



New York State
Parks, Recreation and
Historic Preservation

Request for Proposals

Title:

Design, Fabrication and Installation of Gateway at Marsha P. Johnson State Park

Contract Period/Term:

August 24, 2022 to August 23, 2024

Number:

C003550

Designated Contact(s) & Bid Submission Address

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RFP Timeline

Action	Date/Time
RFP Release	03/02/2022
Registration Deadline for Site Visit	03/15/2022 End of Day
Optional Site Visit	03/16/2022 10:00 AM ET
Questions Deadline	03/23/2022 3:00 PM ET
Questions Response	Approximately 03/30/2022
Bids Due	04/20/2022 3:00 PM ET
Semi-Finalist Notification	Approximately 05/11/2022
Semi-Finalist Demonstrations/Interviews	06/08/2022 to 06/10/2022
Tentative Award	Approximately 06/14/2022
Contract Start Date	Approximately 08/24/2022
Substantial Completion	08/03/2023
Physical Project Completion	08/17/2023

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RFP Key Points

- **Read the RFP in its entirety.**

Note key items such as critical dates, services required, qualifying and mandatory requirements, and proposal submission requirements.

- **Provide complete responses - Bidder proposals must completely address all qualifying and mandatory requirements.**

To ensure your proposal is valid, thoroughly read all proposal requirements and provide complete responses. Ensure all aspects of each requirement are met. Use the forms provided to submit your response. Vague or incomplete responses to desirable requirements may result in a reduced technical score.

- **RFP Glossary**

Definitions for certain terms in this document can be found in *Section 1.14 Glossary*.

- **Note the name and email of the designated contacts listed on the front page of this RFP.**

These are the only individuals that you are permitted to contract regarding this RFP in accordance with Procurement Lobbying Law.

- **All announcements relating to this bid will be disseminated via electronic mail (e-mail).**

It is the Bidder's responsibility to check their e-mail periodically for any updates. All applicable amendment information must be incorporated into the Bidder's proposal. Failure to include any such information in your proposal may result in disqualification or a reduced technical score.

- **Take advantage of the question and answer periods.**

Question and Answer periods are your opportunity to seek clarification. Please utilize this process to understand requirements, as well as raise any questions or concerns with your ability to bid. Submit your questions via e-mail by the dates listed in the RFP Schedule on the front page of this RFP. Responses to the questions will be disseminated to all potential bidders via e-mail. Additional information about Question and Answers can be found in *Section 1.10 Proposal Questions/Inquiries and Response*.

- **File a "Notification of Intent to Bid" by the date listed in the RFP Schedule.**

Additional information about "Attachment 10 - Intent to Bid/No Bid" can be found in *Section 1.11.1*

- **Review the RFP document and your proposal.**

Make sure all requirements are fully addressed and all copies are identical, legible, and complete.

- **Package your proposal as required in the RFP.**

Make sure your proposal conforms to the packaging requirements. Proposals not packaged accordingly may be deemed non-responsive. Additional information about packaging and content can be found in *Section 3.3 Packaging of RFP Proposals*.

- **Submit your proposal on time.**

Except as specified in *Section 5.4 State's Rights to Proposals*, proposals received after the date and time in the RFP Schedule will not be considered for award and may be returned, unopened, to the sender.

1. Introduction and Overview

It is the intent of this solicitation to seek a vendor to provide all necessary services. Bidders shall provide proposals which meet mandatory requirements of this RFP.

1.1 Agency

The mission of the New York State Office of Parks, Recreation and Historic Preservation (State Parks/Parks/OPRHP) is to provide safe and enjoyable recreational and interpretive opportunities for all New York State residents and visitors and to be responsible stewards of our valuable natural, historic, and cultural resources.

Fundamental to the successful achievement of our mission is the dedication of our employees and the adherence to a common set of values. These guiding principles serve as a pledge to the people we serve and a commitment to ourselves and to each other.

- **A Commitment to People.** We are committed to serving and protecting the public to the best of our ability, with courtesy and respect. We are committed to our employees and volunteers, encouraging teamwork, self-improvement, and mutual support.
- **A Commitment to Preservation.** State parks and historic sites are unique and irreplaceable public assets. We are committed to wise acquisition, planning, and, where appropriate, development; timely and professional care and maintenance; and a responsibility to future generations in whose trust we manage our resources. We are committed to providing encouragement to all agencies and individuals to identify, evaluate, and protect recreational, natural, historic, and cultural resources.

1.2 Purpose

The State of New York is dedicated to recognizing the important contributions of LGBTQ+ people throughout its history. In 2019, the State of New York dedicated a park in Brooklyn (formerly known as East River State Park) to the transgender pioneer and activist, Marsha P. Johnson. OPRHP will build a decorative Gateway entrance to the park to draw the attention of the public and communicate a message of welcome and acceptance for all people entering the park. OPRHP seeks a Project Team to design, fabricate and install the decorative Gateway.

The RFP is open to all artists, artisans, architects, landscape architects, and teams with experience in public art, site responsive design, project management and construction administration. Each Project Team should include members with experience in the design, fabrication and installation of public art to fulfill the requirements of the RFP. Only one entity from the Project Team may submit a bid, and if awarded, that entity will be the prime contractor.

1.3 Project Description

Commissioned by OPRHP, the selected Project Team will create an ornamental Gateway to be located at the Kent Avenue/North Eighth Street entrance to Marsha P. Johnson State Park in the Williamsburg section of Brooklyn.

OPRHP is seeking proposals for the park entrance Gateway that communicates Marsha P. Johnson's spirit and legacy and complements the park and surrounding neighborhood. Artists should create a work that is bold and unique within the context of its environment.

The selected Contractor will work with OPRHP's on-call landscape architecture consultant to develop the foundation and surrounding site modifications at the entrance. OPRHP will be responsible for preparing the site prior to the installation of the work.

Project Teams must consider the following goals for the Gateway:

- Welcomes the public into the park
- Responds to the unique character and history of the park and surrounding community
- Evokes a powerful response honoring Marsha P. Johnson, her work, her life, and her community

- Sends a message of inclusion, safety and understanding
- Creates a sense of excitement and curiosity about what lies within the park
- Invites social interaction and shared experience
- Resonates with people of diverse backgrounds
- Is durable and requires little or no maintenance

1.4 Marsha P. Johnson Art Advisory Committee

In September 2021, OPRHP established the Marsha P. Johnson Art Advisory Committee (MPJAAC) to ensure that voices from the various communities with an interest in the state park were heard. The Committee, made up of members of Marsha P. Johnson's family, the Transgender community, public art consultants and OPRHP had lengthy discussions about what should be communicated through the Gateway. The following are samples of their input:

- The Gateway should attract people and entice them to enter, it should demand attention, and provide a sense of to whom the park is dedicated.
- The Gateway should evoke Marsha P. Johnson at a single glance.
- The message of the park's namesake should be communicated boldly; it should feel like Marsha's park with some of Marsha's favorite things like colorful butterflies and flowers.
- The entrance should be grand and translucent.
- The entrance could incorporate the colors of the transgender flag (light blue, light pink and white) to indicate the park is a safe place for transgender individuals.
- The Gateway should complement and build on the industrial history and present design of the park and the surrounding neighborhood.
- The park has a history within the community as a place that welcomed people as they are.

1.5 Marsha P. Johnson

Project Teams are encouraged to develop their own understanding of the context of Marsha P. Johnson's life and her achievement through research.

The following excerpt is from interpretive panels found within the park that were developed with members of the LGBTQ+ communities:

Marsha P. Johnson (1945-1992) was a Black gay and trans liberation activist, drag queen performer, actress, and sex worker. She was a survivor who struggled with mental illness and she was a person living with HIV/AIDS. The "P" in her name stands for "pay it no mind," which is what she told people who asked about many aspects of her life, including her gender. While she was often mistreated by mainstream society and even her queer community, Marsha was known in the West Village for her charisma, joyfulness, and generosity, while living against great odds. Many called her a saint: Saint Marsha.

Marsha graduated high school in 1963 and she briefly enrolled in the US Navy before moving to New York City "with fifteen dollars and a bag of clothes." While Marsha returned to visit Elizabeth often, she found a new home in the West Village, as did many TLGBQ+ people, and made ends meet through sex work, one of the only ventures available to many within the gay community at the time. "Sexual deviancy laws" in New York City essentially made being gay or trans illegal, and police frequently targeted TLGBQ+ people. When the streets around the Stonewall Inn erupted in rebellion in 1969, Marsha P. Johnson was there. In the days that followed, Marsha moved to the forefront of the Gay Liberation Movement, including co-founding STAR—now known as STARR: Strategic Trans Alliance for Radical Reform—with Sylvia Rivera.

In 1980, Marsha took shelter in the New Jersey home of Randy Wicker, a pre-Stonewall TLGBQ+ activist. Marsha stayed with Randy until July 6, 1992. On that day, Marsha's body was tragically found in the Hudson River. The police ruled her death a suicide, but it is widely believed Marsha was murdered. While her case was reopened in 2012 at the insistence of activists, it remains unsolved. Marsha's death is a reminder of the increased risk of violence that Black trans women and the TLGBQ+ community face, even as Marsha P. Johnson's legacy is celebrated.

Exhibit A – Interpretive Panels includes a series of interpretive panels created to provide information and insight into the life of Marsha P. Johnson, the LGBTQ+ community, and specifically the Trans Community. The content was developed in collaboration with many Trans and LGBTQ+ people and organizations in 2020-21. The panels are currently installed along the 8th Avenue extension within the park.

1.6 The Site

Marsha P. Johnson State Park is a seven-acre waterfront park located along the East River in the Williamsburg neighborhood of Brooklyn stretching along Kent Avenue from North 7th Street to North 9th Street. The state park is adjacent to NYC's Bushwick Inlet Park. It offers visitors a stunning view of the Manhattan skyline, a delightful play area, and open space which provides many opportunities for recreation and relaxation. The lush green space is integrated with industrial remnants from its past. The park is built on the former site of the Brooklyn Eastern District Terminal, the first offline railroad terminal to be located in Brooklyn (it opened in 1870 as Palmer's Dock).

When the terminal fell out of use, members of the surrounding neighborhoods began to use the space for relaxation, concerts and other creative activities. The park grew out of a community victory that saved the land from development. Typically, people use the passive section of the park to unplug from the digital world and find shade under the canopy trees, lay out a blanket on the rolling lawns, picnic and take in the soft shoreline. It is a natural space critical to people's health and well-being, especially as overdevelopment on this East River waterfront perpetuates.

Prospective Project Teams, as a part of their conceptual process, should immerse themselves in the park and even the adjacent neighborhood to garner its essence to help inform their idea.

Exhibit B – Site Information includes the site plan with Gateway location noted; photographs of the current site; photographs of the surrounding neighborhood; and historic photographs of the park.

1.7 Additional Resources

To gain a better understanding of Marsha P. Johnson, OPRHP and its Art Advisory Committee recommends exploring the following resources:

1.7.1 About Marsha P. Johnson:

- ["From the Vault: Sylvia Rivera & Marsha P. Johnson, 1970," Making Gay History Podcast \(As It Happens, CBC Radio, January 6, 2020\)](https://www.cbc.ca/radio/asithappens/as-it-happens-monday-edition-1.5416232/podcast-unearths-earliest-known-recordings-of-trans-icons-marsha-p-johnson-and-sylvia-rivera-1.5416240) <https://www.cbc.ca/radio/asithappens/as-it-happens-monday-edition-1.5416232/podcast-unearths-earliest-known-recordings-of-trans-icons-marsha-p-johnson-and-sylvia-rivera-1.5416240>
- "The Unsung Heroines of Stonewall," National Parks Conservation Associate blog post by Cal Goodin, October 1, 2020. <https://www.npca.org/articles/2736-the-unsung-heroines-of-stonewall>
- "About Marsha P. Johnson," The Marsha P. Johnson Institute. <https://marshap.org/about-mpji/>
- "Overlooked" (Marsha P. Johnson Obituary) in the New York Times: <https://www.nytimes.com/interactive/2018/obituaries/overlooked-marsha-p-johnson.html>
- National Park Service Series: LGBTQ America: A Theme Study of Lesbian, Gay, Bisexual, Transgender, and Queer History: <https://www.nps.gov/articles/series.htm?id=4DFF8155-1DD8-B71B-0B4C2713F34EA25C>

1.7.2 About the Park

- *The Accidental Playground: Brooklyn Waterfront Narratives of the Undesigned and Unplanned* by Daniel Campo. Fordham University Press, New York, 2013.
- MPJSP property history: <https://www.tpl.org/our-work/marsha-p-johnson-state-park>
- Marsha P. Johnson State Park webpage: <https://www.parks.ny.gov/parks/155/details.aspx>
- Renaming of East River State Park to Marsha P. Johnson State Park and *initial* renovation and commemoration plan: <https://www.archpaper.com/2020/08/brooklyn-east-river-state-park-renamed-in-honor-of-marsha-p-johnson/>
- Revised renovation and commemoration plan: <https://www.6sqft.com/new-design-for-marsha-p-johnson-state-park-adds-more-greenery-scraps-rainbow-striped-mural/>

1.8 Minimum Bidder (Project Team) Qualifications

Project Teams (Bidders) are advised that the State's intent is to ensure that only responsive, responsible, qualified and reliable bidders enter into a contract to perform the work as defined in this RFP. Bidders shall comply with the laws of the State of New York and shall possess or obtain any required licenses, permits, or authorizations.

The State considers the following qualifications to be a pre-requisite to be considered as a qualified Bidder for purposes of the solicitation. Bidders not meeting the qualifications below will be disqualified. Bidders may use a subcontractor's (team member's) qualifications to meet these requirements. To be deemed qualified and responsive, the following minimum requirements must be met:

1.8.1 Experience Through Reference Qualifications

Project Teams must have experience in designing, fabricating, and installing public artwork of similar size, scope and medium as outlined in this RFP. Artists, fabricators and installers must be identified in the proposal along with their experience.

Using "Attachment 11 – Project References," The Project Team must include at least three (3) Reference Clients for each the artist, fabricator and installer for which they have provided similar artwork and fabrication/installation services within seven (7) years immediately preceding the issuance of this RFP. The artist, fabricator and installer may use the same reference if work was performed on the same project. For Example:

Sample Reference Matrix						
	ABC Company	Company B	Museum Company	Artwork USA	City Park Services	Niagara Falls
<i>Artist</i>	Reference 1		Reference 2		Reference 3	
<i>Fabricator</i>		Reference 1	Reference 2			Reference 3
<i>Installer</i>			Reference 1	Reference 2	Reference 3	

1.8.2 Reference Check

The Bidders' Reference Clients provided on "Attachment 11 – Project References" will be independently verified by OPRHP and will be scored on a pass/fail basis for the semi-finalists.

References will be contacted by OPRHP and asked a series of questions. Prior to submitting a bid, the Bidder should reach out to their listed references to make them aware that they have been listed as such and should expect to be contacted by OPRHP. If OPRHP is unable to obtain a satisfactory reference for one or more of the references provided in 1.8.1 above, the Proposal may be deemed non-responsive.

1.9 Site Visit

A visit to the site is highly recommended to inform the Bidder about the landscape and architectural features at the park. A Pre-Proposal Site Visit will be held at:

Kent Avenue/North Eighth Street Entrance
Williamsburg Section of Brooklyn
Marsha P. Johnson State Park
90 Kent Avenue
Brooklyn, NY 11211

The Site Visit will be held on the date and time indicated in the RFP Timeline. Although attendance of the site visit is optional, Bidders are highly encouraged to attend. Bidders should notify the designated contact by the date/time indicated in the RFP Timeline if they plan to attend. If a Bidder is unable to attend the site visit, Bidders are strongly encouraged to visit the site and neighborhood to gain a greater understanding of the area.

Time permitting, inquiries may be made at the site visit. Any responses given at the site visit are not binding; only the responses in the official response at the conclusion of the Question & Answer (Q&A) period will be binding. All other inquiries shall be submitted in writing to only the designated contacts as per *RFP Section 1.10 Proposal Questions/Inquiries and Response*.

1.10 Proposal Questions/Inquiries and Response

Prospective Bidders will have one opportunity to submit written questions and requests for clarification regarding this RFP. All questions regarding this RFP must be submitted via e-mail to the Designated Contacts and be received by the date and time specified in the RFP Timeline. Questions must reference the relevant page and section of the RFP and must be directed to the designated contact. Questions submitted by Bidders should be in the following format:

No.	RFP Section	RFP Page	Vendor Name	Question

OPRHP will provide a written response to all substantive questions and requests for clarification. Responses to Bidder questions and requests for clarifications will be distributed via e-mail utilizing the Agency-maintained Bidders List.

Prospective Bidders should note that all clarifications and exceptions, including those relating to the terms and conditions of the RFP, are to be resolved prior to the submission of a proposal by utilizing the Question and Answer period. Also, during the Question and Answer period, Bidders should be certain to bring forward terms and conditions in the RFP that would prohibit a Bidder from bidding. Bidders entering into a contract with the State are expected to comply with all terms and conditions contained herein.

Contacting individuals other than the Designated Contacts may result in the disqualification of the Bidder's proposal.

1.11 Notification of Intent to Bid/Not Bid

1.11.1 Intent to Bid/Not Bid

Please complete "Attachment 10 - Intent to Bid/No Bid", indicating your intent to Bid/Not Bid, and submit to the Designated Contacts via email.

1.11.2 Removal from Bidders List

If you would like to have your organization removed from the mailing list for procurements of this type, please send an e-mail to the Designated Contact as well as an indication of why you would like to be removed.

1.12 Procurement Lobbying Guidelines

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OPRHP and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OPRHP and, if applicable, the Office of the State Comptroller ("restricted period") to other than the Designated Contact(s) unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a).

Designated Contact(s), as of the date hereof, is identified above. OPRHP employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Information related to the Procurement Lobbying Law and guidelines can be found with in Attachment 2.

1.13 Contract Signing and Term

Although OPRHP intends to award a two-year Contract to the successful Bidder contingent upon New York State Attorney General (AG) and the Office of the State Comptroller (OSC) approval, the project is expected to be completed on or before August 24, 2023.

1.14 Glossary

Term	Description
Agency	New York State Office of Parks, Recreation and Historic Preservation (OPRHP).
Agency Staff	An employee of OPRHP.
Artist	Person or group that determines the form of artistic expression used in the creation of the Gateway, including, but not limited to the choice of size, material, texture and color.
Bid	The approved prepared bid form on which the Bidder is to submit or has submitted a bid for the Project contemplated.
Bidder	Any individual, firm or corporation submitting a Bid for the Project contemplated, acting directly or through a duly authorized representative.
Brooklyn Community Board 1	The Brooklyn Community Board 1 is the official municipal body whose primary mission is to advise elected officials and government agencies on matters affecting the social welfare of the district.
Commissioner	The Commissioner of Parks, Recreation and Historic Preservation.
Comptroller (OSC)	The Office of State the Comptroller of the State of New York.
Contract Documents	The complete set of documents forming the resultant contract based off this RFP.
Contractor	The person, firm, partnership or corporation executing the Contract.
Days	Unless otherwise indicated, the term "Days" shall mean calendar days.
Designated Payment Office	The regional office as identified on the cover of the Contract.
Desired	Unless otherwise indicated, requirements which state 'should' or 'can' are desirable and at-option of OPRHP if provided by the Bidder.
Fabricator	Entity (and member of Project Team) that constructs/forms/builds the Gateway in the medium selected by the artist.

Term	Description
Gateway	The product desired by OPRHP and resulting final deliverable of the contract.
Installer	Entity (and member of the Project Team) that transports and installs the Gateway.
Landscape Architecture Consultant	On-call landscape architecture firm engaged by OPRHP to assist the Project Team with integrating the work into the site; Landscape Architect will collaborate with Project Team to determine site modifications and provide to OPRHP required drawings and specifications for construction thereof.
Offerer	Any individual or entity, or any employee, agent of consultant or person acting on behalf of such individual or entity that contacts a governmental entity about a governmental procurement during the restricted period of such governmental procurement.
Office or OPRHP	The New York State Office of Parks, Recreation and Historic Preservation.
Physical Completion Date	The date upon which the Contractor and the Director's Representative agree that all deficiencies noted on the final inspection report have been corrected as evidenced by the issuance of the Physical Completion Report.
Policy	A guideline that regulates organizational action. Policies control the conduct of people and thus the activities of systems.
Premises	All land, buildings, structures, or other items of any kind located around or adjacent to the Site and owned, occupied or otherwise used by the State.
Project	Work at the site carried out pursuant to this RFP and resulting Contract.
Project Team	Group responsible for the design, fabrication and installation of the Gateway. Project team will furnish all supplies, labor, material and equipment necessary for the design, fabrication, transportation, and installation of the Gateway.
Project Completion	Project is physically complete, and all elements of the Gateway are installed and have received final acceptance by OPRHP.
Provide	To furnish and install, complete, in place and ready for operation and use.
Report	The means by which the results of a query are displayed or printed.
Site	The area within the contract limit lines as identified in the drawings, or adjacent areas designated in writing by the Director's Representative. Some contracts might involve separate and distinct sites.
Specifications	The body of directions and/or requirements contained in this document, together with all documents of any description, and agreements made (or to be made), pertaining to the methods (or manner), of performing the work and quality (as shown by test records) of accepted materials to be furnished under this Contract.
State	The State of New York.
Subcontractor	A person, firm, partnership or corporation executing a portion of the Work for the "Contractor," who has the sole responsibility for his or her performance.
Substantial Completion	The Work or major milestones thereof as contemplated by the terms of this Contract are sufficiently complete so that the Site can occupy or utilize the Work or designated portion thereof for the use for which it is intended.
Work	The total sum of labor, supervision, materials and equipment necessary for the proper completion of the Contract as set forth in the Contract Documents.

1.15 List of Appendices, Attachments, Forms, and Exhibits

Appendices

Appendix A – Standard Clauses for New York State Contracts

Appendix B – General Specifications for OPRHP Contracts

Appendix D – Bid Protest Procedures

Appendix E – OSC Consultant Disclosure Reporting Requirements

Appendix F – Insurance Requirements

Attachments

Attachment 1 – Financial Proposal
Attachment 2 – Lobbying Law Certification
Attachment 3 – Non-Collusive Bidder Certification
Attachment 4 – Public Officers Law
Attachment 5 – Encouraging Use of New York State Businesses in Contract Performance
Attachment 6 – NYS Finance Law §139-I and Executive Order No. 177 Certification
Attachment 7 – Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement
Attachment 8 – Vendor Responsibility Attestation
Attachment 9 – Diversity Practice Questionnaire
Attachment 10 – Intent to Bid / No Bid
Attachment 11 – Project References
Form A State Consultation Services – Contractor's Planned Employment
Form B State Consultation Services – Contractor's Annual Employment Report
ST-220-CA Contractor Certification to Covered Agency
ST-220-TD Contractor Certification

Exhibits

Exhibit A – Interpretive Panels - A series of interpretive panels created to provide information and insight into the life of Marsha P. Johnson, the LGBTQ+ community, and specifically the Trans Community
Exhibit B – Site Information - Site plan with Gateway location noted; photographs of the current site; photographs of the surrounding neighborhood; historic photographs of the park

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2. Proposal Requirements and Content

These requirements set forth the functionality that the OPRHP requires. OPRHP will evaluate proposals in a two-phase process against these requirements to understand the extent to which they will meet OPRHP's needs. These requirements are written from OPRHP's point of view and define what the solution must accomplish.

