the Construction Manager, their agents, assigns, employees, officers, consultant, or subcontractors, or
2. Any reckless or willful misconduct of the Construction Manager, their agents, assigns, employees, officers, consultants, or subcontractors,
3. Any infringement of any claimed copyright or patent right of designs, plans drawings or specifications furnished by the Construction Manager, their consultants, or subcontractors.

Q. INSURANCE

Prior to the start of work, the Construction Manager shall procure, at its sole cost and expense, all insurance required by this section. During the term of the Contract, and any renewal or extensions thereof, the Construction Manager shall maintain in force, at its sole cost and expense, policies of Insurance as required by this section. All Insurance required by this section shall be written by companies that have an A.M. Best Company rating of "A-" Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Section should be licensed or authorized by the New York State Department of Financial Services to issue Insurance in the State of New York. Parks may, at its sole discretion, accept policies of Insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation are accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit or other documents demonstrating the company's strong financial rating. If during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the Insurance must be replaced, on or before the renewal date of the policy with Insurance that meets the requirements above.

The Construction Manager shall deliver to Parks evidence of the Insurance required by this section in a form acceptable to the Parks. Policies must be written in accordance

with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by Parks does not, and shall not be construed to, relieve the Construction Manager of any obligations, responsibilities, or liabilities under the contract.

The Construction Manager shall not take any action or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract, and any extension or holdover thereof.

1. Conditions Applicable to Insurance. All policies of Insurance required by this section (G) must comply with the following requirements:
 - a. Coverage Types and Policy Limits. The types of coverage and policy limits required from the Contractor are specified below in Section G.2, Types of Insurance.
 - b. Policy Forms. Except as otherwise specifically provided herein, or agreed to in writing by Parks, all policies of Insurance required by this section shall be written on an Occurrence basis. Under certain circumstances, Parks may elect to accept policies written on a Claims-Made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for six (6) years after completion of the Contract. If the policy is cancelled or not renewed during that time, the Construction Manager must purchase, at its sole expense, Tail Coverage sufficient to cover the six (6)-year period after completion of the Contract. Written proof of this extended reporting period must be provided to Parks prior to the policy's expiration or cancellation.
 - c. Certificates of Insurance/Notices. The Construction Manager shall provide a Certificate or Certificates of Insurance, in a form satisfactory to Parks (i.e., an ACORD Certificate), before commencing any work under the Contract, and thereafter, pursuant to the timelines set forth in Section G.1.m below. Certificates shall reference the Contract/contract number and shall name Parks as the Certificate holder. Certificates shall be mailed to:

Tyler Hoerz
New York State Office of Parks, Recreation and Historic Preservation
625 Broadway
Albany, NY 12238

Certificates of Insurance shall:

- i. Be in the form acceptable to Parks and in accordance with the New York State Insurance Law (i.e.: an ACORD Certificate);

- ii. Disclose any Deductible, Self-Insured Retention, Aggregate Limit or any exclusion to the policy that materially changes the coverage required by the contract;
- iii. Refer to the Contract by number;
- iv. Be signed by an authorized representative of the Insurance carriers; and
- v. Contain the following language in the Description of Operations / Locations / Vehicles section: Additional Insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the Additional Insureds.

Only original documents (Certificate(s) and any Endorsements or other attachments) or electronic versions of the same that can be directly traced back to the Insurer, Agent or Broker via e-mail distribution or similar means will be accepted.

Parks has not requested that the Construction Manager submit copies of its entire Insurance policies. Generally, Parks only requests specific documentation regarding proof of Insurance coverage, such as Certificates and Endorsements. The Construction Manager is asked to refrain from submitting entire Insurance policies, unless specifically requested by Parks. If an entire Insurance policy is submitted but not requested, Parks shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire Insurance policy not requested by Parks does not constitute proof of compliance with the Insurance requirements and does not discharge the Construction Manager from submitting the Insurance documentation required by this section.

- d. Primary Coverage. All liability Insurance policies shall, with the exception of Professional Liability, provide that the required coverage shall be primary and non-contributory to other Insurance available to Parks. Any other Insurance maintained by Parks shall be excess of and shall not contribute with the Construction Manager's Insurance.
- e. Breach for Lack of Proof of Coverage. The term of the Contract shall not commence if the coverage provisions and limits of the policies provided by the Construction Manager do not meet the provisions and requirements of this section or proof of compliance is not provided to Parks. In addition, the failure to comply with the requirements of this section at any time during the term of the Contract, and any extension or holdover thereof, shall be considered a breach of the terms of the contract and shall allow Parks to avail itself of all remedies available under the Contract, at law or in equity.
- f. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable Deductibles or Self-Insured Retentions for each listed policy. Deductibles or Self-Insured Retentions above \$100,000.00 are subject to

approval from Parks. Such approval shall not be unreasonably withheld, conditioned, or delayed. The Construction Manager shall be solely responsible for all Claim expenses and loss payments within the Deductible or Self-Insured Retentions. If the Construction Manager is providing the required Insurance through Self-Insurance, evidence of the financial capacity to support the Self- Insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

