



New York State
Parks, Recreation and
Historic Preservation

Invitation for Bid

Title: Shirley Chisholm State Park Invasive Plant Removal	
Contract Period/Term: Five Years Upon OSC Approval	Number: C003671

Designated Contact(s) & Bid Submission Address		
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IFB Timeline	
Action	Date/Time
IFB Release	12/23/2024
Optional Pre-Bid Site Visit Registration Deadline	1/6/2025 3:00 PM ET
Optional Pre-Bid Site Visit	1/7/2025 10:00 AM ET
Questions Deadline	1/15/2025 3:00 PM ET
Questions Response	Approximately 1/21/2025
Bids Due	2/4/2025 3:00 PM ET
Tentative Award	Approximately 2/19/2025
Contract Start Date	Upon OSC Approval

SUBMIT YOUR PROPOSAL ON TIME

Except as specified in *Section 4.4 State's Rights to Proposals*, proposals received after the date and time in the IFB Timeline will not be considered for award and may be returned, unopened, to the sender. **It is the Bidder's responsibility to allow adequate time to deliver an electronic or hardcopy bid before the date and time specified.**

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Key Points

- **Read this document and associated attachments in their entirety.**

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

- **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.

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

These are the only individuals that you are permitted to contact regarding this procurement 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.

- **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 timeline on the front page of this document. 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 3.1 Questions and Clarifications*.

- **Review this document and your proposal.**

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

- **Attend the Optional Pre-Bid Site Visit.**

Interested Bidders should attend the Optional Pre-Bid Site Visit (See Section 1.4 Optional Pre-Bid Site Visit).

- **Prevailing Wages / Payroll Certification**

The work under this contract has been determined to be a public work pursuant to Article 9 of the New York Labor Law. See Section 5.20 Prevailing Wages / Payroll Certification for additional information.

- **Package your proposal as required.**

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 3.8 Submission Requirements*.

- **Submit your proposal on time.**

Except as specified in *Section 4.4 State's Rights to Proposals*, proposals received after the date and time in the IFB Timeline will not be considered for award and may be returned, unopened, to the sender. **It is the Bidder's responsibility to allow adequate time to deliver an electronic or hardcopy bid before the date and time specified.**

Bid Submission Checklist

Please use this basic checklist to ensure all documents are included within your bid submission.

- Attachment 1 – Bid Form
- Attachment 2 – References
- The information requested in *Section 1.3*, Minimum Qualifications to Bid of this document.
- Forms due at time of bid submission
 - [Lobbying Law Certification](#)
 - [Non-Collusive Bidder Certification](#)
 - [NYS Finance Law §139-I and Executive Order No. 177 Certification](#)
 - [Vendor Responsibility Attestation](#)

1. IFB Introduction

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 IFB.

1.1 Agency

The mission of the New York State Office of Parks, Recreation and Historic Preservation (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 Overview

The New York State Office of Parks, Recreation and Historic Preservation is seeking a Contractor to treat and reduce the abundance and extent of Phragmites and Japanese knotweed in Shirley Chisholm State Park (SCSP) in our New York City region and to initiate and continue the necessary work to reduce the abundance and extent of Lespedeza and mugwort in the Park throughout the life of the contract.

SCSP on Jamaica Bay in Brooklyn, New York City, opened to the public in the summer of 2019 and is a 407-acre park comprised of two capped landfills, referred to as “Penn” and “Fountain.” The park includes 10 miles of hiking and biking trails, picnic areas, fishing access, a bike library serving both the Penn and Fountain sides of the park, one water access point on each side of the park, and other recreational opportunities. SCSP provides 3.5 miles of the waterfront of Jamaica Bay available to the public with areas accessible for kayakers and anglers.

Both sides of the park are impacted by invasive plant species. A total of 34 invasive species (IS) listed by the New York Invasive Species Council were recorded during surveys conducted in the 2019 growing season (see Exhibit C – Shirley Chisholm State Park 2023 Invasive Plant Removal Plan). The landfill caps on the two landfills are impacted predominantly by mugwort, Lespedeza, and Phragmites. Over 300 acres of the site, or at least 75% of the site, is impacted by one or a combination of these species (per 2019 field data). Isolated occurrences of Japanese knotweed most frequently occur in patches near the shoreline, but they are also found as isolated individuals or as very small patches on the landfill cap. There are many areas, particularly well-drained slopes, where mugwort is the dominant vegetation. Patches of both Lespedeza and mugwort frequently encroach into areas where native grasses occur. Phragmites is common in drainage and wet areas, and there are several dense stands of Phragmites in tidal wetlands inland of beds of native smooth cordgrass (*Spartina alterniflora*) and to a lesser extent salt meadow cordgrass (*Spartina patens*).

The specific goal of the 2025–2029 Invasive Plant Removal Plan (IPRP) is to initiate sitewide local control of two target invasive species, mugwort (*Artemisia vulgaris*) and Sericea lespedeza (*Lespedeza cuneata*; Lespedeza), and to continue the sitewide local control of Phragmites (*Phragmites australis*; Phragmites) and Japanese knotweed (*Reynoutria japonica*). Initial mechanical and chemical treatments for Phragmites and Japanese knotweed occurred around the outer ring and shoreline areas within SCSP in 2023, which included the removal

of cut Phragmites prior to chemical treatments. The treatment of Japanese knotweed has continued during the 2024 growing season; Phragmites treatment within the shoreline areas was not scheduled for 2024.

Ecosystem restoration is expected to take place in phases over the course of this contract. Ecosystem restoration provides an additional approach for controlling invasive species through restoring recovering areas post-invasive species treatments for increasing resistance to, and resilience against, future introductions of non-native species.

The Project refers to the invasive species treatment locations within the identified Control Site subunits, which occur on both Penn and Fountain portions of the park (see figures 1 through 4 in Exhibit A – SCSP 2025-2029 Invasive Plant Removal Scope of Services, Section 8.0 Figures). Table 1 in Exhibit A – SCSP 2025-2029 Invasive Plant Removal Scope of Services, provides an overview of the control subunits that constitute the Project, the total areas within each control subunit, Project target species for invasive species control, and percent cover for each target species within each of the Project control subunits as estimated during field surveys in 2019.

1.3 Minimum Qualifications to Bid

OPRHP is seeking bids from experienced companies with the personnel, facilities, and organization to meet the demands of a contract of this scope. Bidders shall comply with the laws of the State of New York and shall possess or obtain any required licenses, permits, or authorizations.

To be deemed qualified and responsive, bidders must provide the following minimum requirements:

- Using Attachment 2 - References, provide three (3) satisfactory client references for whom the Bidder has performed services, including similar nature, scale, and scope, similar to those defined in this IFB in the past five (5) years.
- Proof of NYS Department of Environmental Conservation (DEC) certifications of at least one CCPA in Category 5A - Aquatic Vegetation Control and all CCPT staff employed by the Contractor.
- List of any proposed subcontractors that will be responsible for applying the herbicide. Include in the list the names of personnel and their certification. Any subcontractor(s) applying herbicide must possess the same NYS DEC certifications as the Prime Contractor.

References will be independently verified by OPRHP and will be scored on a pass/fail basis. If a Bidder's reference results in a fail, the bidder will be removed from further consideration.

1.4 Optional Pre-Bid Site Visit

A Optional Pre-Bid Site Visit will be held at:

Shirley Chisholm State Park
1750 Pennsylvania Ave
Brooklyn, NY 11239

The Site Visit will be held on the date and time indicated in the IFB Timeline. Although attendance at the Pre-Bid Site Visit is OPTIONAL, Bidders are highly encouraged to attend. Proposers should notify the designated contact by the date/time indicated in the IFB Timeline to indicated their intent to attend. If a Bidder is unable to attend the site visit, Bidders are strongly encouraged to visit the site independently to gain a greater understanding of the area.

1.5 Glossary

Term	Description
Agency	New York State Office of Parks, Recreation and Historic Preservation (OPRHP).

Term	Description
CCPA	Certified Commercial Pesticide Applicator
CCPT	Certified Commercial Pesticide Technician
Chemical Control	The treatment of the target invasive species through the application of designated herbicides, singly or in combination, on the invasive species mentioned.
Control Site	A location where conditions are kept constant to measure the natural state without any intervention.
Disturbance Seeding	The process of planting seeds in areas that have been disturbed to control erosion and stabilize the soil.
IPRP	Invasive Plant Removal Plan
Mechanical Control	The mowing and/or cutting using handheld equipment of the target invasive species.
OPRHP	Office of Parks, Recreation and Historic Preservation
Restoration Seeding	The process of planting native plants in areas that have lost their native habitat.

1.6 List of Appendices, Attachments, Exhibits and Forms

Appendices

Appendix A – Standard Clauses for New York State Contracts
 Appendix B – General Specifications for OPRHP Contracts
 Appendix D – Bid Protest Procedures
 Appendix E – Consultant Disclosure Reporting Requirements

Attachments

Attachment 1 – Bid Form
 Attachment 2 – References

Exhibits

Exhibit A – SCSP 2025–2029 Invasive Plant Removal Scope of Services
 Exhibit B – Shirley Chisholm State Park Phase 2 Contract Work IPRP
 Exhibit C – Shirley Chisholm State Park 2023 Invasive Plant Removal Plan

Forms

Forms are available at the following link <https://parks.ny.gov/business/forms.aspx>, or you may click on the individual form below to access the PDF.

- [Lobbying Law Certification](#)
- [Non-Collusive Bidder Certification](#)
- [Public Officers Law](#)
- [Encouraging Use of New York State Businesses in Contract Performance](#)
- [NYS Finance Law §139-I and Executive Order No. 177 Certification](#)
- [Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement](#)
- [Vendor Responsibility Attestation](#)
- [No Bid Form](#)
- [Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia](#)
- [FORM A State Consultation Services - Contractor's Planned Employment](#)
- [FORM B State Consultation Services - Contractor's Annual Employment Report](#)
- [ST-220-CA](#)
- [ST-220-TD](#)

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

1.7 Downstream Prohibition

Any entity, contractor (or sub-contractor) involved with OPRHP for the development of specifications related to this project is not eligible to receive an award or subcontract with the contractor or any subcontractor in connection with this bid or subsequent award.

Remainder of page intentionally left blank.

2. Service Requirements / Minimum Specifications

The New York State Office of Parks, Recreation and Historic Preservation is seeking a Contractor to reduce the abundance and extent of Phragmites and Japanese knotweed and to initiate and continue the necessary work to reduce the abundance and extent of Lespedeza and mugwort in Shirley Chisholm State Park in our New York City region. The complete Scope of Services can be found in Exhibit A – SCSP 2025-2029 Invasive Plant Removal Scope of Services and the Project location drawings can be found in Exhibit B – Shirley Chisholm State Park Phase 2 (2025-2029) Contract Work IPRP.

2.1 Location of Treatment Areas

- Shirley Chisholm State Park
Jamaica Bay, Brooklyn, NY

2.2 Summary of Scope of Services

The scope for this IPRP was developed in accordance with findings from, and through the framework of, the SCSP 2023 Invasive Plant Removal Plan (see Exhibit C). Fieldwork completed in 2019 provided the basis for the stated extent, distribution, and relative abundance of the target invasive plant species across the park. The primary objective for the IPRP is to establish the framework for directing 2025-2029 invasive species treatments and post-treatment erosion-control seeding; and initiate restoration planting when sufficient control of the target species has been attained within and across the stated work areas. In support of achieving this objective, related IPRP objectives include:

- Summarizing species-specific descriptions, distribution, and abundance.
- Detailing the specific areas where invasive species treatments will occur.
- Describing treatment methods.
- Defining frequencies and timing of treatments.
- Describing treatment performance monitoring approaches.
- Detailing post-treatment erosion control and restoration (revegetation) options.

2.3 Additional Requirements

- The Contractor will perform fieldwork from 2025 through the 2029 invasive species treatment seasons, as described in Exhibit A – SCSP 2025-2029 Invasive Plant Removal Scope of Services.
 - The Contractor will communicate with OPRHP on a weekly basis, at minimum, during the field seasons.
- Field seasons vary by treatment season for specific target species but typically are between May and October.
- OPRHP expects that there will be adaptive implementation of the Project scope throughout the contract term. Therefore, the Contractor will work closely with OPRHP to communicate preparations for each season, execute Project tasks, adapt to changing conditions on the ground, and document all treatment activities.
- Per State requirements, it is imperative that OPRHP is aware of when herbicide treatments will occur at least ten (10) days in advance of when herbicide treatments will occur to allow for adequate coordination with the New York State Department of Environmental Conservation.
- OPRHP will provide guidance, and technical and logistical support as appropriate throughout the Project.

3. Instructions to Bidders

3.1 Questions and Clarifications

Prospective Bidders will have an opportunity to submit written questions and requests for clarification regarding this Invitation for Bids (IFB). All questions regarding this IFB must be submitted via e-mail or mail and be received by the date and time specified in the IFB Timeline. Questions must reference the relevant page and section of the IFB and must be directed to the designated contact.

Questions submitted by Bidders should be printed or in a Word or Excel document in the following format:

No.	IFB Section	IFB Page	Vendor Name	Question
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Prospective Bidders should note that all clarifications and exceptions, including those relating to the terms and conditions of the IFB, are to be resolved prior to the submission of a bid 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 IFB that would prohibit a Bidder from bidding. Bidders entering a contract with the State are expected to comply with all the terms and conditions contained herein.

The Agency 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 to the Agency-maintained Bidders List.

Contacting individuals other than a designated contact listed on the front page of this IFB may result in the disqualification of the Bidder's proposal.

3.2 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 Section 1.5 – Forms – Lobbying Law Certification.

3.3 No Bid Submission and Removal from Bidders List

3.3.1 "No Bid" Submission

If you do not intend to bid on this procurement, please complete No Bid Form located in Section 1.5 – Forms, and send it to the designed contact address listed on the cover of this IFB.

3.3.2 Removal from the 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 requesting such to a designated contact listed on the cover of this IFB.

3.4 Method of Award

In the sole discretion of OPRHP, the award of the contract will be made to a responsive, responsible and qualified bidder who offers the lowest Grand Total bid to perform work as outlined in these specifications. The successful bidder will be found non-responsible if OPRHP finds that he/she does not have sufficient resources.

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 lowest responsible bidder that will best promote the public interest. If all bids are rejected, each solicited bidder will be so notified.

3.5 RESERVED

3.6 Contract Signing, Term, and Budget

The Agency intends to award one, five-year Contract to the successful Bidder, contingent upon New York State Attorney General (AG) and the Office of the State Comptroller (OSC) approval.

The resultant Contract awarded from this IFB will have a maximum, Not to Exceed value set at \$2.5 million; with work being budgeted/prioritized at OPRHP's sole discretion for approximately \$500,000 annually. OPRHP does not guarantee a minimum or a maximum amount of work, and the Contractor will only be paid for services rendered in accordance with this IFB and the resultant contract. The estimates provided on Attachment 1 Bid Form are best estimates for the entire term of the contract, and are provided to form a basis of award.

3.7 Form of Bids

Attachment 1 – Bid Form shall be completed in ink. The grand total bid amount must be shown in numeric form. Bidders may elect to submit either a hardcopy bid or a scanned copy of the original signed bid via e-mail.

All bids must be received at or before the time specified and at the place designated for the bid opening. **It is the Bidder's responsibility to allow adequate time to deliver an electronic or hardcopy bid before the date and time specified. 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 IFB 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.

3.7.1 E-Mail Bids (PREFERRED)

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 – IFB C003671 – Shirley Chisholm State Park Invasive Plant Removal – Due 2/4/2025 3:00 PM ET
--

Every signature page of an e-mail 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 single 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.

3.7.2 *Hardcopy Bids*

The bid shall be submitted in a sealed envelope and addressed to a designated contact listed on the cover of this IFB. The envelope shall be marked in the lower left-hand corner with the following information:

PROPOSAL ENCLOSED
IFB C003671
Shirley Chisholm State Park Invasive Plant Removal
Proposal Submission Due February 4, 2025 3:00 PM ET

3.8 **Submission Requirements**

3.8.1 *Documentation of Prior Experience*

The information requested in *Section 1.3, Minimum Qualifications to Bid* of this document.

3.8.2 *Completed Forms Due with Bid*

Bidders must submit the following Attachments and forms with their proposal (please see Section 1.6 List of Appendices, Attachments, Exhibits and Forms for access to hyperlinks, as applicable):

- Attachment 1 – Bid Form
- Attachment 2 – References
- [Lobbying Law Certification](#)
- [Non-Collusive Bidder Certification](#)
- [NYS Finance Law §139-I and Executive Order No. 177 Certification](#)
- [Vendor Responsibility Attestation](#)

3.8.3 *Completed Forms Due Upon Tentative Award*

Should the contract be awarded to your company, you must submit the following forms within ten (10) business days of Tentative Award notification. If not received within this time period, OPRHP reserves the right to make Tentative Award to the next ranked bidder:

- [Public Officers Law](#)
- [Encouraging Use of New York State Businesses in Contract Performance](#)
- [Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement](#)
- [Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia](#)
- [FORM A State Consultation Services - Contractor's Planned Employment](#)
- [ST-220-CA: Contractor Certification to Covered Agency](#)
- Proof of Insurance per IFB Section 5.19 Insurance Requirements

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

3.9 **Tie Bids**

In the event there is a tie in the Grand Total Bid, Final determination will be made by the Commissioner of OPRHP

3.10 **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.