- Phase 1 Bidders includes written and graphic concept proposals that must be submitted with a bid.
- Phase 2 Bidders (semi-finalists) susceptible to award will be invited to present in person at the offices of OPRHP in New York City and should be prepared to conduct their presentation per the RFP Schedule.

2.1 Phase 1 – Technical and Financial Proposal Requirements

2.1.1 *Project Team Qualifications*

Bidders must provide each of the following:

- A biography or resume for each Project Team member (artist, fabricator, installer) that describes previous work, exhibition history, awards and honors, as well as experience with public art projects.
- Full-color, high-resolution images of the completed work, including multiple viewpoints.
- Fabrication and development drawings produced for the project.
- Demonstrate their qualifications (as applicable) for proficiency in and technical knowledge of the medium/media in which the Gateway is proposed.

2.1.2 *Statement of Artist Concept*

Bidders must provide a summary statement of the artistic concept. The concept statement will be evaluated in conjunction with the graphic representations of the Gateway for a full understanding of the artist's intent. The statement should reflect on each of the following:

- How the Gateway addresses the life of Marsha P. Johnson, her achievements and her dedication to the rights of the LGBTQ+ people;
- How the Gateway welcomes all people into the park and conveys the park is a safe space;
- How the materials and design will achieve artistic excellence and/or innovation; and
- How the proposed Gateway resonates with the designated site at the North 8th Street entrance.

2.1.3 *Gateway Design and Composition*

The ornamental Gateway must celebrate the life and legacy of Marsha P. Johnson and be compatible with the Park and neighborhood location. Proposals should consider the scale of the proposed work in the context of the urban neighborhood, the site's topography and orientation to the East River. The proposal should engage the park's unique qualities, complement the park physically and programmatically, and be feasible within the existing conditions.

The Gateway must be operable and accessible to pedestrians, cyclists, small motor vehicles and emergency equipment. Note: the entrance from Kent Avenue opens onto a historic cobbled street flanked by complementary accessible paths. The Gateway and site design must comply with all State and Local building codes, and with the Americans with Disabilities Act recommendations.

The Project Team should consider an overarching element that should be visible at all times and that communicates the goals of the project—honoring Marsha P. Johnson, her exuberant spirit and her dedicated activism.

- Bidders must provide drawings and/or images that convey the artist's concept in the context of the designated site. The drawings should include figures to indicate scale and dimensions. At a minimum, drawings submitted should include:

- Concept Sketch(es) to convey the essence of the Gateway including, but not limited to elevation views from the street side *and* from within the park as well as details of important decorative elements that speak to the park's namesake;
- 3D representation/rendering of the proposed Gateway at the entrance to the park.

2.1.4 Fabrication and Materials

Bidders must provide a conceptual description of the materials and fabrication methods proposed for the Gateway. The fabrication and installation processes for the proposed Gateway should be feasible and within the project budget. The description should communicate the Artist's (Project Team's) knowledge and experience with materials proposed.

2.1.5 Sustainability/Maintenance & Durability

The Gateway should be constructed of durable materials that can be easily maintained by OPRHP staff, and are resistant to graffiti, scratchiti and other forms of vandalism. Bidders should provide preliminary artwork maintenance plan that outlines both sustainability and maintenance requirements based on the materials proposed.

2.1.6 Installation

Bidders should provide a written installation plan that outlines the likely method of installation based on the conditions at the site, and illustrates their understanding of the site topography, existing trees, plantings, infrastructure and traffic patterns, and provides for protection of the public and adjacent site features.

2.1.7 Project Schedule

Bidder's must provide a preliminary project schedule that identifies major milestones in design development, fabrication and installation processes, and illustrates the Project Team's capacity to complete the project on time.

2.1.8 Cost Proposal

The budget for the Gateway project may not exceed \$1,300,000 and bidders are encouraged to provide competitively priced cost proposals which will be evaluated. The cost proposal must reflect the realistic costs to execute the project which includes artistic creativity, high quality, durable materials and must include the following:

- Artist Fee (not to exceed 20% of the price bid);
- Material Cost;
- Fabrication Costs;
- Transportation and Delivery to the Site;
- Installation; and
- Other Professional Services necessary.

Important Note: OPRHP will work with the Project Team to develop the foundations and other technical installation requirements and will prepare the site for installation of the Gateway.

2.2 Phase 2 – Bidders' Presentation

The purpose of the Bidder's Presentation is to allow invited Project Teams to present a further developed project concept. Keep in mind, the Gateway is intended to be a celebration of Marsha P. Johnson *and* to complement the site. Each invited bidder (semi-finalist) will have approximately one (1) hour to address the following topics during their presentation:

- Project Concept

- Materials, Fabrication and Maintenance
- Installation and Schedule
- Project Team Experience

The presentation team should include the bidder's personnel critical to the oversight of the project.

Each semi-finalist will be paid an honorarium of \$1,500. To receive the honorarium, the Bidder must have successfully presented their proposal to OPRHP and must complete reimbursement documentation when the presentation has concluded. Bidders can expect to receive the honorarium no sooner than 30 calendar days after completion of their presentation and receipt of the documentation by OPRHP.

To ensure equitable review of each proposal submission, there must be uniformity and consistency in the proposal presentations. **The submitted elements, including the maquette, will become property of OPRHP.** Bidders must adhere to the specific formats indicated below and bring to the Bidder presentation each of the following:

2.2.1 Maquette

The maquette is a small-scale model for a larger piece of artwork, created to visualize how it might look and to work out approaches and materials for how it might be made. The artist should create a maquette of their concept to show the evaluation team how the finished work will fit in the proposed site.

Please provide one maquette with dimensions not to exceed 30"L x 30"W x 18"H. The maquette should be submitted with the scale indicated. The scale of the maquette must enable an accurate portrayal of the proposed design, including how the Gateway relates to the surrounding features in the park and in the neighborhood. The maquette must be securely mounted to its base to ensure its safety in transit.

2.2.2 Material Sample(s)

Materials for the Gateway must be easily maintained, durable, and able to withstand vandalism and weathering. All finishes should be non-proprietary. Samples of proposed finished or fabricated materials (e.g., welds, patinas, enamels, or other) should also be presented.

Provide sample(s) of the proposed medium including, if applicable, all related components, colors, and finishes. Sample size(s) must be limited to no more than 6" x 6" each.

2.2.3 Supporting drawings and detail materials

Drawings of the developed concept should communicate the Gateway's relationship to the site, the functionality (e.g., how it will look when the gates are opened and closed), and features that will be visible when the gates are open. Drawings of the decorative details are important to include.

Use no more than two (2) 24" x 36" mounting boards, 1/4" foam core or equivalent to present supporting drawings, renderings or photographs, which provide detailed information of your proposed design. One board must include a 1/8" = 1' - 0" scaled elevation showing the Gateway within the context of the park and neighborhood as viewed from the street. The second board should be clearly labeled, indicating the scale and placement of the feature or detail as it relates to overall design. All boards must be presented with a horizontal orientation. The project team shall clearly write its name on all drawings and detail materials.

3. Proposal Submission

3.1 General Proposal Requirements

This RFP is framed to present the business needs of OPRHP. OPRHP expects that respondents will demonstrate their competency and the breadth and depth of knowledge in this area by helping OPRHP understand how the Bidder's Proposal will meet OPRHP's needs.

Proposals containing false or misleading statements, or which provide unverifiable details, may be rejected. If in the opinion of OPRHP such statements are intended to mislead OPRHP in their evaluation of the Bidder's Proposal, OPRHP reserves the right to reject said Proposal.

Administrative requirements can be found in *Section 3.2.3 Administrative Proposal*. Information regarding MWBE goals can be found in *Section 7.7 Equal Employment Opportunities*.

3.2 Proposal Format and Content

The Bidder must provide a response that clearly and precisely provides all required information. Emphasis should be placed on conformance with RFP instructions, responsiveness to the RFP requirements and clarity of the intent. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive. OPRHP does not require, nor desire, any excessive promotional material which does not specifically address the response requirements of this RFP.

For OPRHP to evaluate bids fairly and completely, Bidders are strongly encouraged to follow the format set forth herein and should provide all of the information requested. All items identified below should be addressed as concisely as possible for a bid to be considered complete. Failure to conform to the stated requirements may necessitate rejection of the bid.

Bidders are encouraged to include all information that may be deemed pertinent to their proposal. Bidders may be requested to provide clarification based on the State's evaluation procedure. Any clarification will be considered a formal part of the Bidder's original proposal. If further clarification is needed during the evaluation period, OPRHP will contact the Bidder.

A page should be 8-1/2" x 11", single-sided, single spaced with a font size equivalent to a size 10 font "Times New Roman" and one (1) inch margins.

3.2.1 Technical Proposal

The Bidder's Technical Proposal should include detailed written responses that demonstrate an understanding of the proposed work and should include all the following. Only information included in the proposal will be evaluated. Web links that are provided with a Proposal will not be accessed and information within such links will not be considered for evaluation.

3.2.1.1 Cover Letter

The cover letter should confirm that the Proposer understands all the terms and conditions contained in this RFP and will comply with all the provisions of this RFP. Further, should the contract be awarded to your company, you would be prepared to begin services as illustrated in the RFP Schedule. The cover letter should include the full contact information of the person(s) OPRHP shall contact regarding the proposal and must also include the name(s) of principal(s) of the company responsible for this contract, their function, and title.

3.2.1.2 Technical Requirement Narratives

The Technical Requirement Narrative must include all of the elements outlined in RFP Sections 152.1.1 through 2.1.7, which includes the following:

- Project Team Qualifications
- Statement of Artist Concept

- Gateway Design and Composition
- Fabrication and Materials
- Sustainability/Maintenance & Durability
- Installation
- Project Schedule

3.2.1.3 Minimum Requirements

Bidders must submit information to confirm their ability to meet the minimum qualifications of this RFP as set forth in *Section 1.8 Minimum Bidder (Project Team) Qualifications*.

3.2.1.4 Diversity Practices

Bidder must provide their Diversity Practices on the form provided in this RFP as “Attachment 9 - Diversity Practices Questionnaire.” Additional sheets should be attached as necessary to fully describe your company’s Diversity Practices.

3.2.2 Bidder’s Financial Proposal

Bidder shall submit a completed “Attachment 1 – Financial Proposal” in a separately sealed package within the proposal submission and must be clearly identified as the Financial Proposal as indicated in *Section 3.3 Packaging of RFP Proposals*. Each item must be completed with no lines omitted.

Bidder shall not modify or change the form, provide alternative pricing or deviate from the Financial Proposal form; doing so may render the bid non-responsive and may result in it being eliminated from further evaluation. Add-on costs that do not conform with “Attachment 1 – Financial Proposal” will not be evaluated, will be disregarded as extraneous and will not be considered. Alternative pricing methodologies will not be considered and may result in the rejection of the proposal.

3.2.3 Administrative Proposal

- Extraneous terms, if applicable
- Request for exemption from Disclosure, if applicable

Forms

- Attachment 2 – Lobbying Law Certification
- Attachment 3 – Non-Collusive Bidding Certification
- Attachment 4 – Public Officers Law Form
- Attachment 5 – Encouraging Use of New York State Businesses in Contract Performance
- Attachment 6 – NYS Finance Law §139-I and Executive Order No. 177 Certification
- Attachment 7 – Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement
- Attachment 8 – Vendor Responsibility Attestation
- Form A: State Consultation Services - Contractor’s Planned Employment
- ST-220-CA: Contractor Certification to Covered Agency

3.3 Packaging of RFP Proposals

All bids must be received at or before the time specified and at the place designated for the bid opening. A late bid will not be eligible for consideration unless no bids were received when due. All bids and accompanying documentation submitted in response to this RFP will become the property of OPRHP and will not be returned. The resulting contract will include a copy of the specifications and the successful Bidder’s Bid.

Bidders may submit either hardcopy (RFP Section 3.3.1 Hardcopy Bids) or electronic (RFP Section 3.3.2 Electronic Submission / E-Mail Bids); however, electronic is preferred.

Bid submissions **MUST** be addressed to the designated contact listed on the cover page of this RFP.

The Technical, Financial and Administrative proposal (*Section 3.2 Proposal Format and Content*) should be separated and identified within the submission package.

- Where signatures are required, the proposals designated as originals shall have a handwritten signature and be signed in ink.
- OPRHP discourages overly lengthy proposals. Therefore, marketing brochures, user manuals, or other materials beyond those sufficient to present a complete and effective proposal are not desired. In order for OPRHP to evaluate proposals fairly and completely, proposals should follow the format set out herein to provide all requested information. The Bidder should not repeat information in more than one section of the proposal. If information in one section of the proposal is relevant to a discussion in another section, the Bidder should make specific reference to the other section, rather than repeating the information.
- Audio and/or videotapes are not allowed. Any submitted audio or videotapes will be ignored by the evaluation team.
- If a discrepancy is found between the electronic and hardcopy proposal (if available), the original hardcopy will prevail.
- All volumes must be packaged separately, be clearly identified and should contain page numbers.
- Financial Proposals must be submitted in a separate, sealed envelope containing only the Financial Proposal.
- For Electronic submissions, the Financial Proposal must be a separate file.

3.3.1 Hardcopy Bids

Hardcopy submissions shall consist of two (2) exact copies on flash drives containing the three proposal elements Administrative Proposal, Technical Proposal, and Financial Proposal, each. Bidders should endeavor to consolidate all files in each proposal element into a single PDF file to the best of their ability.

	Electronic Submission	Hardcopies
Administrative Proposal	One (1) Copy in a standard, searchable PDF format on a flash drive.	One (1) Original Hardcopy
Technical Proposal	One (1) Copy in a standard, searchable PDF format on a flash drive.	One (1) Original Hardcopy
Financial Proposal	One (1) Copy in a standard, searchable PDF format on a flash drive.	One (1) Original Hardcopy

The hardcopy bid shall be submitted in a sealed envelope marked in the lower left-hand corner with the following information:

PROPOSAL ENCLOSED

RFP C003550

Design, Fabrication and Installation of Gateway at Marsha P. Johnson State Park

Due April 20, 2022, 3:00 PM ET

3.3.2 Electronic Submission / E-Mail Bids

E-Mail submissions should be separated as follows:

	Electronic Submission
Administrative Proposal	One (1) Copy in a standard, searchable PDF format.
Technical Proposal	One (1) Copy in a standard, searchable PDF format.
Financial Proposal	One (1) Copy in a standard, searchable PDF format.

Every signature page of an Electronic submission must be a scanned copy of the original ink signature. Electronic signatures are not acceptable.

Bidders are permitted to submit their proposal in multiple email submissions should any circumstance, including file size, prevent a one-email submission. If any specific file or element (e.g.: Attachment 1; Attachment 2; etc.) is duplicated, the element received latest will be considered for evaluation and all other same elements will be disregarded.

The bid shall be submitted via e-mail to ServiceContracts@parks.ny.gov with the subject of the e-mail clearly marked with the following information:

Proposal Enclosed – RFP C003550 - Design, Fabrication and Installation of Gateway at Marsha P. Johnson State Park Due April 20, 2022, 3:00 PM ET

3.4 Modification or Withdrawal of Bids

Bid modifications that are submitted in writing and signed by an authorized representative of the bidding firm will be considered for award if received at the place of the bid opening any time prior to the scheduled bid opening. Bids may be withdrawn or cancelled prior to the scheduled bid opening. A bid may be rejected by OPRHP: if it shows any alteration of terms, conditions or requirements; for any other irregularities; if it is incomplete, or if it offers an alternate bid not invited by the specifications.

3.5 Proposal Clarification

OPRHP reserves the right to require a Bidder to provide clarification and validation of its proposal through any means OPRHP deems necessary. Failure of a Bidder to cooperate with OPRHP's efforts to clarify or validate proposal information may result in the proposal being labeled as non-responsive and given no further consideration.

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4. Proposal Evaluation

4.1 Best Value

Pursuant to State Finance Law, the basis for contract award under this RFP will be “best value,” optimizing quality, cost, and efficiency among responsive and responsible Bidders.

4.2 Proposal Clarification

OPRHP reserves the right to require a Bidder to provide clarification and validation of its proposal through any means OPRHP deems necessary. Failure of a Bidder to cooperate with OPRHP’s efforts to clarify or validate proposal information may result in the proposal being labeled as non-responsive and given no further consideration.

4.3 Evaluation Process Overview

There will be three phases to the evaluation process. Proposals which pass Phase One of the evaluation will be further evaluated in Phase Two. Only the proposals susceptible to award will advance to Phase Three.

4.3.1 Phase One – Proposal Screening

All timely submitted proposals will be evaluated in Phase One. Each proposal will be screened for completeness and conformance with OPRHP’s requirements for proposal submission as specified in this RFP. Proposals which do not meet the requirements may be labeled as non-responsive and may not be given further consideration.

4.3.2 Phase Two – Technical, Financial and Diversity Practices Evaluation

All proposals that passed Phase One will be further evaluated in Phase Two.

4.3.2.1 Technical Evaluation (59 Points)

Technical scoring will be based on Bidder’s responses as submitted in their Technical Proposal and shall be scored and normalized as follows:

$$\text{Points Awarded for CBE} = \frac{HBS}{CBE} \times 59 \text{ Points}$$

CBE = Raw Score of Current Technical Bid Being Evaluated

HBS = Raw Score of Highest Technical Bid Evaluated

4.3.2.2 Diversity Practices (1 Point)

Bidder must provide their Diversity Practices on the form provided in this RFP as “Attachment 9 - Diversity Practices Questionnaire.” Additional sheets should be attached as necessary to fully describe your company’s Diversity Practices. All available points will be awarded based upon the answers provided on the “Attachment 9 - Diversity Practices Questionnaire.”. Points will not be awarded based on a company’s status as a certified MWBE firm. Pursuant to §310(22) of Article 15A of New York State Executive Law, “Diversity Practices” shall mean the Contractor’s practices and policies with respect to:

1. Utilizing certified minority and women-owned business enterprises in contracts awarded by a state agency or other public corporation, as subcontractors and suppliers; and
2. Entering into partnerships, joint ventures or other similar arrangements with certified minority and women-owned business enterprises as defined in this article or other applicable statute or regulation governing an entity’s utilization of minority and women-owned business enterprises.

4.3.2.3 Financial Evaluation (30 points)

Bidder's Financial proposal will be scored concurrently and separately from the Technical Evaluation. Scoring will be based on Bidder's response as submitted in their Financial Proposal. Bidders who submit Financial proposals with blank bid line items grant OPRHP the right to interpret such line items to have zero associated charge. The Financial Proposals shall be scored and normalized as follows:

$$\text{Points Awarded for CBE} = \frac{LBS}{CBE} \times 30 \text{ Points}$$

CBE = Contract Total of Current Financial Bid being Evaluated

LBS = Contract Total of Lowest Financial Bid Submitted

4.3.3 Phase Three– Reference Qualification Evaluation (Pass/Fail)

References provided on "Attachment 11 – Project References" will be independently verified by OPRHP and will be scored on a pass/fail basis. If a reference fails or OPRHP is unable to successfully verify the reference, that Bidder will be omitted from further consideration and will not be invited for a Bidder Presentation.

4.3.4 Phase Four– Bidder Presentations (10 Points)

The preliminary composite score will be calculated by adding the written Technical Evaluation points and the Cost points awarded. Finalists (bidder's susceptible to an award) will be determined based upon preliminary composite scores. Bidder susceptible to award and have passed Phase Three – Reference Qualification Evaluation, will be invited to provide an oral presentation.

The Bidder's Presentation will be worth up to 10 points of the bidder's Final Composite Score. Bidders who are eligible to present and fail to present will be omitted from consideration. Bidder Presentations shall be scored and normalized as follows:

$$\text{Points Awarded for CBE} = \frac{HBE}{CBE} \times 10 \text{ Points}$$

CBE = Raw Score of Current Bidder Presentation Being Evaluated

HBE = Raw Score of Highest Bidder Presentation Evaluated

4.4 Final Ranking/Contract Tentative Award

The final composite score will be calculated by adding the Technical, Financial, Diversity Practices Evaluation, and Bidder Presentation scores. The proposals will then be ranked based upon each Bidder's Final Composite Score. The highest scoring proposal will be eligible for an award.

The table below summarizes the evaluation point distribution:

Evaluation Component	Maximum Points
Financial Evaluation	30
Technical Evaluation	59
Diversity Practices	1
Bidder Presentations	10
TOTAL	100

If Bidders receive the same final score, OPRHP will use the following tie breaking mechanisms, in the order listed, to determine the final ranking:

1. The Bidder's Financial Score
2. Demonstration Evaluation Score

4.5 Written Notification

Written notification of OPRHP's selection will be furnished to all responding bidders, and a final contract shall be mailed or delivered to the recommended awardee. If the selected bidder fails to execute and return the contract to OPRHP within the time allotted, OPRHP reserves the right to reject the selected bidder's bid and select the next responsible bidder that will best promote the public interest. If all bids are rejected, each solicited bidder will be so notified.

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5. General Bidding Requirements/Terms

5.1 General Requirements

With the submission of a response to this Request for Proposals, the Bidder agrees to the proposal conditionals outlined in this section

Bidder affirms acceptance of and compliance with all requirements and specifications outlined in this RFP. If any part of the work required by this RFP is subcontracted, the Contractor is responsible for all requirements identified in this document.

5.2 Solicitation

This RFP is a solicitation for proposals, not an offer for a contract.

5.3 Liability

Neither OPRHP nor the State of New York shall be liable for any costs incurred by a Bidder in the preparation and production of any proposal, or for any work performed prior to the award of a formal contract.

5.4 State's Rights to Proposals

By submitting a proposal, the Bidder agrees not to make any claim for, or have any right to damages because of any misinterpretation or misunderstanding of the specifications, or because of any misinformation or lack of information. OPRHP reserves the right to exercise the following:

- Change any of the scheduled dates herein;
- Amend RFP Requirement(s) after their release to correct errors or oversights, or to supply additional information as it becomes available and if so notify all potential Bidders on the Agency-maintained Bidders List;
- Withdraw the RFP, at its sole discretion without any obligation or liability to any vendor;
- Eliminate any mandatory, non-material requirement that cannot be complied with by all of the prospective Bidders;
- Evaluate, accept and/or reject any and all proposals, in whole or in part, and waive technicalities, irregularities, and omissions if, in OPRHP's judgement, the best interests of OPRHP will be served. In the event compliant bids are not received, OPRHP reserves the right to consider late or non-conforming bids as offers;
- Require the Bidder to demonstrate, to the satisfaction of OPRHP, any information presented as part of their proposal;
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an Offeror's proposal and/or to determine an Offeror's compliance with the requirements of this solicitation;
- Disqualify any Bidder whose conduct and/or bid fails to conform to the requirements of the solicitation;
- Use proposal information obtained through OPRHP's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to OPRHP's request for clarifying information in the course of evaluation and selection under this RFP;
- Prior to the bid opening, determine a tie-breaking mechanism for award of the Contract to serve the best interests of OPRHP and the State of New York;
- Negotiate with the successful Bidder within the scope of the RFP to serve the best interests of OPRHP and the State of New York;
- Conduct Contract negotiations with the next ranked responsible Bidder should OPRHP be unsuccessful in negotiating an Agreement with the selected Bidder;
- Conduct negotiations with the next ranked responsible Bidder should the awarded Contractor fail to implement these Services upon approval of the Contract;

- If OPRHP must terminate the Contract for non-performance or the Contractor is unable to maintain the support required, OPRHP reserves the right, with the approval of the Attorney General and the Office of the State Comptroller, to award a contract to the next highest ranked Bidder of the original bid submission within the first twelve (12) months of the contract start date;
- Utilize any or all ideas submitted in the proposals received;
- Make an award under the RFP in whole or in part; and
- Seek revisions of proposals.