- g. Subcontractors. Prior to the commencement of any work by a subcontractor, the Construction Manager shall require such subcontractor to procure policies of Insurance that comply with the requirements of this section and maintain the same in force during the term of any work performed by that subcontractor. An Additional Insured Endorsement CG 20 38 12 19 (or the equivalent) evidencing such coverage shall be provided to the Construction Manager prior to the commencement of any work by a subcontractor, pursuant to the timelines set forth in Section G.1.m. below, as applicable, and to Parks upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the named additional insureds (per Section G.1.i) with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such Insurance policies.
- h. Waiver of Subrogation. The Construction Manager shall, with the exception of Professional Liability, cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the Construction Manager's right of subrogation against The People of the State of New York, New York State Office of Parks, Recreation and Historic Preservation, and their officers, agents, and employees or, if such waiver is unobtainable, provide one of the following to Parks prior to the commencement of the Contract: (i) an express Contract that such policy shall not be invalidated if the Construction Manager waives or has waived before the casualty, the right of recovery against The People of the State of New York, New York State Office of Parks, Recreation and Historic Preservation, and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, New York State Office of Parks, Recreation and Historic Preservation, and their officers, agents, and employees acceptable to Parks. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
- i. Additional Insured. The Construction Manager shall, with the exception of Professional Liability, cause to be included in each of the liability policies required below, ISO form CG 20 10 11 85 (or a form or form that provide equivalent coverage, such as the combination of the CG 20 10 12 19 and CG 20 37 12 19) and form CA 20 48 10 13 (or a form or forms that

provide equivalent coverage), naming as additional insureds: The People of the State of New York, New York State Office of Parks, Recreation and Historic Preservation, and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to Parks prior to the commencement of the Contract and pursuant to the timelines set forth in Section G.1.m below. A blanket Additional Insured Endorsement CG 20 38 12 19 (or the equivalent) evidencing such coverage is also acceptable. For Construction Managers that are self-insured, the Construction Manager shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Construction Manager would have been required to pursuant to this section had the Construction Manager obtained such Insurance policies.

- j. Excess/Umbrella Liability Policies. Required Insurance coverage limits may be provided through a combination of primary and Excess Liability and Umbrella Liability policies. If coverage limits are provided through Excess Liability and Umbrella Liability policies, then a Schedule of Underlying Insurance listing policy information for all underlying Insurance policies (Insurer, policy number, policy term, coverage and limits of Insurance), including proof that the Excess Liability and Umbrella Liability Insurance follows form, must be provided upon request.
- k. Notice of Cancellation or Non-Renewal. Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of Insurance, the Construction Manager shall provide Parks with a copy of any such notice received from an Insurer together with proof of replacement coverage that complies with the requirements of this section.
- l. Policy Renewal/Expiration. Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the requirements of this section shall be delivered to Parks. If, at any time during the term of the Contract, and any extension or holdover thereof, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this section, or proof thereof is not provided to Parks, Parks shall have the right to avail themselves of all remedies available under the Contract, at law or in equity.
- m. Deadlines for Providing Insurance Documents after Renewal or Upon Request. As set forth herein, certain Insurance documents must be provided to Parks after renewal or upon request. This requirement means that the Construction Manager shall provide the applicable Insurance document to Parks as soon as possible, but in no event later than the following time periods:

- For Certificates of Insurance: five (5) business days from request or renewal, whichever is later;
- For information on Self-Insurance or Self-Insured Retention programs: fifteen (15) calendar days from request or renewal, whichever is later;
- For other requested documentation evidencing coverage: fifteen (15) calendar days from request or renewal, whichever is later;
- For Additional Insured and waiver of subrogation endorsements: thirty (30) calendar days from request or renewal, whichever is later; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: five (5) business days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the Construction Manager shall have promptly requested the Insurance documents from its Broker or Insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its Insurer and submit them to Parks, Parks shall extend the time periods set forth above for a reasonable period, that shall in no event exceed thirty (30) calendar days from request or renewal, whichever is later.