Remainder of page intentionally left blank.

4. Administrative Requirements

With the submission of a response to this Invitation for Bid, the Bidder agrees to the proposal conditional outlined in this section.

4.1 Issuing Agency

This IFB is issued by the New York State Office of Parks, Recreation and Historic Preservation, which is responsible for all criteria stated herein and for evaluation of all bids submitted.

4.2 Solicitation

This IFB is a solicitation to bid, not an offer of a contract.

4.3 Liability

OPRHP/The State of New York is not liable for any costs incurred by a Bidder in the preparation and production of any proposal, or for any work performed prior to the execution of a formal contract.

4.4 State's Rights to Proposals

By submitting a bid, 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 reserve the right to exercise the following:

- Change any of the scheduled dates herein;
- Amend IFB Requirement(s) after their release to correct errors or oversights, or to supply additional information as it becomes available and so notify all potential Bidders;
- Withdraw the IFB, 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 bids, in whole or in part, and to 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 Offerer's proposal and/or to determine an Offerer'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 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 IFB;
- 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 IFB 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 terminates the Contract for non-performance, 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 months of the award;

- Utilize any and all ideas submitted in the bids received;
- Make an award under the IFB in whole or in part; and
- Seek revisions of bids.

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 the Agency, a statement is intended to mislead the Agency in its evaluation of the bid, and the attribute, condition, or capability is a requirement of the IFB, the bid shall be disqualified from consideration.

4.5 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."

4.6 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.

4.7 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.

4.8 Bid Effective Period

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

4.9 Bid Opening

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

4.10 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' effort to clarify a proposal may result in the proposal being labeled as non-responsive and be given no further consideration.

Additionally, OPRHP reserve 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 IFB.

4.11 Bid Evaluation and Selection

See *Section 3.4 Method of Award*, regarding bid selection and evaluation methodology. Submitted bids may be reviewed and evaluated by any personnel or agents of OPRHP, other than one associated with a competing Bidder.

4.12 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.

4.13 Bid Review and Contract Approval

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

4.14 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 listed on the cover of this IFB. The debriefing will be scheduled within ten (10) business days of receipt of written request by OPRHP or as soon after that time as practicable under the circumstances.

4.15 Bid Protest Procedure

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

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

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

4.17 Conformance to IFB

Any exceptions or objections to the terms, conditions, and requirements of this IFB are governed by, and to be submitted in accordance with *Appendix B, Section 10, Extraneous Terms*. Bidders are cautioned that any such exceptions or objections may render their bid non-responsive.

4.18 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/proposers 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.

4.19 Bidder Assurances

The Bidder warrants that it has carefully reviewed OPRHP's needs as described in the IFB 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 IFB 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 IFB 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.

4.20 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>. 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).

4.21 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.

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

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

5. Contractual Requirements

With the submission of a response to this Invitation for Bids, the Bidder agrees to all contract conditions outlined in this Section except that Bidders may propose changes as allowable in *Appendix B, Section 10, Extraneous Terms*.

5.1 Appendix A Standard Clauses for New York State Contracts

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

5.2 Appendix B General Specifications for OPRHP Contracts

The terms of *Appendix B, General Specifications for OPRHP Contracts*, attached hereto, are hereby incorporated into this IFB and any resulting contract and shall govern any situations not covered by this IFB or *Appendix A*.

5.3 RESERVED

5.4 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. Executed Agreement
4. IFB, including all other associated Appendices, Attachments, Addenda and Questions and Answers
5. Contractor's Bid in Response to the IFB

5.5 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.

5.6 Conflict of Interest

The Contractor will be responsible for establishing procedures to identify potential conflicts of interest. If during the term of this Agreement, and any extensions thereof, the Contractor becomes aware of an actual or potential relationship which may be considered a conflict of interest, the Contractor shall immediately notify the State in writing and disclose the nature of the potential conflict of interest in the manner prescribed by the State. The State will have sole discretion in evaluating the nature of the identified conflict of interest and will make the final decision regarding its resolution.

5.7 Litigation Support

In the event that the Agency 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.

5.8 Interpretation & Disputes

Any dispute arising from this IFB, 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 IFB.

5.9 Indemnification

The Contractor agrees to indemnify, defend, save, and hold harmless the State of New York, OPRHP, and their officers, employees and agents of and from any claims, demands, actions, or causes of action of any kind arising out of the services of the Contractor provided for in this agreement.

5.10 Equal Employment Opportunities

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

disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

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

C. 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.

D. Workforce Utilization Report

- 1) The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the New York State Office of Parks, Recreation and Historic Preservation on a quarterly basis during the term of the Contract.
- 2) Separate forms shall be completed by the Contractor and any subcontractors.
- 3) 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.

- E. 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.

5.11 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 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.

5.12 Payment Requirements

The Contractor's compensation will be based on the Contractor's response to this IFB. If applicable, 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:

- A. 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.
- B. Invoices should be submitted for services rendered and for acceptance by OPRHP on a monthly basis to the following designated payment office:

Leslie Wright
Leslie.Wright@parks.ny.gov

- C. 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.
- D. 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.

5.13 CPI Price Adjustments

On each anniversary date of the Contract, the Contractor may request a rate change (increase or decrease) based upon the fluctuation in the latest published copy of the Consumer Price Index that is applicable to this service (all urban consumers, Northeast region, not seasonally adjusted, all items, <https://data.bls.gov/cgi-bin/surveymost?cu>, Northeast Region All Items, 1982-1984=100 - CUUR0100SA0).

This index is published monthly by the US Bureau of Labor Statistics and posts statistics that include the preceding twelve (12) months service period. Some contract rates may not change; however increases or decreases will be based on the applicable CPI and may not exceed 5% of the contract rate paid during the prior term. The percentage change from 12 months prior for any goods or services listed in the CPI will be used to calculate the applicable rate increase or decrease.

Ninety days prior to the anniversary date, the contract rate will be reviewed using the CPI as a cost basis. The percentage change in price from the 15 months prior to the anniversary date will be used to calculate the applicable contract rate.

For example, if the anniversary date of the contract is April 1, 2020, the January 2020 CPI would be compared to the January 2019 CPI to calculate the rate. If the CPI lists a price that has risen in the prior 12 months, the contract rate may be adjusted by that percent change.

Sample Calculation

CPI for January 2020	262.188
Less CPI for January 2019	258.073
Equals index point change	4.115
Divided by previous period CPI	0.016
Result multiplied by 100 = Rounded Percent Change	1.57

The Contractor is solely responsible for notifying OPRHP that the Contractor wishes to receive the CPI rate change and to submit a request in writing to OPRHP at ServiceContracts@parks.ny.gov for the adjusted rate on the contract anniversary date.

Should the Contractor fail to make a written request to OPRHP at ServiceContracts@parks.ny.gov within ninety (90) days after the applicable anniversary date, the Contractor shall be deemed to have waived its right to any increase in price for that year, but OPRHP shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

CPI rate adjustments made pursuant to this section should only pertain to non-labor items (i.e. supplies and materials) or labor rates not covered under Section 5.20 Prevailing Wages / Payroll Certification (if applicable).

5.14 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, Subcontractors 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.

5.15 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.

5.16 Advertising

The Contractor agrees not to use the Agency's name, 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 by OPRHP.

5.17 Termination Provisions

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

5.17.1 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.

5.17.2 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.

5.17.3 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.

5.18 Vendor Responsibility Provisions

The State must conduct business only with responsible entities.

5.18.1 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.

5.18.2 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.

5.19 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 commercial general liability insurance and any required combination of excess/umbrella liability policies shall be endorsed to name the "State of New York, Office of Parks, Recreation, and Historic Preservation, and their officers, employees, and agents", the "City of New York, including its officials and employees", and the "United States Department of the Interior, acting through the National Park Service, an agency of the United States of America" as additional insureds.
- All required policies of liability insurance other than commercial general liability insurance noted immediately above shall be endorsed to name the "State of New York, Office of Parks, Recreation, and Historic Preservation, and their officers, employees, and agents" as additional insureds.
- 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 shall provide that the required coverage shall be primary and non-contributory to other insurance available to the State.
- All required policies of liability insurance, other than pollution legal liability/environmental liability insurance, will be written on an "Occurrence" and not a "Claims-Made" basis. Coverage shall remain force throughout the performance of the services and for three (3) years after completion of the contract. If the environmental liability insurance 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 three (3) years 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 \$4,000,000.00
- Products/Completed Operations \$4,000,000.00
- 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. **Pollution Legal Liability/Environmental Liability Insurance.** Said policy shall provide and maintain Pollution Legal Liability coverage with limits not less than \$2,000,000 per Claim.

C. **Comprehensive Business Automobile Liability Insurance.** Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$1,000,000 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.

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
DB-120.2	Certificate of Participation in Disability Benefits Group Self Insurance
DB-155	Certificate of Disability Benefits Self-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.

5.20 Prevailing Wages / Payroll Certification

The work under this contract has been determined to be a public work pursuant to Article 9 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	2024901247
Scheduled Period	July 2024 through June 2025
Link	https://apps.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1580302

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.

5.21 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.

5.22 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 one year. 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.

5.23 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.

5.24 Travel, Meals and Lodging

Not applicable.

5.25 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.

5.26 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.

5.27 Additional Consultant Hours

Not applicable.

5.28 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.

Appendix A – Standard Clauses for New York State Contracts

June 2023

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, licensor, 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, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) 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, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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, citizenship or immigration status, 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 and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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 33rd Floor
New York, NY 10017
646-846-7364
email: <mailto:mwbebusinessdev@esd.ny.gov>
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirector.y.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 May 2023, 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 899-bb and State Technology Law § 208).

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/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

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. EXTRANEIOUS 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 discontinues 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.

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 – 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 OPRHP (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 OPRHP as the contracting agency, and Form B must be submitted to OPRHP, 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 this IFB. Please see below 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 this IFB, 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 <https://www.onetonline.org/find/all> 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 OPRHP 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 OPRHP, 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 <https://www.onetonline.org/find/all> 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 OPRHP (as the contracting Agency):

By mail: Director of Procurement and Service Contracts By email: ServiceContracts@parks.ny.gov
Office of Parks, Recreation and Historic Preservation
625 Broadway
Albany, NY 12207

To the Consultant Reporting Section of the Bureau of Contracts at OSC:

By mail: NYS Office of the State Comptroller By fax: (518) 474-8030 or (518) 473-8808
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting

To DCS:

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

Attachment 1 – Bid Form

Method of Award is based on the lowest Grand Total from a responsive and responsible vendor. The figures shown below represent OPRHP's best estimate included for bidding purposes. OPRHP guarantees no minimum or maximum amount of work. Payment to awarded contractor will reflect only work completed. All ancillary costs **must** be included in rates bid. To submit a bid, please enter your price(s) below, being mindful of any required mathematical extensions (e.g. multiplied by quantities/frequency, etc.). **All figures must be rounded to two decimal places.**

#	Description	A	B	A × B
		5 Year Estimate	Rate Bid	Total Cost
1	Mechanical Control – Mechanical Removal	80 acres		
2	Mechanical Control – Hand Removal	48 acres		
3	Off-site Disposal Japanese Knotweed	270 tons		
4	Chemical Control – Glyphosate	501 acres		
5	Chemical Control – Imazamox	19 acres		
6	Chemical Control – Imazapyr	4.2 acres		
7	Chemical Control – Confront	88 acres		
8	Restoration Seeding – Shoreline	109 acres		
9	Restoration Seeding – Cap	1 acre		
10	Restoration Seeding – Steep Slope (F12)	57 acres		
11	Disturbance Seeding	175 acres		
Grand Total:				

Note: All bids must be valid for at least 180 days.

Bidder Certification				
By completing this bid form, the Bidder certifies that it has carefully examined the bidding and contract documents, has a full understanding of ORRHP's requirements, and agrees to perform this contract and to provide all goods and / or services, labor, material and equipment necessary for this contract at the bid price offered, if so awarded.				
Company Name:			Federal ID No.:	
Doing Business As:			SFS ID No.:	
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> NYS Certified Minority- Owned Business	<input type="checkbox"/> NYS Certified Women- Owned Business	<input type="checkbox"/> NYS Service-Disabled Veteran Owned Business	
Address:			City	
			State	
			Zip Code	
Name of Official:			Title:	
E-Mail			Telephone:	
_____ Signature			_____ Date	

Bidder Certification Signature MUST be completed in ink.

Attachment 2 – References

Bidder Name:

Per IFB Section 1.3 Minimum Requirements, please provide three (3) satisfactory client references for whom the Bidder has performed services, including similar nature, scale, and scope, similar to those defined in this IFB in the past five (5) years. Please provide phone number, email, and address for all references.

Reference 1

Company/Organization Name:	
Contact Person:	
Address:	
City, State, Zip Code:	
Telephone Number:	
E-Mail Address:	
Timeframe of Services Provided:	
Brief Description of Services Provided:	

Reference 2

Company/Organization Name:	
Contact Person:	
Address:	
City, State, Zip Code:	
Telephone Number:	
E-Mail Address:	
Timeframe of Services Provided:	
Brief Description of Services Provided:	

Reference 3

Company/Organization Name:	
Contact Person:	
Address:	
City, State, Zip Code:	
Telephone Number:	
E-Mail Address:	
Timeframe of Services Provided:	
Brief Description of Services Provided:	

Exhibit A – SCSP 2025-2029 Invasive Plant Removal Scope of Services

Exhibit A – SCSP 2025–2029 Invasive Plant Removal Scope of Services

1. BACKGROUND: TARGET INVASIVE SPECIES DETAILS

This contract is for treating mugwort, Lespedeza, Phragmites, and Japanese knotweed for the overarching goal of restoring the areas identified as the control subunit target areas. The following provides summary descriptions of each species.

Phragmites

Species Description. Phragmites is a perennial, warm-season grass that grows into dense stands and usually progresses into a monoculture. Plants can reach 15 feet in height, yet more than 80% of the yearly biomass is contained below ground in a dense mass of roots and rhizomes. Phragmites has gray-green foliage during the growing season, with purple-brown-silver seed head plumes appearing in late August (in New York City). The plumes are 6 to 20 inches long at the end of stalks and have many branches. Phragmites turns tan in the fall and most leaves drop off, leaving only the stalk and plume-topped shoot throughout winter. Rhizomes generate roots and stalks at regularly spaced nodes. An individual plant can multiply into a large stand through its rhizomes. Rhizomes may exceed 60 feet in length, grow more than 6 feet per year, and readily grow into new plants when fragmented. In addition to facilitating reproduction, Phragmites rhizomes can penetrate the soil to a depth of more than 6 feet. Germination occurs in the spring, generally on exposed moist soils (NYCDEP 2009).

In 2019, Phragmites was most abundant along shoreline edges both below and above the riprap line, inland of smooth cordgrass beds. In places with suitable moisture, Phragmites forms dense monocultures and excludes other species. The thickest patches occurred along the northeast shorelines of both the Penn and Fountain sites.

Project Target Areas. Phragmites was treated across the outer rings and shoreline areas of both sides of the park in 2023. The 2023 treatment regime included cutting and removal, followed by herbicide treatments. Information is not available regarding the abundance and distribution across the control subunits after the 2023 treatment activities, however, it is expected that this Project will continue Phragmites treatments across the shoreline areas over the duration of the Project. The shoreline control subunits account for 19 acres on the Penn side and 27.5 acres on the Fountain side of the park. Relative cover of Phragmites was estimated in 2019 to range from 2% to 37% within the Penn shoreline control subunits and 2% to 59% within the Fountain shoreline control subunits (see Table 1 and Section 8 Figure 1). Five of the six Fountain site control subunits were estimated to have 25% or greater percent cover of Phragmites in 2019.

Japanese Knotweed

Species Description. Japanese knotweed is a large, herbaceous perennial plant native to eastern Asia. Japanese knotweed has hollow stems with distinct raised nodes. The leaf is a broad oval with a truncated base, 5 to 15 centimeters (cm) long and 5 to 12 cm broad. The flowers are small, creamy white, and produced in erect racemes in late summer and early autumn. It is a frequent colonizer of temperate riparian ecosystems, roadsides, and landfills. It forms thick, dense colonies that completely crowd out any other herbaceous species, forming a

monoculture. Japanese knotweed has a large underground network of rhizomes. Its rhizomes can extend 20 feet horizontally and 10 feet deep, making removal by excavation extremely difficult and often unsuccessful. The plant is also resilient to cutting, vigorously resprouting from the roots (NYCDEP 2009).