Bids containing false or misleading statements, or which provide project contacts that do not support an attribute or condition claimed by a Bidder, may be disqualified from consideration. If, in the opinion of OPRHP, a statement is intended to mislead OPRHP in its evaluation of the bid, and the attribute, condition, or capability is a requirement of the RFP, the bid shall be disqualified from consideration.

5.5 Freedom of Information Law

Your bid to OPRHP, including accompanying documents, is subject to the Freedom of Information Law (FOIL) found in Article 6 of the N.Y. Public Officer Law. FOIL provides that certain records are exempt from disclosure, including those that contain (1) trade secrets, (2) information that, if disclosed, would cause substantial injury to the competitive position of your organization, or (3) critical infrastructure information. Records may be redacted to protect only the portions of documents that fall within a FOIL exemption. An entire document may not be withheld if only a portion of the document is exempt from disclosure. Blanket assertions that information is a trade secret, confidential, or proprietary are insufficient to justify withholding information under FOIL. If you identify information seeking an exemption from public disclosure due to the above-mentioned reasons such request will be reviewed and a determination will be made as to whether the information is exempt from disclosure under FOIL. However, such submissions seeking non-disclosure will not be considered unless it is accompanied with an explanation justifying the privilege. The State's determination may be appealed pursuant to POL §89(5)(c). Pursuant to POL §87(2)(b), the State, without having to request it, will redact information that "if disclosed would constitute an unwarranted invasion of personal privacy."

5.6 Bid Security

Each Bidder's bid will be held in strict confidence by OPRHP/State of New York staff and will not be disclosed except to the Office of the Attorney General and the Office of the State Comptroller as may be necessary to obtain approvals of those agencies for the final Contract and except as required by law.

Public inspection of the bids is regulated by the Freedom of Information Law (Article 6 of the New York State Public Officers Law). The bids are presumptively available for public inspection. If this would be unacceptable to Bidders, they should apply to OPRHP for trade secret protection for their bid.

The public officers' code of ethics (Section 74 of the Public Officers Law) sets the standard that no officer or employee of a State agency shall disclose confidential information that he acquires during the course of his official duties. These standards control the confidentiality of a Bidder's bid unless OPRHP grants a petition for records access in accordance with the Freedom of Information Law.

Bidders should be advised that the confidentiality of their proposals is founded upon statute, as described above. A nondisclosure agreement, whether prescribed by OPRHP or the Bidder, would not alter the rights and responsibilities of either party under the Freedom of Information Law. Bidders should not propose a nondisclosure agreement for OPRHP employees, for that would be legally ineffective to alter any legal responsibility under the Freedom of Information Law or the code of ethics.

The provisions of the Freedom of Information Law will also govern the confidentiality of any and all products or services supplied by the successful Bidder.

5.7 Timely Submission

The Bidders are solely responsible for timely delivery of their bid to the location set forth by the stated bid due date/time and are solely responsible for delays in receipt, including but not limited to those due to third-party carriers.

5.8 Bid Effective Period

The Bidder's bid must be firm and binding for a period of at least 180 days following the proposal due date.

5.9 Bid Opening

Bids will not be opened publicly. OPRHP reserves the right at any time to postpone or cancel a scheduled bid opening.

5.10 Bidder Proposal Clarification

Prior to award, OPRHP reserves the right to seek clarifications, request proposal revisions, or to request any information deemed necessary for proper evaluation of proposals from all Bidders deemed to be eligible for Contract award. Failure of a bidder to cooperate with OPRHP's effort to clarify a proposal may result in the proposal being labeled as non-responsive and be given no further consideration.

Additionally, OPRHP reserves the right to use information submitted by the Bidder in response to OPRHP's request for clarifying information in the course of evaluation and selection under this RFP.

5.11 Bid Evaluation and Selection

See *Section 4.4 Final Ranking/Contract Tentative Award*, regarding bid selection and point allocation. Submitted bids may be reviewed and evaluated by any personnel or agents of OPRHP, other than those associated with a competing Bidder.

5.12 Contract Negotiations and Authorized Negotiators

During contract negotiations, OPRHP must have direct access to Bidder personnel who have full authority to make commitments on behalf of the Bidder. Bidders must include, as part of their proposal, any restrictions under which their primary negotiators will operate.

5.13 Bid Review and Contract Approval

The Contract resulting from this RFP will not be effective until approved by the Office of the Attorney General and the Office of the State Comptroller.

5.14 Debriefing Sessions

A debriefing is available to any entity that submitted a proposal or bid in response to a solicitation ("Bidder"). A Bidder will be accorded fair and equal treatment with respect to its opportunity for debriefing. Debriefing must be requested in writing by any bidder within fifteen (15) calendar days of OPRHP notifying the unsuccessful bidders that another vendor was selected. A bidder's written request for a debriefing must be submitted to the Designated Contact. The debriefing will be scheduled within ten (10) business days of receipt of written request by State Parks or as soon after that time as practicable under the circumstances.

5.15 Bid Protest Procedure

OPRHP procedures for handling protests of bid awards are set forth in *Appendix D – Bid Protest Procedures*.

5.16 NYS Finance Law § 139-I

Pursuant to N.Y. State Finance Law § 139-I, 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-I, 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, OPRHP may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

5.17 Conformance to RFP

Any exceptions or objections to the terms, conditions, and requirements of this RFP are governed by, and to be submitted in accordance with, the "Extraneous Terms" clause in Appendix B. Bidders are cautioned that any such exceptions or objections may render their bid non-responsive.

5.18 Encouraging use of New York State Business in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Each Bidder must complete and submit Encouraging Use of New York State Business in Contract Performance.

5.19 Bidder Assurances

The Bidder warrants that it has carefully reviewed OPRHP's needs as described in the RFP and its attachments/supplements. Bidder also warrants that it has familiarized itself with OPRHP's specifications and that it can provide such services as described in the RFP and as offered in its Bid.

If awarded the contract, the Bidder agrees that it will perform its obligations hereunder in accordance with all applicable Federal, State and local laws, rules, and regulations now or hereafter in effect.

The Bidder further warrants and affirms that the terms of this RFP and any resultant contract do not violate any contracts or agreements to which it is a party and that its other contractual obligations will not adversely influence its capabilities to perform under the contract.

5.20 Vendor Responsibility Questionnaire

If this or any other contract you have with the State of New York is valued at \$100,000.00 or more, OPRHP requires that Vendor file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. However, vendors may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at <https://osc.state.ny.us/vendrep/index.htm>, or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the Office of State Comptroller's Help Desk may be reached at (866) 370-4672 or (518) 408-4672 or by email at ciohelpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website at <https://osc.state.ny.us/vendrep/index.htm> or may contact OPRHP or the Office of the State Comptroller's Help Desk for a copy of the paper form.

Vendors must provide their New York State Vendor Identification number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's help desk at (866) 370-4672 or (518) 408-4672 or by e-mail at ciohelpdesk@osc.state.ny.us.

To be considered timely, questionnaires filed via the VendRep System require that a vendor certify a questionnaire no more than six months before the due date of the bid. If you are bidding on other state contracts in the future, you only have to update any changes that have occurred in the last six months or since the last time you updated your questionnaire, (you do not have to completely fill out a new questionnaire unless you have made a major change to your company).

5.21 Tax Law §5-A

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 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.

6. Contract Scope of Work

6.1 Deliverables and Compensation

Contractor will be compensated for each of the following project deliverables and the percent remitted will be based on the bidder's not-to-exceed total Project Cost and Artist Fee bid. Compensation will be realized upon contractor submission and acceptance by OPRHP. Each deliverable payment may be divided into smaller milestone and/or sub-milestones payments associated with deliverables identified depending on the approved project schedule and sequence of production. Milestones do not need to be completed in order.

No.	Contractor Deliverables	% of Project Cost	% of Artist Fee
1	Concept Confirmation and Schematic Design a. Kickoff Meeting with OPRHP and MPJAAC b. Presentation of Concept to Brooklyn Community Board 1 c. Approved project schedule identifying all milestones and sub-milestones in design, fabrication and installation d. Development of Concept Designs and Acceptance by OPRHP, including Contractor submission of revised maquette and sketches/renderings/materials information	15%	30%
2	Final Design Documents/Gateway Production Modules a. Fully developed design documentation including drawings, renderings and materials information b. Presentation of Final Design to Brooklyn Community Board 1 c. Complete Shop Drawings for Fabrication approved by OPRHP d. Submission of materials samples and approval by OPRHP e. Engineer Stamped Drawings f. Updated Production Schedule	35%	30%
3	Fabrication a. Fabrication of the Gateway (sub-milestones will be specific to the medium proposed) b. OPRHP Shop Approval/Visit c. Written Installation Plan	25%	15%
4	Installation/Substantial Completion	15%	15%
5	Project Completion a. Written Maintenance Guidelines and Closeout Submittals b. Final Acceptance by OPRHP	10%	10%

6.2 Project Schedule

Maintaining the project schedule is critical and time of the essence. All Project Schedule dates listed below must be met. If a Project Schedule date is not met, OPRHP reserves the right to assess liquidated damages, per RFP Section 7.32 *Liquidated Damages*. Any use of overtime and premium time, if required to meet the schedule, must be included in the prices bid.

Milestone #	Project Schedule/Milestone Dates/Project Completion		Deliverable Owner
1	August 3, 2023	Substantial Completion	Contractor
2	August 17, 2023	Physical Project Completion	Contractor

6.3 Project Management

The selected Bidder will be required to schedule, coordinate, oversee, and manage work produced and installed under this contract. The Contractor's Project Manager shall be the single point of contact between the Contractor and OPRHP. The contractor's Project Manager shall be in contact with the OPRHP Director's Representative, on no less than a weekly basis. The Project Manager shall perform the following work:

- Provide quality control to ensure that all elements of project work meet the requirements of the contract and that all modifications are implemented.
- Provide routine inspections of shop-fabricated work and subcontracted work.
- Oversee quality of all work during installation.
- Ensure that all work not acceptable or non-compliant with the specifications is corrected prior to inspection or review by OPRHP.
- Propose a production & installation schedule that includes key production milestones, shop reviews, shipment, delivery and installation dates that conform to the start and completion dates published above.
- Track work progress to ensure that the project is completed according to the schedule.
- Alert the Director's Representative should progress not meet key schedule milestones. Should progress not meet key milestones, provide a recovery schedule to show how to maintain the completion date.
- Coordinate and confirm the dates for shipment, delivery, and installation of the work at the site with the Director's Representative.
- Meet with MPJAAC to discuss design during Concept Confirmation, Schematic, and Design Development Phases.
- Work with OPRHP's on-call landscape architecture consultant to design foundations and site modifications to accommodate ornamental Gateway installation and function.
- Coordinate all contractor's submittals and review them for legibility, accuracy, completeness, and compliance with contract requirements. Forward all submittals to the Director's Representative for review and approval. Receive all reviewed submittals and take appropriate action according to the approval or rejection by the Director's Representative.
- Ensure that all changes, revisions, or additions are noted, and fabrication drawings and instructions are updated and forwarded to the Director's Representative.
- When submittals are rejected, the Director's Representative will notify the Project Manager in writing, identifying the reasons for rejection. The Project Manager shall revise and/or correct and resubmit, identifying changes.
- Inspect completed work, including that of subcontractors, prior to final inspection by the Director's Representative and shipment to the site. Ensure that all elements of the project are complete and ready for the final inspection. The Project Manager shall notify the Director's Representative prior to the inspection if any elements will not be ready for final inspection as scheduled.
- Ensure that all work is delivered and installed as scheduled. In the event that the Director's Representative reports problems during or after shipment, delivery, and/or installation, the Project Manager shall:
 - Determine the nature of the reported problem, damage, or production error and provide a proposal for resolution to the Director's Representative for review and approval; and
 - Ensure that approved corrections or repairs are made in a satisfactory manner within the time scheduled by the Director's Representative.
- Compile, prepare, and forward a closeout package to the Director's Representative.

6.4 Meetings and Inspections

The Contractor's Project Manager shall meet with the Director's Representative and the MPJAAC as specified below. After all scheduled meetings, the Project Manager shall prepare and provide written documentation to the Director's Representative enumerating all issues discussed and decisions made relative to the project.

6.4.1 *Kickoff Meeting*

After contract award, the Contractor must schedule and attend a kickoff meeting within ten (10) business days of receipt of approved contract. This kickoff meeting will be held in a mutually agreeable format (e.g. WebEx, in person, etc.) and on a mutually agreeable date. At the kickoff meeting, the contractor's designated Project Manager must be present along with any additional staff who will be fulfilling critical project roles (e.g., the artist, fabricator and installer). Contractor must present, at a minimum, a proposed design/fabrication/installation schedule, a list of long-lead items and materials for the project, and descriptions of each staff member's roles within the scope of the project.

6.4.2 *Progress Meetings and Inspections*

The Director's Representative will schedule one progress meeting to coincide with project work inspection at the contractor's facility. The minimum agenda for the progress meeting includes the following:

- Inspection of work in progress and completed work;
- Identification of problem areas and discussion of proposed solutions;
- Review of schedule;
- Discussion of planned progress during succeeding work period; and
- Discussion of work standards and practices to maintain quality.

6.4.3 *MPJAAC Meetings*

Artist/Project Team will meet with the MPJAAC to present the artwork during Concept and Development Phases. The number of meetings will not exceed three (3). The Project Team or Artist should be prepared to update the Committee on the progress of the Gateway design and production using photographs, sketches, videos and samples of the medium being used for the work. The MPJAAC meeting will be conducted virtually; Project Team/Project Manager should be prepared to share design using digital visuals.

6.4.4 *Brooklyn Community Board 1/Public Meetings*

OPRHP will present the project to the Brooklyn Community Board 1. The number of meetings will not exceed three (3). The artist is required to prepare a presentation, attend the meetings to present the Gateway design, and respond to questions.

6.4.5 *Pre-Installation Meeting*

The Director's Representative will meet with the Project Manager, Installation Team, and others of the contractor's staff, at the contractor's facility or via teleconference, prior to shipping and installation of the Gateway.

6.4.6 *Site Visits*

The Project Manager shall travel to Marsha P. Johnson State Park to review existing conditions prior to fabrication of the Gateway. The Project Manager shall make additional trips to the site as required in order to review conditions that have changed or to examine conditions not viewed previously. At a minimum, the Project Manager shall perform the following:

- Assess existing conditions for onsite work. Take detailed measurements of the space to ensure proper fit of all design elements.
- Assess existing conditions which could impact the installation of the Gateway, including: unloading areas, clearances, curbs, stairs, available areas for setup of power tool work stations, offsite facilities for disposal of debris, parking, and local availability of food, gas, hardware, and other supplies and services.

- Meet with OPRHP's on-call Landscape Architecture Consultant to collaborate on requirements for site modification, accessibility and building code compliance and installation of Gateway.

6.4.7 Installation

The Project Manager will travel to the site to oversee installation of the Gateway at the site by the Installation Team, and to submit the Final Maintenance Manuals to OPRHP.

6.5 Fabrication Drawings

The Project Manager will provide drawings to the Director's Representative for review and approval detailing proposed fabrication of all structures and will provide drawings documenting fabrication of the completed Gateway, including illustrations describing operational and maintenance procedures.

6.6 Contractor Responsibilities

The awarded Contractor will be responsible for the fabrication and installation of the Gateway, meeting NYS Building Code and Americans with Disabilities Act (ADA) Requirements, including but not limited to the following:

- Prepare production schedule based on the desired start & completion dates for review and approval by OPRHP.
- Create and provide shop drawings of Gateway structure and details.
- Consult with OPRHP's on-call Landscape Architecture consultant to design necessary modifications to site to enable installation and functioning of Gateway, as well as confirming compliance with Building Code and other permitting and ADA requirements.
- Provide all submittals, including product data, shop drawings, structural calculations, samples and warranties to the Directors Representative.
- Fabricate Gateway, including management of any fabrication sub-contractors, if applicable.
- Install Gateway.
- Close out the project, including providing maintenance manuals and training on upkeep of the Gateway.

6.7 Quality Assurance

6.7.1 Shop Drawings

Contractor shall provide shop drawings signed and sealed by a qualified Engineer licensed to practice in the jurisdiction of the project.

6.7.2 In-Fabrication Review

Contractor and Director's Representative will visit the Contractor's facility to review the progress and condition of the Work, at mutually agreed upon times.

Contractor will make available for review by Director's Representative documentation of the source and quality of materials used in the fabrication of the Gateway.

Quantity of fabrication facility visits: maximum of three (3).

- Initial visit to occur within 30 days of OPRHP final design approval to review set-up and production progress.
- Two additional visits to monitor the progress and quality of the work.

6.8 Property Rights

OPRHP retains physical ownership of the Gateway. The Contractor and all applicable subcontractors will grant and assign to the State of New York all right, title and interest to the work done under this contract.

6.9 Contractor Documentation

After contract award, the awarded contractor will be responsible for submitting within (10) business days a schedule of submittals, arranged in chronological order by dates required by project schedule. Submittals for the Gateway project should include, but not be limited to sketches, renderings, shop drawings, engineering documentation, photographs of fabrication progress, and materials. Schedule must include time required for review, ordering, manufacturing, fabrication, and delivery when establishing dates.

Contractor must also include additional time for making corrections or revisions to submittals noted by the Director's Representative and additional time for handling and reviewing submittals required by those corrections.

- **Initial Review:** Allow OPRHP seven (7) calendar days for initial review of each submittal. Allow additional time if coordination with subsequent submittals is required. Construction Manager will advise Contractor when a submittal being processed must be delayed for coordination.
- **Intermediate Review:** If intermediate submittal is necessary, process it in same manner as initial submittal.
- **Resubmittal Review:** Allow OPRHP seven (7) calendar days for review of each resubmittal.

6.10 Contractor Site Management

Contractor shall be responsible for the following:

- Restore existing features that required removal, replacement, or adjustment to perform the Work, in place or provide temporary measures to ensure safety and security, by the end of each workday, unless otherwise authorized in writing by the Director's Representative. These features include, but are not limited to gates, fencing and security systems.
- Remove all tools and materials from public areas when the work areas are not attended by employees and at the end of each workday. Store tools in a locked toolbox, cabinet, or shed.
- Clean Project site and work areas daily, including common areas. Enforce requirements strictly. Dispose of materials lawfully.
- Containerize hazardous and unsanitary waste materials separately from other waste. Mark containers appropriately and dispose of legally, according to regulations.
- Clean areas where work is in progress to the level of cleanliness necessary for proper execution of the Work.
- Take field measurements to fit work to actual construction. If it is not possible or practical to take field measurements before fabrication, provide adequate installation tolerances and trim to fit.
- Coordinate installation of work with other project construction.
- Do not begin installation until potentially damaging conditions are corrected in the installation area.

6.11 Instruction

Before leaving site, the Contractor will instruct designated facility personnel designated by the Director's Representative in the operation and maintenance of all elements and provide Director's Representative with maintenance information for all elements.

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7. Contract Clauses and Requirements

With the submission of a response to this Request for Proposals, the Bidder agrees to all contract conditions outlined in this Section except that Bidders may propose changes as allowable in Appendix B, clause 6, Extraneous Terms.

7.1 RFP Order of Precedence

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:

1. Appendix A: Standard Clauses for New York State Contracts
2. Appendix B: General Specifications for OPRHP Contracts
3. RFP and Addenda, including any modifications by OPRHP and by official OPRHP's responses to questions

7.2 Appendix A – Standard Clauses for New York State Contract

The terms of Appendix A, Standard Clauses for New York State Contracts, attached hereto, are hereby incorporated into this RFP and any resulting contract. The Contractor is required to adhere to all clauses.

7.3 Appendix B – General Specifications for OPRHP Contracts

The terms of Appendix B, General Specifications for OPRHP Contracts, attached hereto, are hereby incorporated into this RFP.

7.4 Appendix D – Bid Protest Procedures

OPRHP protest procedures are set forth in *Appendix D, Bid Protest Procedures*.

7.5 Appendix E – Consultant Disclosure Reporting

Contractor consultant disclosure reporting requirements are set forth in *Appendix E, OSC Consultant Disclosure Reporting Requirements*.

Chapter 10 of the Laws of 2006 amended State Finance Law §§8 and 163 by instituting new reporting requirements in contracts for consultant services. As a result of this amendment to the law, State contractors are required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked, and the amount paid to the contractor by the State as compensation for work performed by those employees. Chapter 10 of the Laws of 2006 expands the definition of contracts for consulting services to include any contract entered into by a State agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

In order to comply with these requirements, the Contractor is required to complete the State Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term ("Form A"). The completed form must include information for all employees providing services under the Contract, whether employed by the Contractor or a subcontractor.

Additionally, the Contractor is required to submit annual employment reports to OPRHP, Office of the State Comptroller, and Department of Civil Service. This reporting will be accomplished through the State Consultant Services Contractor's Annual Employment Report ("Form B"). Form B must be submitted each year the contract is in effect and will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 - March 31).

Information regarding Consultant Disclosure Legislation, including where Form B must be submitted, can be obtained on the website of the Office of the State Comptroller at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm>.

7.6 Appendix F – Insurance Requirements

OPRHP insurance requirements are set forth in *Appendix F, Insurance Requirements*.

7.7 Equal Employment Opportunities

7.7.1 General

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. In performing the Contract, the Contractor shall:

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.

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.

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 – Equal Employment Opportunity Policy Statement).

The Contractor's EEO policy statement shall include the following language:

- 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.
- 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.
- 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.
- 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.

7.7.2 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.

7.7.3 Workforce Utilization Report

- 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 quarterly basis during the term of the Contract.
- Separate forms shall be completed by the Contractor and any subcontractors.
- 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.

7.7.4 Compliance Law And All Other Statutory Provisions

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.

7.8 Procedures for Amendments

See *Appendix B, Section 31, Modification of Contract Terms*.

Any request by the contractor to change or amend any part of the contract shall be made, in writing, to OPRHP and may be subject to approval by the Office of the State Comptroller and/or the Office of the Attorney General.

7.9 Conflict of Interest

7.9.1 Organizational Conflict Of Interest

To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to OPRHP.

1. An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for OPRHP.
2. The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to OPRHP. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with OPRHP, to avoid, mitigate, or minimize the actual or potential conflict.
3. To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

7.9.2 Personal Conflict Of Interest

The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

- A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify OPRHP immediately of any actual or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. OPRHP will notify the Contractor of the appropriate action to be taken.
- The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise OPRHP which will advise the Contractor of the appropriate action to be taken.
- Unless waived by OPRHP, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to OPRHP. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by OPRHP. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.
- In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by OPRHP or first generated during contract performance, of a sensitive nature which should not be released without OPRHP's approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to OPRHP, Department of Health or the New York State Department of Law, any information or data provided by OPRHP or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of OPRHP. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to OPRHP so that OPRHP can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

7.9.3 Remedies

- OPRHP may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to OPRHP, OPRHP may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions of this contract regarding termination.
- The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package
- The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by OPRHP.