2. Types of Insurance

- a. Commercial General Liability Insurance (CGL). CGL covering the liability of the Contractor for bodily injury, property damage, and Personal and Advertising Injury arising from all work and operations under the contract, using form CG 00 01 or a policy providing equivalent coverage. The limits under such policy shall not be less than the following:
 - Each Occurrence limit – \$10,000,000
 - General Aggregate – \$10,000,000
 - Products/Completed Operations – \$10,000,000
 - Personal and Advertising Injury – \$1,000,000
 - Damage to Rented Premises - \$50,000
 - Medical Expense – \$5,000

Coverage shall include, but not be limited to, the following:

- premises liability;
- independent Contractors/subcontractors;
- blanket contractual liability, including tort liability of another assumed in a contract;
- defense and/or indemnification obligations, including obligations assumed under the contract;

- cross liability for Additional Insureds;
- Products/Completed Operations for a term of no less than 6 years, commencing upon acceptance of the work, as required by the Contract;
- explosion, collapse, and underground hazards,
- Contractor means and methods; and
- liability resulting from Section 240 or Section 241 of the New York State Labor Law.

CG 25 03 05 09 Limits may be provided through a combination of primary and Umbrella Liability/Excess Liability policies. The CGL aggregate shall be endorsed to apply on a per project basis.

Policies shall name The People of the State of New York, New York State Office of Parks, Recreation and Historic Preservation, and their officers, agents, and employees as Additional Insureds, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy, and any Umbrella Liability/Excess Liability policies used to meet the "Each Occurrence" limits specified above, must be endorsed to be primary with respect to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to, and non-contributing with, any other Insurance maintained by Parks. Any other Insurance maintained by Parks shall be excess of and shall not contribute with the Construction Manager's or subcontractor's Insurance, regardless of the "Other Insurance" clause contained in either party's policy(ies) of Insurance, if applicable.

When the work involves construction or demolition within 50 feet of rail stations, yards, tracks, or other railroad property, the exclusion for work done within 50 feet of railroad property (the "Railroad" exclusion) must be deleted.

- b. Professional Liability. The Construction Manager and any subcontractor retained by the Construction Manager to work on the contract shall procure and maintain during and for a period of six (6) years after completion of the Contract, Professional Liability Insurance/Errors and Omissions Liability Insurance in the amount of FIVE MILLION DOLLARS (\$5,000,000) per claim and in the annual aggregate issued to and covering damage for liability imposed on the Construction Manager by the Contract or law arising out of any negligent act, error, or omission in the

rendering of or failure to render professional services required by the Contract. The Professional Liability Insurance/Errors and Omissions Liability Insurance may be issued on a Claims-Made Policy form, in which case the Construction Manager shall purchase, at its sole expense, Tail Coverage of up to six (6) years after work is completed if coverage is cancelled or notrenewed.

If applicable, the Construction Manager shall provide coverage for its' negligent act, error or omission in rendering or failing to render professional services required by the contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants.

- c. Workers' Compensation. For work to be performed in New York State, the Construction Manager shall provide and maintain full New York State (NYS listed in item 3a of the policy's Information Page) coverage during the life of the Contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law.

If work is on or near a shoreline, or navigable waters (i.e. work in adjoining areas customarily used in the loading, unloading, repairing, or building of a vessel), a U.S. Longshore and Harbor Workers' Compensation Act and/or Jones Acts policy as applicable must be provided. Any waiver of this requirement must be approved by Parks and will only be granted in unique or unusual circumstances.

Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Chair of the New York State Workers' Compensation Board:

- i. C-105.2 (September 2007, or most current version) – Certificate of Workers' Compensation Insurance;
- ii. U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund;
- iii. GSI-105/SI-12 – Certificate of Workers' Compensation Self-Insurance;
or
- iv. CE-200 – Attestation of Exemption – When Contractor meets the requirements.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier.

- d. Disability Benefits. For work to be performed in New York State, the Construction Manager shall provide and maintain coverage during the life of the Contract for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law. Any waiver of this requirement must be approved by Parks and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Chair of the Workers' Compensation Board:

- i. DB-120.1(May 2006 or most current version) – Certificate of Insurance Coverage under the New York State Disability Benefits Law;
- ii. DB-155 – Certificate of Disability Self-Insurance; or
- iii. CE-200 – Certificate of Attestation of Exemption.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier.

- e. Owners and Contractors Protective. The Construction Manager shall obtain a separate Owners/Contractors Protective Liability (OCP) Policy as follows:
- i. For work related to street, road, highway, and/or bridge work – Form CG 00 14, Special Protective and Highway Liability Policy – New York Department of Transportation.
 - ii. For projects not related to street, road, highway, and/or bridge work – Form CG 00 09, Owners and Contractors Protective Liability Coverage form – Coverage for Operations of the Designated Contractor.

The policy shall be written on a project basis for the benefit of The People of the State of New York, Parks, and their officers, agents, and employees, with respect to all operations under the Contract by the Construction Manager or its subcontractors, including in such coverage any omissions and supervisory acts of New York State Office of Parks, Recreation and Historic Preservation, its officers, agents, and employees.