Project Target Areas. Japanese knotweed was treated in 2023, with treatments continuing in 2024. At the start of the 2025 IPRP treatment season, Japanese knotweed across the shoreline control subunits will have been treated through two seasons. Isolated areas where the species occurs on the landfill cap will have been treated for one season by the time of the onset of the 2025 IPRP treatment season. The goal is to eradicate Japanese knotweed from the park by the end of this Project.

Information is not available regarding the abundance and distribution of Japanese knotweed across the control subunits after the 2023 treatments. Within those shoreline control subunits that were treated in 2023, the species ranged from less than 1% to 15% cover prior to the 2023 treatments, with only two control subunits exceeding 2% at the time (see Table 1 and Section 8 Figure 2). In 2024, treatments will occur across the 2023 control subunits in addition to the two cap locations, which include control subunits P8 and F10 (see Section 8 Figure 2). It is expected that Japanese knotweed treatments will target small, discrete areas throughout the Project.

Lespedeza

Species Description. Lespedeza is a perennial, warm season, herbaceous legume. The species is 3 to 6 feet tall, with leafy slender stems, often branching in the upper half with crowded whitish flowers toward the terminals. Leaves are alternate, numerous with three-leaflet leaves 3/8 to 3/4 inches long. The leaves are green above, but dense whitish hairy to light gray-green beneath. Flowers appear in July through late September (in New York City) in clusters ranging from one to three and flowers are 1/4 inch long, white with purple marks. Seeds appear in October through November in legume pods clustered in terminal axils and scattered along the stems. Lespedeza is a nitrogen fixer, which displays allelopathic properties to surrounding species. Once established, Lespedeza is long-lived and a prolific seed producer (NYCDEP 2009).

Project Target Area. Lespedeza was most typically found on the landfill caps, often in dense, localized clusters among native grasses or pioneering plants. Lespedeza was also observed interspersed with mugwort in more degraded habitats (e.g., lower frequency of native plant species). From the information gathered during the 2019 field data collection, Lespedeza occurred in proximity to mugwort across target Control Subunit F12 (see Section 8 Figures 3 and 4). F12 covered approximately 46 acres of which there were approximately 31 acres estimated to contain invasives species. Lespedeza was estimated to account for 42% cover within F12 in 2019.

Mugwort

Species Description. Mugwort is a perennial with an extensive rhizome system. Mugwort spreads largely through vegetative expansion and the anthropogenic dispersal of root propagules. Shoots emerge during the spring, and flowering occurs from July to late September. The small seeds (about 1 millimeter in diameter) are primarily wind dispersed. Seed production does not seem to be a major factor in the spread of mugwort. Stems are smooth and longitudinally ridged, with numerous axillary branches toward the upper portions of the plant. The stems become somewhat woody as they age. The leaves are alternate; densely covered with woolly, silver-

white hairs on the underside; and slightly hairy on the upper surface. The lower leaves are petiolate and generally coarsely toothed and pinnately lobed. The upper leaves are sessile and lanceolate with smooth or toothed margins. The numerous flowers are 5 millimeters in size, green, and grow in clusters at the end of stems and branches. The foliage is aromatic (NYIS.INFO 2019).

Project Target Area. Overall, mugwort was the most widespread and abundant invasive plant species during the 2019 surveys, occurring in nearly all control subunits at both Penn and Fountain sites (see Section 8 Figure 4). It occurs along a gradient from low density of small, scattered patches to densely populated monocultures that exclude the growth of all other plant species. Mugwort monocultures were often observed on steep side-slopes, where drainage and relatively xeric conditions appeared to provide mugwort a competitive advantage. From 2019 field data collection, mugwort occurred in proximity to Lespedeza across target Control Subunit F12. F12 covers approximately 46 acres of which there were approximately 31 acres estimated to contain invasives species. Mugwort was estimated to account for 44% of the cover within F12 in 2019.

2. OVERVIEW OF TREATMENT TYPES

The scope of this work includes both mechanical and chemical treatment control methods. An overview of the control methods is provided in this section. Additional specifics are included in Section 4 Invasive Species Treatment Protocols.

Mechanical Control

Mechanical control refers to mowing and/or cutting using handheld equipment as appropriate to complete mechanical treatment of the target invasive species. Mechanical control will be implemented in combination with chemical control. Be aware that the park is built on two closed landfills. Proactive care must be taken to avoid surface soil disturbances and erosion. At the onset of the Project, OPRHP does not anticipate the removal of cut Phragmites, Lespedeza, or mugwort vegetation from the Project site. Japanese knotweed is expected to be cut, removed, and properly disposed of off-site in accordance with DEC solid waste disposal rules and regulations. It could be determined later in the Project that removal of other target species would be beneficial to the overall outcome of the Project. OPRHP and the Contractor will discuss options for removal, as relevant.

Chemical Control

Chemical control refers to the treatment of the target invasive species through the application of designated herbicides, singly or in combination, on the invasive species mentioned. Herbicides to be used for targeted treatment of invasive species are provided in Section 5, Target Invasive Species Approaches.

Table 1. Invasive Species within 2025-2029 Control Subunits at Shirley Chisholm State Park

Subunit ID	Subunit Acreage	2025-2029 Target Species	Estimated Target Invasive Plant Species Percent Cover ¹
P2	2.1	Phragmites	13% ²
		Knotweed	7% ³
P3	6.0	Phragmites	37% ²
		Knotweed	15% ³
P4	1.7	Phragmites	2.0% ²
		Knotweed	1% ³
P5	9.0	Phragmites	14% ²
		Knotweed	1% ³
P8	2.0	Knotweed	1% ⁴
F1	1.0	Knotweed	2% ⁴
F2	7.0	Phragmites	35% ²
		Knotweed	2% ³
F3	4.0	Phragmites	25% ²
		Knotweed	2% ³
F4	4.0	Phragmites	59% ²
		Knotweed	<.005% ⁴
F5	0.5	Phragmites	2.0% ²
F6	5.0	Phragmites	56% ²
F7	6.0	Phragmites	58% ²
		Knotweed	1% ³
F10	38	Knotweed	1% ⁴
F12	42	Lespedeza	42% ⁵
		Mugwort	44% ⁵

Notes:

- 1 Invasive species cover presented are from surveys performed in 2019.
- 2 Indicates target invasive species within this subunit were treated in 2023 and in 2024; the current invasive species coverage may be less than that reported in 2019.
- 3 Indicates target invasive species within this subunit were treated in 2023 and in 2024; current invasive species coverage is likely less than that reported in 2019.
- 4 Indicates target invasive species within this subunit was treated in 2024; current invasive species coverage is likely less than that reported in 2019.
- 5 Note that the coverage of target invasive species within Control Subunit F12 identified may differ, and may be greater, in 2025 than the values reported following 2019 survey.

3. SUBMITTALS AND PROCEDURES

The following submittals shall be prepared by the Contractor prior to performing work activities as a part of this services contract. OPRHP will require pretreatment submittals at least 10 days prior to the commencement of Project work.

Pretreatment Submittals

A. Invasive Species Treatment Work Plan

1. Submit a treatment plan, created, and signed by the Certified Commercial Pesticide Applicator (CCPA) including, but not limited to, the following:
 - a. How the mechanical treatment will be completed including a list of all equipment (makes and models) proposed to be used to complete the work;
 - b. Description of removal of plant material (where applicable)
 - i. Handling, removal, and off-site disposal are only anticipated for Japanese knotweed. However, through adaptive management, a decision could be made in future Project years that removal and off-site disposal would improve the performance of the Project. Coordination would occur between OPRHP and the Contractor should that situation arise to determine tradeoff costs and timing of the activity.
 - ii. Submit a plan detailing how Japanese knotweed, and other target species as needed (see b i. above), will be removed from the site and where the cut material will be disposed of.
 - iii. DEC guidelines for disposal of invasive plant material indicates that the Contractor must put invasive plant material in thick, durable plastic bags and dispose of them at a local landfill. Not all landfills will accept plant material, therefore, the Contractor is responsible for calling ahead to inquire. Ensure that the material is securely contained (such as under a truck cap) to avoid spread during transport.
 - c. List of proposed products including herbicide product information to be used in accordance with the Contract;
 - d. How the herbicide will be applied;
 - e. The application rates of the herbicides to include estimated quantities of herbicide to be used in each subunit within the Control Site;
 - f. Personnel that will perform the work including name, employer name, and date of certification as a Certified Commercial Pesticide Technician (CCPT); copies of registrations of CCPA and all CCPT and proof of registration with DEC;
 - g. Pollution prevention and spill response plan;
 - h. Schedule and sequencing of the proposed work outlined in this scope (i.e., multiple treatment areas where work is performed simultaneously or in a sequential order);
 - i. Erosion and sediment control protocols and procedures proposed to be implemented on site, as needed, in accordance with the New York State Standards and Specifications for Erosion and Sediment Control “Blue Book” (DEC 2016);

- j. A sample of the chemical application notification markers, an electronic version is acceptable.
 - i. Visual notification markers must be posted on the day of each chemical treatment and must be in place before pesticides are applied. There are no exceptions even when 48 hours written notice is not required or when the application is more than 150 feet from any property line. The markers may not be removed sooner than 24 hours following herbicide applications.
- k. If applicable, the list of proposed subcontractor(s) that will be responsible for applying the herbicide. Include in the list the names of personnel and their certification. Any subcontractor(s) applying herbicide must possess the same NYS DEC certifications as the Prime Contractor.
- l. Procedures for safe chemical and waste handling for specific products and wastes to be used or generated as a result of the on-site activities.

B. Health and Safety Plan

1. Submit a health and safety plan 14 days prior to treatment specifically for the application of herbicide. Include all personal protective equipment to be used.
 - i. Attach the Product Data and the Material Safety Data Sheets for the herbicides to be used to the plan.

C. Site Access Plan

1. The Site Access Plan shall be completed prior to any work on site and shall include the identification of required permits and copies of obtained permits, and the staging/site area layout indicated in Exhibit B – Shirley Chisholm State Park Phase 2 (2025-2029) Contract Work IPRP, drawings C-001 and C-002.

D. Certification of Seed

1. From each seed vendor for each grass-seed monostand or mixture, stating the botanical and common name, percentage by weight of each species and variety, and percentage of purity, germination, and weed seed. Include the year of production and date of packaging. Document that seed mix does not contain DEC prohibited invasive species seed.

E. Post-Treatment Daily Submittals

1. Daily summary reports must be completed for every day of Project work. The format and organization of the Daily Activity Summary Report is included in Section 9. A physical copy of the daily reports should be provided to OPRHP by End of Day, and email electronic version by the next business day. OPRHP will conduct site visits prior to, and after, treatments to monitor Project progress and coordinate with the Contractor. OPRHP expects that the Contractor will document any observations regarding the relative effectiveness of treatments and beneficial or adverse effects to target and non-target species.
2. The Daily Activity Summary Report shall contain:
 - a. The date of on-site activity;
 - b. Locations where treatments occurred;
 - c. Species treated within each location;
 - d. Treatment method(s) employed (i.e., mechanical, type of mechanical, and chemical);

- e. Herbicide product type(s) and amount(s) of product used within each location (note that the Project amounts for each herbicide are approved by DEC and shall not be exceeded. A permit condition requires that the dates of application, rates of applications, and total quantities of each herbicide used must be recorded on a daily basis – see Section 9 DAILY ACTIVITY SUMMARY REPORT.
 - i. The Contractor shall keep a running Project log of amount of herbicide applied as a percentage of the total Project amount per the issued permit(s);
- f. Amount of cut material removed within each location (as relevant, see note in Item A sub-element b above);
- g. Confirmation that all target areas were treated within each control subunit where work occurred;
- h. Any modifications of treatment methods, as applicable.

4. INVASIVE SPECIES TREATMENT PROTOCOLS

4.1. General

1. The invasive species control methods for this scope of services are described in the following subsections for targeted species. The Contractor will use an adaptive management approach and, therefore, there may be technical modifications to the invasive species treatments as outlined in reaction to the uncertainty associated with uncontrollable elements (e.g., weather events, herbivory, and wildlife use) as well as the responses of target species to treatments. It should not be expected that additional budget will be available to accommodate modifications in approach.
2. Potential environmental problems should be brought to the attention of OPRHP, at which point an alternative application strategy may be implemented. Any off-target damage to the environment shall be the responsibility of the Contractor and the applicator(s).
3. This Project is a park on top of capped landfills. The New York City Department of Environmental Protection (NYCDEP) is responsible for performing operation, maintenance, and monitoring activities for the existing landfill post-closure systems on site as described in the NYCDEP Bureau of Engineering Design and Construction Operations and Maintenance Manual (2008). As such, the Contractor shall maintain, protect, and provide access to all NYCDEP infrastructure during treatment.
 - a. The Contractor shall take care not to damage cleanouts on the landfill side of the roadway along Hendrix Creek.
4. Chemical applications are expected to be foliar for all target species through the duration of the Project. For Phragmites, under certain situations where protected species are located in close proximity to invasive species, the use of hand wiping may be done to apply herbicide to avoid overspray to endangered and native species. OPRHP will communicate with the Contractor regarding the potential use of hand-wiping applications. Do not touch non-target plants during hand application. See Section 4.6 Avoidance of Impacts to Non-Target Species, Item 2, below and Exhibit C – Shirley Chisholm State Park 2023 Invasive Plant Removal Plan, Section 4.3.1 for additional information.
5. Use a suitable adjuvant, such as LI-700, with the Rodeo (glyphosate) and Garlon 3A (Triclopyr) herbicides or methylated seed oil (MSO) with Arsenal (imazapyr). The Contractor may propose an

alternate, but it may not be used without the approval of OPRHP. Product labels for all herbicides should be followed per recommendations. For example, the product label for Garlon 3A indicates mixing with an “agriculturally labeled non-ionic surfactant.” The use of an adjuvant with Confront (clopyralid) is not usually necessary; however, it may be added at the discretion of the Contractor. If an adjuvant is added, follow all manufacturer use guidelines.

6. Invasive species control shall comply with all applicable federal, state, and local laws regarding herbicide use, including the requirements of DEC and NYC Local Law 37 and with regard to warning signs and neighborhood notification. The Contractor and any Subcontractor(s) should comply with the requirements for notifying surrounding property owners prior to chemical applications. Compliance would entail following what is provided by the DEC Neighbor Notification here: see <https://dec.ny.gov/environmental-protection/pesticides/laws-regulations/neighbor-notification>.
7. Post notification on the perimeter of treatment areas. Post the signs the same day as the herbicide treatment is completed. Follow all instructions from the manufacturer regarding locations, frequency, physical characteristics, time limits, and any other criteria not specifically mentioned in this paragraph.
8. Do not apply herbicides to plants when the ambient temperature is greater than 85 degrees Fahrenheit or when vegetation to be treated is wet, suffering from drought, or entering the dormant stage.
9. Do not spray herbicide when the wind speeds are in excess of what is recommended by the herbicide manufacturer.
10. Do not spray herbicide when rain is forecasted within 12 hours.
 - a. The Contractor is responsible for obtaining all weather forecasts to properly plan daily activities.
 - b. If rain does occur within 12 hours of application, the Contractor shall reapply the herbicide at no additional cost to OPRHP.
11. A tracer dye shall be used in herbicide mixes to aid in identifying application coverage. Marker dyes are considered helpful in selective or broadcast herbicide applications to allow the applicator to verify that the herbicide formulation was applied to the intended target(s). A tracer dye shall be used for all herbicide applications to support confirmation of areas treated; to support reducing the overall amount of herbicide applied (reducing overspray); and to provide a basis for OPRHP to confirm treatment occurred across entire control subunits where invasive species occur. The use of tracer dye can inform the need for follow-on spot treatments.
12. Disposal of any herbicide on the work site is not permitted.
13. The Contractor shall ensure that no person enters the treatment area without wearing the appropriate safety equipment within 24 hours of herbicide application. The Contractor shall follow DEC Regulations Part 598: Handling and Storage of Hazardous Substances. The Contractor, when on the premises or when in control of a hazardous substance transfer, is responsible for transfer activities. The Contractor must employ practices for preventing transfer spills, overfills, and releases. The herbicide may be temporarily stored on site during treatments, providing it is stored in accordance with all federal, state, and local laws and regulations, and in a manner approved by the manufacturer.
14. All persons applying the herbicide are required to wear all Personal Protective Equipment (PPE) required by the manufacturer of the herbicide. The Contractor must provide PPE to its employees.