7.10 Litigation Support

If OPRHP becomes involved in litigation related to the subject matter of the resulting contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation may be negotiated.

7.11 Interpretation & Disputes

Any dispute arising from this RFP, or from any resulting contract, shall be submitted in writing within seven (7) business days after the issuance of the award recommendation letter, to the Designated Contact provided on the cover of this RFP.

7.12 Relationship as Independent Contractor

The relationship of the Contractor to OPRHP is that of an independent contractor, and the Contractor, 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 OPRHP by reason of this agreement, and that no employee of the Contractor, by reason of this agreement, will claim to be an officer or employee of OPRHP or make any claim, demand, or application for any benefit, right, or privilege applicable to employees of the State of New York.

7.13 Payment Requirements

The awarded Contractor will be compensated as described in "Attachment 1 - Financial Proposal."

Payment requests shall be made on forms mutually agreed upon by the Contractor and the Agency and shall include appropriate back-up documentation to support the request for payment. All payments will be made in accordance with Article XI-A of the State Finance Law.

All requests for payment must include an explanation and breakdown showing determination of all charges.

The Agency pays charges after the services and or/products are provided and does not pay in advance for these services and/or products. Fees paid for which it is subsequently determined that the Contractor was not entitled must be reimbursed to the Agency, and the Agency may do so by subtracting such fees from any payments that later become due to the Contractor under the Contract.

Payment shall be made as follows:

1. The Contractor shall submit to OPRHP for its approval, and for the audit and warrant of the State Comptroller, a proper invoice, receipts, and documents that verify the Contractor's expenditures as directed by OPRHP. The Contractor shall reference the contract number on the invoice.
2. Invoices should be submitted for services rendered and for acceptance by OPRHP to the following designated payment office:

Elizabeth.Martin@parks.ny.gov

3. Within fifteen (15) calendar days of receiving the invoice, OPRHP shall notify the Contractor of any mistakes on the invoice or if additional documents must be submitted. Once the Contractor has submitted an invoice to OPRHP, OPRHP will review and audit the invoice and submit it for approval and payment in accordance with the requirements of the State Finance Law.
4. Contractor shall provide complete and accurate billing invoices to OPRHP in order to receive payment. Billing invoices submitted to OPRHP must contain all information and supporting documentation required by the Contract, OPRHP, and the State Comptroller. Payment for invoices submitted by the Contractor shall be sent to the address listed on the W-9 submitted by the Contractor with the returned, signed contract. In order to expedite payment, the Contractor may register for Electronic Funds Transfer by updating its registration with the Vendor Management Unit in the Office of the State Comptroller. Vendor support information is available at <http://www.sfs.ny.gov> as well as helpdesk@sfs.ny.gov and toll-free at (855) 233-8363.

5. Contractor shall agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Agency, in the Agency's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at HelpDesk@sfs.ny.gov, or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Agency has expressly authorized payment by paper check as set forth above.

7.14 Prime Contractor/Subcontractor

The successful Bidder shall act as prime Contractor under the Contract and shall be held solely responsible for Contractor performance by the Bidder, its partners, officers, employees, sub-contractors and agents. The Bidder shall be responsible for payment of all Subcontractors and suppliers, including all third-party service providers contracted by or through the Bidder in performance of the Contract.

Where Services are supplied by or through the Contractor under the Contract, it is mandatory for the Contractor to assume full integration responsibility for delivery, installation, maintenance, performance and support services for such items, as applicable. The Contractor shall also be responsible for payment of any license fees, rents or other monies due third parties for Services or materials provided under the Contract.

Proposed subcontractors must be identified at the time of bid submission and are subject to the approval of OPRHP.

7.15 Diesel

Contractor certifies and warrants that all heavy-duty vehicles, as defined in New York State Environmental Conservation Law (ECL) section 19-0323, to be used under this Contract will comply with the specifications and provisions of ECL section 19-0323, as well as any regulations promulgated pursuant thereto, including NYCRR Part 248; which, requires the use of Best Available Retrofit Technology (BART) and Ultra-Low Sulfur Diesel (ULSD) fuel.

7.16 Advertising

The Contractor agrees not to use OPRHP's names, logos, images, or any Data or results arising from this procurement process or Contract as a part of any commercial advertising without prior written approval OPRHP.

7.17 Termination Provisions

In addition to the provisions for termination set forth in Appendix B, Section 51, Termination, the following apply:

7.17.1 Lobby Law Termination Provision

OPRHP reserves the right to terminate this contract in the event it is found that this certification filed by the Contractor, in accordance with NYS Finance Law 139-k, was intentionally false or incomplete. Upon such finding, OPRHP may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this contract.

7.17.2 Termination Pursuant to Tax Law §5-a

the Agency reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with §5-a of the Tax Law was not timely filed during the term of the Contract, or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Agency may exercise its termination right by providing written notification to the Contractor.

7.17.3 Termination Pursuant to Vendor Responsibility (for Non-Responsibility):

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

7.18 Vendor Responsibility Provisions

The State must conduct business only with responsible entities.

7.18.1 General Responsibility

The contractor shall, at all times during the Contract term, remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, 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.

7.18.2 Suspension of Work (for Non-Responsibility)

The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

7.19 Prevailing Wages / Payroll Certification

The work under this contract has been determined to be a public work pursuant to Article 8 of the New York Labor Law. That law requires prevailing wages to be paid. A willful violation of such may result in civil penalties and debarment from public contracting in the State of New York.

The applicable Prevailing Wage Rate Schedule for this bid and subsequently awarded contract is:

Prevailing Wage Schedule	
PRC Number	2022001453
Schedule Period	July 2021 – June 2022
Link	https://apps.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1527100

OPRHP reserves the right to request that payroll certification reports be submitted with each invoice. Failure to provide this requested documentation shall result in non-payment of invoices. Additional requirements can be found in the Prevailing Wage Rate Schedule.

7.20 Contractor's Compensatory Liability

If the Contractor fails to complete any of the specified services within the timeframe required, OPRHP reserves the right to have such work completed either by another company or with in-house staff. In any such event, the Contractor shall be liable to reimburse OPRHP for all costs incurred to complete the work. OPRHP further reserves the right to collect such reimbursement from any outstanding payments due to the Contractor.

7.21 Warranties

Contractor warrants that the services acquired under the resultant contract will be provided in a professional and workmanlike manner in accordance with industry standards.

All materials and workmanship provided under the resultant contract shall be warranted for a minimum of two (2) years. Where the Contractor, Product manufacturer, or service provider generally offers additional or more advantageous warranties, such additional or more advantageous warranty shall apply. All warranties contained in the resultant contract shall survive the termination of the resultant contract.

7.22 Security Procedures

Please note OPRHP locations may have on-site security policies that must be followed. The Contractor will work with OPRHP to obtain necessary clearances. The Contractor may be required to provide information such as, but not limited to, the company name, the employee's name (as it appears on valid driver license or photo identification), vehicle make, model and license plate, etc. to OPRHP.

7.23 Damages

It is the Contractor's responsibility to replace or repair any property lost or damaged in the course of performing the contract through no fault of OPRHP. If, during the term of the contract, loss or damage to property occurs through no fault of OPRHP, OPRHP has the right to withhold monies from the Contractor equivalent to the costs of the loss or damage sustained until the property is returned by the winning bidder to the condition immediately preceding the loss or damage, either by repair or replacement. OPRHP will not be liable for any deductible through any claim and retains the right to inspect and reject insufficient repairs.

7.24 Contract Staffing Requirements

The awarded bidder shall provide capable personnel to effectuate the business relationship, discovery, implementation, and ongoing services of the resultant contract. Any changes to the Contractor's project team must be approved by OPRHP. The contractor shall provide for the continuity of the responsibilities of any position that must be reassigned or replaced with a qualified replacement made available within ten (10) business days, subject to the review and approval by OPRHP. Should the need arise to make substitutions for any member of the project team, the Contractor will promptly provide resumes of comparably experienced staff for OPRHP's review and approval.

7.25 Vehicles

Vehicles to be used in the performance of this service will be clearly marked as property of the Contractor, and will travel to and from the service areas strictly in accordance with the directions and/or maps furnished by park staff.

7.26 Contingency Budget

This RFP includes a Contingency Budget established as five (5) percent of the Total Price Bid. The Contingency Budget may only be used for modifications and/or any unforeseen circumstances, that if not executed, would impair the ability for the contract requirements to be met. The contingency budget shall not be used to expand the scope of any deliverables, and/or the contractual agreement.

OPRHP makes no guarantees that the contingency budget will be used. Modifications may be identified by either OPRHP or the Contractor; however, this contingency budget may not be utilized by the Contractor to supplement the original price(s) bid to meet the minimum requirements of the awarded contract. Modifications must be documented in writing and will include all the following:

- Description of Proposed Modification
- Reason for Modification

- Impact of Not Making the Modification
- Proposed Cost, including Contractor's Supporting Cost Documentation and Documentation of Reasonableness of Cost

Any modification must be approved in writing by OPRHP and the Contractor. The Contractor shall be responsible for implementing OPRHP approved modifications throughout the contract term. Any modifications not covered under this section may be subject to OSC prior approval.

7.27 Schedule

The Contractor shall deliver to OPRHP's Designated Representative and receive approval prior to commencing work, a detailed schedule concerning his or her operations upon the Project on a form acceptable to OPRHP, which shall indicate completion within the specified time frame, to the satisfaction of the Director's Representative.

During the term of this Agreement, the Director's Representative may require any Contractor to modify any schedules which he or she has submitted either before or after they are approved so that:

- The Work or the Project may be properly progressed.
- Changes in the Work or the Work of other Contractors are properly reflected in these schedules.

7.28 Contractor's Supervision

The Contractor shall designate a competent supervisor for the Work to represent the Contractor at the site at all times with authority to act for the Contractor ("Contractor's Representative"). The Contractor shall notify the Director's Representative in writing of the identity of the Contractor's Representative prior to the commencement of the Work. All directions given the Contractor's Representative shall be as binding as if given to the Contractor.

Should the Director's Representative deem any employee of the Contractor incompetent or negligent or for any cause unfit for his or her duty, the Contractor shall dismiss such employee and he or she shall not again be employed on the Work.

The Contractor's use of any Subcontractor shall not diminish the Contractor's obligations to complete the Work in accordance with the Contract. The Contractor shall control and coordinate the Work of its Subcontractors.

The Contractor shall be responsible for informing its Subcontractors and suppliers of all the terms, conditions and requirements of the Contract Documents including, but not limited to the RFP Exhibits and Appendices.

7.29 Use of Premises

If the Premises are occupied, the Contractor, the Contractor's Subcontractors and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the Premises and shall perform the Work in such a manner as not to unreasonably interrupt or interfere with the conduct of business.

The Contractor, the Contractor's Subcontractors and their employees shall not have access to or be admitted into any area of the Premises outside the Site except with the written permission of the Director's Representative.

7.30 Inspection and Material Acceptance

The Director's Representative will inspect and test the Work at reasonable times at the Site, unless the Director's Representative determines to make an inspection or test at the place of production, manufacture or shipment. Such inspection or test shall be conclusive as to whether the material and workmanship inspected or tested conforms to the requirements of the Contract. Such inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance. Conducting inspections or tests shall not diminish the Director's Representative the right to reject the completed Work.

The Contractor shall, without charge, promptly correct any Work the Director's Representative determines does not conform to the Contract Documents unless in the public interest the Director's Representative consents to

accept such Work with an appropriate adjustment in the Contract price. The Contractor shall promptly remove rejected material from the Premises.

If the Contractor does not promptly correct rejected Work including the Work of another contractor or Subcontractor destroyed or damaged by removal, replacement, or correction, the Director's Representative may (1) correct such Work and charge the cost thereof to the Contractor; or (2) terminate the Contract in accordance with Appendix B, Clause 15, Termination.

The Contractor shall furnish promptly, without additional charge, all facilities, labor, material and equipment reasonably needed to perform in a safe and convenient manner such inspections and tests, as the Director's Representative requires.

The Contractor shall keep the Director's Representative informed of the progress of the Work and particularly when the Contractor intends to cover Work not yet inspected or tested. All inspection and tests by the Director's Representative shall be performed in such manner as not to unreasonably delay the Work. The Contractor shall be charged with any additional cost of inspection when the Work is not ready at the time specified by the Director's Representative for inspection.

Should the Director's Representative determine at any time before acceptance of the entire Work to examine Work already completed by removing, uncovering or testing the same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, materials and equipment to conduct such inspection, examination or test. If such Work is found to be defective or nonconforming in any material respect, the Contractor shall defray all the expenses of such examination and satisfactory reconstruction. If the Work is found to meet the requirements of the Contract Documents, the Director's Representative shall compensate the Contractor for additional services involved in such examination and reconstruction. If completion of the Work has been delayed, the contractor may request a suitable extension of time.

No previous inspection or certificates of payment shall relieve the Contractor from the obligation to perform the Work in accordance with the Contract Documents.

The Contractor shall remedy all defects, and pay for the cost of any damage to other Work resulting therefrom, notice of which shall have been provided within a period of one year from the Substantial Completion Date.

7.31 Responsibility for Damage and Indemnification

The Contractor shall faithfully perform and complete all of the work required by the Contract, and has full responsibility for the following risks:

- Loss or damage, direct or indirect; to the Work including the building or structure in which the Work is being performed, or any other construction in progress, whether being performed by any other contractor or by the Office, or to any plant, equipment, tools, materials or property furnished, used, installed, or received by the Director's Representative under this Contract or any other contract. The Contractor shall bear all such risk of loss or damage, until all of the Work covered by the Contract has been finally accepted. In the event of such loss or damage, the Contractor shall forthwith repair, replace, and make good any such loss or damage without additional costs.
- Injury to persons (including death resulting therefrom), or damage to property caused by an occurrence arising out of the performance of this Contract for which the Contractor may be liable under any theory of law.

Contractor assumes all risks in the performance of all activities authorized by this Contract and agrees to defend, indemnify and hold harmless the People of the State of New York, the Office, their officers, employees, agents and assigns (hereinafter, collectively the "Indemnitees") from and against any and all claims, suits, losses, damage or injury to persons or property of whatsoever kind and nature, whether direct or indirect, caused or contributed to by Contractor and Contractor's sub-contractors, vendors, material suppliers, employees, agents, invitees and guests, and/or arising out of Contractor's conduct and/or Contractor's performance pursuant to this Contract, provided however that Contractor's indemnity shall not extend to any claims, liabilities, losses, damages, expenses, accidents or occurrences arising out of, relating to, or in connection with: (i) the negligence of any Indemnatee; or (ii) the Indemnitees' ordinary upkeep and maintenance of the Park and its grounds and facilities outside of the

Premises. Contractor shall defend at its sole cost and expense any action commenced for the purpose of asserting any claim of whatsoever character arising out of this Contract. Contractor's responsibility under this section shall not be limited to the required or available insurance coverage.

For all purposes hereunder, the Office shall not be liable for any injury, loss or damage to Contractor, its agents, servants, sub-contractors, vendors, invitees and guests, or to any person happening on, in or about the Premises or its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Contractor or to any other person, that may be caused by fire, theft, breakage, vandalism or any other use or misuse or abuse of any portion of the Premises, including but not limited to any common areas, sidewalks, roads, or water in or adjacent to the Premises, or that may arise from any other cause whatsoever, unless, and only to the extent of the proportion of which any such injury, loss or damage is determined to be caused by the negligence of the Office.

The Office shall not be liable to Contractor, its agents, contractors, vendors, invitees and guests, or any other person, for any failure of water supply, gas supply or electric current, nor for any injury or damage to any property of Contractor or any other person or to the Premises, caused by or resulting from spill or release of gasoline, oil, steam, gas, or electricity, or caused by leakage of any substance from pipes, appliances, sewers or plumbing works, or caused by hurricane, flood, tornado, wind or similar storm or disturbance, or caused by water, rain or snow that may leak or flow from the street, sewers or subsurface areas, or from any part of the Premises or any body of water within or adjacent to the Premises, or caused by any public or quasi-public work, unless, and only to the extent of the proportion by which any such injury, loss or damage is determined to be caused by the negligence of the Office.

The Office may retain such monies from the amount due the Contractor as may be necessary to satisfy any claim for damages recovered against the State. The Contractor's obligations under this paragraph shall not be deemed waived by the failure of the Office to retain the whole or any part of such monies due the Contractor, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Contractor, Subcontractor or the State.

The Contractor agrees to make no claim for damages in the performance of the Contract occasioned by any act or omission to act of the Office or its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the Work as provided herein.

The Contractor shall not create or cause to be created any lien, encumbrance or charge upon the Premises, the Office or any part thereof. If any mechanics, laborers or similar statutory or common law lien (including tax liens, provided that the underlying tax is an obligation of Contractor by law or by a provision of this Contract) caused or created by Contractor is filed against the Premises, or if any public improvement lien created or caused to be created by Contractor is filed against any assets of, or funds appropriated by the Office, then Contractor shall, within forty-five (45) days after receipt of notice of the lien, cause it to be vacated or discharged of record by payment, deposit, bond, court order, or otherwise. However, Contractor shall not be required to discharge any such lien if Contractor shall have: (i) furnished the Office with, at Contractor's option, a cash deposit, bond, letter of credit (from an institutional lender in a form satisfactory to the Office), or other security reasonably satisfactory to the Office in an amount sufficient to discharge the lien and all applicable interest, penalties and/or costs; and (ii) brought an appropriate legal proceeding to discharge the lien and is prosecuting such proceeding with diligence and continuity; except that if despite Contractor's efforts to discharge the lien the Office reasonably believes the lien is about to be foreclosed and so notifies Contractor, Contractor shall immediately cause such lien to be discharged of record or the Office may use the security furnished by Contractor in order to discharge the lien.

7.32 Liquidated Damages

The work represented in this Contract is part of a comprehensive program, undertaken by the Office on behalf of the People of the State of New York in the belief that the expenditures are justified by the benefits which accrue to the public. If the public does not get the full and complete use of facilities for which the expenditures are made, a resulting financial loss cannot be exactly computed. Accordingly, a deduction as indicated below in the Schedule of Liquidated Damages will be made from the Contract price for every calendar day after the contractor milestone and/or project completion dates specified in the Contract Documents for which the Contract and/or relevant milestone are not completed in every detail. Said sum, because of the difficulty in determining

accurately the loss to the State, is hereby fixed and agreed as the Liquidated Damages that the State will suffer by reason of such delay, and not as a penalty; such Liquidated Damages, as defined for this Project, are understood and agreed to be the actual cost of all extra inspection, and salaries of contingent force entailed upon the State as a result of such delay. The Liquidated Damages set forth herein apply only to a delay in completion of the Project and in no way are such damages to be interpreted as being the Office's exclusive remedy under the Contract or in Law.

SCHEDULE OF LIQUIDATED DAMAGES		
Original Total Contract Bid Price		Liquidated Damages per Calendar Day
From More Than	To and Including	
\$0	\$100,000	\$500
\$100,000	\$500,000	\$1,000
\$500,000	\$1,000,000	\$1,500
\$1,000,000	\$2,000,000	\$1,750
\$2,000,000	\$5,000,000	\$2,000
\$5,000,000	\$10,000,000	\$2,500
\$10,000,000	\$20,000,000	\$4,000
\$20,000,000		\$7,000

7.33 Ownership of Documents and License for Design

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.

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 re-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, without obtaining consent from the Contractor and without additional payment to the Contractor, 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.

In the event the licensed materials are used in another project or location other than that of the original Work, Parks agrees that the Contractor provides no warranty or guarantee in the event any design changes are made to the licensed materials at the direction of Parks by any party other than the Contractor. Parks acknowledges that the licensed materials produced by Contractor pursuant to this Contract may be designed specific to a location and may require independent verification that the reuse of a design is appropriate under the circumstances.

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the

agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The

contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

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

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

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

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

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

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

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

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

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

APPENDIX B

GENERAL SPECIFICATIONS FOR OPRHP CONTRACTS

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GENERAL

1. APPLICABILITY The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to all procurements and resulting procurement contracts let by the New York State Office of Parks, Recreation and Historic Preservation (“OPRHP” or the “Agency”), or let by any other Issuing Entity where incorporated by reference in its Bid Documents. Appendix B shall govern such procurements or contracts unless expressly modified or amended by the terms of a Bid Specification, Solicitation, or a negotiated Contract/Clarification document, if any. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. GOVERNING LAW This procurement, the resulting Contract and/or any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the Contract shall be heard in a court of competent jurisdiction in the State of New York.

3. APPENDIX A The terms of Appendix A (*Standard Clauses for New York State Contracts*) are expressly incorporated herein.

4. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

5. DEFINITIONS Terms used herein shall have the following meanings:

a. AFFILIATE Any individual or other legal entity (including, but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than 50% of the ownership; or (b) any individual or other legal entity which owns more than 50% of the ownership of the Bidder. In addition, if a Bidder owns less than 50% of the ownership of another legal entity, but directs or has the right to direct such entity’s daily operations, then that entity shall be considered an Affiliate hereunder.

b. AGENCY The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York, including the Office of Parks, Recreation and Historic Preservation (“OPRHP”).

c. ATTORNEY GENERAL Attorney General of the State of New York.

d. BID A response to the Solicitation submitted by a Bidder to provide Products.

e. BIDDER Any person or entity who submits a response to the Solicitation. At the time that a Bidder executes a Contract with the State, the Bidder shall become a “Contractor.” See also “Contractor.”

f. BID SPECIFICATIONS A written description drafted by OPRHP setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a Product, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where this Appendix B is incorporated in negotiated Contracts that have not been competitively solicited, the term “Bid Specifications” shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

g. COMMISSIONER The Commissioner of the Agency.

h. COMPTROLLER Comptroller of the State of New York.

i. CONTRACT The writings that contain the agreement of the Agency and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

1. Agency Specific Contracts Contracts where the written description for a Product or a particular scope of work is described and defined to meet the needs of one or more Agencies.

2. Centralized Contracts Single- or multiple-award Contracts where the written description for a Product or general scope of work is described and defined by OGS to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction’s contract or on a sole source, single source, emergency, or competitive basis. Once established, procurements may be made from the selected Contractors without further competition or Mini-Bid unless otherwise required by the Contract.

3. Back-Drop Contracts Multiple-award Centralized Contracts where OGS provides a written description for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Solicitation. Selection of a Contractor from among Back-Drop contract holders for an actual Product, project or particular scope of work may be subsequently made as set forth in the Contract.

4. Piggyback Contract A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or group of states that is adopted and extended for use by OGS in accordance with the requirements of the State Finance Law.