The People of the State of New York, Parks, and their officers, agents, and employees shall be the Named Insured in the OCP Policy, which shall be promptly furnished to Parks. OCP policy limits shall be no less than: ONE MILLION DOLLARS (\$1,000,000) per Occurrence, TWO MILLION DOLLARS (\$2,000,000) Aggregate.

- f. Commercial Auto Liability. Insurance covering liability arising out of the use of any motor vehicle in connection with the Contract, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least ONE MILLION DOLLARS

(\$1,000,000) dollars and shall name The People of the State of New York, New York State Office of Parks, Recreation and Historic Preservation, and their officers, agents, and employees as additional insured. The limits may be provided through a combination of primary and umbrella/excess liability policies. If the contract involves the removal of hazardous waste or otherwise transporting hazardous materials, pollution liability coverage for covered autos shall be provided by form CA 01 12 03 06 and the Motor Carrier Act Endorsement (MCS-90) shall be attached.

- g. Marine Protection & Indemnity, Hull & Machinery, Jones Act and United States Longshore and Harbor Workers' Act Coverage. Anytime the activity involves work on or near a shoreline, navigable water (i.e. work in adjoining areas customarily used in the loading, unloading, repairing or building of a vessel) or the work is connected to water related activities, Marine Protection & Indemnity and Hull and Machinery coverage is required. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment. The Construction Manager shall obtain Protective and Indemnity Liability Insurance for all marine operations under the Contract, with a minimum TEN MILLION DOLLARS (\$10,000,000) limit.

- h. Contractor's Pollution Liability (CPL). Anytime the activity involves abatement, handling, removal, repair, replacement, enclosure, encapsulation and/or disposal of any pollutants, which includes but are not limited to, petroleum, petroleum product, hazardous materials or substances including asbestos, lead, fungus and those as defined by applicable State and federal laws and regulations, and the need to monitor, clean up, remove, contain, treat, detoxify, or assess the effects of a pollution-related event or condition the Construction Manager shall procure, or otherwise obtain through an approved subcontractor, and maintain in full force and effect throughout the term of the Contract, and for two years after completion hereof, Contractor's Pollution Liability Insurance, including coverage for non-owned disposal sites, with limits of not less than TEN MILLION DOLLARS (\$10,000,000), providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any Claim, suit, or proceedings against Parks arising from the Construction Manager's work. The People of the State of New York, New York State Office of Parks, Recreation and Historic Preservation, and their officers, agents, and employees shall be named as Additional Insureds and coverage shall be primary.

This requirement applies to mold as well, if excluded in the Commercial General Liability Insurance policy.

If automobiles are to be used for transporting hazardous materials, the Construction Manager shall provide pollution liability broadened coverage for covered autos (Endorsement CA 01 12 or its equivalent) as well as proof of MCS-90.

R. STATUTORY REQUIREMENTS FOR RESTRICTIONS ON CONTRACTS DURING THE PROCUREMENT PROCESS AND DISCLOSURE OF CONTACTS AND RESPONSIBILITY OF OFFERERS

New York State Finance Law §139-k requires that every procurement contract award subject to the provisions of State Finance Law §139-k or §139-j shall contain a certification by the offerer that all information provided to the procuring governmental agency with respect to State Finance Law §139-k is complete, true and accurate. The Construction Manager shall provide such certification in its contract or agreement.

New York State Finance Law provides:

- (1) New York State Finance Law §139-k (2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163 (9). In accordance with State Finance Law §139-k, an offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity.
- (2) As part of its responsibility determination, State Finance Law §139-k (3) mandates consideration of whether an offerer fails to timely disclose or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the offerer is necessary to protect public property or public health and safety, and that the offerer is the only source capable of supplying the required Article of Procurement within the necessary time frame. The required forms to be completed by the offerer must be submitted to the Governmental Entity conducting the government procurement. The Governmental Entity will have included the disclosure request in its solicitation of proposals or bid documents or specifications of contract documents, as applicable, for procurement contracts.

S. RESPONSIBILITY PROVISION FOR STATE CONTRACTS

The Construction Manager shall at all times during the Contract term remain responsible.

The Construction Manager agrees, if requested by Parks, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

In addition to Suspension of Work under this Contract (III.Y), Parks reserves the right to suspend any or all activities under this Contract, at any time, when information is discovered that calls into question the responsibility of the Construction Manager. In the event of such suspension, the Construction Manager will be given written notice, outlining the particulars of such suspension. Upon issuance of such notice, the Construction Manager must comply with the terms of the suspension order. Contract activity may resume at such time Parks issues a written notice authorizing a resumption of performance under the Contract.