4.2. Qualifications and Permits

1. Only personnel certified by DEC as a CCPA or a CCPT may apply herbicides. A minimum of one CCPA is required and has the responsibility for supervising all CCPTs. Provide the CCPTs with the ability to contact the supervising CCPA. The supervising CCPA will be on site if standing water is present, or as required by the conditions of the pesticide applicator permit. See the following DEC website for requirements: (<http://www.dec.ny.gov/permits/45618.html>).
2. All pesticide-related contract work and supervision must be performed by a contractor experienced with previous work of similar scope.
3. Copies of NYS Department of Environmental Conservation (DEC) certifications of at least one CCPA in Category 5A - Aquatic Vegetation Control and all CCPT staff employed by the Contractor. (DEC) certifications of at least one CCPA and all CCPT staff employed by the Contractor shall be available for inspection during applications.
4. The direct application of an aquatic pesticide to Surface Waters of the State of an acre or more, including wetlands, will include Permit to Use a Pesticide for the Control of an Aquatic Pest, which is required under Article 15 of the Environmental Conservation Law and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 327. Refer to the application for additional details (http://www.dec.ny.gov/docs/materials_minerals_pdf/aqv02app.pdf). The Contractor will complete portions of the application for Permit to Use a Pesticide for the Control of an Aquatic Pest including the Pesticide Applicator Information and Pesticide Application Information (with manufacturers' labels for each) and send to OPRHP. The Contractor will provide OPRHP with application fees. OPRHP will act as the Permittee.

4.3. Treatment Execution Criteria

1. Treatment execution criteria are defined as follows:
 - a. 100% of all target invasive species will be mechanically and chemically treated for each scheduled round of treatment.
 - b. Interim/follow-on spot chemical treatments will be conducted over areas not fully treated during the previously scheduled round.
 - c. Interim/follow-on spot chemical treatment areas will be identified through Project monitoring by OPRHP; the Contractor is expected to spot treat all plants within areas identified as requiring follow-on chemical treatment.
2. Invasive species treatment activities will be conducted to meet the treatment execution criteria. The Contractor may be required to make additional visits to perform spot treatment activities, at no extra cost to OPRHP to meet the treatment execution criteria. If the criteria are not met based on monitoring by OPRHP, the Contractor shall provide recommendations with detailed actions to be taken to meet the treatment execution criteria.
3. Over the duration of the Project, monitoring between treatments may detect new occurrences of the target species not previously treated or areas not properly treated previously. New occurrences of target species and areas missed or not fully treated previously shall be treated, or spot treated, respectively, as directed.

4. If treatment of invasive species is determined to be less than the specified treatment execution criteria, the Contractor shall implement remedial treatments to 100% of remaining invasive species areas (e.g., areas determined by OPRHP to have been either wholly or partially missed within a control subunit). Inspection of treatment areas by OPRHP will occur within or up to two weeks (or a reasonable period based upon herbicide product efficacy) of treatment actions. In the event areas were missed, the Contractor shall perform all interim/follow-on spot chemical treatments at no additional cost to OPRHP. Such spot treatments shall be conducted within seven days of requests for interim/follow-on spot chemical treatments to avoid impacts to the overall treatment schedule within a season (e.g., 2025 - 2029). If the Contractor fails to comply with the requirements for treatment execution, OPRHP may make other arrangements, as it may deem necessary to correct deficiencies, and charge the cost of such remedies to the Contractor.

4.4. Interim/Follow-Up Spot Chemical Treatments

1. Interim spot treatments are chemical treatments that could occur, as directed by OPRHP, throughout the course of the Project. Spot treatments will be directed for those areas within the Project where it is determined that the treatment execution criteria (identified above) are not met and/or where previously unidentified occurrences are detected within the Project target areas through monitoring over the duration of the Project.
2. Interim spot treatments will be required to apply herbicide to areas that were missed during the scheduled course, or round, of chemical treatments. Interim spot treatments are not considered the next round of treatment, rather a treatment to satisfactorily complete the scheduled treatment that previously occurred.

4.5. Wetlands and Waters

1. The Contractor will be responsible for treating invasive species in the Control Sites and the subunits therein, as designated. Some of these areas include wetlands and waters. Contractor personnel will be on site during invasive species treatments to ensure compliance with the Permit to Use a Pesticide for the Control of an Aquatic Pest in wetland and water areas. Herbicide treatments close to wetlands and water shall comply with the Control of an Aquatic Pest permit and follow pesticide product information.
2. Rodeo (glyphosate) is a pesticide product labeled for use in and around aquatic sites and wetlands. These herbicides can be applied within 20 feet of shoreline.
3. Arsenal (imazapyr), Garlon 3A (triclopyr) and Confront (clopyralid) are herbicide products not labeled for application in or near water. These herbicides must be applied a minimum of 20 feet away from the shoreline of a water source or wetland.

4.6. Avoidance of Impacts to Non-Target Species

1. Herbicide applications shall be completed at times to avoid impacts on native, planted, and non-target species.
2. Any areas on the site containing rare plant species, such as the New York State-listed endangered Roland's sea-blite (*Suaeda rolandii*), will be avoided during invasive species control treatments.

Roland's sea-blite occurs in tidal wetlands habitat; it was identified by New York Natural Heritage Program (NYNHP) in tidal wetlands on the eastern shoreline of the Fountain site, approximately 0.3 miles north of the Fountain site's southeast corner (the NYNHP record is from 1992). OPRHP will conduct pretreatment monitoring field surveys and communicate the results to the Contractor. OPRHP will inform the Contractor should there be any deviations to treatments should listed non-target threatened and/or endangered species be detected. See Exhibit C - Shirley Chisholm State Park 2023 Invasive Plant Removal Plan, Section 4.3.1 for additional information.

3. Chemical applications are expected to be foliar for all target species through the duration of the Project. For Phragmites, under certain situations the use of hand wiping may be performed to apply herbicide to avoid overspray to endangered and native species. OPRHP will communicate with the Contractor regarding the potential use of hand-wiping applications. Do not touch non-target plants during hand application.

4.7. Grassland Birds

1. To avoid potential impacts to nesting grassland birds that may occur on the caps of the Penn and Fountains sides of the park, OPRHP may conduct grassland bird surveys prior to the commencement of treatment activities. Coordination between the Contractor and OPRHP will be necessary to ensure that OPRHP has suitable notice (minimum two weeks) prior to treatment activities to complete the bird surveys. The Contractor shall maintain communication with OPRHP to implement any changes in the work plan that may result from these surveys.

4.8. Park Road Use

1. The location of approved staging areas and temporary access paths are shown in Exhibit B – Shirley Chisholm State Park Phase 2 (2025-2029) Contract Work IPRP, drawings C-001 and C-002.
2. Pathways used during treatment activities shall be restored to conditions free of ruts, low areas, and other unwalkable conditions as documented by OPRHP due to the Contractor's use.
3. The Contractor shall comply the speed limits posted within the park:
 - a. 5 miles per hour in the parking areas
 - b. 10 miles per hour on the park roads and pathways
4. All vehicles must have their hazard lights on when driving within the park.
5. The Contractor will be sharing roadways and pathways with cyclists and other patrons.
6. Motorized equipment and machinery will only be used on designated roadways and pathways.
7. Vehicles operating on the landfill caps should be utility terrain vehicles (UTVs). The Contractor must notify OPRHP, at least one week prior, if a vehicle weighing two-thousand pounds or more is expected to be used.

4.9. Overall Sequence and Schedule

1. Perform mechanical and chemical control activities in accordance with Table 2. Treatments for which months are listed may be completed at any time during that month. Expect coordination on specific timing of treatments to occur with OPRHP.

2. Monitoring of invasive species treatments will occur over the duration of the Project by OPRHP.
3. OPRHP will coordinate with the Contractor regarding the timing of restoration seeding. Enough control within treatment locations will need to be achieved prior to the application of restoration seeding. The 2023 IPRP calls for a threshold of $\leq 15\%$ invasive species cover within areas considered for restoration seeding. OPRHP will monitor treatment success and will coordinate with the Contractor for the timing and locations where and when restoration seeding will occur (see Section 6). Disturbance seeding is expected at the end of every treatment season.
4. Working hours shall be from 0700 to 1500 hours unless otherwise specified by OPRHP. The Contractor shall seek approval from OPRHP to proceed with work outside of these hours should that be necessary. Work on weekends and overtime work requires prior approval by OPRHP. Any additional weekend or overtime costs to achieve Project success that were not contemplated as part of the bid shall be borne solely by the Contractor.

Table 2. 2025–2029 Target Invasive Species and Overall Sequence and Annual Treatment Schedule¹

Month	Phragmites	Knotweed	Lespedeza	Mugwort
May			Mechanical Control	Mechanical Control
June	Mechanical Control	Mechanical Control	Chemical Control – First Round	Chemical Control – First Round
July		Chemical Control – First Round		
August	Chemical Control – First Round			Chemical Control – Second Round
September	Chemical Control – Second Round	Chemical Control – Second Round		

Note:

1. The timing of treatments of the target species may change over the course of the Project, as a result of monitoring Project performance. OPRHP will coordinate with the Contractor prior to each Project year to determine whether modifications to timing are justified.

5. TARGET INVASIVE SPECIES APPROACHES

5.1. Phragmites (Shoreline/Outer Ring Control Subunits)

All elements of the following sections shall be implemented each year of the service contract.

Mechanical and chemical treatments will be applied variably across the site along shoreline areas in both the Penn and Fountain sides of SCSP in subunits identified in Table 3. These treatments will build upon areas previously treated in 2023.

Table 3. Phragmites Control Subunits

Subunit	Subunit Acres	Percent Coverage of Phragmites ¹	Herbicide Product
P2	2.1	13	Glyphosate
P3	6	37	Glyphosate
P4	1.7	2	Glyphosate
P5	9	14	Imazapyr
F2	8	35	Imazapyr
F3	4	25	Glyphosate
F4	4	59	Glyphosate
F5	0.5	2	Glyphosate
F6	5	56	Glyphosate
F7	6	58	Imazapyr

Note:

1. The percent coverages of Phragmites within each control subunit are from field surveys conducted in 2019 and therefore represent Phragmites extent and abundance prior to 2023 treatment activities, which included mechanical cutting, removal, and chemical treatments. The percentages of Phragmites within the identified subunits to be treated have not been determined following the 2023 treatment period but are expected to be substantially less compared to pretreatment conditions.

SEQUENCING AND SCHEDULING

The work shall be as follows unless otherwise directed by OPRHP:

1. The Contractor shall notify OPRHP and request approval of the intended treatment area 10 days prior to the commencement of mechanical or chemical control activities.
2. The Contractor shall perform mechanical and chemical control of Phragmites in the designated areas listed in Table 3.
3. The Contractor shall follow the treatment schedule for mechanical and chemical control of Phragmites provided in Table 4. Treatments for which months are listed may be completed at any time during that month. Expect coordination on specific timing of treatments to occur with OPRHP.

Table 4. Phragmites Treatment Schedule¹

Timing	Phragmites
Expected Locations (2025–2029)	See Table 3. Dense stands within shoreline control subunits were previously treated in 2023, including removal and off-site disposal of cut material.
Early June: Mechanical Control (2025)	Cut dense patches within designated treatment areas.
August: Chemical Control (2025–2029)	First round: chemically treat (with approved herbicide[s]; see Section 4.5 Wetlands and Waters) areas designated to be treated with glyphosate-based herbicide.

Timing	Phragmites
September: Chemical Control (2025–2029)	<p>Second round: re-treat Phragmites with appropriate glyphosate-based herbicide per specified locations and permit requirements.</p> <p>Note: second round treatments shall occur a minimum of 30 days after the conclusion of the first round treatments.</p>
<p>Note:</p> <p>1 The timing of treatments of the target species may change over the course of the Project, as a result of monitoring Project performance. OPRHP will coordinate with the Contractor prior to each Project year to determine whether modifications to timing are justified.</p>	

MATERIAL:

1. Herbicides

Rodeo (glyphosate) or approved equivalent product.

METHOD:

1. Notification of Proposed Treatment Activities.

a. The Contractor shall notify OPRHP or their representative and request approval for the intended treatment at least 10 days in advance of the proposed treatment.

2. Mechanical Control.

a. Cut Phragmites within subunits where dense patches of vegetation are encountered in a manner consistent with avoiding the spread of Phragmites to other areas.

- i. Vegetation shall be cut according to the schedule presented in Table 4 in Year 1. The need for cutting in 2026 will be evaluated by OPRHP based on the amount of regrowth encountered and the performance of treatments in reducing invasive species cover. OPRHP will communicate with the Contractor should it be determined that mechanical control should continue beyond Project Year 1.

3. Chemical Control.

a. The Contractor shall chemically treat all occurrences of Phragmites within the control subunits identified in Table 3.

- ii. Foliar spray may be used where endangered or native species are not present.
- iii. Blanket treat Phragmites using foliar spraying with herbicide in two rounds according to the schedule specified in Table 4.

b. Follow all protocols for applications of herbicides near wetlands and waters.

c. All pesticide products and product labeling shall comply with DEC pesticide application program regulations.

d. The herbicide shall be sprayed onto cut vegetation to thoroughly saturate the plant material without causing excessive dripping.

e. The specific herbicide applications and rates are provided below:

- i. Glyphosate treatment areas will be treated with glyphosate-based herbicide and surfactant at rates of 2% glyphosate product +0.5% non-ionic surfactant (NIS) (or as otherwise instructed on the product label).

5.2. Japanese Knotweed (Shoreline/Outer Ring Control Subunits and on Landfill Cap P2, P3, P4, P5, P8, F1, F2, F3, F7, F10)

All elements of the following subsections shall be implemented each year of the service contract. Table 5 identifies the control subunits within which Japanese knotweed is to be treated.

Table 5. Japanese Knotweed Control Subunits

Subunit ID	Subunit Acreage	Percent Coverage of Knotweed ¹	Year of First Treatment
P2	2	7	2023
P3	6	15	2023
P4	1.7	1	2023
P5	9	1	2023
P8	2	1	2024
F1	1	1	2024
F2	7	2	2023
F3	4	2	2023
F4	4	<.005	2024
F7	6	1	2023
F10	38	1	2023

Note:

¹ With the exception of F4, the percent coverages of Japanese knotweed within each control subunit are from field surveys conducted in 2019 and therefore represent knotweed extent and abundance prior to 2023 and 2024 treatment activities, which included mechanical cutting, removal, and chemical treatments. The percentages of knotweed within the identified subunits to be treated have not been determined following the 2023 and 2024 treatment periods but are expected to be substantially less compared to pretreatment conditions. The observation of Japanese knotweed in F4 first occurred in 2024 and therefore the estimated percent coverage is based on 2024 observations.

SEQUENCING AND SCHEDULING

The work shall be as follows unless otherwise directed by OPRHP:

1. The Contractor shall notify OPRHP and request approval of the intended treatment area 10 days prior to the commencement of mechanical or chemical control activities.
2. The Contractor shall perform mechanical and chemical control of Japanese knotweed in the designated areas listed in Table 5.
3. The Contractor shall follow the treatment schedule for mechanical and chemical control of Japanese knotweed provided in Table 6. Treatments for which months are listed may be completed at any time during that month. Expect coordination on specific timing of treatments to occur with OPRHP.

Table 6. Japanese Knotweed Treatment Schedule¹

Timing ¹	Japanese Knotweed
Expected Locations ²	
June: Mechanical Control	Hand cut and manually remove Japanese knotweed.
After Flowering (July/August) Chemical Control	First round: After flowering, chemically treat Japanese knotweed with glyphosate-based herbicide in areas within 20 feet of shoreline or wetland areas. Chemically treat with imazapyr-based herbicide in areas greater than 20 feet from the shoreline or wetland areas (i.e., P8, F1, and F10).
After Additional Flowering (September) Chemical	Second round: after additional flowering, re-treat Japanese knotweed with glyphosate-based herbicide. Treatment may take place earlier if the first hard freeze is forecasted. Note: second round treatments shall occur a minimum of 30 days after the conclusion of the first round treatments.

Notes:

1. The timing of treatments of the target species may change over the course of the Project, as a result of monitoring Project performance. OPRHP will coordinate with the Contractor prior to each Project year to determine whether modifications to timing are justified.
2. See Table 5 for distinct stands observed in 2019; particularly the east edge of the Penn site.

MATERIAL:

1. Herbicides
 - a. Rodeo (glyphosate) or approved equivalent product.
 - b. Arsenal (imazapyr) or approved equivalent product.

METHOD:

1. Delineation of Treatment Areas.
 - a. The Contractor shall mark the limits of work using surveyor's flagging tape or other suitable means.
 - b. The Contractor shall notify OPRHP or their representative and request approval for treatment at least five days in advance of the proposed treatment.