5. Contract Letter A letter to the successful Bidder indicating acceptance of its Bid in response to a Solicitation. Unless otherwise specified, the issuance of a letter of acceptance forms a Contract but is not an order for Product, and the Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized Users.

j. CONTRACT AWARD NOTIFICATION

An announcement to Bidders that a Contract has been recommended for award prior to any negotiation and approval by the Office of the New York State Comptroller.

k. CONTRACTOR Any successful Bidder to whom a Contract has been awarded by the Agency.

l. DOCUMENTATION The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, that are necessary to enable the Agency to properly test, install, operate and enjoy full use of the Product.

m. EMERGENCY An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

n. ENTERPRISE The total business operations in the United States of OPRHP without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of the OPRHP.

o. ENTERPRISE LICENSE A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

p. ERROR CORRECTIONS Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

q. GROUP A classification of a Product.

r. INVITATION FOR BIDS (IFB) A type of Solicitation that is most typically used for procurements where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder or Bidders.

s. ISSUING ENTITY The Agency who issued the Solicitation for a procurement.

t. LATE BID A bid not received in the location established in the Bid Specifications on or before the date and time of the submission deadline specified in the Solicitation.

u. LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes Error Corrections, upgrades, enhancements or New Licensed Software Releases, and any deliverables due under a technical support/maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

v. LICENSEE The Agency who acquires Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the Agency who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

w. LICENSE EFFECTIVE DATE The date Product is delivered to the Agency. Where a License involves Licensee's right to copy a

previously licensed and delivered master copy of a program, the License Effective Date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

x. LICENSOR A Contractor who transfers rights in proprietary Product to in accordance with the rights and obligations specified in the Contract.

y. NEW LICENSED SOFTWARE RELEASES (Licensed Software Revisions) Any commercially released revisions to the licensed version of Licensed Software as may be generally offered and available to the Agency that is currently on technical support/maintenance. New Licensed Software Releases involve a substantial revision of functionality from a previously released version of the Licensed Software. Updates are provided when available, and Contractor is under no obligation to develop any future Product or functionality.

z. OGS The New York State Office of General Services.

aa. PROCUREMENT RECORD Documentation by the Issuing Entity of the decisions made and approach taken during the procurement process, including but not limited to a copy of the Solicitation, any modification and justification for same, and any documentation considered necessary for contract review purposes by the Office of the New York State Comptroller.

bb. PRODUCTS Items or deliverables under any Solicitation or Contract and may include commodities, services and/or technology.

cc. PROPRIETARY Owned by a private individual, corporation or governmental entity under copyright, trademark, trade secret or patent laws.

dd. PURCHASE ORDER The Agency's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Purchasing Card, electronic Purchase Order, or other authorized instrument).

ee. REQUEST FOR PROPOSALS (RFP) A type of Solicitation which is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law.

ff. REQUEST FOR QUOTATION (RFQ) A type of Solicitation that can be used when a formal Bid opening is not required (e.g., discretionary, sole source, single source or emergency purchases).

gg. RESPONSIBLE BIDDER A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Agency. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

hh. RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by the Agency.

ii. SINGLE SOURCE A procurement where two or more Bidders can supply the required Product, and the Agency may award the contract to one Bidder over the other.

jj. SITE The location (street address) where Product will be delivered or executed.

kk. SOLE SOURCE A procurement where only one Bidder is capable of supplying the required Product.

ll. SOLICITATION Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. The procurement may be undertaken on a competitive or non-competitive basis. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to Appendix A (Standard Clauses for NYS Contracts), Appendix B (General Specifications for OPRHP Contracts), and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term “Solicitation” shall be deemed to refer to all the terms and conditions identified by the State.

mm. SOURCE CODE The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine object code.

nn. STATE State of New York.

oo. STATE AGENCY OR AGENCIES The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York, including OPRHP.

pp. SUBCONTRACTOR Any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

qq. TERMS OF LICENSE The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

rr. VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

BID SUBMISSION

6. INTERNATIONAL BIDDING All Bids, including all information and Product required by the Solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$US). Any Bids submitted which do not meet the above criteria will be rejected.

7. BID OPENING Bids may, as applicable, be opened publicly. The Agency reserves the right at any time to postpone or cancel a scheduled Bid opening.

8. LATE BIDS REJECTED Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Solicitation are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of the Agency. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with the Solicitation. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Agency, shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance, shall not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of the Agency.

9. BID CONTENTS Bids must be complete and legible. All bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Solicitation. Changes may be ignored by the Agency or may be grounds for rejection of the bid. Changes, corrections and/or use of white-out in the bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their bids before submission, as amendments to bids or requests for withdrawal of bids received by the Agency after the time specified for the bid opening, may not be considered

10. EXTRANEOUS TERMS Bids must conform to the terms set forth in the Solicitation. Extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

Extraneous terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:

- a.** Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form;
- b.** The writing must identify the particular Solicitation requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c.** The Bidder shall enumerate the proposed addition, deletion, counter-offer, deviation, or modification from the Solicitation, and the reasons therefor.

No extraneous terms, whether or not deemed “material,” shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and the Agency expressly accepts each such terms in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of extraneous terms.

11. CONFIDENTIAL/TRADE SECRET MATERIALS

a. CONTRACTOR Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as “confidential” or “proprietary” on its face or in the document header or footer shall not be considered by the Agency to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The State’s receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

b. AGENCY Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or the Agency hereunder or received from another third party, will not be divulged to any third parties without the written consent of the Agency. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Agency, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

12. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS If any portion of work being solicited is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

a. PREVAILING WAGE RATE APPLICABLE TO BIDS A copy of the applicable prevailing wage rate schedule is attached to the Solicitation and may also be obtained by visiting www.labor.ny.gov and typing in the search box: Prevailing Wage Schedule Request. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

b. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such

required prevailing wage adjustments during the Contract term for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.

c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS In compliance with Article 8, Section 220 of the New York State Labor Law:

i. Posting The Contractor must publicly post on the work Site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

ii. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in the State, such records must be kept at the work Site. For building services contracts, such records must be kept at the work Site while work is being performed.

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and Subcontractors on public works Contracts must submit monthly payroll transcripts to the Agency issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.

iv. Day’s Labor No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. “Extraordinary emergency” shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract Site or for the protection of the life and limb of the persons using the Contract Site.

d. ARTICLE 9 BUILDING SERVICES CONTRACTS In compliance with Article 9, Section 230 of the New York State Labor Law:

i. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work Site while work is being performed.

ii. Overtime Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

13. TAXES

a. Unless otherwise specified in the Solicitation, Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

b. Purchases made by the State of New York and the Agency are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

14. EXPENSES PRIOR TO CONTRACT EXECUTION The Agency is not liable for any costs incurred by a Bidder or Contractor in the preparation and production of a Bid, Mini-Bid, cost proposal revision, or for any work performed prior to Contract execution.

15. ADVERTISING RESULTS The prior written approval of the Agency is required in order for results of the Solicitation to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of the Agency relative to the Solicitation or Contract for press or other media releases.

16. PRODUCT REFERENCES

a. **“Or Equal”** In all Solicitations or Bid Specifications, the words “or equal” are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Agency’s decision as to acceptance of the Product as equal shall be final.

b. **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

17. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS Upon the conditions specified in the Solicitation and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Solicitation. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product unless such use is precluded due to health, welfare, safety requirements or by the Solicitation. Where such use is not practical, suitable, or permitted by the Solicitation, Contractor shall deliver new materials in accordance with the “Warranties” set forth below.

Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

18. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS Bids offering Products that are manufactured or produced in public institutions will be rejected.

19. PRICING

a. **Unit Pricing** If required by the Solicitation, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item unless otherwise specified, in the Solicitation. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Agency, such unit pricing is obviously erroneous.

b. **Net Pricing** Unless otherwise required by the Solicitation, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Solicitation.

c. **“No Charge” Bid** When Bids are requested on a number of Products as a Group or lot, a Bidder desiring to Bid “no charge” on a Product in the Group or lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Agency.

d. **Educational Pricing** All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

e. **Third Party Financing** If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract award to agree to the terms and conditions of a “Consent & Acknowledgment Agreement” in a form acceptable to the Agency.

f. **Best Pricing Offer** During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Agency, shall be immediately reduced to the lower price.

g. Specific Price Decreases:

(i) **GSA Changes:** Where net pricing under the Contract is based on an approved GSA schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA schedule pricing decreases during the Contract term; or

(ii) **Commercial Price List Reductions:** Where net pricing under the Contract is based on a discount from Contractor’s list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

(iii) **Special Offers/Promotions Generally:** Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or net pricing otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) **Special Offers/Promotions to the Agency:** Contractor may offer the Agency, under either this Contract or any other contracting vehicle, competitive pricing which is lower than the net pricing set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Solicitation, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order(s) from the Agency without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

h. Cost Proposal Revisions A Contractor may be solicited prior to Contract award to propose the best possible offer for the Product being bid on, in accordance with State Finance Law § 163(9)(c). A cost proposal revision must be a lower price than the initial price.

20. DRAWINGS

a. Drawings Submitted With Bid When the Solicitation requires the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Solicitation and shall, when approved by the Agency, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

b. Drawings Submitted During the Contract Term Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Agency's representative.

c. Accuracy of Drawings Submitted All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of Product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing Product, or carrying out any other requirements of the intended scope of work.

21. SITE INSPECTION Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions that such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly provide the required Product.

22. PURCHASING CARD The State's Purchasing Card program is designed to be an efficient and cost effective way to expedite purchases. The Purchasing Card (also referred to as the Procurement Card) is a credit card that enables the Agency to make authorized purchases directly from a Contractor without processing formal Purchase Orders. Purchasing Cards are issued to selected employees who are authorized to make purchases for the Agency. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

23. SAMPLES

a. Bidder Supplied Samples The Agency reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a Contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of the Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Solicitation or Contract reference.

A sample may be held by the Agency during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period, the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Agency as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

b. Enhanced Samples When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Agency may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

c. Conformance with Samples Submission of a sample (whether or not such sample is tested by, or for, the Agency) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Solicitation. If in the judgment of the Agency the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Solicitation, the Agency may reject the Bid. If an award has been made, the Agency may cancel the Contract at the expense of the Contractor.

d. Testing All samples are subject to tests in the manner and place designated by the Agency, either prior to or after Contract award. Unless otherwise stated in the Solicitation, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.

e. Requests For Samples By the Agency Requests for samples by the Agency require the consent of the Contractor. Where Contractor refuses to furnish a sample, the Agency may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

BID EVALUATION

24. BID EVALUATION The Agency reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if the Agency determines the best interests of the State will be served. The Agency, in its sole discretion, may accept or reject illegible, incomplete or vague Bids and his/her decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be

considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the Bid.

25. TIE BIDS In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Agency may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Agency to award a Contract to one or more of such Bidders shall be final.

26. QUANTITY CHANGES PRIOR TO AWARD The Agency reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Solicitation. In the event such right is exercised, the lowest responsible Bidder meeting the Solicitation requirements will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

27. CLARIFICATION / REVISIONS Prior to award, the Agency reserves the right to seek clarifications on Bids, request revisions to Bids, or to request any information deemed necessary for proper evaluation of Bids from all Bidders deemed to be eligible for contract award. Failure to provide requested information may result in rejection of the Bid.

28. TIMEFRAME FOR OFFERS The Agency reserves the right to make awards within sixty days after the date of the Bid opening or such other period of time as set forth in the Solicitation, during which period, Bids must remain firm and cannot be withdrawn. Where an award is not made within the sixty day period or other time specified as set forth in the Solicitation, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Agency written notice of the withdrawal of its Bid.

TERMS & CONDITIONS

29. CONTRACT CREATION / EXECUTION Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Solicitation, a Contract shall be deemed executed and created with the successful Bidder(s) upon the Agency's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Agency.

30. OFFICIAL USE ONLY/NO PERSONAL USE The Contract is only for official use by the Agency. Use of the Contract for personal or private purposes is strictly prohibited.

31. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by the Agency under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Agency and Contractor.

The Contractor may, however, offer the Agency more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Agency by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Agency than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against the Agency unless authorized by the Agency or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, Purchase Orders or other documents forwarded by the Contractor for payment, notwithstanding the Agency's subsequent acceptance of Product, or that the Agency has subsequently processed such document for approval or payment.

32. SCOPE CHANGES The Agency reserves the right, unilaterally, to require, by written order, changes altering, adding to or deducting from the Contract specifications, such changes to be within the general scope of the Contract. The Agency may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

33. ESTIMATED/SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts, also referred to as indefinite delivery/indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given. Unless otherwise set forth in the Bid Specifications, contracts for services and technology are completely voluntary as to use, and therefore no quantities are guaranteed.

With respect to any specific quantity stated in the Contract, the Agency reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Agency may purchase greater or lesser percentages of Contract quantities should the Agency and Contractor so agree. Such agreement may include an equitable price adjustment.

34. EMERGENCY CONTRACTS In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or the Commissioner of the Agency determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract(s), as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim for lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

35. PURCHASE ORDERS Unless otherwise authorized in writing by the Agency, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Agency. Unless terminated or cancelled pursuant to the authority vested in the Agency, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the Contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to a Contract let by the Agency must bear the appropriate Contract number and, if necessary, required

State approvals. As deemed necessary, the Agency may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Contracts will be placed by the Agency directly with the Contractor and any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Agency.

The Purchase Order shall indicate the address for delivery of the Product. The Agency shall confirm pricing, supported hardware platforms and model availability with Contractor prior to placement of orders. Contractor's order form shall, at a minimum, contain the NYS Product reference number, license type, price, and must separately itemize quantities for software, documentation, and services. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to verify any Purchase Orders placed under the Contract.

36. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Agency and the Contractor. The decision of the Agency as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Agency, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Agency. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Agency's discretion, the Contract.

37. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Contract or by the Agency, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Agency shall govern.

38. SHIPPING/RECEIPT OF PRODUCT

a. Packaging Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Agency unless otherwise specified in the Contract documents.

b. Shipping Charges Unless otherwise stated in the Contract, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Agency. Unless otherwise agreed, items purchased at a price F.O.B. shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Agency's payment of transportation charges. Contractor shall be responsible for ensuring that the bill of lading states "charges prepaid" for all shipments.

c. Receipt of Product The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Agency. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

39. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Agency until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Contract or Purchase Order. Mere acknowledgment by Agency personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Contract may be rejected or accepted on an adjusted price basis, as determined by the Agency.

40. RE-WEIGHING PRODUCT Deliveries are subject to re-weighing at the point of destination by the Agency. If shrinkage occurs which exceeds that normally allowable in the trade, the Agency shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the Agency.

41. PRODUCT SUBSTITUTION In the event a specified Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure clause), a Product deemed in writing by the Agency to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Agency. Unless otherwise specified, any substitution of Product prior to the Agency's written approval may be cause for termination of Contract.

42. REJECTED PRODUCT When Product is rejected, it must be removed by the Contractor from the premises of the Agency within ten calendar days of notification of rejection by the Agency. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Agency shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Agency for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar-day period.

43. INSTALLATION Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the Site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or Site. Work shall be performed to cause the least inconvenience to the Agency and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and

in a neat, unobstructed condition, and everything in satisfactory repair and order.

44. REPAIRED OR REPLACED PRODUCTS, PARTS, OR COMPONENTS Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including warranties, as set forth in the Warranties clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Agency. Before installation, all proposed substitutes for the original manufacturers' installed parts or components must be approved by the Agency. The part or component shall be equal to or of better quality than the original part or component being replaced.

45. ON-SITE STORAGE With the written approval of the Agency, materials, equipment or supplies may be stored at the Agency's site(s) at the Contractor's sole risk.

46. EMPLOYEES, SUBCONTRACTORS AND AGENTS All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Contract, and must comply with all security and administrative requirements of the Agency. The Agency reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor 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 the Agency's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Agency reserves the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agent of the Contractor.

47. ASSIGNMENT In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of the Agency (as applicable); provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Agency and seek written agreement from the Agency which will be filed with the State Comptroller. The Agency shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the Contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes responsibility for the Contract.

48. SUBCONTRACTORS AND SUPPLIERS The Agency reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the Department of Labor's list of companies with which New York State cannot do business; the Agency determines that the company is not qualified; the Agency determines that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit New York State certified minority- and women-owned business enterprises as required by prior Contracts.

49. PERFORMANCE/BID BOND The Agency reserves the right to require a Bidder or Contractor to furnish, without additional cost, a performance, payment or Bid bond, negotiable irrevocable letter of credit, or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Agency.

50. SUSPENSION OF WORK The Agency, 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 Agency. In the event of such suspension, the Contractor 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 Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Agency issues a formal written notice authorizing a resumption of performance under the Contract.

51. TERMINATION

a. For Cause For a material breach that remains uncured for more than thirty (30) calendar days or other longer period as specified by written notice to the Contractor, the Contract or Purchase Order may be terminated by the Agency at the Contractor's expense. Such termination shall be upon written notice to the Contractor. In such event, the Agency may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience This Contract may be terminated at any time by Agency for convenience upon sixty (60) calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Agency shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.

c. For Violation of Sections 139-j and 139-k of the State Finance Law The Agency reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Agency may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

d. For Violation of Section 5-a of the New York State Tax Law The Agency reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or

intentionally incomplete. Upon such finding, the Agency may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

e. For Non-Responsibility The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Agency may terminate the Contract.

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

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

f. Upon Conviction of Certain Crimes The Agency reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor 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.

52. SAVINGS/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, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Agency 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 thirty (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.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor under the Contract due to a force majeure occurrence:

- a. The Agency may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or

- b. The Contractor will provide the Agency with access to Products first in order to fulfill orders placed before the force majeure event occurred. The Agency may accept allocated performance or deliveries during the occurrence of the force majeure event.

Neither the Contractor nor the Agency 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 Contractor and the Agency to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Agency where the delay or failure will significantly impair the value of the Contract to the State or to the Agency, the Agency 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.

In addition, the Agency reserves the right, in his or her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss. In the event of a dispute between the Contractor and the Agency, such dispute shall be resolved in accordance with the Agency's Dispute Resolution Procedures set forth in herein; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

53. CONTRACT INVOICING

a. Invoicing Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to the Agency in order to receive payment. Billing invoices submitted to the Agency must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Agency from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Agency, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in a commercially reasonable manner as requested by the Agency. The Agency may direct the Contractor to provide the information to the State Comptroller.

b. Payment of Contract Purchases made by the Agency when the State Comptroller is responsible for issuing such payment The Agency and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Agency, in the Agency's sole discretion, due to extenuating circumstances. Such electronic payments

shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at HelpDesk@sfs.ny.gov, or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Agency has expressly authorized payment by paper check as set forth above.

c. Payment of Contract Purchases made by the Agency when the State Comptroller is not responsible for issuing such payment The Agency and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Agency. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. The Agency strongly encourages the Contractor to establish electronic payments.

54. DEFAULT – BY AGENCY

a. Breach by Agency The Agency's breach shall not be deemed a breach of the Contract; rather, it shall be deemed a breach of the Agency's performance under the terms and conditions of the Contract.

b. Failure to Make Payment In the event the Agency fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within thirty calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to the Agency, suspend additional provision of Products to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. Notice of Breach Notwithstanding the foregoing, the Contractor shall, at least ten business days prior to declaring a breach of Contract by the Agency, by certified or registered mail, notify the Agency of the specific facts, circumstances and grounds upon which a breach will be declared.

d. Insufficient basis If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to provide Products to the Agency may constitute a breach of the Contract, and the Agency may thereafter seek any remedy available at law or equity.

55. PROMPT PAYMENTS

a. State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law Section 179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by the State Agency may be made in accordance with State Finance Law Sections 179-d et seq. and the implementing regulations (2 NYCRR § 18.1 et seq.).

b. By Contractor Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

56. REMEDIES FOR BREACH It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

a. Cover/Substitute Performance In the event of Contractor's material, uncured breach, the Agency may, with or without issuing a formal Solicitation: (i) purchase from other sources; or (ii) if the Agency is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement Product of equal or comparable quality, the Agency may acquire acceptable replacement Product of lesser or greater quality.

Such purchases may be deducted from the Contract quantity without penalty or liability to the State. The Agency shall accept allocated performance or deliveries during a period where Contractor is making good faith efforts to cure a material breach.

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Agency. Should Contractor and the Agency fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be a dispute to be resolved in accordance with the Agency's Dispute Resolution Procedures.

c. Bankruptcy In the event that the Contractor files, or there is filed against Contractor, a petition under the U.S. Bankruptcy Code during the term of this Contract, the Agency may, at its discretion, make application to exercise their right to set-off against monies due the debtor or, under the doctrine of recoupment, be credited the amounts owed by the Contractor arising out of the same transactions.

d. Reimbursement of Costs Incurred The Contractor agrees to reimburse the Agency promptly for any and all additional costs and expenses incurred for acquiring acceptable replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the Agency may obtain replacement Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

e. Deduction/Credit Sums due as a result of these remedies may be deducted or offset by the Agency from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Agency the amount of such claim or portion of the claim still outstanding, on demand. The Agency reserves the right to determine the disposition of any rebates, settlements, restitution, damages, etc., that arise from the administration of the Contract.

57. ASSIGNMENT OF CLAIM Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 USC Section 1, et seq. and the antitrust laws of the State of New York, General Business Law Section 340, et seq.

58. TOXIC SUBSTANCES Each Contractor furnishing a toxic substance, as defined by Section 875 of the Labor Law, shall provide

the Agency with not less than two copies of a Material Safety Data Sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Agency representative.

59. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its Subcontractors, agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the Agency, and therefore are not entitled to any of the benefits associated with such employment.

60. SECURITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Agency in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

61. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Agency, as necessary to ensure delivery or performance of Product.

62. CONTRACT TERM - RENEWAL The Agency may extend by mutual agreement of the Agency and the Contractor any stated renewal periods in the Contract.

63. WARRANTIES

a. Product Performance Contractor hereby warrants and represents that the Products acquired by the Agency under this Contract conform to the manufacturer's specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.

b. Title and Ownership Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by the Agency under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify and hold harmless the Agency from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein.

c. Product Warranty Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer's standard commercial warranty period, if applicable, or for a minimum of one (1) year from the date of acceptance, whichever is longer (the "Product warranty period").

During the Product warranty period, defects in the materials or workmanship of Products, components, or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be repaired or replaced by Contractor at no cost or expense to the Agency. Contractor shall extend the Product warranty period for individual Products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual Product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the

Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

Any component or part replaced by the Contractor under the Contract warranties shall be guaranteed for the greater of: (i) the Product warranty period set forth herein; or (ii) the manufacturer's standard commercial warranty period offered for the component or part, if applicable.

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole during the warranty period shall be borne solely by the Contractor, and the State or the Agency shall in no event be liable or responsible therefor.

Where Contractor, the independent software vendor (ISV), or other third-party manufacturer markets any Product delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with ISV or other third-party manufacturers for warranty repair or replacement of ISV or other third-party manufacturer's Product.

Where Contractor, ISV or other third-party manufacturer markets any Product with a standard commercial warranty that goes beyond the Product warranty or extended warranty periods, Contractor shall notify the Agency and pass through the standard commercial warranty to the Agency at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the standard commercial warranty after expiration of the Product warranty and extended warranty periods.

Unless recycled, recyclable, or recovered materials are available in accordance with the Remanufactured, Recycled, Recyclable or Recovered Materials clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered. Contractor further warrants and represents that no component or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor shall not be responsible for any modification of the Products made by the Agency without Contractor's approval.

d. Virus Warranty The Contractor represents and warrants that any Licensed Software acquired under the Contract by the Agency does not contain any known Viruses. Contractor is not responsible for Viruses introduced at Licensee's Site.

e. Date/Time Warranty Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the Product Documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: (i) consulting, integration, code or data conversion, (ii) maintenance or support services, (iii) data entry or processing, or (iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and

timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

f. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards. The Agency must notify Contractor of any services warranty deficiencies within ninety calendar days from performance of the services that gave rise to the warranty claim.

g. Survival of Warranties All warranties contained in this Contract shall survive the termination of this Contract.

h. Prompt Notice of Breach The Agency shall promptly notify the Contractor in writing of any claim of breach of any warranty provided herein.

i. Additional Warranties Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to the Agency.

j. No Limitation of Rights The rights and remedies of the State and the Agency provided in this clause are in addition to and do not limit any rights afforded to the State and the Agency by any other clause of the Contract.

64. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Agency that it meets or exceeds all requirements of the Solicitation and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Agency to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Agency. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

65. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Agency from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Agency.

The Agency shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify the Agency, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense,

and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

In the event that an action or proceeding at law or in equity is commenced against the Agency arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Agency and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Agency to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and the Agency may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

66. INDEMNIFICATION RELATING TO INFRINGEMENT

The Contractor will also defend, indemnify and hold the Agency harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: (a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by the Agency or by someone other than Contractor at the direction of the Agency without Contractor's approval, and (b) the Agency gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

The Agency shall give Contractor the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

Such indemnity shall only be applicable in the event of claims, judgments, liabilities and/or costs that may be finally assessed against the Agency in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, judgments, liabilities and/or costs arise solely from the Agency's negligent act, failure to act, gross negligence or willful misconduct.

If usage of a Product shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Agency the right to continue usage (ii) to modify the service or Product so that usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace such Product or parts thereof, as applicable, with non-infringing Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided that the Agency is given a refund for any amounts paid for the period during which usage was not feasible.

In the event that an action at law or in equity is commenced against the

Agency arising out of a claim that the Agency's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Agency and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Agency and seek to secure a continuance to permit the Agency to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Agency may have. This constitutes the Agency's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

67. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Infringement clause, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products forming the basis of the Agency's claim or (ii) five hundred thousand dollars (\$500,000), whichever is greater.

b. The Agency may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Agency unless Contractor at the time of the presentation of claim shall demonstrate to the Agency's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

c. Notwithstanding the above, neither the Contractor nor the Agency shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Agency, the Contractor, or by others.

68. AGENCY'S DISPUTE RESOLUTION PROCEDURES The first step of the dispute resolution will be through conference between the Agency and the Contractor. The party initiating the process shall notify the other party in writing and set forth the issues for resolution and provide all necessary documentation. Unresolved disputes will be resolved by the Commissioner or his/her designee, whose decision is final and binding. During this period all work required hereunder shall be performed. If the Contractor pursues any legal or equitable remedy outside the Agency, the Contractor will continue to perform work in accordance with the direction of the Agency until such proceedings may be concluded and will continue to be paid in accordance with the Agreement, and less any amounts attributable to the dispute. Disputes that go to litigation must be pursued in a court of competent jurisdiction of the State of New York. New York law will govern the dispute and venue must be laid in Albany County, New York.

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

69. SOFTWARE LICENSE GRANT Where Product is acquired on a licensed basis the following shall constitute the license grant:

a. License Scope Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by the Agency otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

b. License Term The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the license term shall be extended by the time period for testing, acceptance or trial.

c. Licensed Documentation If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) hard copy instructions for access by downloading from the Internet; and (iii) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - one (1) copy per License
- Concurrent Users - 10 copies per Site
- Processing Capacity - 10 copies per Site

Software media must be in a format specified by the Agency, without requiring any type of conversion.

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the Terms of License.

d. Product Technical Support & Maintenance Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Contract term. Maintenance terms and any renewals thereof are independent of the expiration of the Contract term and shall not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, fixes, upgrades and New Licensed Software Releases to Licensee, and (ii) help desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line help desk accessibility. Contractor shall maintain the Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the technical support/maintenance term.

The Agency shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that the Agency does not initially acquire or discontinue maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

e. Permitted License Transfers As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated Site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior Site. There shall be no additional license or other transfer fees due Contractor, provided that: (i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred Site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

f. Restricted Use By Outsourcers, Facilities Management, Service Bureaus, or Other Third Parties Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and (ii) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and (iii) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

Any third party with whom a Licensee has a relationship for a State function or business operation, shall have the temporary right to use Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: (i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or

corruption of the Product or disasters or emergencies that require Licensee to restore backups or to initiate disaster recovery procedures for its platform or operating systems; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. The phrase "cold site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; (iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

h. Confidentiality Restrictions The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

i. Restricted Use by Licensee Except as expressly authorized by the Terms of License, Licensee shall not: (i) copy the Product; (ii) cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or (iii) export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

70. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Agency and the Contractor, the Agency shall have thirty (30) days from the date of delivery to accept hardware Products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Agency until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Agency as of the expiration of that period. The license term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Agency agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Agency and the Contractor, the Agency shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by the Agency. Where using its own data or tests, the Agency must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Agency, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Agency after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, the Agency shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. The Agency shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Agency for damages, loss of profits, expenses, or other remuneration of any kind.

If the Agency elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Agency shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at

the end of the extended testing period, the Agency, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Agency to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Agency's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the Contractor from the premises of the Agency within ten calendar days of notification of non-acceptance by the Agency. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Agency shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Agency for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

71. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any Site where a copy of the Product resides provided that: (i) Contractor gives Licensee at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the net pricing in effect under the Contract at time of audit, or if none, then at the Contractor's U.S. commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

72. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

(i) For purposes of this clause, "Products." Deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, object code).

(ii) For purposes of this clause, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

(iii) For purposes of this clause, "Custom Products." Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for the Agency under the Contract.

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Agency to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Solicitation or Purchase Order, the Agency shall have ownership and license rights as follows:

(i) Existing Products:

1. Hardware - Title and ownership of Existing Hardware Product shall pass to the Agency upon acceptance.

2. Software - Title and ownership to Existing Software Products delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to the Agency in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Agency a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the Agency as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Agency's satisfaction) and distribute Existing Licensed Product to the Agency up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purposes stated in the Solicitation or the Agency's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the Licensee where the Agency is a State Agency. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Agency shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

(ii) **Custom Products:** Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to the Agency the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. The Agency may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of the Agency taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all the Agency shall

be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchases under the Contract may be the obtaining of acceptable third party financing by the Agency. The Agency shall make the sole determination of the acceptability of any financing proposal. The Agency will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, the Agency may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to the Agency all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and the Agency's prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS) The Agency's sale or other transfer of Custom Products which were acquired by the Agency using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Agency which complies with the terms of this clause.

e. Contractor's Obligation with Regard to ISV (Third Party) Product Where Contractor furnishes Existing Licensed Product(s) as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Agency at Contractor's sole cost and expense.

73. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the proprietary owner accepting Product invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

74. PRODUCT VERSION Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by the Agency and Contractor is willing to provide such version.

75. CHANGES TO PRODUCT OR SERVICE OFFERINGS

a. Product or Service Discontinuance Where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be

offered, Contractor shall be required to: (i) notify the Agency and each Licensee then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: (a) the best terms offered by Contractor to any other customer, or (b) not less than twelve (12) months from the date of notice; and (iii) at the Agency's option, provided that the Agency is under contract for maintenance on the date of notice, either: provide the Agency with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable the Agency to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to State approval, to an alternate Subcontractor.

b. Product or Service Re-Bundling In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and the Agency in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: (a) the best terms offered by Contractor to any other customer, or (b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed re-bundling change to the Agency for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

76. NO HARDSTOP/PASSIVE LICENSE MONITORING Unless the Agency is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all upgrades do not and will not contain any computer code that would disable the Product or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that the Agency shall not have an adequate remedy at law, including monetary damages, and that the Agency shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which the Agency shall be entitled.

77. SOURCE CODE ESCROW FOR LICENSED PRODUCT If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall: (i) provide Licensee with the Source Code for the

Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) certify to the State that the Product manufacturer/developer has named the State, acting by and through the Agency, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such Source Code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause.

The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

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Appendix D – Bid Protest Procedures

It is the policy of the Office of Parks, Recreation and Historic Preservation (OPRHP) to provide bidders with an opportunity to administratively resolve disputes or inquiries related to OPRHP contract awards. Bidders are encouraged to seek resolution of disputes through consultation with the Designated Contact(s). After being notified of the results of this contract opportunity, any entity or individual that participated in the procurement may submit a protest of the resulting contract award.

OPRHP reserves the right to suspend, modify, or cancel this procurement at any time during the procurement process. OPRHP also reserves the right to waive or extend the deadlines in this procedure.

Submission of Formal Written Protests

Protests must be received by the Designated Contact no later than five (5) business days after a debriefing or ten (10) business days after the written notice of selection or non-selection for contract award, whichever is later.

Protests must be submitted in writing, clearly marked as a protest on the envelope or in the email subject line, and include the following information:

1. Solicitation or contract number
2. Name, address, email address and telephone number of the filer
3. Detailed statement of the legal and factual grounds for the protest
4. Statement of the relief requested
5. Copies of relevant documents

Agency Response

Within 30 business days of receipt of a protest, OPRHP's protest officer (the Director of Audit or her designee) will respond with a protest determination stating the agency's decision on the protest and the reasoning on which it is based. In making a determination, the protest officer will consider the legal and factual grounds stated in the protest, consult with the Designated Contact and appropriate program staff, and review all relevant documents.

Finality; Appeal

For contract opportunities subject to the approval of the Office of the State Comptroller, the protesting party may appeal OPRHP's protest determination to the Office of the State Comptroller in accordance with the regulations contained in Part 24 of Title 2 of the New York Codes, Rules and Regulations.

For contract opportunities that are not subject to the approval of the Office of the State Comptroller, OPRHP's protest determination is the conclusive and final determination of the protest.

'Nothing in these bid protest procedures is intended to limit or impair the rights of any bidder to seek and pursue remedies of law through the judicial process.

Appendix E – OSC Consultant Disclosure Reporting Requirements

Background:

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 selected for award on the basis of a procurement issued by OSC (Request for Proposals, Mini-Bid, or Invitation for Bids) must complete Form A, State Consultant 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 selected for award are also required to complete Form B, State Consultant 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 Consultant Reporting Section of the Bureau of Contracts at OSC, at the addresses provided in these instructions.

Form A, State Consultant Services – Contractor's Planned Employment from Contract Start Date through the End of the Contract Term and Form B, State Consultant Services Contractor's Annual Employment Report, are attached to these instructions. Please see these instructions for further information regarding completion and submission of the forms.

Instructions

FORM A:

Upon notification of contract award, use Form A, State Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term, attached to these instructions, to report the necessary planned employment information prospectively from the start date through the end of the contract term. This is a one-time reporting requirement.

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:

Use **Form B, State Consultant Services Contractor's Annual Employment Report**, attached to these Instructions, to report the annual employment information required by the statute. This form will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Submit **Form B** to OSC (as the contracting Agency), the Department of Civil Service (DCS), and to the Consultant Reporting Section of the Bureau of Contracts at OSC at the addresses listed below.

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 Consultant 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: Consultant 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

Appendix F – Insurance Requirements

Prior to the start of this Agreement, the Contractor shall procure, at its sole cost and expense, all insurance coverage required by this Appendix. During the term of this Agreement, the Contractor shall maintain in force any and all policies of insurance required by this Appendix.

All policies of insurance required by this Appendix shall be written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York ("Authorized Carriers") with an A.M. Best Company rating of "A-" Class "VII" or better. If during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Office of Parks, Recreation and Historic Preservation (OPRHP) and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall deliver to OPRHP evidence of such policies in a form acceptable to OPRHP. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OPRHP does not and shall not be construed to relieve Contractor of any obligations, responsibilities, or liabilities under any contract resulting from this solicitation.

All policies of insurance required by any contract resulting from this solicitation must meet the following requirements:

- All required policies of liability insurance, with the exception of Professional Liability insurance, shall be endorsed to name the "State of New York, Office of Parks, Recreation, and Historic Preservation, and their officers, employees, and agents" as an additional insured.
- Forms shall be filled out with the date of issuance, names of the insured, carrier, policy numbers, coverage period, any deductible or self-insured retention amounts, each occurrence and aggregate limits, and exclusions or additional insured endorsements to the policy.
- Forms shall be signed by an authorized representative of the reference insurance carriers.
- Only original forms or electronic versions of the same that can be directly traced back to the insurer, agent, or broker via email distribution or similar means will be accepted.
- Forms shall refer to the contract number resulting from the solicitation.
- Upon renewal of insurance coverage, the Contractor shall submit to OPRHP current proof of insurance.
- All required policies, with the exception of Professional Liability, shall provide that the required coverage shall be primary and non-contributory to other insurance available to the State.
- If the policy is written on a claims-made basis, Contractor must submit to OPRHP an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.
- All required policies shall be written such that OPRHP is afforded at least thirty (30) calendar days' prior notice of cancellation, modification or renewal of coverage.
- The Contractor shall notify OPRHP of any claims arising from the activities or operations under this Agreement as soon as practicable, but in no event more than five (5) business days from the Contractor's receipt of notice of the accident or claim.

OPRHP generally requires Contractors and subcontractors to submit only certificates of insurance and additional insured endorsements, although OPRHP reserves the right to request other proof of insurance. Contractors and subcontractors should refrain from submitting entire insurance policies, unless specifically requested by OPRHP. If an entire insurance policy is submitted but not requested, OPRHP 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 OPRHP does not constitute proof of compliance with the insurance requirements and does not discharge Contractors and subcontractors from submitting the requested insurance documentation.

Waiver of Subrogation

For all liability policies and the Workers' Compensation insurance required below, with the exception of Professional Liability, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of Parks, Recreation and Historic Preservation and their officers, agents, and employees, or, if such waiver is unobtainable:

- an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of Parks, Recreation and Historic Preservation and their officers, agents, and employees

OR

any other form of permission for the release of The People of the State of New York, the New York State Office of Parks, Recreation and Historic Preservation and their officers, agents, and employees.

A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

Subcontractors

Contractor shall require any of its subcontractors retained in relation to this Agreement to meet the requirements of this Section, including but not limited to naming the "State of New York, Office of Parks, Recreation, and Historic Preservation, and their officers, employees, and agents" as additional insureds on all required policies of insurance. Prior to the commencement of any work, an Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor by their subcontractor and shall be provided to OPRHP upon request.

Insurance Coverage Types and Minimum Policy Limits

Contractor shall procure the types of insurance coverage and minimum liability limits set forth below. Contractor may meet the required insurance coverage limits through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/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/umbrella insurance follows form must be provided after renewal and/or upon request.

A. **Commercial General Liability** Said policy shall cover the liability of the Contractor for bodily injury, property damage, premises liability and personal/advertising injury from all work and operations under any contract resulting from this solicitation. The limits under such policy shall not be less than the following:

- | | |
|---------------------------------|----------------|
| • Each Occurrence limit | \$2,000,000.00 |
| • General Aggregate | \$2,000,000.00 |
| • Products/Completed Operations | \$2,000,000.00 |
| • Personal Advertising Injury | \$1,000,000.00 |
| • Damage to Rented Premises | \$50,000.00 |
| • Medical Expense | \$5,000.00 |

The following ISO forms must be endorsed to the policy:

- a. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
- b. CG 20 10 11 85 or an equivalent – Additional Insured – Owner, Lessees or Contractors (Form B)
- c. Waiver of Subrogation

- B. **Professional Liability Insurance** Said policy shall have the liability limit of at least \$2,000,000 each occurrence or claim and at least \$2,000,000 general aggregate. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract.

If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to OPRHP prior to the policy's expiration or cancellation.

- C. **Comprehensive Business Automobile Liability Insurance** Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000 each accident. Said policy shall cover liability arising out of any automobile used in connection with performance under this Agreement including owned, leased, hired, and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Law of the State of New York to bear license plates.

If the Contractor does not own, lease, or hire any automobiles used in connection with performance under this Agreement, the Contractor is not required to obtain Comprehensive Business Automobile Liability Insurance.

- D. **Owner's and Contractor's Protective** If fabrication/construction is to be performed by an Independent Contractor or subcontracted, the Contractor shall obtain a separate Owners/Contractors Protective Liability (OCP) Policy. Said policy limits shall be no less than \$1,000,000 per occurrence, \$2,000,000 aggregate. 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 the Named Insured in the policy, which shall be promptly furnished to Parks.

The Contractor shall obtain a separate Owners/Contractors Protective Liability (OCP) Policy as follows

- 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
- 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 Agency, its officers, agents, and employees, and the People of the State of New York, with respect to all operations under the contract by the Contractor or its subcontractors, including in such coverage any omissions and supervisory acts of the Agency, its officers, agents, and employees. The Agency shall be the Named Insured in the OCP Policy, which shall be promptly furnished to the Agency.

Workers' Compensation and Disability Benefits Insurance

Prior to the start of this Agreement, the Contractor shall provide OPRHP with proof of Workers' Compensation Insurance and Disability Benefits Insurance. The following are the only acceptable means of proof; ACORD forms are NOT acceptable proof of coverage.

Acceptable Proof of Workers' Compensation	
CE-200	Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage
C-105.2	Certificate of Workers' Compensation Insurance
U-26.3	NYS Insurance Fund Certificate
GSI-105.2	Certificate of Participation in Workers' Compensation Group Board - approved self-insurance
SI-12	Certificate of Workers' Compensation Self-Insurance

Acceptable Proof of Disability Benefits	
CE-200	Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage
DB-120.1	Certificate of Disability Benefits Insurance

For more information about Workers' Compensation and Disability insurance, log onto the Workers Compensation Board website at www.wcb.state.ny.us or call them toll-free at 1-866-546-9322.

Attachment 1 – Financial Proposal

The Financial Proposal is a Microsoft Excel document with the filename: C003550 – Financial Proposal.xlsx. Bidders must complete and submit this form as their Financial Proposal. Any expenses occurring outside of that which is submitted within the completed Financial Proposal shall be borne by the Contractor.

If you did not receive this file or are unable to access this file, please contact one of the Designated Contacts.

Attachment 2 – Lobbying Law Certification

Pursuant to State Finance Law §§139-j and 139-k, this solicitation [or use identifier that is pertinent such as “Invitation for Bid” or “Request for Proposal”, etc.] includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest posting, on a Governmental Entity’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with article four-C of the economic development law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Offerers intending to result in a Procurement Contract with a Governmental Entity through final award and approval of the Procurement Contract by the Governmental Entity and, if applicable, the Office of the State Comptroller (“Restricted Period”) [conform for pertinent government entity] to other than the Designated Contacts for the Governmental Procurement unless it is a Contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). The Designated Contact(s) for this Governmental Procurement, as of the date hereof, are identified on the first page of this solicitation [or conform to whatever location is used to identify Designated Contacts]. Governmental Entity employees [conform for pertinent government entity] are also required to obtain certain information when Contacted during the Restricted Period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found [conform for how will provide copies of the rules, regulations, guidelines or procedures].

Offerer Disclosure of Prior Non-Responsibility Determinations

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

Instructions

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

The Office of State Parks, Recreation and Historic Preservation (OPRHP) includes this disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to OPRHP unit conducting the Governmental Procurement.

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please mark):
☐ No ☐ Yes - If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please mark):
☐ No ☐ Yes
3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please mark):
☐ No ☐ Yes
4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity	Date of Finding of Non-Responsibility
Basis of Finding of Non-Responsibility	

(attach additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please mark):
☐ No ☐ Yes - If yes, please provide details below.

Governmental Entity	Date of Finding of Non-Responsibility
Basis of Finding of Non-Responsibility	

Lobbying Affirmation and Certification	
Offerer affirms that it understands and agrees to comply with the procedures of the OPRHP relative to permissible Contacts as required by State Finance Law §139-j(3) and §139-j(6)(b). Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k, §139-j(3) and §139-j(6)(b), §139-k(5) is complete, true and accurate.	
Company Name:	
Doing Business As:	
Address:	City
	State
	Zip Code
Name of Official:	Title
E-Mail	Telephone:
<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div>_____</div> <div>_____</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div>Signature</div> <div>Date</div> </div>	

Attachment 3 – Non-Collusive Bidding Certification

The undersigned hereby certifies his or her compliance with the following:

By submission of this bid, each bidder and each person signing on behalf of any other bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

- A. The prices of this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- B. Unless otherwise required by law, the prices which have been quoted in this bid have not have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- C. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

- 1. Within the previous four years, has the bidder been found non-responsible by a government entity? (Please mark):

☐ No ☐ Yes

- 2. If "yes," was the determination of non-responsibility due to (1) engaging in impermissible contacts with a government entity, or (2) the intentional provision of false or incomplete information to a government entity? (Please mark)

☐ No ☐ Yes - If yes, please explain on a separate sheet.

Certification	
The undersigned has carefully examined the bidding and contract documents and agrees to perform this contract and to provide all goods and / or services, labor, material and equipment necessary for this contract. In addition, the bidder certifies that all information submitted regarding the Procurement Lobbying Law * is complete, true and accurate. If such information is found to be intentionally false or intentionally incomplete, OPRHP reserves the right to terminate the resulting contract.	
Company Name:	
Doing Business As:	
Address:	<div style="border-bottom: 1px solid black; margin-bottom: 2px;">City</div> <div style="border-bottom: 1px solid black; margin-bottom: 2px;">State</div> <div style="border-bottom: 1px solid black;">Zip Code</div>
Name of Official:	Title
E-Mail	Telephone:
<div style="border-top: 1px solid black; width: 100%; margin-bottom: 10px;"></div> <div style="display: flex; justify-content: space-between;"> Signature Date </div>	

Attachment 4 – Public Officers Law

THE FOLLOWING PROHIBITIONS PERTAIN TO THE SALE OF GOODS AND SERVICES BY STATE EMPLOYEES TO NEW YORK STATE AGENCIES PURSUANT TO THE NYS PUBLIC OFFICERS LAW § 73(4)

Current State Employees - Current employees of New York State cannot sell goods or services valued at \$25 or more to any state agency, either as a private contractor or through a company in which that employee holds ownership of at least 10%, unless the procurement opportunity is first advertised in the NYS Contract Reporter and competitively bid.

Former OPRHP State Employees - Former employees of the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) cannot sell goods or services to OPRHP under any circumstance for two (2) years following the date they leave OPRHP's employ. This applies only to OPRHP and OPRHP's employees, and does not preclude a former employee of another state agency from selling goods or services to OPRHP within two years following the last date of that person's state employment.

Please check (X) as appropriate, sign and date.

- ☐ I am currently a state employee, and:
- ☐ am a private contractor
- ☐ own at least 10% of the company that is being asked to provide goods or services to OPRHP.
- ☐ I am a former OPRHP employee, and my service with OPRHP ended less than two (2) years prior to the date of my signature below.
- ☐ None of the above apply.

Certification	
Company Name:	
Doing Business As:	
Name of Official:	Title
E-Mail	Telephone:
<div style="display: flex; justify-content: space-between;"><div>_____ Signature</div><div>_____ Date</div></div>	

Please complete this form and return it with your bid.

Revised July 2021

Attachment 6 – NYS Finance Law §139-I and Executive Order No. 177 Certification

State Finance Law § 139-I Certification

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, 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 section two hundred one-g of the labor law.

Executive Order No. 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

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

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

Certification	
By signing, you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of the above certifications and that all information provided is complete, true and accurate.	
Company Name:	
Doing Business As:	
Name of Official:	Title
E-Mail	Telephone:
<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 60%; text-align: center;"> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Signature </div> <div style="width: 35%; text-align: center;"> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Date </div> </div>	

Attachment 7 – Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement

M/WBE and EEO Policy Statement

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

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

Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.

Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.

Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.

Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.

Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.

Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

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

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

Agreed to this _____ day of _____, 20____ By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison

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

Attachment 8 – Vendor Responsibility Attestation

If this or any other contract you have with the State of New York is valued at \$100,000.00 or more, Office of Parks, Recreation and Historic Preservation (OPRHP) requires that Vendor file the required Vendor Responsibility Questionnaire.

To comply with the Vendor Responsibility Requirements, I hereby certify:

Choose One:

- ☐ The total value bid/proposed is less than \$100,000; therefore, a Vendor Responsibility Questionnaire is not required at this time.¹
- ☐ An on-line Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire> within the last six months.
- ☐ A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months. <https://www.osc.state.ny.us/state-vendors/vendrep/profit-non-construction-questionnaire>
- ☐ A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations. https://www.osc.state.ny.us/vendrep/documents/vendrep/document_requirements.pdf

Certification	
Company Name:	
Doing Business As:	
Name of Official:	Title
E-Mail	Telephone:
<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 60%; text-align: center;"> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Signature </div> <div style="width: 35%; text-align: center;"> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Date </div> </div>	

January 2019

¹ If during the term of the contract the value exceeds \$100,000 due to an amendment or extension, a Vendor Responsibility Questionnaire may be required.

Attachment 9 – Diversity Practice Questionnaire

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives?	No <input type="checkbox"/> Yes <input type="checkbox"/>
<i>If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals:</i>	
<i>Attach Additional Sheets, If Necessary</i>	

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?	_____ %
---	---------

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or noncontract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors? ²	_____ %
---	---------

4. Does your company provide technical training ³ to minority- and women-owned business enterprises?	No <input type="checkbox"/> Yes <input type="checkbox"/>
<i>If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs:</i>	
<i>Attach Additional Sheets, If Necessary</i>	

² Do not include onsite project overhead.

³ The process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?	No <input type="checkbox"/> Yes <input type="checkbox"/>
<i>If Yes, Identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program:</i>	
Attach Additional Sheets, If Necessary	

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements?	No <input type="checkbox"/> Yes <input type="checkbox"/>
<i>If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained:</i>	
Attach Additional Sheets, If Necessary	

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program?	No <input type="checkbox"/> Yes <input type="checkbox"/>
<i>If Yes, provide documentation of program activities and a copy of policy or program materials.</i>	
Attach Additional Sheets, If Necessary	

<p>8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent?</p>	<p>No <input type="checkbox"/> Yes <input type="checkbox"/></p>
<p><i>If Yes, provide a description of your efforts.</i></p>	
<p><i>Attach Additional Sheets, If Necessary</i></p>	

Certification	
<i>I swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge.</i>	
Company Name:	
Doing Business As:	
Name of Official:	Title
E-Mail	Telephone:
<div><div>_____</div><div>Signature</div></div> <div><div>_____</div><div>Date</div></div>	

Attachment 10 – Intent to Bid / No Bid

Please complete this form to signify if your firm intends to bid or has chosen not to bid on this procurement opportunity, please use the space below to briefly explain why and return this form to:

Office of Parks, Recreation and Historic Preservation
Contract Unit
625 Broadway
Albany, NY 12207
Contracts@parks.ny.gov

☐ My Company / Firm Intends to Bid on this RFP

☐ My Company / Firm Does Not Intend to Bid on this RFP for the reason(s) stated below:

Reason(s):

Company Name:	
Doing Business As:	
Name of Official:	Title
E-Mail	Telephone:
<div style="display: flex; justify-content: space-between; margin-top: 20px;"><div>_____ Signature</div><div>_____ Date</div></div>	

Attachment 11 – Project References

Bidder Name:

Per RFP Section 1.7.1 Experience Through Reference Qualifications, the Project Team must include at least three (3) Reference Clients for each the artist, fabricator and installer for which they have provided similar artwork and fabrication/installation services within seven (7) years immediately preceding the issuance of this RFP. The artist, fabricator and installer may use the same reference if work was performed on the same project. See Sample Reference Matrix in RFP Section 1.7.1.

Project Information	
Name of Project:	
Square Footage:	Timeframe of Services:
Date of Installation:	Contract Amount:
Customer Name:	
Project Address:	
Brief Description of Services Provided:	
Person for OPRHP to Contact to Verify Reference	
Name:	Title:
E-Mail:	Telephone:
Alternate Person for OPRHP to Contact to Verify Reference	
Name:	Title:
E-Mail:	Telephone:
The following have been included with this Project Reference:	
<input type="checkbox"/> Full-color, high-resolution images of the completed, installed project, including multiple viewpoints.	
<input type="checkbox"/> Selection of fabrication and development drawings produced for the project.	

Project Reference Roles				
Indicate Which of the Following Project Services Were Performed	As Prime	As Subcontractor	As Other (Specify)	Comments
Artist	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> _____	
Fabricator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> _____	
Installer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> _____	

Duplicate this Page to Satisfy the Minimum Number of Project References Roles Required

FORM A State Consultation Services - Contractor's Planned Employment

OSC Use Only:

Reporting Code:

Category Code:

Date Contract Approved:

FORM A

From Contract Start Date Through The End Of The Contract Term

State Agency Name: Office Parks, Recreation & Historic Preservation

Agency Code: 49070

Contractor Name:

Contract Number:

Contract Start Date: / /

Contract End Date: / /

Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

Page of

FORM B State Consultation Services - Contractor's Annual Employment Report

FORM B

OSC Use Only:

Reporting Code:

Category Code:

Report Period: April 1, to March 31,

State Agency Name: Office Parks, Recreation & Historic Preservation Agency Code: 49070

Contract Number:

Contract Term: / / to / /

Contractor Name:

Contractor Address:

Description of Services Being Provided:

Scope of Contract (Choose one that best fits):Analysis ☐ Evaluation ☐ Research ☐ Training ☐Data Processing ☐ Computer Programming ☐ Other IT consulting ☐Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐Health Services ☐ Mental Health Services ☐Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☐

Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Preparer's Signature: _____

Title: _____ Phone #: _____

Date Prepared: / /

Use additional pages if necessary)

Page of

**Contractor Certification to Covered Agency**

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-CA

(12/11)

For information, consult Publication 223, Questions and Answers Concerning Tax Law Section 5-a (see Need Help? on back).

Contractor name				For covered agency use only Contract number or description	
Contractor's principal place of business		City	State		
Contractor's mailing address (if different than above)					
Contractor's federal employer identification number (EIN)				Contractor's sales tax ID number (if different from contractor's EIN)	
Contractor's telephone number				Covered agency name	
Covered agency address				Covered agency telephone number	

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____ }
: _____ SS.:
COUNTY OF _____ }

On the ____ day of _____ in the year 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _____ he resides at _____, Town of _____, County of _____, State of _____; and further that:

[Mark an **X** in the appropriate box and complete the accompanying statement.]

- ☐ (If an individual): _____ he executed the foregoing instrument in his/her name and on his/her own behalf.
- ☐ (If a corporation): _____ he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _____ he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- ☐ (If a partnership): _____ he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _____ he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- ☐ (If a limited liability company): _____ he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _____ he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

**Contractor Certification**(Pursuant to Tax Law Section 5-a, as amended,
effective April 26, 2006)**ST-220-TD**

(4/15)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name

Contractor's principal place of business

City

State

ZIP code

Contractor's mailing address (if different than above)

City

State

ZIP code

Contractor's federal employer identification number (EIN)

Contractor's sales tax ID number (if different from contractor's EIN)

Contractor's telephone number

()

Covered agency or state agency

Contract number or description

Covered agency telephone number

()

Covered agency address

City

State

ZIP code

Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000?

Yes ☐No ☐Unknown at this time ☐**General information**

Tax Law section 5-a, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file Form ST-220-CA, *Contractor Certification to Covered Agency*, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and *Individual, Corporation, Partnership, or LLC Acknowledgement* on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227-0826**

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features

**Telephone assistance****Sales Tax** Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, and 3 below. Make only one entry in each section.

Section 1 – Contractor registration status

- ☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253, and is listed on Schedule A of this certification.
- ☐ The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 – Affiliate registration status

- ☐ The contractor does not have any affiliates.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 – Subcontractor registration status

- ☐ The contractor does not have any subcontractors.
- ☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- ☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Schedule A – Listing of each entity (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such entity exceeded the \$300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to contractor	B Name	C Address	D Federal ID number	E Sales tax ID number	F Registration in progress

- Column A – Enter **C** in column A if the contractor; **A** if an affiliate of the contractor; or **S** if a subcontractor.
- Column B – Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner’s given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.
- Column C – Address - Enter the street address of the entity’s principal place of business. Do not enter a PO box.
- Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.
- Column E – Sales tax ID number - Enter only if different from federal EIN in column D.
- Column F – If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
 : SS.:
COUNTY OF }

On the ____ day of _____ in the year 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _____ he resides at _____, Town of _____, County of _____, State of _____; and further that:

(Mark an X in the appropriate box and complete the accompanying statement.)

- ☐ (If an individual): _____ he executed the foregoing instrument in his/her name and on his/her own behalf.
- ☐ (If a corporation): _____ he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _____ he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- ☐ (If a partnership): _____ he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _____ he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- ☐ (If a limited liability company): _____ he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _____ he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No. _____



Parks, Recreation and Historic Preservation

Request for Proposals

C003550 Design, Fabrication and Installation of Gateway at Marsha P. Johnson State Park

March 2, 2022

Exhibit A

Interpretive Panels

Designated Contact(s)
Eric Zeissler, Sharon Featherstone, Joseph Scandurra ServiceContracts@parks.ny.gov Office of Parks, Recreation and Historic Preservation Contract Unit 625 Broadway, 2 nd Floor Albany, NY 12207

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MPJSP PANEL 01
40.72"W x 21.5"H

welcome to **MARSHA P. JOHNSON STATE PARK**

A place on the river to be who you are

Marsha P. Johnson State Park is the first park in New York State to be named after a TLGBQ+ person and Black transgender woman. The park was previously called East River State Park. It was officially renamed on February 1, 2020 by Governor Andrew Cuomo, whose term in office included several landmark achievements for TLGBQ+ people and equality in general. In his announcement of the rededication of the park, Governor Cuomo condemned hate crimes and discriminatory policies, and urged all of us to recognize "the commonality of humanity."

Marsha P. Johnson was a trailblazer and a game changer in the fight for TLGBQ+ acceptance. She is a recognized icon in the Gay and Trans Rights Movements, and the subject of several books and films. Her contributions to the fight for equality and equity will never be forgotten, and her work and activism with her longtime friend Sylvia Rivera helped propel the modern day Trans Rights Movement.

Please enjoy the park, and please help keep it a safe space for all people, no matter how they identify, and a place to recognize how we can care for one another. Outside the park, there are many ways to continue supporting the TLGBQ+ community. Educate yourself and spread the word. Support TLGBQ+ businesses, artists, political leaders, and organizations. Reach out to your leaders about protecting the rights of all people.

*"Dedicating this state park for Marsha P. Johnson will ensure
her memory and her work fighting for equality lives on."*
—Governor Andrew Cuomo



MARSHA P. JOHNSON was the fifth of seven children born to Malcolm Michaels Sr. and Alberts (Claborne) Michaels on August 24, 1945, in Elizabeth, New Jersey. Marsha relocated to Manhattan's West Village in 1963 after graduating from Thomas A. Edison High School and briefly enrolling in the U.S. Navy. In the Village, Marsha became known for her style, generosity, and activism against injustice.

Photo courtesy Everett Collection
Special thanks to the Marsha P. Johnson Family Foundation



MPJSP PANEL 02
40.725"W x 23.07"H

MARSHA P. JOHNSON

Gay and trans liberation activist (1945-1992)

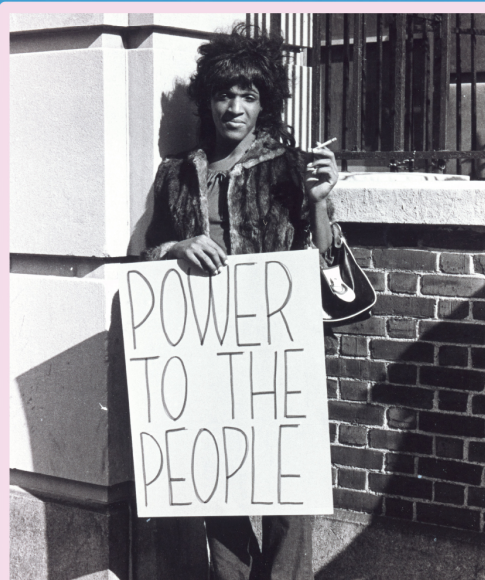
Marsha P. Johnson was a Black gay and trans liberation activist, drag queen performer, actress, and sex worker. She was a survivor who struggled with mental illness and she was a person living with HIV/AIDS. The "P" in her name stands for "pay it no mind," which is what she told people who asked about many aspects of her life, including her gender. While she was often mistreated by mainstream society and even her queer community, Marsha was known in the West Village for her charisma, joyfulness, and generosity, while living against great odds. Many called her a saint: Saint Marsha.

Marsha graduated high school in 1963 and she briefly enrolled in the U.S. Navy before moving to New York City "with fifteen dollars and a bag of clothes." While Marsha returned to visit Elizabeth often, she found a new home in the West Village, as did many TLGBQ+ people, and made ends meet through sex work, one of the only ventures available to many within the gay community at the time. "Sexual deviancy laws" in New York City essentially made being gay or trans illegal, and police frequently targeted TLGBQ+ people. When the streets around the Stonewall Inn erupted in rebellion in 1969, Marsha P. Johnson was there. In the days that followed, Marsha moved to the forefront of the Gay Liberation Movement, including co-founding STAR—now known as STARR: Strategic Trans Alliance For Radical Reform—with Sylvia Rivera.

In 1980, Marsha took shelter in the New Jersey home of Randy Wicker, a pre-Stonewall TLGBQ+ activist. Marsha stayed with Randy until July 6, 1992. On that day, Marsha's body was tragically found in the Hudson River. The police ruled her death a suicide, but it is widely believed Marsha was murdered. While her case was reopened in 2012 at the insistence of activists, it remains unsolved. Marsha's death is a reminder of the increased risk of violence that Black trans women and the TLGBQ+ community face, even as Marsha P. Johnson's legacy is celebrated.

*"As long as my people don't have their rights across
America, there's no reason for celebration."*

—Marsha P. Johnson



MARSHA P. JOHNSON called for "Power To The People" outside Bellevue Hospital in demonstrations led by the Gay Liberation Front in 1970. Sylvia Rivera was with her as well. At the time, Bellevue practiced highly controversial treatments such as the dangerous and now discredited gay conversion therapy in its psychiatric ward. Bellevue would later open two Pride Health Centers in 2019.

Photos by Diana Dierke, Manuscripts and Archives Division, The New York Public Library



MARSHA P. JOHNSON marched in the 1971 Christopher Street Liberation Day march as she had the year before. Liberation Day commemorated the Stonewall Rebellion of 1969 and later became the NYC Pride Parade. Marsha marched every year.

Photos by Diana Dierke, Manuscripts and Archives Division, The New York Public Library



MARSHA AND SYLVIA RIVERA, lifetime friends, joined three days of protests at City Hall in 1973 after City Council voted down a bill protecting homosexual people while overlooking protections for trans people.

Photos by Diana Dierke, Manuscripts and Archives Division, The New York Public Library



MPJSP PANEL 03
28.725"W x 14"H

"We have to be visible. We should not be ashamed of who we are."
—Sylvia Rivera

WHAT IS TRANS?

An evolving term for a growing range of gender identities

The word "trans" is short for "transgender," a term whose meaning continues to evolve. People who identify as trans feel that the sex they were assigned at birth—male or female—and the gender they have been given by people around them—boy, girl, man, or woman—do not match how they internally understand themselves to be. People who identify with their birth sex and societal gender assignments are "cisgender."

Trans has been called an umbrella term, meaning it can include a broad diversity of identities, such as non-binary and gender non-conforming. Male and female roles, traditional in most cultures, are too rigid for many people. In Marsha P. Johnson's lifetime, these identities were not yet known. Rather, she typically referred to herself as a "transvestite" or "queen," two terms no longer in widespread use. As the term transgender has entered everyday conversation, popular misconceptions have emerged about what it means.

MYTHS

All transgender people "medically transition" through hormones and surgery.
Transitioning means having a single operation, often called "the surgery".
Dressing in drag and being transgender are the same thing.
Sex and gender are the same.
Trans people are really just effeminate gay men or masculine lesbian women.
Trans people are simply confused about what gender they really are.
Being trans is a lifestyle choice.
The meaning of transgender is fixed.

FACTS

Some people medically transition; others transition socially.
Medical transitioning has many steps and may include many or no surgeries.
Transgender is not about the clothes you choose to wear.
Sex is about anatomy and gender is about identity.
Trans people can be straight, gay, lesbian, asexual, or anything else.
Trans people know their own gender identities.
Being trans is deeply connected to one's sense of self.
The meaning of transgender continues to evolve.



FOR MORE
SCAN HERE

MPJSP Panel 04

28.722 W x 13.337 H

WHAT ARE YOUR PRONOUNS?

Asking someone's pronouns communicates respect

A pronoun is a word people use to replace a noun. For example, he, she, him, his, and her are pronouns people commonly use instead of a person's name. These pronouns communicate a person's gender. When a person is addressed by pronouns that do not match their gender identity, it can cause stress, anxiety, and feelings of being unsafe. It is considered respectful to address a trans person by the pronouns they identify with. It is also respectful to ask which pronouns a person prefers, or to use they and them until you know.

Since Marsha P. Johnson's lifetime, pronouns and other terms of identity have changed. This is nothing new. For example, many pronouns, like thee and thine, have come and gone. Marsha typically used female pronouns to refer to herself. However, when asked directly about her gender, she typically responded, "pay it no mind," resisting identification as male or female. Today's lexicon of non-binary pronouns includes ze, hir, and they. Tomorrow, there may be more.

GENDER PRONOUNS

SUBJECTIVE	OBJECTIVE	POSSESSIVE	REFLEXIVE	EXAMPLE
She	Her	Hers	Herself	She is speaking. I listened to her. The backpack is hers.
He	Him	His	Himself	He is speaking. I listened to him. The backpack is his.
They	Them	Theirs	Themselves	They are speaking. I listened to them. The backpack is theirs.
Ze	Hir/Zir	Hirs/Zirs	Hirself/Zirself	Ze is speaking. I listened to hir. The backpack is zirs.

Please note that these are not the only pronouns. There are an infinite number of pronouns as new ones emerge in our language. Always ask someone for their pronouns.

Pronouns chart adapted with permission from Trans Student Educational Resources www.transstudent.org

FOR MORE



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MPJSP PANEL 05
44"W x 20.69"H

A TRANS RIGHTS TIMELINE

The transgender rights movement is intertwined with others, here are some of its milestones

1959	COOPER DO-NUTS A crowd at a doughnut shop in Los Angeles, CA prevents police from harassing and arresting transgender and gay customers.
1964	DEWEY'S LUNCH COUNTER In Philadelphia, PA, local Black and gender non-conforming teenagers and members of the Janus Society stage a sit-in that forces the restaurant to drop its policy of refusing to serve gay and trans people.
1965	GAY MARDI GRAS Despite police pressure, a San Francisco, CA organization puts on a drag ball. After arrests are made, the organizers win a trial against the police, with help from allies and the American Civil Liberties Union.
1966	COMPTON'S CAFETERIA RIOT Trans women, drag queens, gay hustlers, and queer street youth fight back when police raid a popular late-night restaurant where they regularly gather in San Francisco's Tenderloin neighborhood.
1969	STONEWALL REBELLION Members of the TLGBQ+ community, including Marsha P. Johnson, Sylvia Rivera, and Stormé DeLarverie, clash with the police for several days around the Stonewall Inn, a bar in New York, NY frequented by TLGBQ+ customers.
1969	QUEENS LIBERATION FRONT Lee Brewster founds the Queens Liberation Front in New York, NY in response to the prejudices that gender non-conforming persons face.
1970	STAR HOUSE Marsha P. Johnson and Sylvia Rivera create STAR House in New York, NY, a safe house for trans youth. STAR (now known as STARR: Strategic Trans Alliance For Radical Reform) is an activist organization.

1976	M.T. v. J.T. In a case before the Superior Court of New Jersey, judges rule that transgender people can marry based on their gender identity, regardless of their gender at birth.
1993	MINNESOTA MILESTONE Minnesota becomes the first state in America to ban employment discrimination based on perceived gender identity.
1999	REMEMBRANCE Trans activist Gwendolyn Ann Smith starts the Remembering Our Dead web project and annual Transgender Day of Remembrance in San Francisco, CA, which quickly spreads to other cities.
2000	JEAN DOE v. BELL Foster teen Jean Doe acquires a New York State Supreme Court order that forces her boys-home residence to allow her to dress according to her gender identity.
2012	KYLAR BROADUS TESTIFIES Founder of the Trans People of Color Coalition, Kylar Broadus becomes the first trans person to testify before the U.S. Senate when he does so in support of the Employee Non-Discrimination Act.
2014	TRANSGENDER TIPPING POINT Transgender actress Laverne Cox appears on the cover of the June 9th edition of Time Magazine. The interview with her inside is titled, "The Transgender Tipping Point: America's Next Civil Rights Frontier."
2015	TASK FORCE In the U.S. Congress, the House Equality Caucus announces a new Transgender Equality Task Force to develop legislation protecting transgender people.

"How many years has it taken people to realize that we are all brothers and sisters and human beings in the human race?"

—Marsha P. Johnson

2015	THE PRESIDENT ACKNOWLEDGES TRANS PEOPLE In his State of the Union Address, Barack Obama becomes the first U.S. President to acknowledge transgender people. "We do these things not only because they're right," he says, "but because they make us safer."
2016	GAVIN GRIMM WINS Virginia teenager Gavin Grimm sues his high school for the right to use a bathroom corresponding with his gender identity. The 4th U.S. Circuit Court of Appeals rules in Grimm's favor.
2018	WELCOME, ANDREA JENKINS In Minneapolis, MN, Andrea Jenkins becomes the first openly transgender Black woman elected to City Council, making her the first to serve in any public office in America.
2019	GENDA PASSES After years of activism on the issue, the New York State Assembly passes the Gender Expression Non-Discrimination Act, protecting trans people of all ages in school and the workplace.
2019	TRANS VISIBILITY MARCH More than 1,500 people in Washington, D.C. march down Pennsylvania Avenue from Freedom Plaza to demonstrate against hate and discrimination aimed at trans people.
2020	WORKPLACE NON-DISCRIMINATION The U.S. Supreme Court rules that workplace protections under the 1964 Civil Rights Act apply to gay and transgender employees.
2021	RACHEL LEVINE AND SARAH MCBRIDGE Sarah McBridge becomes the first openly trans state senator (Delaware), and Rachel Levine the first openly trans federal official, as Secretary of the Department of Health and Human Services.



MPJSP PANEL 06
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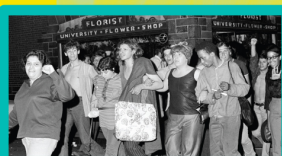
FRIENDS ON THE FRINGES

People of Marsha's time who fought for equality and equity



MISS MAJOR GRIFFIN-GRACY (b. 1946) has fought for justice for the transgender community since the 1960s, currently as the director of House of GG, a retreat center for trans and gender non-conforming leaders from across the U.S. South.