Under Termination of this Contract (III.Z), upon written notice to the Construction Manager, and a reasonable opportunity to be heard with appropriate Parks officials or staff, the Contract may be terminated by Parks at the Construction Manager's expense where the Construction Manager is determined by Parks to be non-responsible. In such event, Parks may complete the contractual requirements in any manner Parks deem advisable and pursue available legal or equitable remedies for breach.

T. NEW YORK STATE TAX LAW SECTION 5-A – SALES TAX CERTIFICATION

Tax Law §5-a is effective with all solicitations to purchase issued by covered agencies on or after January 1, 2005. It applies to contracts where: (1) the total amount of such persons' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates, subcontractors, or affiliates of subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made; and (2) the contracts or agreements with State agencies or public authorities for the sale of commodities or services have a value in excess of \$100,000. This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, its subcontractors and affiliates of the subcontractors are required to register to collect State sales and compensating use tax. Where required to register, the contractor must also certify that it is, in fact, registered with the New York State Department of Taxation and Finance (DTF). The law prohibits the Office of the State Comptroller, or other approving agency, from approving a contract awarded to a vendor meeting the registration requirements but who is not so registered in accordance with the law.

Upon notice of potential award, the responsive Bidder may be required to submit, within ten business days of receipt of the notice, the New York State Tax Law §5-A Contractor Certification Forms (ST-220-CA and ST-220-TD). Failure to respond may render a Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms to ensure compliance with the law.

Bidders may call the DTF at (800) 972-1233 for any and all questions relating to Tax Law §5-a and relating to a company's registration status with the DTF. For additional

information and frequently asked questions, please refer to the DTF website www.tax.ny.gov.

ST-220-CA https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

ST-220-TD https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

V. CONSULTANT DISCLOSURE REPORTING REQUIREMENTS

Pursuant to New York State Finance Law Section 163(4)(g), state agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract, such report to include for each employment category within the contract: (i) the number of employees employed to provide services under the contract, (ii) the number of hours they work, and (iii) their total compensation under the contract. Consulting services are defined as analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

Contractors must complete Form A, State Construction Manager Services – Contractor’s Planned Employment from Contract Start Date through the End of the Contract Term upon notification of award. The completed Form A must include information for all employees that will be providing services under the contract, whether employed by the contractor or by a subcontractor.

Contractors are also required to complete Form B, State Construction Manager Services Contractor’s Annual Employment Report annually for each year of the contract term, on a State fiscal year basis. The first report is due on May 15 for the period April 1 through March 31.

Form A must be submitted to OSC as the contracting agency, and Form B must be submitted to OSC (as the contracting agency), the Department of Civil Service, and the Construction Manager Reporting Section of the Bureau of Contracts at OSC, at the addresses provided in these instructions.

FORM A: Complete **Form A** for contracts for consulting services in accordance with the following:

- **Employment category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees anticipated to be providing services under the contract.

Note: Access the O*NET database, which is available through the US Department of Labor’s Employment and Training Administration, on-line at www.online.onetcenter.org to find a list of occupations.)

- **Number of employees:** the total number of employees in the employment category anticipated to be employed to provide services under the contract, including part time

employees and employees of subcontractors.

- **Number of hours to be worked:** the total number of hours anticipated be worked by the employees in the employment category.
- **Amount payable under the contract:** the total amount payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

Submit completed **Form A** within 48 hours of notification of selection for award to OSC (as the contracting agency) at the address listed below.

FORM B: Complete **Form B** for contracts for consulting services in accordance with the following:

- **Scope of Contract:** a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- **Employment Category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract.
- (Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at www.online.onetcenter.org to find a list of occupations.)
- **Number of Employees:** the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors.
- **Number of hours worked:** the total number of hours **worked** during the Report Period by the employees in the employment category.
- **Amount Payable under the Contract:** the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

Submit the completed Form B annually by May 15th for each State fiscal year (or portion thereof) the contract is in effect, as follows:

To OSC (as the contracting Agency):

By mail: Mr. Larry Appel, Assistant Comptroller
Financial Management
Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001

By email: rfp@osc.state.ny.us

To the Construction Manager Reporting Section of the Bureau of Contracts at OSC:

By mail: NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Construction Manager Reporting

By fax: (518) 474-8030 or (518) 473-8808

To DCS:

By mail: NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239

W. SEXUAL HARASSMENT PREVENTION IN THE WORKPLACE

Pursuant to N.Y. State Finance Law § 139-l, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed and where otherwise required by such public department or agency, shall contain a certification that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy, and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL:<https://www.ny.gov/combating-sexual-harassment-workplace/> employers.