2. Mechanical Control.

- a. Mechanically treat the entire areas within the limits as indicated on Figure 2 in Section 8. During cutting, collecting, and transporting, do not deposit plant materials into areas outside of treatment zones and/or into water courses and wetlands on site. Accessing wetlands will be accomplished to avoid and minimize impacts (e.g., rutting, altering of surface drainage patterns). Clearly indicate the method of (1) mechanical treatment, (2) collection of the cuttings, (3) transportation of cuttings off-site, and (4) disposal in the “Invasive Species Treatment Work Plan” submittal.
 - i. Hand cut target species prior to chemical treatment. Ensure no plant matter enters the watercourse and wetlands on site. Remove all cuttings from the site and dispose of all material at a location that can legally accept the cuttings, following all federal, state, and local laws. Japanese knotweed to be removed from the Project site will be disposed of according to local and state laws and Section 3 A(1)b. of this specification. Since root and stem fragments can grow into a new plant, remove all material of all target species from the site and dispose of all material at a location that can legally accept them, following all federal, state, and local laws. Obtain any required permits, at no cost to OPRHP, prior to removal from the site.

3. Chemical Control.

- a. Take extreme caution when transporting the herbicide to the treatment areas. Open containers are not permitted. Once a treatment area has begun to have herbicide applied, treat the entire area in the same day so that the notification signs required may be posted the same day.
- b. Follow all protocols for applications of herbicides near wetlands and waters.
 - i. Motorized equipment and machinery will only be used on designated roadways and pathways. Vehicles operating on the landfill caps should be UTVs.
- c. All pesticide products and product labeling for target species shall comply with the DEC pesticide application program regulations.
- d. The Contractor shall chemically treat all occurrences of knotweed within the control subunits through foliar application. The herbicide shall be sprayed onto cut vegetation to thoroughly saturate the plant material without causing excessive dripping.
- e. At the direction of OPRHP, Japanese knotweed present within rocky swales within the designated work areas shall be treated with an imazapyr-based herbicide. Potential imazapyr-based treatment areas are not expected to exceed 0.10 acres.
- f. The specific herbicide applications and rates for the 2025–2029 treatments are provided below:
 - i. Japanese knotweed within 20 feet of the shoreline or wetland areas shall be treated with glyphosate-based herbicide and surfactant at rates of 2% glyphosate product plus 0.5% NIS (or as otherwise instructed on the product label).
 - ii. Japanese knotweed areas greater than 20 feet from the shoreline or wetland areas shall be treated with imazapyr-based product and surfactant at rates of 3% to 4% imazapyr-based product (2% imazapyr product) plus 1% MSO (or as otherwise instructed on the product label).

4. Removal of cut material from the site.
 - a. Cut, bag, and dispose of all standing invasive species plants from any work areas to be mechanically treated, or areas where heavy machinery will be used, to prevent spreading invasive plant biomass into water sources or other parts of the site. Bag and dispose of cut plant material at a permitted off-site landfill. Complete the cutting by hand or with machinery that will not contribute to the spread of plant debris across the site or into adjacent waters. A mechanical mulcher/shredder may be used if it mulches directly into a disposal bag and does not result in an uncontrolled release of plant material onto the site. Bag all mulched material and remove it from the site.

5.3. Lespedeza (F12, per Subunit Section Listed)

Mechanical and chemical control of Lespedeza will be implemented in a phased approach across Control Subunit F12. Targeted treatments will continue across the reduced areas where Lespedeza persists over the duration of the Project term. Table 7 identifies the control subunit sections (see Exhibit B – Shirley Chisholm State Park Phase 2 (2025-2029) Contract Work IPRP, drawing I-002 for subunit F12A, F12B and F12C locations) within which Lespedeza is to be treated.

Table 7. Lespedeza Control Subunits

Subunit Section	Acres	Percent Coverage of Lespedeza ¹	Sequencing
F12A	14.6	42%	Begin 2025
F12B	14.4		Begin 2026
F12C	17.1		Begin 2027
F12 Total	46		

Note:

- 1 The percent coverage of Lespedeza within Control Subunit F12 is from field surveys conducted in 2019. The percentage of Lespedeza within each identified subunit at the time treatment begins may be greater than what was recorded in 2019.

SEQUENCING AND SCHEDULING

The work shall be as follows unless otherwise directed by OPRHP:

1. The sequencing of treatment activities within Subunit F12 shall begin within one Subunit Section per year outlined in the Table 8. Treatment shall begin with Subunit Section F12A in 2025, followed by F12B in 2026, and F12C in 2027. Treatments shall continue at the previously treated control subunit section the following year until the threshold invasive species cover has been reached and restoration seeding has begun (see assumptions regarding commencement of restoration seeding in Item 6 below).
2. The limits of the areas to be treated shall be delineated utilizing surveyor's flagging tape or other appropriate means. Given there may be extensive infestations of Lespedeza across the control

subunit sections, treatment areas can be delineated at subunit section boundaries for each successive treatment year and initiation of treatments in the other subunit sections (i.e., F12A, F12B, and F12C). Over time, with the assumed reduction in Lespedeza distribution and abundance into smaller stands and patches, the Contractor can field mark treatments areas within subunit sections. The Contractor shall notify OPRHP and request approval of the treatment area 10 days prior to the commencement of mechanical or chemical control activities.

- Mechanical and/or chemical treatments within the target subunit section(s) shall follow the timetable presented in Table 9.

Table 8. Sequencing Tiered Approach for Lespedeza Management within Subunit F12

Subunit	2025	2026	2027	2028	2029
F12A	Mechanical and Chemical Treatment ¹	Mechanical and Chemical Treatment	Chemical Treatment/ Targeted Restoration Seeding ²	Chemical Treatment/ Targeted Restoration Seeding ³	Chemical Treatment/Targeted Restoration Seeding ³
F12B		Mechanical and Chemical Treatment	Mechanical and Chemical Treatment	Chemical Treatment/ Targeted Restoration Seeding ²	Chemical Treatment/ Targeted Restoration Seeding ³
F12C			Mechanical and Chemical Treatment	Mechanical and Chemical Treatment	Chemical Treatment/ Targeted Restoration Seeding ²

Notes:

- Disturbance seeding is expected to occur in each Project year after the season treatments of the target invasive species have been completed.
- OPRHP will coordinate with the Contractor to determine the extent to which restoration seeding can occur.
- OPRHP will monitor the F12 subunit sections and will coordinate with the Contractor regarding restoration seeding in the out years. Current assumptions are that there will be a 20% (of total area) restoration seeding within F12 subunit sections in the third Project year, 30% in the fourth Project year, and 50% in the fifth Project year.

Table 9. Lespedeza Control Timetable¹

Timing	Lespedeza
Expected Locations	Subunit F12
Bud stage (May) Mechanical Control	Mowing or mechanical removal
After flowering (June/July) Chemical Control	First round: At least 30 days after mechanical treatment. After flowering, chemically treat Lespedeza when plants are 12 to 24 inches in height.

Timing	Lespedeza
After additional flowering (August/September) Chemical Control	Second round: after additional flowering, chemically treat at least 30 days after the initial treatment.

Note:

- 1 The timing of treatments of the target species may change over the course of the Project, as a result of monitoring Project performance. OPRHP will coordinate with the Contractor prior to each Project year to determine whether modifications to timing are justified.
4. Table 9 presents the tiered approach for the treatment of Lespedeza within Control Subunit F12. The purpose of this approach is to minimize the soil erosion along the steep slopes of Control Subunit F12 through the division of the Control Subunit into three sections: F12A, F12B, and F12C. Any modifications to the approach will be communicated to the Contractor by OPRHP. This approach may be modified as required to meet the treatment goals of this scope of work. OPRHP will coordinate with the Contractor to implement adaptive management when needed.
5. The treatments of mugwort and Lespedeza will occur within the same treatment periods.
6. Through treatment monitoring, OPRHP will determine the onset of restoration seeding and will direct the Contractor to areas where restoration seeding is to occur. The Contractor shall assume that restoration seeding will begin in the third year within each control subunit section, assuming 20% in the third year, 30% in the fourth year, and the remaining 50% in the fifth year. Actual restoration seeding within each control subunit section will be based upon treatment efficacy. Disturbance seeding will occur after every treatment season across each of the treated control subunit sections in a given Project year.

MATERIAL:

1. Herbicides
 - a. Triclopyr-based herbicide (Garlon or equivalent).
 - b. Confront (33% triclopyr, 12.1% clopyralid), or approved equivalent.
 - c. Glyphosate is also effective but is not recommended for the site since there are effective alternatives.

METHOD:

Mechanical and chemical treatments will be applied variably across the site within Subunit F12. The total area to be treated is approximately 46 acres.

1. Delineation of Treatment Areas.
 - a. The Contractor shall mark the limits of work in each subunit section using surveyor's flagging tape or other suitable means. Given there will be large portion of each subunit section that will contain Lespedeza (and mugwort) early in the Project, limits of work areas can be delineated as subunit sections for first years of treatments. Over time, with the assumed reduction in Lespedeza (and mugwort) distribution, smaller stands and patches should be field delineated prior to treatments in future Project years.

- b. The Contractor shall notify OPRHP or their representative and request approval for treatment at least 10 days in advance of the proposed treatment.
2. Mechanical Control.
 - a. The Contractor shall use a mower where topography allows, and invasive species are prevalent to cut vegetation to no greater than 12 inches in height. Plants should be left to regenerate to a height of 12 to 24 inches prior to chemical treatment (approximately 30 days).
 - b. Brush cutters may be used for areas with steep topography and in areas with limited invasive species presence to avoid collateral damage of native species.
 - c. During mechanical treatment, mulch or thatch all cut plant material to a particle length of approximately 6 inches and leave in place.
 - d. Vehicles operating on the landfill caps should be UTVs. Contractor vehicles must be identifiable to the Contractor.
 3. Chemical Control.
 - a. Take extreme caution when transporting the herbicide to the treatment areas. Open containers are not permitted. Once herbicide application has begun in a treatment area, treat the entire area in the same day so that the notification signs required may be posted the same day.
 - b. The Contractor shall chemically treat all occurrences of Lespedeza within the control subunits through foliar/broadcast application.
 - c. Herbicide can be applied with a boom sprayer or pressurized hose and tank sprayers. Backpack sprayers may be used for targeted treatments, smaller infested areas, or in difficult to reach areas.
 - d. The herbicide shall be sprayed onto cut vegetation to thoroughly saturate the plant material without causing excessive dripping.
 - e. The Contractor shall use Confront (33% triclopyr, 12.1% clopyralid), or approved equivalent product in all upland areas greater than 20 feet away from wetlands/water for treatment of targeted invasive species.
 - i. For any required herbicide the Contractor may propose an alternate but may not use it unless approved by OPRHP.
 - f. The specific herbicide application rates for Lespedeza shall follow the product label and manufacturer's instructions.

5.4. Mugwort (F12, per Subunit Section Listed)

Mechanical and chemical control of mugwort will be implemented in a phased approach across Control Subunit F12. Targeted treatments will continue across the reduced areas where mugwort persists over the duration of the Project term. Table 10 identifies the control subunits (see Exhibit B – Shirley Chisholm State Park Phase 2 (2025-2029) Contract Work IPRP, drawing I-002 for subunit F12A, F12B and F12C locations) within which mugwort is to be treated.

Table 10. Mugwort Control Subunits

Subunit Section	Acres	Percent Coverage of Mugwort ¹	Sequencing
F12A	14.6	44%	Begin 2025
F12B	14.4		Begin 2026
F12C	17.1		Begin 2027
F12 Total	46		

Note:

- 1 The percent coverage of Lespedeza within Control Subunit F12 is from field surveys conducted in 2019. The percentage of Lespedeza within each identified subunit at the time treatment begins may be greater than what was recorded in 2019.

SEQUENCING AND SCHEDULING

The work shall be as follows unless otherwise directed by OPRHP or their designated representative:

1. The sequencing of treatment activities within Subunit F12 shall begin within one subunit section per year outlined in Table 11. Treatment shall begin with Subunit Section F12A in 2025, followed by F12B in 2026, and finally F12C in 2027. Treatments shall continue at the previously treated control subunit section the following year until the threshold invasive species cover has been reached and restoration seeding has begun (see assumptions regarding commencement of restoration seeding in Item 6 below).
2. The limits of the areas to be treated shall be delineated using surveyor's flagging tape or other appropriate means. Given there may be extensive infestations of mugwort across the control subunit sections, treatment areas can be delineated at subunit section boundaries for each successive treatment year and initiation of treatments in the other subunit sections (F12A, F12B, F12C). Over time, with the assumed reduction in Lespedeza distribution and abundance into smaller stands and patches, the Contractor can field mark treatments areas within subunit sections. The Contractor shall notify OPRHP and request approval of the treatment area 10 days prior to the commencement of mechanical or chemical control activities.
3. Mechanical and/or chemical treatments within the target subunit section(s) shall follow the timetable presented in Table 12.

Table 11. Sequencing of Tiered Approach for Mugwort Management within Control Subunit F12

Subunit	2025	2026	2027	2028	2029
F12A	Mechanical and Chemical Treatment ¹	Mechanical and Chemical Treatment ¹	Chemical Treatment/ Targeted Restoration Seeding ²	Chemical Treatment/ Targeted Restoration Seeding ³	Chemical Treatment/Targeted Restoration Seeding ³
F12B		Mechanical and Chemical Treatment	Mechanical and Chemical Treatment	Chemical Treatment/ Targeted Restoration Seeding ²	Chemical Treatment/ Targeted Restoration Seeding ³
F12C			Mechanical and Chemical Treatment	Mechanical and Chemical Treatment	Chemical Treatment/ Targeted Restoration Seeding ²

Notes:

- 1 Disturbance seeding is expected to occur in each Project year after the season treatments of the target invasive species have been completed.
- 2 OPRHP will coordinate with the Contractor to determine the extent to which restoration seeding can occur.
- 3 OPRHP will monitor the F12 subunit sections and will coordinate with the Contractor regarding restoration seeding in the out years. Current assumptions are that there will be a 20% (of total area) restoration seeding within F12 subunit sections in the third Project year, 30% in the fourth Project year, and 50% in the fifth Project year.

Table 12. Mugwort Control Timetable¹

Timing	Mugwort
Expected Locations	Subunit F12
Bud stage (May) Mechanical Control	Mowing or mechanical removal
Chemical Control (June/July)	First round: At least 30 days after mechanical treatment. After flowering, chemically treat Mugwort when plants are 12 to 24 inches in height.
Chemical Control (August/September)	Second round: after additional flowering, chemically treat at least 30 days after the initial treatment.

Note:

- 1 The timing of treatments of the target species may change over the course of the Project, as a result of monitoring Project performance. OPRHP will coordinate with the Contractor prior to each Project year to determine whether modifications to timing are justified.

4. Table 11 presents the tiered approach for the treatment of mugwort within Control Subunit F12. The purpose of this approach is to minimize the soil erosion along the steep slopes of Control Subunit F12 through the division of the control subunit into three sections (F12A, F12B, and F12C). Any modifications to the approach will be communicated to the Contractor by OPRHP. This approach

may be modified as required to meet the treatment goals of this scope of work. OPRHP will coordinate with the Contractor to implement adaptive management when needed.

5. The treatments of mugwort and Lespedeza will occur within the same treatment periods.
6. Through treatment monitoring, OPRHP will determine the onset of restoration seeding and will direct the Contractor to areas where restoration seeding is to occur. The Contractor shall assume that restoration seeding will begin in the third year within each control subunit section, assuming 20% in the third year, 30% in the fourth year, and the remaining 50% in the fifth year. Actual restoration seeding within each control subunit section will be based upon treatment efficacy. Disturbance seeding will occur after every treatment season across each of the treated control subunit sections in a given Project year.

MATERIALS:

1. Herbicides
 - a. Triclopyr-based herbicide (Garlon or equivalent).
 - b. Confront (33% triclopyr, 12.1% clopyralid), or other approved triclopyr equivalent.
 - c. Glyphosate is also effective but is not recommended for the site since there are effective alternatives.

METHOD:

Mechanical and chemical treatments will be applied variably across the site along Control Subunit F12. The total area to be treated is approximately 46 acres.

1. Delineation of Treatment Areas
 - a. The Contractor shall mark the limits of work in each subunit section using surveyor's flagging tape or other suitable means. Given there will be large portion of each subunit section that will contain mugwort (and Lespedeza) early in the Project, limits of work areas can be delineated as subunit sections for the first years of treatments. Over time, with the assumed reduction in Lespedeza (and mugwort) distribution, smaller stands and patches should be field delineated prior to treatments in future Project years.
 - b. The Contractor shall notify OPRHP or their representative and request approval for treatment at least 10 days in advance of the proposed treatment.
2. Mechanical Control
 - a. The Contractor shall use a mower where topography allows, and invasive species are prevalent to cut vegetation to approximately 12 inches in height. Plants should be left to regenerate to a height of approximately 12 to 24 inches prior to chemical treatment (approximately 30 days).
 - b. Brush cutters may be used for areas with steep topography and in areas with limited invasive species presence to avoid collateral damage of native species.
 - c. During mechanical treatment, all cut plant material should be mulched or thatched to a particle length of approximately 6 inches and left in place.