Courtesy of Annelise Opfinger



BUBBLES ROSE LEE (dates unknown) was instrumental in acquiring the STAR House building. Lee is pictured here, right of Sylvia Rivera who is holding a shopping bag, during the 1970 New York University protests that led to STAR's founding.

Photo by David Davies, Manuscripts and Archives Division, The New York Public Library



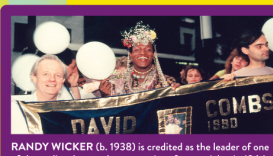
SALSA SOUL SISTERS raised their voices at a rally in Central Park in 1976. As the first organization in the U.S. dedicated to lesbians of color, Salsa Soul Sisters was founded by Rev. Delores Jackson and others through bar meetings that preceded the events of Stonewall.

Photo by Bettye Lane, Manuscripts and Archives Division, The New York Public Library



STORMÉ DELARVERIE (1920-2014, center) was a drag king performer at Radio City Music Hall and the Apollo Theater, and founded the Stonewall Veterans Association after taking part in the 1969 Stonewall Rebellion. DeLarverie continued her advocacy throughout her life, and is known as a gay superhero for personally ejecting abusive people from gay-friendly environments.

Photographs and Photo Archives, Stonewall Center for Research in Black Culture, The New York Public Library



RANDY WICKER (b. 1938) is credited as the leader of one of the earliest known demonstrations for gay rights in 1964. Wicker (left) gave Marsha P. Johnson a home from 1980-1992. At the 1992 Gay Pride Parade in New York City, Randy and Marsha carried this AIDS Quilt patch, honoring David Combs, Randy's lover of 18 years, for whom Marsha was a dedicated caretaker.

Courtesy of Randy Wicker



SYLVIA RIVERA (1951-2002, right) resisted police at the Stonewall Rebellion and advocated vehemently for LGBTQ+ rights for decades. Along with Marsha P. Johnson, Rivera founded STAR (now known as STARR: Strategic Trans Alliance For Radical Reform) and STAR House. Rivera and Johnson were considered inseparable.

Leonard Fish Photographs, The LGBT Community Center National History Archive

FOR MORE
SCAN HERE

MPJSP PANEL 07
40.725"W x 21.95"H

STAR HOUSE

A safe house for trans and gender non-conforming youth

STAR House was modeled on "house" culture, a form of mutual care in trans communities of color since at least the 1890s. Marsha P. Johnson founded STAR in 1970 with Sylvia Rivera, a Latinx trans woman known for her outspoken protests for gay and trans rights. At STAR House, Marsha and Sylvia served their mission for more than a year, providing food and housing. Traditional shelters are often unsafe and unwelcoming for trans people. STAR House served as a model for providing safe spaces for the TLGBQ+ community.

STAR also had an activist branch, formed in 1970 during a five-day protest at New York University. The University's Gay Liberation Activist Group had hosted a summer series of dance-a-thons at the school's Weinstein Residence Hall. The school cancelled the remaining events and banned further gay social organizing. In protest, Marsha, Sylvia, gay students, and soon, straight allies occupied the sub-basement of Weinstein Hall for five days. Marsha and Sylvia seized the energy, led a march to Sheridan Square, and STAR was born. STAR's existence, separate from groups like the Gay Liberation Front and Gay Activist Alliance, reflected the struggle trans people had in being included in the greater gay rights movement, which would resist including trans people for many more years.

STAR is now known as STARR—Strategic Transgender Alliance for Radical Reform—led by Mariah Lopez. STARR extends Sylvia and Marsha's legacy by fighting for health care, legal and police reform, as well as direct advocacy on behalf of trans people. STARR continues to serve the immediate needs of the transgender and gender non-conforming community, providing housing, food, and support. STARR has chapters throughout the United States, including the Deep South. STAR(R)'s work is rooted in the Civil Rights Movement, and at times overlapped with the Young Lords, Black Panthers, and other activist groups. STAR(R)'s work continues today.

*"Sylvia Rivera deserves all the credit for STAR.
I hope somebody writes a life story about her someday."*

—Marsha P. Johnson



THE STAR BANNER was first carried with the Young Lords in a Puerto Rican protest march in Spanish Harlem. Seen here, the banner is carried by members of STAR in the 1973 Christopher Street Liberation Day march. Sylvia Rivera is second from left. At this time, the larger gay community was still debating the inclusion of transgender people in the Liberation Movement. Parading the STAR banner represented a bold statement.

Richard C. Wendt Photograph Collection, The LGBT Community Center National History Archive



MPJSP PANEL 08
28.725"W x 14.65"H



SAY THEIR NAMES

Stop the violence against TLGBQ+ people

Marsha P. Johnson's death was ruled a suicide when her body was tragically found on July 6, 1992 in the Hudson River. Those who knew her are certain she was murdered, and although her case has been reopened, it officially remains unsolved. Sadly, many more TLGBQ+ lives have been lost to violence and bigotry in the U.S., especially among Black trans women. Please take a moment to consider what you can do to make this world a safer, more loving, inclusive place. It's not enough to grieve. We must protect and honor our loved ones with action.



FOR MORE

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MPJSP PANEL 09
28.725"W x 12.38"H

MARSHA P. JOHNSON'S LEGACY CONTINUES

Working towards a better future

HONORING MARSHA

Marsha P. Johnson's legacy lives on through the efforts of her family, the activism of the Black Trans Lives Matter movement, and the courage of many individuals and organizations working in her spirit. In 2020, Marsha's family established the Marsha P. Johnson Family Foundation and planned and executed two rallies in Manhattan in support of Black Trans Lives, one at Christopher Street Pier, the other in Greenwich Village. Both were significant places in Marsha's life. That same year, the Family Foundation successfully championed the design and placement of a statue of Marsha in her hometown of Elizabeth, New Jersey, near City Hall. The monument will stand as New Jersey's first in honoring a person from the TLGBQ+ community and a Black trans woman.

BLACK TRANS LIVES MATTER

Marsha's spirit continues to inspire activists today. On June 14, 2020, more than 15,000 people marched in the "Brooklyn Liberation" march from the Brooklyn Museum to Fort Greene Park in support of rights, visibility, and the very lives of Black trans people. The march took place during a record

breaking year in the rate of murders of trans people, most of whom were trans people of color, and it stands as one of the largest marches of its kind, in which Black trans voices were centered. During the rally, protesters wore the color white in reference to a march in 1917, when the National Association for the Advancement of Colored People led some 10,000 demonstrators silently down Fifth Avenue in Manhattan to demand an end to police violence against Black people. Many protesters also wore white to protest what they deemed the corporate appropriation of the TLGBQ+ Pride Flag.

EXPLORE THE MARSHA "WITHIN YOU"

It takes a village to create substantial and profound change. To carry out her legacy, look within yourself and examine your own internal biases. When you come across somebody who is transgender or different in any way, approach them with an open mind. Further, you can attend protests, educate yourself and others, and push your local, state, and federal lawmakers to enact equitable changes for the transgender community. The change starts with you.



MPJSP PANEL 10
14.9"W x 15.53"H

SOUL

You can count your karma
if Nirvana is your goal
you can shake and you can rattle
you can rock and roll
you can be a Clark Kent
or a Lois
or an Alice down a hole,
you can be a vampire on a mountain
With a heart of stone black coal.
You can be a leather angel.
On a sleek black Harley bike.
or a redhead screaming f*ggot or a dazzling d*ke
you can lock yourself in a closet
in a fine mink stole
but it really doesn't matter
if you ain't got soul.

FOR MORE



SCAN HERE

—Performed by Marsha P. Johnson for
the theater troupe, The Hot Peaches.
Written by The Hot Peaches founder
and producer, Jimmy Camicia



Parks, Recreation and Historic Preservation

Request for Proposals

C003550 Design, Fabrication and Installation of Gateway at Marsha P. Johnson State Park

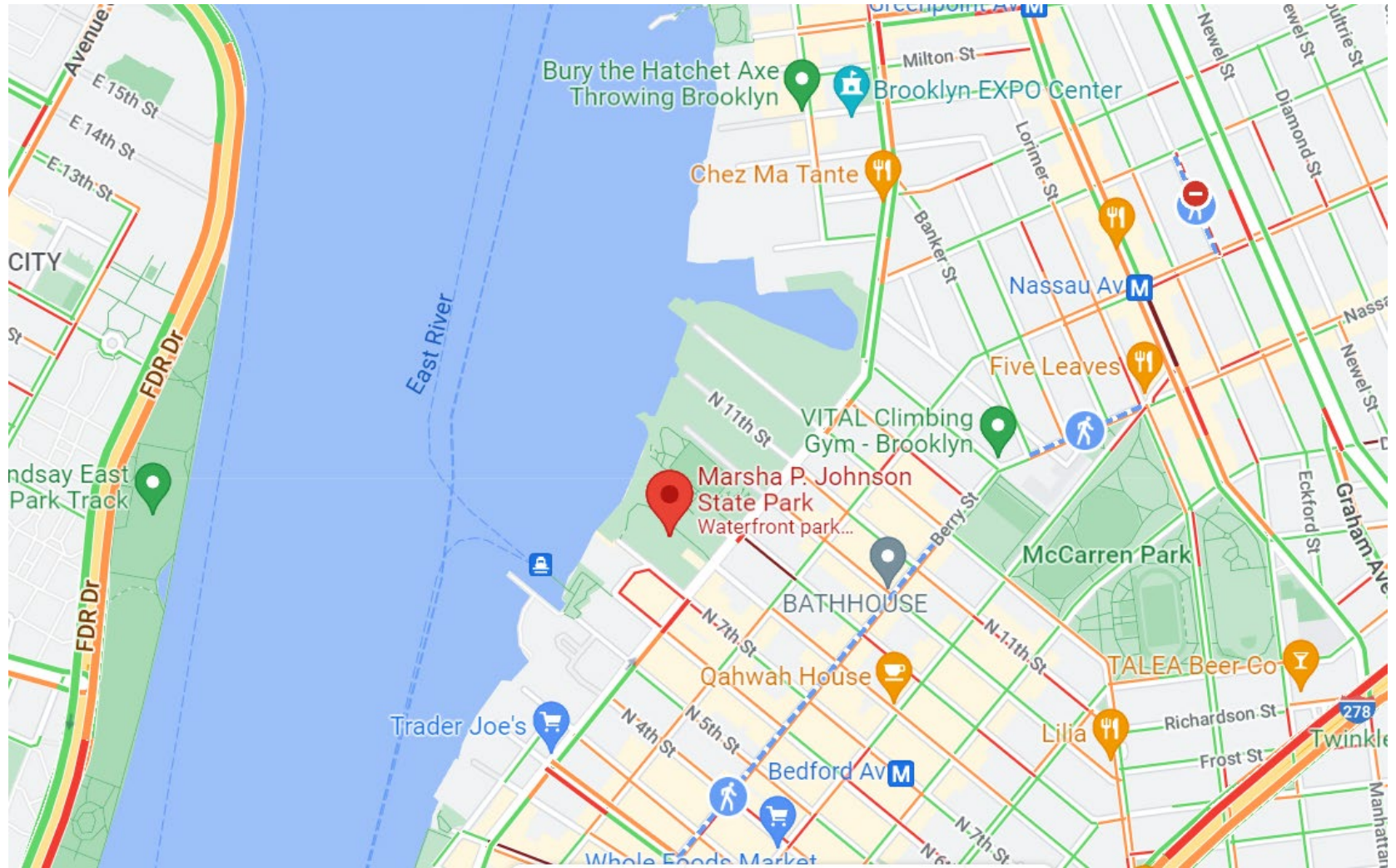
March 2, 2022

Exhibit B

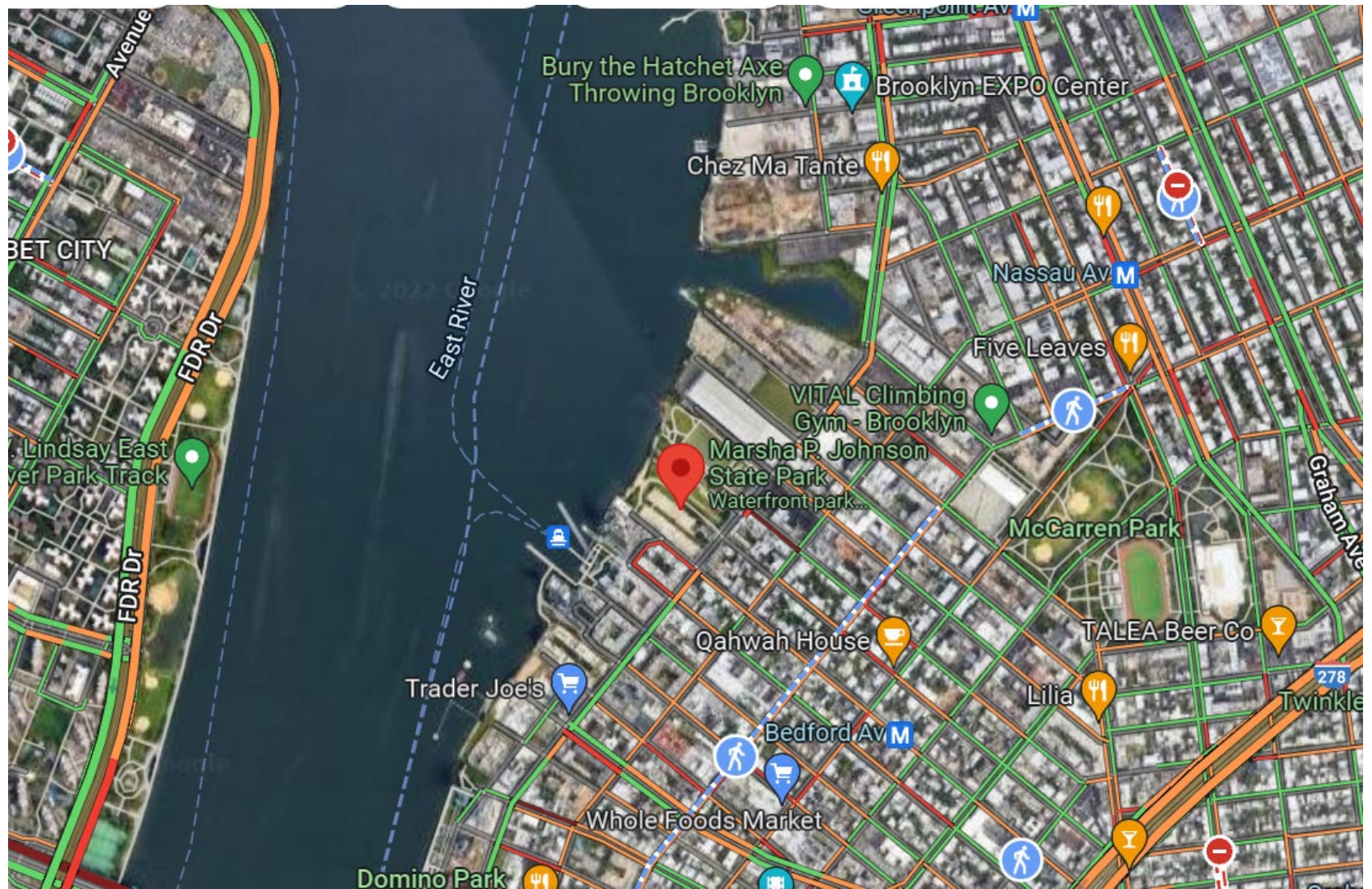
Site Information

Designated Contact(s)
Eric Zeissler, Sharon Featherstone, Joseph Scandurra ServiceContracts@parks.ny.gov Office of Parks, Recreation and Historic Preservation Contract Unit 625 Broadway, 2 nd Floor Albany, NY 12207

Map indication location of Marsha P. Johnson State Park



Satellite view of Marsha P. Johnson State Park



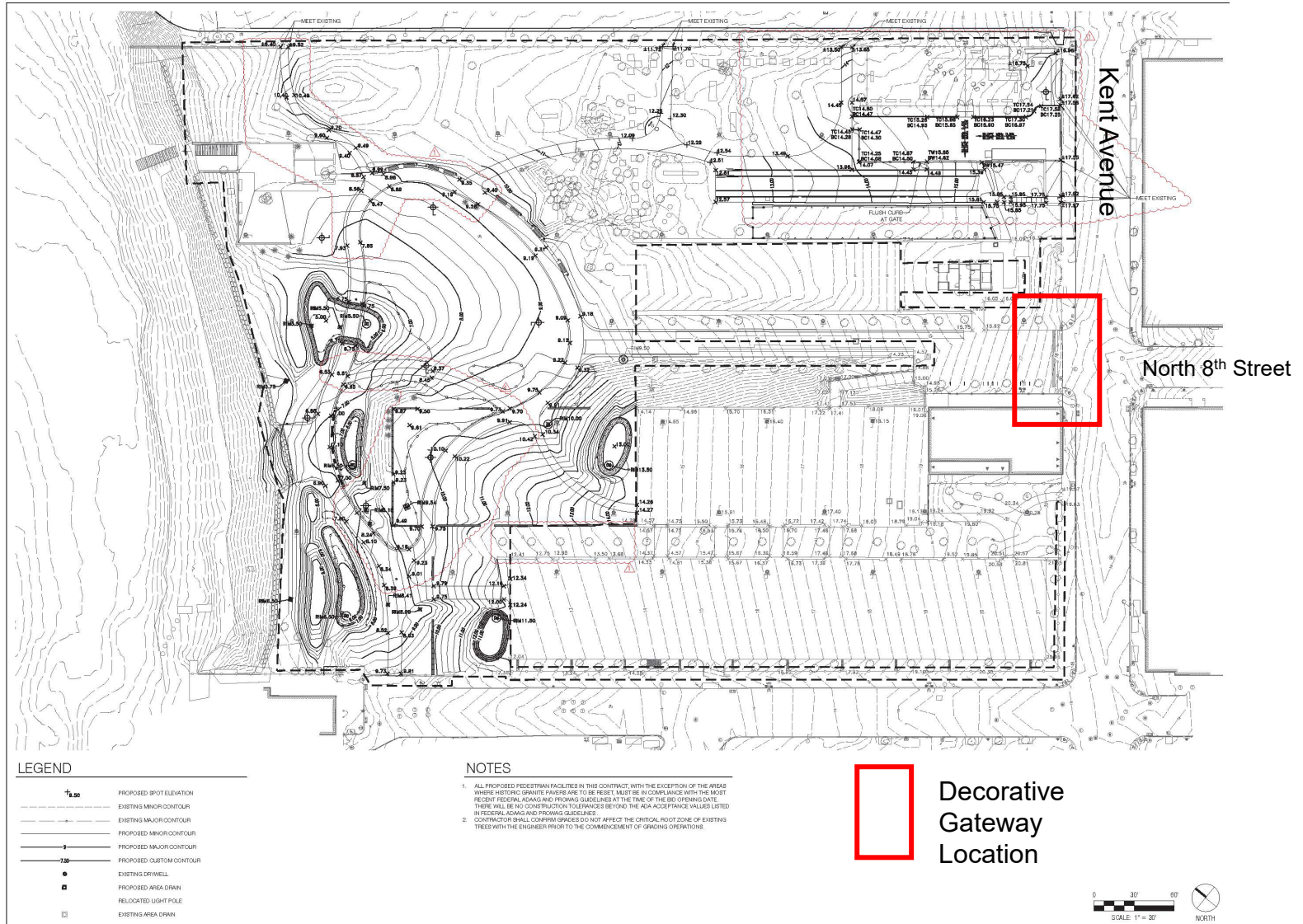
Aerial Rendering of Marsha P. Johnson State Park after Phase II Improvements (completion expected summer 2022)



Site plan rendering (monument site indicated by arrow)



Marsha P. Johnson State Park, Grading Plan



Existing Site Conditions Photographs



View from North 8th Avenue across from existing entrance gate



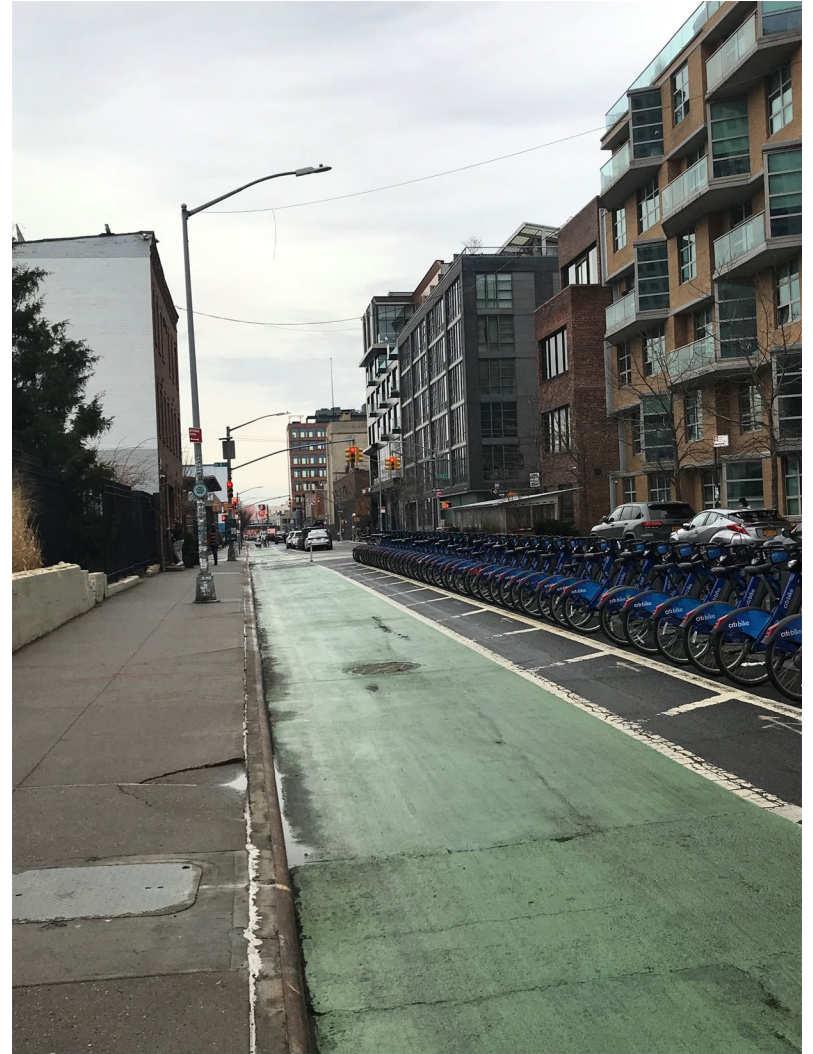
Approximate dimensions of existing North 8th Avenue gate. The current gate and fence are 8 feet high.



Panoramic view from 8th Avenue



View from north along Kent Avenue



View toward gate from south and view to north from park entrance



View from gate into park along cobbled allee (North 8th Street)



View toward gate from within park along cobbled allee (Norh 8th Street)



Panoramic view toward gate from within park along cobbled allee (Norh 8th Street)

Historic Photos of Marsha P. Johnson State Park





Photograph of community members using the abandoned industrial site as a park
(Photo credit: Chris Martin, 2006)