Pursuant to N.Y. State Finance Law § 139-l, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, Parks may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

X. FORCE MAJEURE

A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, embargoes, strikes, fires, explosions, actions of the elements, floods, epidemics or pandemics, quarantines, or other similar causes beyond the control of the Construction Manager or Parks in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond 30 days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

Neither the Construction Manager nor Parks shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Construction Manager and Parks to be necessary to enable complete performance by the Construction Manager if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of Parks, where the delay or failure will significantly impair the value of the Contract to the State or Parks, Parks may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

Y. SUSPENSION OF WORK

Parks, in its sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State. In the event of such suspension, the Construction Manager will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues, or other circumstances. Upon issuance of such notice, the Construction Manager is not to incur any further expenses under this Contract and shall comply with the suspension order. Activity may resume at such time as Parks issues a formal written notice authorizing a resumption of performance under the Contract.

Z. TERMINATION

In the event the Contract is terminated for any reason outlined under this Section, the Construction Manager shall deliver to Parks all drawings, specifications, reports and other data, records and material in their custody or control pertaining to any Project.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor give rise to any cause of action against Parks for damages, loss of profits, expenses or other remuneration of any kind other than Compensation specified under this Section, subsection "7. For Convenience", which may be sustained by the Construction

Manager as a result of such termination.

Notwithstanding any other provision of this Contract, if, in the judgment of Parks such termination is made necessary or desirable because of the Construction Manager's failure to fulfill their obligations under this Contract or any other fault of the Construction Manager, Parks may withhold payment of all or any part of any monies which otherwise may be payable to the Construction Manager under this Contract and apply such monies toward any damages or expenses sustained by Parks as a result of such failure including, without limitation, any excess costs incurred by Parks in completing any Project by the use or employment of other Construction Managers or otherwise. Notwithstanding the foregoing, the Construction Manager shall be liable to Parks for all such damages and expenses without limitation to any such monies being withheld by Parks and the failure of Parks to withhold monies from the Construction Manager shall not be construed as an acknowledgment by Parks that no such damages or expenses exist and shall not prevent Parks from thereafter making any claim against the Construction Manager therefore.

1. For Cause

If the Construction Manager fails to perform any of its obligations under this Contract, or is otherwise in material breach of one or more provisions of the Contract, Parks may, after seven (7) days written notice during which period the Construction Manager fails to make a good faith effort to perform such obligations and/or make good such deficiencies, terminate the Contract for cause. In the event this Contract is terminated for cause, the Construction Manager will be liable to the State for any additional costs incurred to complete outstanding projects.

2. Dissolution or Bankruptcy of the Construction Manager

In the event of the dissolution or bankruptcy of the Construction Manager, Parks may terminate this Contract and all drawings, specifications, reports and other data and records pertaining to any and all Task Orders in the custody or control of the Construction Manager shall be delivered to Parks and Parks shall pay the legal representative of the Construction Manager all amount due and owing by Parks to the Construction Manager, to the date of termination, in accordance with the provisions of this Contract.

3. State Finance Law § 139-j and 139-k

Parks reserves the right to terminate this contract in the event it is found that the certification filed by the Construction Manager in accordance with New York State Finance Law § 139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, Parks may exercise its termination right by providing written notification to the Construction Manager in accordance with the written notification terms of this contract.

4. Section 5-a of the Tax Law

Parks reserves the right to terminate this contract in the event it is found the certification filed by the Construction Manager in accordance with Section 5-a of the Tax Law is not timely filed during the term of the contract or the certification furnished is intentionally false or intentionally incomplete. Upon such finding, Parks may exercise its termination right by providing written notification to the Construction Manager.

5. Termination for Non-Responsibility.

The Construction Manager agrees that if it is found by the State that the Construction Manager's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, Parks may terminate the Contract.

Upon written notice to the Construction Manager, and a reasonable opportunity to be heard with appropriate Parks officials or staff, the Contract may be terminated by Parks at the Construction Manager's expense where the Construction Manager is determined by the Parks to be non-responsible. In such event, Parks may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

6. Upon Conviction of Certain Crimes

Parks reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of the Construction Manager is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

7. For Convenience

If Parks terminates this Contract other than for cause pursuant to TERMINATION Sections 1 thru 6 above, it shall give ten (10) days written notice and shall reimburse the Construction Manager for costs of the Contract due it in accordance with COMPENSATION under this Contract, without penalty or early termination charges. Upon receipt of such notice, the Construction Manager shall exercise due diligence and cease further work under this Contract to mitigate expenses. Parks shall also pay to the Construction Manager fair compensation, either by purchase or rental, at the election of Parks, for any equipment used or retained. The Construction Manager shall, as a condition of receiving the payments referred to under TERMINATION, execute and deliver all such papers and take all such steps as Parks may require for the purpose of fully vesting in it the rights and benefits of the

Construction Manager under such obligations or commitments.