3. Chemical Control

- a. The Contractor shall chemically treat all occurrences of mugwort within the control subunits through foliar/broadcast application.
- b. Herbicide can be applied with a boom sprayer or pressurized hose and tank sprayers. Backpack sprayers may be used for targeted spot treatments or in difficult to reach areas.
- c. The herbicide shall be sprayed onto cut vegetation to thoroughly saturate the plant material without causing excessive dripping.
- d. The Contractor shall use Confront (33% triclopyr, 12.1% clopyralid), or approved equivalent product in all upland areas greater than 20 feet away from wetlands and water for treatment of targeted invasive species.
- e. For any required herbicide the Contractor may propose an alternate but may not use it unless approved by OPRHP.
- f. The specific herbicide application rates for mugwort shall follow the product label and manufacturer's instructions.

6. POST-TREATMENT SEEDING

There will be two types of post-treatment seeding, which include disturbance (erosion control/cover crop) seeding and restoration seeding. Disturbance seeding is expected to occur in each Project year after the season treatments of the target invasive species have been completed. Restoration seeding is for the purpose of establishing a future landscape across the park that is predominantly comprised of native species. OPRHP and the Contractor will coordinate the specific timing for disturbance and restoration seeding. It is expected that all seeding will occur during the same calendar year within which invasive species treatments occur. Typical fall seeding windows are from September 1 through November 15.

OPRHP will coordinate with the Contractor regarding the timing of restoration seeding. Satisfactory control within treatment locations will need to be achieved prior to restoration seeding occurring. As provided, restoration seeding schedules will vary depending upon location and whether previous invasive species treatments occurred prior to this Project.

Shoreline Phragmites and Japanese Knotweed Treatment Areas. Due to treatment of Phragmites in 2023 and treatments of Japanese knotweed in 2023 and 2024 across the shoreline control subunits, limited and targeted restoration seeding will begin in 2025.

Upland Japanese Knotweed Treatment Areas. Due to treatment of Japanese knotweed in upland areas (cap and fence line) in 2024, limited and targeted restoration seeding will begin in 2025.

F12 Lespedeza and Mugwort Treatment Area. There have been no previous invasive species treatments within F12. The ISMCP calls for a native revegetation threshold of $\leq 15\%$ invasive species cover within treated areas, depending on the size of an area considered for planting and the distribution of invasive species within it. OPRHP will monitor treatment success and will coordinate with the Contractor for the timing and locations where and when restoration seeding will occur. For the purposes of bidding, assumptions regarding a potential restoration seeding are provided in Table 13. Seed in all exposed soil areas and areas treated for invasive species. Apply the following:

1. Disturbance Seeding.
 - a. Following invasive species treatments outlined in Section 5.0 Target Invasive Species Approaches, there will be a need for seeding disturbed soils. Exposed soil areas will be seeded with an erosion-control mix consisting of 98% Pure Live seed or better with 100% annual ryegrass (*Lolium multiflorum*). Seeding shall occur at the conclusion of the invasive species treatment period at a rate of 50 pounds per acre. Straw mulch (weed free) will be spread over seeded areas per seed vendor specifications.
2. Restoration Seeding.
 - a. Shoreline Phragmites and Japanese Knotweed Treatment Areas.
 1. Following invasive species treatments restoration seeding will occur using SCSP Shoreline Mix (Ernst Seeds). Seeding shall occur at the end of the invasive species treatment period at the rate of 20 pounds per acre – SCSP Shoreline Mix, with a fall seeding preferred. Refer to Table 13 for percentage of treatment area assumed to receive restoration seeding.
 - b. Upland Japanese Knotweed Treatment Areas.
 1. Following invasive species treatments restoration seeding will occur using SCSP Cap Mix (Ernst Seeds). Seeding shall occur at the end of the invasive species treatment period at the rate of 20 pounds per acre – SCSP Cap Mix, with a fall seeding preferred. Refer to Table 13 for percentage of treatment area assumed to receive restoration seeding.
 - c. F12 Lespedeza and Mugwort Treatment Area
 1. Following invasive species treatments restoration seeding will occur using Native Steep Slope Mix (Ernst Seeds). Seeding shall occur at the end of the invasive species treatment period at the rate of 75 pounds per acre – Native Steep Slope Mix, with a fall seeding preferred. Refer to Table 13 for percentage of treatment area assumed to receive restoration seeding.
 - d. Substantial control of invasive species will be determined by OPRHP prior to restoration seeding in areas. Restoration seeding will begin in 2025 in those control subunits treated in years prior to this Project. Restoration seeding in F12 will be delayed until satisfactory control of Lespedeza and mugwort have been determined by OPRHP. Assumptions regarding restoration seeding are provided below.

Table 13. Native Restoration Seeding Overview 2025-2029 Scope of Services

Location	Recommended Seed Mix	Application Rate
Shoreline Phragmites and Japanese Knotweed Treatment Areas ¹	Shirley Chisholm State Park Shoreline Mix	20 lbs. per acre
Upland Japanese Knotweed Treatment Areas ²	Shirley Chisholm State Park Cap Mix	20 lbs. per acre
F12 Lespedeza and Mugwort Treatment Areas ³	Native Steep Slope Mix – Ernst ERNMX-181-2	75 lbs. per acre

Notes:

- 1 OPRHP will monitor each treatment area and will coordinate with the Contractor regarding restoration seeding over the course of the Project. Current assumptions are that there will be a 20% (of total area) restoration seeding across all control subunits in the first Project year (meaning that the assumption is 20% of the total acreage of all the control subunits – approximately 46.5 acres – would be seeded; seeding within control subunits is likely to vary based upon treatment efficacies), 30% in the second Project year, 50% in the third Project year, 60% in the fourth Project year, and 75% in the fifth Project year. Monitoring of treatment performance will determine the actual seeding area in each of the Project years.
- 2 OPRHP will monitor each treatment area and will coordinate with the Contractor regarding restoration seeding over the course of the Project. Current assumptions are that there will be a 20% restoration seeding across the upland Japanese knotweed treatment areas in the first Project year (meaning that the assumption is 20% of the total acreage estimate for which Japanese knotweed occurred in 2019 – approximately 0.41 acres – would be seeded; seeding within control subunits is likely to vary based upon treatment efficacies), 30% in the second Project year, 50% in the third Project year, 60% in the fourth Project year, and 75% in the fifth Project year. Monitoring of treatment performance will determine the actual seeding area in each of the Project years.
- 3 OPRHP will monitor F12 and will coordinate with the Contractor regarding restoration seeding in the out years. Current assumptions are that there will be a 20% (of total area) restoration seeding within each section in the third Project year, 30% in the fourth Project year, and 50% in the fifth Project year.

MATERIALS:

1. Fertilizers
 - a. Is used, use in upland area only. Do not apply fertilizer within 20 feet of wetland or open-water areas as shown on contract drawings.
 - b. Slow-Release Fertilizer: Granular or pelleted fertilizer consisting of 50% water-insoluble nitrogen, phosphorous, and potassium in the following composition:
 - i. 1. Composition: 10% nitrogen, 0% phosphorous, and 10% potassium, by weight, or a mixture approved by OPRHP that complies with the New York State Nutrient Runoff Law Article 17 Title 21 (January 2012).
 - ii. Apply at 50 lbs/acre or 1 lb/ 1,000 sq. ft.
2. Mulches
 - a. Straw Mulch: As needed, furnish straw mulch for application in areas of bare or exposed soil. Provide air-dry, clean, mildew- and seed-free, salt hay or threshed straw of wheat, rye, oats, or barley.
 - b. Cut vegetation mulched in place shall serve as the mulching material, where applicable and as directed by OPRHP.

3. Seed

- a. Refer to seed mixes in Table 13. Alternatives to the specified mixes shall be approved by OPRHP.

METHOD:

1. Examination and Preparation

- a. Perform all invasive species removal activities before seeding unless otherwise indicated.
 - i. Examine all areas to be seeded for compliance with requirements and other conditions affecting installation and performance of the work.
- b. Verify no foreign or deleterious material or liquid has been deposited in soil within the planting or seeding area.
- c. Suspend planting operations during periods of excessive soil moisture until the moisture content reaches acceptable levels to attain the required results.
- d. Uniformly moisten excessively dry soil that is not workable or is dusty.
- e. Proceed with seeding only when existing and forecasted weather conditions permit planting to be performed when beneficial and optimum results may be obtained. Apply products during favorable weather conditions according to the manufacturer's written instructions.
- f. Protect adjacent and adjoining areas from hydroseeding overspray.

2. Execution

- a. Restore existing site areas damaged by the Contractor's operations, such as storage of materials or equipment and movement of vehicles.
 - i. Reestablish grasses where settlement or washouts occur or where minor regrading is required.
 - ii. Install new planting soil as required.
- b. Although not anticipated, any topsoil containing foreign or deleterious materials shall be removed and replaced with a 3-inch layer of topsoil. Legally dispose of the removed material off-site.
- c. Till stripped, bare, and compacted areas thoroughly to a soil depth of 6-inches.
- d. Apply initial fertilizer required for establishing new grasses and mix thoroughly into top 4-inches of existing soil. Install new planting soil to fill low spots created by the Project operations, as applicable.
- e. Unless otherwise specified, evenly distribute all plantings and seeding. Use a method of spreading the seed that will deliver the correct amount of each species by portion.
- f. Apply seed at rates specified in Table 13. The Contractor shall field verify the restoration mixes and use the appropriate restoration mix based on the restored area. Seed mixes shall be approved by OPRHP before use.
- g. Apply straw mulch to seed applied in bare areas on steep slopes to prevent washout of newly seeded areas.
- h. Water newly seeded areas and keep moist until new grass is established.

3. Maintenance

- a. Maintain and establish grasses by watering, fertilizing, replanting, and performing other operations as required to establish healthy, viable growth. Replant bare or eroded areas and re-mulch to produce a uniform growth throughout the seeded area. Provide materials and installation the same as those used in the original installation.
 - i. Fill in as necessary soil subsidence that may occur because of settling or other processes. Replace materials and seed damaged or lost in areas of subsidence.

SATISFACTORY GROWTH:

1. Seeded Area installations shall meet the following criteria as determined by OPRHP:
 - a. Satisfactory Seeded Area: At end of maintenance period, a healthy, uniform, close stand of grass has been established, free of weeds and surface irregularities, with coverage exceeding 80% over any 10 sq. ft. (0.92 sq. m) area and bare spots not exceeding 10 by 10 inches (125 by 125 mm).
2. Use specified materials to reestablish seeded area that does not comply with requirements and continue maintenance until growth is satisfactory.

CLEANUP AND PROTECTION:

1. Promptly remove soil and debris created by turf work from paved areas. Clean wheels of vehicles before leaving site to avoid tracking soil onto roads, walks, or other paved areas.
2. Remove surplus soil and waste material, including excess subsoil, unsuitable soil, trash, and debris, and legally dispose of them off of site property unless otherwise directed by OPRHP.
3. Erect temporary fencing or barricades and warning signs as required to protect newly planted areas from traffic. Maintain fencing and barricades throughout initial maintenance period and remove after plantings are established.
4. Remove nondegradable erosion-control measures after grass establishment period.

MAINTENANCE:

1. Provide full maintenance by skilled employees of landscape installer. Maintain as required in "SATISFACTORY GROWTH." Begin maintenance immediately after each area is seeded and continue until acceptable growth is established, but for not less than the following:
 - a. Seeded areas: A maintenance period of 60 days from the date of planting completion will be provided.
 - i. When initial maintenance period has not elapsed before end of planting season, or if turf is not fully established, continue maintenance during next planting season.

7. REFERENCES

New York City Department of Environmental Protection (NYCDEP). 2009. Vegetation Monitoring and Maintenance Plan for the Fountain/Pennsylvania Avenue Landfills (the 30-year Monitoring Plan). February 2009.

New York Invasive Species Information Clearinghouse (NYIS.INFO). 2019. "Mugwort." Available at: https://nyis.info/invasive_species/mugwort-draft/. Accessed on October 31, 2022.

New York State Department of Environmental Conservation (DEC). 2016. New York State Standards and Specifications for Erosion and Sediment Control Blue Book. Accessed online at: https://extapps.dec.ny.gov/fs/docs/pdf/erosionsediment_bluebook.pdf

8. FIGURES



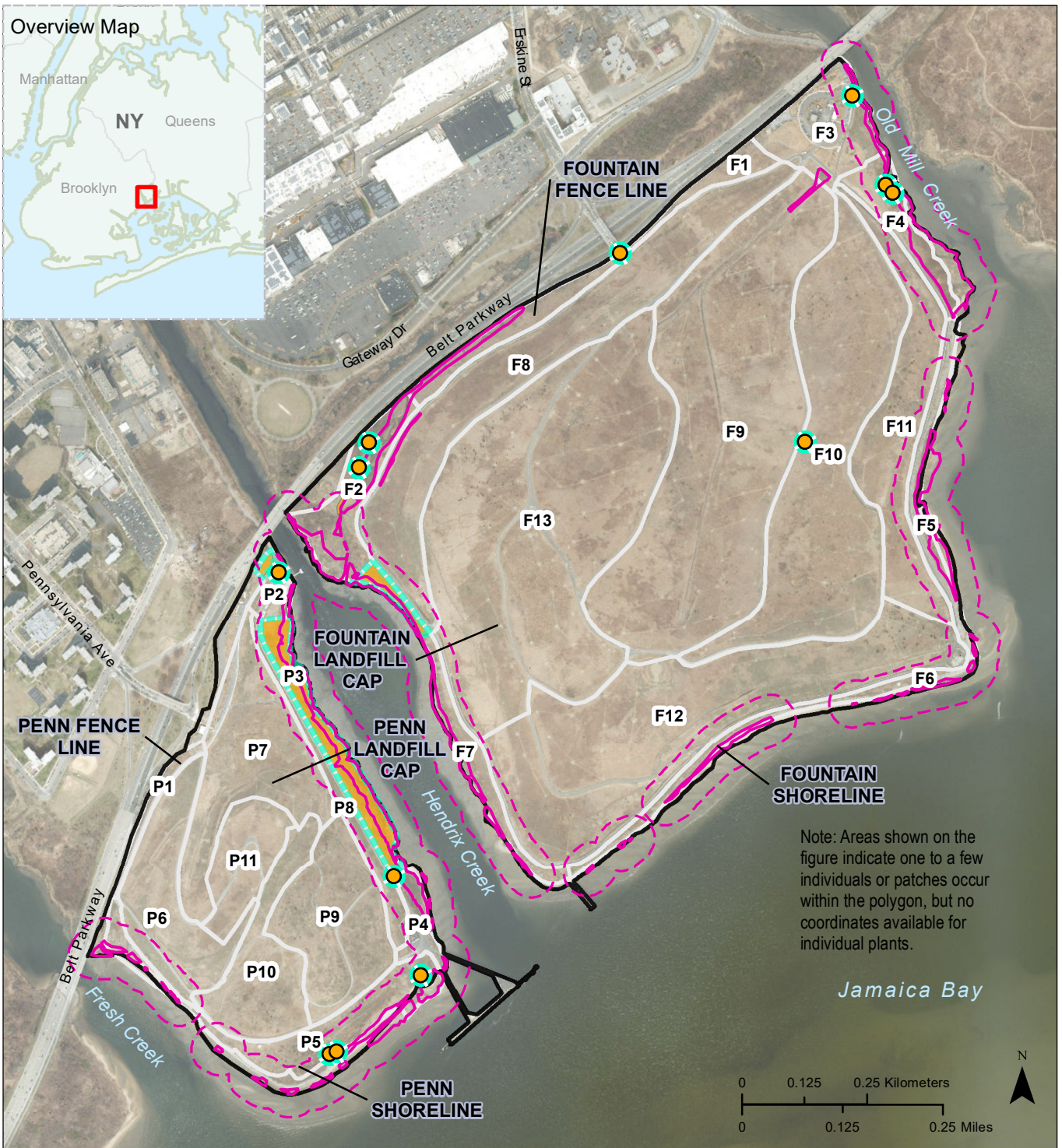
- Project Area
- Control Site Subunits
- Wetland
- Treatment Area
- 150' Wetland Buffer

- Macro Survey Area
IS Percent Cover
- Not Observed
 - 0.1-5%
 - 5.1-25%
 - 25.1-50%
 - 50.1-75%
 - 75.1-95%

Figure 1
2025 – 2029 Phragmites
Treatment Areas*

Shirley Chisholm State Park
Brooklyn, Kings County, New York

* Areas and percent cover estimates from 2019 field surveys. Phragmites in shoreline areas were treated in 2023. 2025 treatments represent second season of treatments in those control site subunits.