Z. AUDITS

1. Whenever any payment to the Construction Manager is dependent in whole or in part upon any cost, the Construction Manager shall maintain complete detailed and accurate cost and accounting records of all such costs. During the term of this Contract and at any time within six years thereafter, the Construction Manager shall make such records available to the State of New York, Parks, or their authorized representatives for review and audit in such place or places as may be designated by the State of New York, Parks or their authorized representatives. If Parks authorizes the Construction Manager to retain the services of consultants or subcontractors for which the Construction Manager will be entitled to payment hereunder, the Construction Manager agrees to include in all contracts with such consultants and subcontractors a requirement that they maintain complete, detailed and accurate cost and accounting records as to all their costs relating to the services and/or materials furnished by them under such contracts and that during the term of this Contract, and at any time within six years thereafter, if required by Parks, they will make such records available to the State of New York, Parks, or their authorized representatives for review and audit at such place or places as may be designated by the State of New York, Parks, or their authorized representatives. If all or any part of such records are not maintained by the Construction Manager, their consultants or subcontractors or made available to the State of New York, Parks, or their authorized representatives as provided herein, any item not supported by such records shall, at election of the State of New York, Parks, or their authorized representatives, be disallowed and, if payment therefore has already been made, the Construction Manager upon demand shall refund to Parks the amount so disallowed. Payments to the Construction Manager shall in no way affect the Construction Manager's obligations hereunder or the right of Parks to obtain a refund of any payment to the Construction Manager which was in excess of that to which they were lawfully entitled.

The Construction Manager acknowledges that the compensation provided for in this Contract was determined during negotiations conducted between Parks and the Construction Manager and was based upon information supplied by the Construction Manager. The Construction Manager certifies that all information submitted during the compensation negotiations concerning payroll and cost information related to its overhead are accurate and consistent with generally accepted accounting practices. The Construction Manager acknowledges that the State of New York, Parks, or their authorized representatives may audit all records related to such compensation or the negotiations which resulted in the determination thereof for a period ending three years after all compensation due or claimed to be due under this Contract is paid. The Construction Manager agrees that any compensation under this Contract which may be due because of inaccurate or improper records submitted during negotiation of the compensation shall be refunded to the State of New York. The Construction Manager agrees

that, in the event that the State of New York, Parks, or their authorized representatives audits the Construction Manager's compensation (including Compensation, Additional Compensation and/or other form of compensation flowing from this Contract), any compensation not satisfactorily supported by records shall be refunded to the State of New York. The Construction Manager also agrees that it anticipated a profit, as outlined in the Contract, of its direct labor costs, employee fringe benefits and overhead costs, which was the basis of compensation agreed to in the Contract. The Construction Manager further agrees that any profit actually realized in excess of its anticipated profit shall be refunded to the State of New York as excess profit under this Contract.

AA. CONFLICTS OF INTEREST

1. The Construction Manager shall disclose to Parks in writing any relationship(s) it has now, or has ever had, with the subject matter or any related matter(s) including, but not limited to, potential or actual vendors/contractors involved with the Scope of Work. The Construction Manager shall also inform Parks in writing of any other potential conflicts of interest that exist now, or as they may arise in the future. Parks reserves the right to make any and all determinations as to whether a potential conflict is material to the representation of Parks.
2. Any firm that provided services such as, but not limited to, design, surveying, hazardous materials (HAZMAT) monitoring, soil testing, etc., as a consultant or subconsultant during the design of a project, or any firm in which a principal, stockholder, or member of the Construction Manager or of any prime contractor that has a financial interest, shall not be permitted to bid on or provide any services either as a prime contractor or as a subcontractor under any contracts, construction or otherwise, that arise from this Contract.

Such restrictions shall not apply where:

- (a) The firm is the sole source or single source of the product or service, or
- (b) Parks determines that the restriction is not in the best interest of the State and documents this determination in the procurement record.

AB. ETHICAL CONDUCT

Parks strives to maintain the highest ethical standards in all of its operations. All parties acting pursuant to this Contract will establish standards, policies and procedures of ethical conduct that address, but are not limited to, the areas of conflict of interest, misconduct in science, fraud, abuse and waste.

IV. **PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRATS: REQUIREMENTS AND PROCEDURES**

A. **GENERAL PROVISIONS**

1. The New York State Office of Parks, Recreation and Historic Preservation is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
2. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Office of Parks, Recreation and Historic Preservation, to fully comply and cooperate with the New York State Office of Parks, Recreation and Historic Preservation in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
3. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

B. CONTRACT GOALS

1. For purposes of this procurement, the New York State Office of Parks, Recreation and Historic Preservation hereby establishes New York State certified minority-owned business enterprises (“MBE”) participation of 3% and New York State certified women-owned business enterprises (“WBE”) participation of 3% based on the current availability of qualified MBEs and WBEs as defined in the bidder’s documentation provided at the time of solicitation.
2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established above, the Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>.
3. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the New York

State Office of Parks, Recreation and Historic Preservation for liquidated or other appropriate damages, as set forth herein.

C. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

1. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
2. In performing the Contract, the Contractor shall:
 - a. Ensure that each Contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - b. The Contractor shall submit an EEO policy statement to the New York State office of Parks, Recreation and Historic Preservation within seventy-two (72) hours after the date of the notice by the New York State Office of Parks, Recreation and Historic Preservation to award the Contract to the Contractor.
 - c. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, the New York State office of Parks, Recreation and Historic Preservation may require the Contractor or subcontractor to adopt a model statement (see Form EO 177 Certification Form found on the Parks Capital webpage).
 - d. The Contractor's EEO policy statement shall include the following language:
 - i. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - ii. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - iii. 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.

- iv. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

3. Staffing Plan

To ensure compliance with this Section, for those contracts reaching \$250,000 or greater, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

4. Workforce Utilization Report

- a. The Contractor shall submit a Workforce Utilization Report and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the New York State Office of Parks, Recreation and Historic Preservation on a [MONTHLY/QUARTERLY] basis during the term of the Contract.
 - b. Separate forms shall be completed by the Contractor and any subcontractors.
 - c. Pursuant to Executive Order #162, Contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.
5. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

D. **WAIVERS**

1. For Waiver Requests, the Contractor should use the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to New York State Office of PARKS, Recreation and Historic Preservation.
2. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the New York State Office of Parks, Recreation and Historic

Preservation shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

3. If the New York State Office of Parks, Recreation and Historic Preservation, upon review of the MWBE Utilization Plan and updated MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regard to such non-compliance, the New York State Office of Parks, Recreation and Historic Preservation may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

E. CONTRACTOR COMPLIANCE REPORT

Upon contract approval, the Contractor is required to update the NYS Contracting System (NYSCS) with the subcontractors and suppliers that will be used throughout the contract term, regardless of their MWBE status. The contractor is required to submit MWBE Contractor Compliance Reports (audits) through the NYSCS Reports will be generated by the NYSCS for completion upon the generation of a payment to the Contractor. Reports should be completed for the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

F. LIQUIDATED DAMAGES – MWBE PARTICIPATION

1. Where New York State Office of Parks, Recreation and Historic Preservation determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the New York State Office of Parks, Recreation and Historic Preservation liquidated damages.
2. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
3. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Office of Parks, Recreation and Historic Preservation, the Contractor shall pay such liquidated damages to the New York State Office of Parks, Recreation and Historic Preservation within sixty (60) days after they are assessed by the New York State Office of Parks, Recreation and Historic Preservation unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313

of the Executive Law in which event the liquidated damages shall be payable if the Director renders a decision in favor of the New York State Office of Parks, Recreation and Historic Preservation.

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

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

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

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

Agency 49070
D005899

CONTRACT SIGNATURE PAGE

PARKS CERTIFICATION: In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

IN WITNESS WHEREOF, PARKS and the **CONSULTANT** have executed this Contract on the day and year first above written.

**OFFICE OF PARKS, RECREATION &
HISTORIC PRESERVATION**

By:  _____
D9D52B2E91B04F1...
Jeffrey McDonald
Deputy Commissioner for Capital Programs

CONSULTANT CERTIFICATION & CONTRACT SIGNATURE:

By my signature below, I certify that all information provided to the Agency with respect to State Finance Law § 139-k is complete, true and accurate. Additionally, I understand and agree to the inclusion of the termination clause related to intentionally false or intentionally incomplete certification of § 139-k in the contract.

Date: 2/28/22

By:  _____
(signature)

Name: Yiannoulla Charalambous
(printed)

Title: Authorized Representative

Firm Name: Henningson, Durham & Richardson, Architecture and Engineering, P.C. Federal I. D. #

APPROVED:

For the Attorney General:

APPROVED
DEPT. OF AUDIT & CONTROL

Mar 18 2022
Jacklyn Roberts

FOR THE STATE COMPTROLLER

NYS Office of the Comptroller

By: _____

Date: _____

CORPORATION

STATE OF NEW YORK)
) SS.:
COUNTY OF New York)

On this 28 day of February 2022, before me personally came Yiannoulla Charalambous,
to me known, who being by me duly sworn, did depose and say that he or she is the
Authorized Representative Henningson, Durham & Richardson
Architecture and Engineering, P.C. of the Board of the _____,
the corporation described in and which executed the foregoing instrument; that he or she has
been duly authorized by the Board of Directors of said corporation to execute the foregoing
instrument on behalf of said corporation and that he or she signed his or her name thereto
by order of said corporation for the purposes and uses therein described.

Handwritten signature in blue ink

Notary Public