- Project Area
- 150' Wetland Buffer
- Survey Points
- Control Site Subunits
- Wetland
- Japanese Knotweed Macro Survey Area
- Treatment Area
- Japanese Knotweed

Figure 2
2025 – 2029 Japanese Knotweed
Treatment Areas*

Shirley Chisholm State Park
Brooklyn, Kings County, New York

* Surveys originally completed in 2019. Japanese knotweed was treated in 2023 along the shoreline areas, and is scheduled for treatment along the shoreline areas and in upland locations in 2024. The 2024 treatments will be the first for Japanese Knotweed in locations upland from the shoreline.



Figure 3
2025 – 2029 Lespedeza
Treatment Area F12*

Shirley Chisholm State Park
Brooklyn, Kings County, New York

- Project Area
- Control Site Subunits
- General IS Control Sites
- Treatment Area

- Macro Survey Area
IS Percent Cover
- Not Observed
 - 0.1-5%
 - 5.1-25%
 - 25.1-50%
 - 50.1-75%
 - 75.1-95%

* Areas and percent cover estimates from 2019 field surveys



* Areas and percent cover estimates from 2019 field surveys.

9. DAILY ACTIVITY SUMMARY REPORT

Shirley Chisholm State Park – 2025-2030 Invasive Plant Species Removal	
Daily Activity Summary Report	
Date:	Report No:
Weather:	

Control Subunit ID	Region(s) w/in Subunit	Tasks (Pre-treatment, Mechanical, Chemical, etc.)	Status at Days' End

Start Time:	End Time:	Hours on Site:
Personnel on Site:		Crew Size: _____
Equipment Used:		
Visitors (Name, Affiliation, Notes):		
Health & Safety Meeting/Safety Issues:		

Permitted Volume of Herbicides:

Herbicide Product	Total Permitted Volume	Total Volume Applied to Date

Treatment Table Complete? Yes No

Shirley Chisholm State Park – 2025-2030 Invasive Plant Species Removal	
Daily Activity Summary Report	
Date:	Report No:
Weather:	

Exhibit B – Shirley Chisholm State Park Phase 2 (2025-2029) Contract Work IPRP



New York State Parks, Recreation and Historic Preservation

GOVERNOR
KATHY HOCHUL

COMMISSIONER PRO TEM
RANDY SIMONS

NYC CAPITAL DISTRICT

163 WEST 125TH ST, 17TH FLOOR
NEW YORK, NY 10027

SHIRLEY CHISHOLM STATE PARK PHASE 2 (2025-2029) CONTRACT WORK IPRP

1750 PENNSYLVANIA AVENUE, BROOKLYN, NY 11239

EXECUTIVE DEPUTY COMMISSIONER
TOM ALWORTH

DEPUTY COMMISSIONER, CAPITAL PROJECTS
BEVIN COLLINS, RA

NYC CAPITAL DISTRICT MANAGER
MAXFIELD J. SCHNAUFER, RA

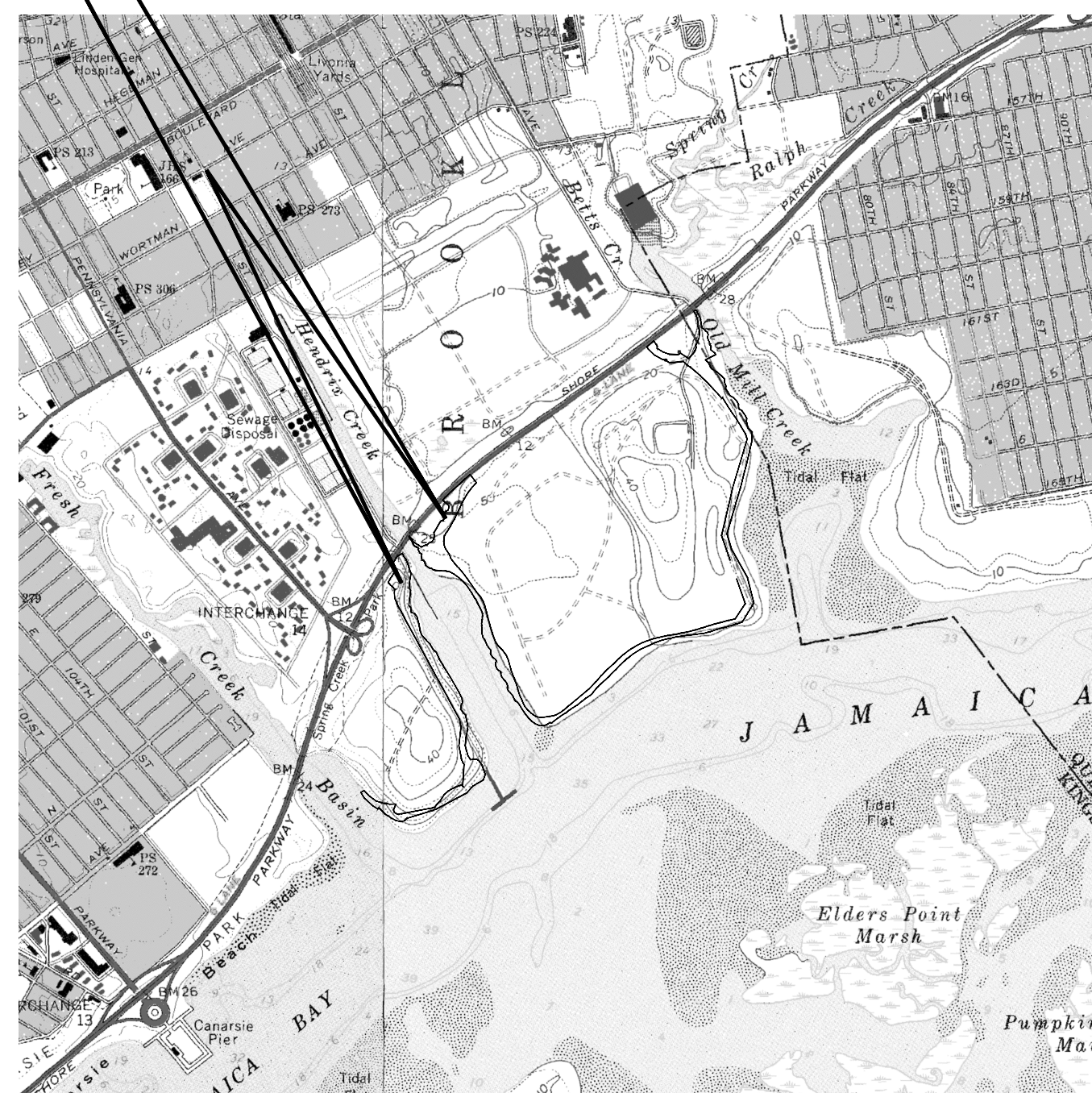
NYC REGIONAL DIRECTOR
LESLIE WRIGHT

CONTRACT #: C003671
SUBMISSION: ISSUED FOR BIDS

LIST OF DRAWINGS		
DWG. NO.	REV.	TITLE
T-001	A	TITLE SHEET, LOCATION PLAN, AERIAL PHOTO, AND LIST OF DRAWINGS
C-001	A	PENN LANDFILL WORK AREA
C-002	A	FOUNTAIN LANDFILL WORK AREA
I-001	A	PENN LANDFILL 2025-2029 INVASIVE PLANT REMOVAL CONTRACT WORK - PENN LANDFILL TREATMENT AREAS
I-002	A	FOUNTAIN LANDFILL 2025-2029 INVASIVE PLANT REMOVAL CONTRACT WORK - PENN LANDFILL TREATMENT AREAS

CONSULTANTS:
WSP

SITE
LOCATION



LOCATION PLAN
NOT TO SCALE

WORK
LIMITS



AERIAL PHOTO/
EX. SITE/ STRUCTURE
NOT TO SCALE

CONTRACTOR SHALL FURNISH ALL LABOR AND MATERIALS
REQUIRED TO COMPLETE THE FOLLOWING WORK ITEMS:

1. CONTRACTOR SHALL COMPLETE MECHANICAL TREATMENTS ACROSS ENTIRE AREAS WITHIN THE LIMITS OF WORK AS INDICATED ON THE CONTRACT DRAWINGS, AND AS SPECIFIED IN THE 2025-2029 TREATMENT SCHEDULE.
2. CONTRACTOR SHALL COMPLETE CHEMICAL TREATMENTS ACROSS THE ENTIRE AREAS WITHIN THE LIMITS OF WORK TARGETING PHRAGMITES, JAPANESE KNOTWEED, LESPEDEZA, AND MUGWORT AS INDICATED ON THE CONTRACT DRAWINGS AND AS SPECIFIED IN THE 2025-2029 TREATMENT SCHEDULE.
3. CONTRACTOR SHALL COMPLETE POST TREATMENT SEEDING, INCLUDING DISTURBANCE SEEDING AND RESTORATION SEEDING, AS SPECIFIED.
4. CONTRACTOR SHALL MAINTAIN DAILY RECORDS OF TREATMENTS AND ALL SITE ACTIVITIES AS SPECIFIED.



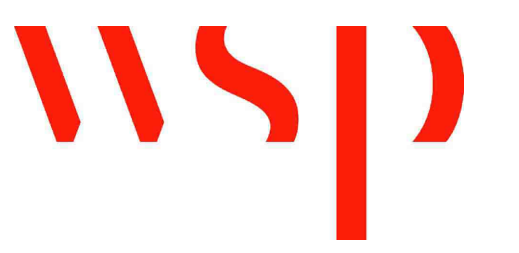
DATE: _____
MAXFIELD J. SCHNAUFER
CAPITAL DISTRICT MANAGER
NYC STATE PARKS

DATE: _____
LESLIE WRIGHT
REGIONAL DIRECTOR
NYC STATE PARKS

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T-001

SHEET
1 OF 5



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KEY PLAN:

Contract No: C003671

Project Title:
SHIRLEY CHISHOLM STATE PARK 2025-2029
INVASIVE PLANT REMOVAL CONTRACT WORK

Project Location:
SHIRLEY CHISHOLM STATE PARK
1750 PENNSYLVANIA AVE
BROOKLYN, NEW YORK 11239-2627

REVISIONS

Rev No	Description	Date
A	ISSUED FOR BIDS	12-11-2024

Drawn By: **KMK** *KMK* Seal and Signature

Design By: **MD** *MD*

Checked By: **KE** *KE*

Approved By: **ACS**

Date: 12-11-2024

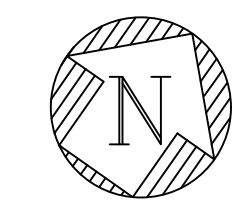


Sheet Title:

PENN LANDFILL WORK AREA

Drawing Number:

C-001



PENN LANDFILL WORK AREA & ACCESS/STAGING LOCATIONS
SCALE: 1" = 200'-0"

LEGEND

--- WORK LIMITS

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KEY PLAN:

Contract No: C003671

Project Title:
SHIRLEY CHISHOLM STATE PARK 2025-2029
INVASIVE PLANT REMOVAL CONTRACT WORK

Project Location:
SHIRLEY CHISHOLM STATE PARK
1750 PENNSYLVANIA AVE
BROOKLYN, NEW YORK 11239-2627

REVISIONS

Rev No	Description	Date
A	ISSUED FOR BIDS	12-11-2024

Drawn By:
KMK

Design By:
MD

Checked By:
KE

Approved By:
ACS

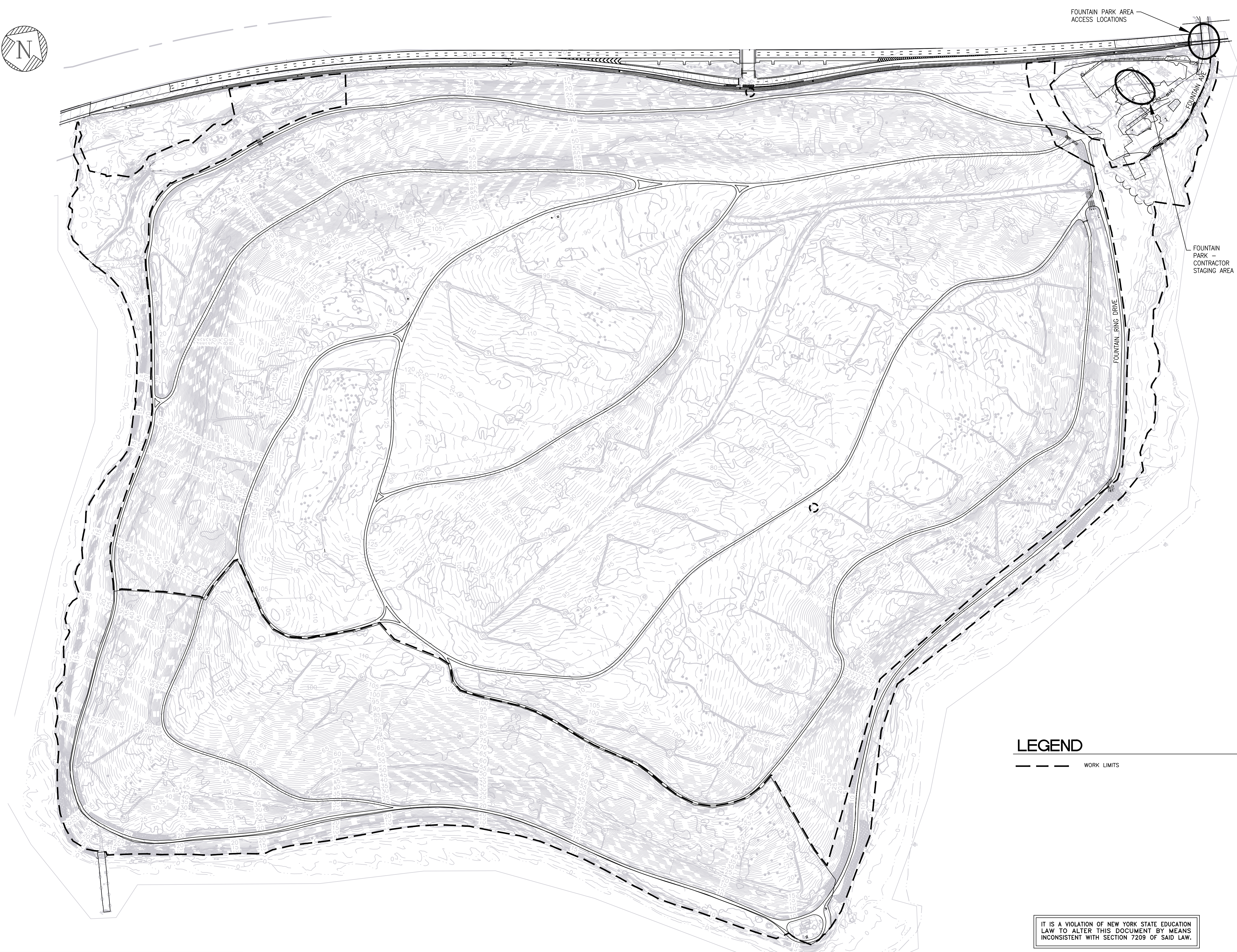
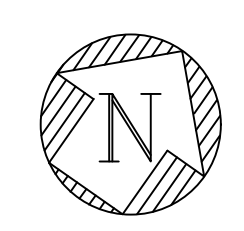
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Sheet Title:
FOUNTAIN LANDFILL WORK AREA

Drawing Number:

C-002



LEGEND

--- WORK LIMITS

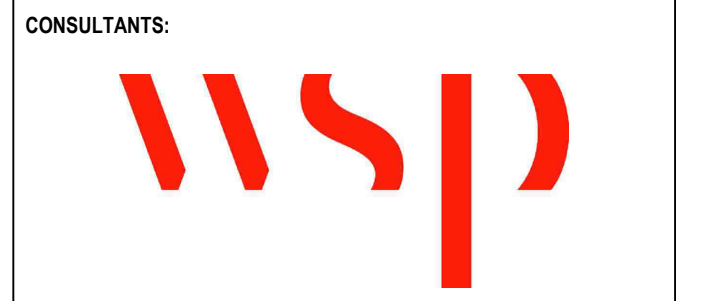
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KEY PLAN:

Contract No: C003671

Project Title:
SHIRLEY CHISHOLM STATE PARK 2025-2029
INVASIVE PLANT REMOVAL CONTRACT WORK

Project Location:
SHIRLEY CHISHOLM STATE PARK
1750 PENNSYLVANIA AVE
BROOKLYN, NEW YORK 11239-2627

REVISIONS

Rev No	Description	Date
A	ISSUED FOR BIDS	12-11-2024

Drawn By:
KMK *KMK*

Design By:
MD *MD*

Checked By:
KE *KE*

Approved By:
ACS

Date:
12-11-2024

Seal and Signature

Sheet Title:
PENN LANDFILL 2025-2029
INVASIVE PLANT REMOVAL
CONTRACT WORK - PENN
LANDFILL TREATMENT AREAS

Drawing Number:
I-001



LEGEND

- PHRAGMITES IDENTIFIED FOR TREATMENT (ABOVE 5%)
- JAPANESE KNOTWEED IDENTIFIED FOR TREATMENT
- WORK LIMITS
- AREA OF JAPANESE KNOTWEED

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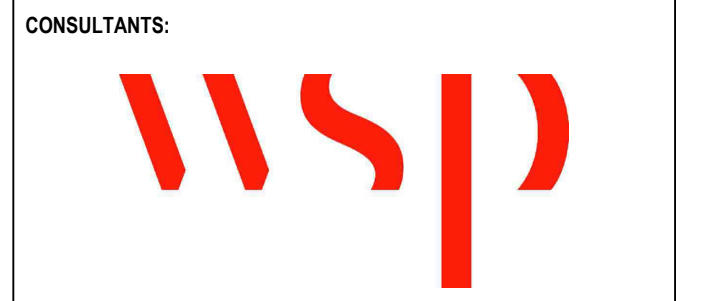
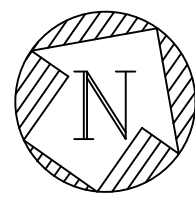


NOTE
1. VERIFY EXTENT OF EXISTING INVASIVE SPECIES PRIOR TO START OF WORK.

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PENN LANDFILL INVASIVE SPECIES TREATMENT LOCATIONS

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REVISIONS

Rev No	Description	Date
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12-11-2024

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Sheet Title:
FOUNTAIN LANDFILL 2025-2029
INVASIVE PLANT REMOVAL
CONTRACT WORK - PENN
LANDFILL TREATMENT AREAS

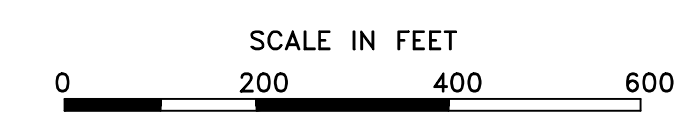
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LEGEND

- PHRAGMITES IDENTIFIED FOR TREATMENT (ABOVE 5%)
- F12 SUBUNIT SECTION BOUNDARIES
- LESPEDEZA AND MUGWORT IDENTIFIED FOR TREATMENT
- JAPANESE KNOTWEED IDENTIFIED FOR TREATMENT
- WORK LIMITS
- AREA OF JAPANESE KNOTWEED

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NOTE
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FOUNTAIN LANDFILL INVASIVE SPECIES TREATMENT LOCATIONS

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Exhibit C – Shirley Chisholm State Park 2023 Invasive Plant Removal Plan



NEW YORK STATE PARKS

SHIRLEY CHISHOLM STATE PARK

2023 INVASIVE PLANT REMOVAL PLAN

PROJECT NO.: 187914Z

DECEMBER 9, 2022

WSP USA Inc.
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1 INTRODUCTION

1.1 SITE BACKGROUND

Shirley Chisholm State Park (SCSP) is a state park on Jamaica Bay in Brooklyn, New York City, that opened to the public in summer 2019. The 407-acre park is comprised of two capped landfills, referred to as “Penn” and “Fountain.” The park includes 10 miles of hiking and biking trails, picnic areas, fishing access, a bike library serving both the Penn and Fountain sides of the park, one water access point on each side of the park, and other recreational opportunities. The state park makes 3.5 miles of the waterfront of Jamaica Bay available to the public, with areas accessible for kayakers and anglers.

Both sides of the park are impacted by IS. A total of 34 invasive plant species listed by the New York Invasive Species Council were recorded during surveys conducted in the 2019 growing season (ISMCP; E & E 2021). The landfill caps of the two landfills are impacted primarily by mugwort, Chinese lespedeza (*Lespedeza*), and common reed (*Phragmites*). Over 300 acres of the site, or at least 75% of the site, is impacted by one or a combination of these species. Isolated occurrences of Japanese knotweed (*Fallopia japonica*) most frequently occur in patches near the shoreline, but they are also found as isolated individuals on the landfill cap. There are many areas, particularly well-drained slopes, where mugwort is the dominant vegetation. Patches of both *Lespedeza* and mugwort frequently encroach into areas where native grasses occur. *Phragmites* is common in drainages and wet areas, and there are several dense stands of *Phragmites* in tidal wetlands inland of beds of native smooth cordgrass (*Spartina alterniflora*) and to a lesser extent saltmeadow cordgrass (*Spartina patens*). While invasive species surveys may be completed in the future, the extent, distribution, and abundance data collected in 2019 are considered to be representative of 2023 conditions.

1.2 GOALS AND OBJECTIVES

This IPRP is the companion and source document from which technical specifications have been prepared for inclusion in a bid package that will be sent to prospective contractors for completing the 2023 invasive species treatments across SCSP. The information from this plan supported the development of contract drawings and specifications for contractors to review and provide bids for the on-the-ground targeted invasive plant removal activities. The selection of invasive species for the 2023 IPRP is supported by the survey work completed across the entire park in 2019, as described in the Shirley Chisholm State Park Invasive Species Management and Control Plan (ISMCP; E & E 2021).

IPRP Goals

The specific goal of this IPRP is to initiate sitewide local control of four target invasive species, including mugwort, lespedeza, *Phragmites*, and Japanese knotweed, which are known to be widespread and abundant across SCSP. The IPRP has been developed in accordance with findings from, and through the framework of, the *Shirley Chisholm State Park Invasive Species Management and Control Plan* (ISMCP; final version submitted February 2021). The ISMCP

provided the basis for the extent, distribution, and relative abundance of the target invasive plant species across the park.

Related, and as an anticipated outcome, is the goal of reducing invasive species biomass within the park resulting from the 2023 treatment season.

As noted in Section 8, the Phase 1 (2023) Contract Work will focus on Phragmites and Japanese knotweed in the shoreline areas in both the Penn and Fountain portions of the park.

IPRP Objectives

The primary objective associated with the aforementioned goals is for the IPRP to establish the framework for directing 2023 invasives species treatments, and for developing information for directing/prescribing future invasive species treatments from 2024 through 2026.

In support of achieving this objective, related IPRP objectives include:

- Providing details regarding the geographical and spatial framework within which invasive species treatments will occur and will be documented/monitored.
- Summarizing species-specific descriptions and sitewide distribution and abundance.
- Describing treatment/plant removal methods.
- Defining frequencies and timing of treatments.
- Describing treatment performance monitoring approaches.
- Detailing post-treatment revegetation options.

Accomplishing these objectives provides the foundation for a set of contract drawings and technical specifications that will be actionable by a contractor or contractors to implement invasive plant removal and treatment activities.

Conservation Goals and Objectives for Shirley Chisholm State Park

As provided in Section 2.8 of the ISMCP there are eight (8) overarching conservation goals for SCSP, along with multiple objectives associated with each of the goals. Per the ISMCP:

With the spread of IS at SCSP, aesthetic value, recreational use, biodiversity, and ecological carrying capacity are all at risk. The mission of the 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. The OPRHP mission aligns with the overall goal for SCSP, which is to achieve a balance between recreation and the protection of natural resources occurring within the park while providing compatible public, environmental, and historic education and interpretive programs.

The implementation of this IPRP will directly advance the first conservation goal and its associated objectives, which are stated as follows (the first objective has been moderately modified to specifically align with the IPRP):

1. Reduce the distribution and abundance of invasive plant species within the park through an iterative, and adaptive management process.

- Apply annual mechanical and/or chemical treatments as recommended by this ISMCP.
- Monitor and document IS management work completed over the course of each year. Record the treatments carried out, where they were completed, the treatment types, and frequency of treatments. Iterative mapping in treatment areas will support decision making and budget planning, as mapping will provide geographic information of where treatments are performed and the running results of those treatments (e.g., reduction in total area impacted by IS).
- Adaptive implementation will be critical in meeting this conservation goal over time. Monitoring and internal reporting will support adaptive management that may include modifying treatment methods, changing herbicides, increasing/decreasing frequencies of treatments, and defining new areas for treatment.
- The agency will prioritize resources so that both in-house staff and contract consultants can share the responsibility for reducing the distribution and abundance of invasive plant species within SCSP.

As invasive plant removal activities continue and IS populations are reduced, other conservation goals will be addressed.

1.3 PLAN CONTENTS

The 2023 IPRP is considered the first iteration, or version, of the Four-Year Plan. It is assumed that there will be re-issuances in 2024, 2025, and 2026 that may require varying degrees of adjustment (from the 2023 version) to account for observations/monitoring regarding invasive species treatment performance. Updating the IPRP through adaptive management will contribute to addressing changes to invasive species abundance and distribution over time.

The following information is provided in this 2023 IPRP:

- An overview of the site’s spatial framework.
- Descriptions and locations of the four target plant species.
- An overview of treatment methods, including permitting requirements and environmental regulations.
- Treatment schedule and specifications, including the adaptive management framework.
- Performance indicators and monitoring.
- Post-treatment revegetation and restoration.
- Phase 1 (2023) Contract Work.

2 SPATIAL FRAMEWORK

2.1 SPATIAL FRAMEWORK OF SCSP

SCSP is a large site with an unusual history (previously landfills), across which IS have become, widespread, pervasive, and, in many areas, predominant. When developing approaches for directing IS treatments, the scale and distribution of the target species need to be considered. Consequently, to provide IS control and management recommendations for specific patches of IS currently located at the site would be limited in geographic scope and neglect potentially changing conditions and management priorities at the park. Thus, the ISMCP developed a sitewide framework by which to describe IS abundance by geography and for providing specific recommendations for IS control. The park is divided into seven general control sites based on priority areas, general location, and topography.

This 2023 IPRP outlines control activities targeting mugwort, Lespedeza, Phragmites, and Japanese knotweed within six control sites: Penn Shoreline, Fountain Shoreline, Penn Landfill Cap, Fountain Landfill Cap, Penn Fence Line, and Fountain Fence Line. Each of these control sites is comprised of multiple subunits (see Figure 2-1). It is noted that subunits, too, constitute large areas and will require large-scale efforts to conduct IS control activities (e.g., local control of mugwort, Lespedeza, and Phragmites). More spatially restricted sites for active control within control sites can be designated by site managers based on resources available and management priorities (e.g., publicly visible areas or heavily infested areas). These local control sites can be established using, for instance, either natural breaks (topography) or infrastructure (access roads) to establish a network of definable units. Table 2-1 provides estimated overall acreage impacted by IS (i.e., areas with at least 5% cover of mugwort, Lespedeza, Phragmites, and/or Japanese knotweed) along with estimated percent cover of the four target species for each subunit (from 2019 surveys).

Table 2-1. Estimated Percent Coverage and Total Acreage of Target Invasive Species Identified within each Subunit of the Proposed Control Sites

Subunit ID	Subunit Acreage	Estimated Acreage Impacted by Four Listed IS	Estimated Percent Cover within Subunit			
			Mugwort (%)	Lespedeza (%)	Phragmites (%)	Japanese Knotweed (%)
Penn Shoreline Control Site						
P2	2	2	47	<1	13	7
P3	6	6	37	2	37	15
P4	1.7	1.6	19		2	1
P5	9	9	37	<1	14	<1
Total Acres	19	19				
Fountain Shoreline Control Site						
F2	8	7.2	16	3	35	X
F3	4	4	22	2	25	2
F4	4	4	15	1	59	
F5	0.5	0	2		2	
F6	5	5	57	2	56	

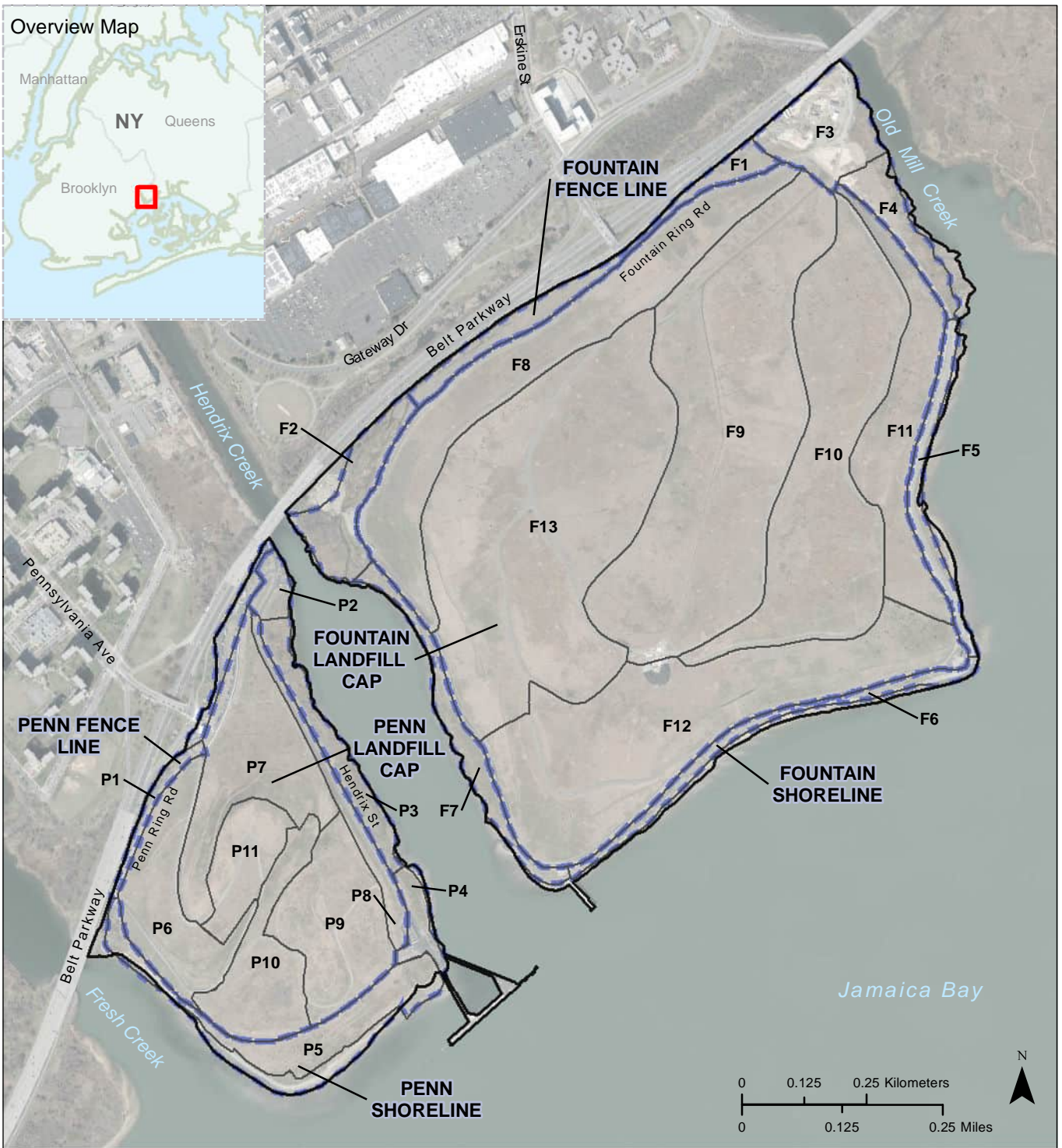
Table 2-1. Estimated Percent Coverage and Total Acreage of Target Invasive Species Identified within each Subunit of the Proposed Control Sites

Subunit ID	Subunit Acreage	Estimated Acreage Impacted by Four Listed IS	Estimated Percent Cover within Subunit			
			Mugwort (%)	Lespedeza (%)	Phragmites (%)	Japanese Knotweed (%)
F7	6	6	81	12	58	<1
Total Acres	28	26.2				
Penn Landfill Cap Control Site						
P6	12	12	61	6	36	
P7	16	16	55	1	37	
P8	2	2	90	2		1
P9	11	3.9	9	<1	22	
P10	11	9.6	38	3	19	
P11	4	3.3	23	10	7	
Total Acres	56	46.8				
Fountain Landfill Cap Control Site						
F8	24	21.6	28	17	14	
F9	59	59	10	14	15	
F10	38	30.4	13	4	14	<1
F11	17	17	45	13	18	
F12	42	42	44	42	5	
F13	61	56.5	5	18	14	
Total Acres	241	226.5				
Penn Landfill Fence Line Control Site						
P1	1	1	15	0	10	0
Fountain Landfill Fence Line Control Site						
F1	7	7	25	2	28	2
Site-wide Total	351	158				

Notes

X = Species present but estimate of the species' percent cover within the Buffered Constructed Area was not available. The 2019 IS surveys were complicated by active construction activities at the Fountain Bike Connector (F2).

Subunits in **bold** text identify subunits with particularly high coverage of invasive species.



- Project Area
- General IS Control Sites
- Control Site Subunits

Figure 2-1
 General Invasive Species (IS)
 Control Sites and Subunits
 Shirley Chisholm State Park
 Brooklyn, Kings County, New York

3 TARGET INVASIVE PLANT SPECIES

3.1 INVASIVE PLANT OVERVIEW

The massive remediation effort to install the landfill caps and cover the site with soil initially created large expanses of bare ground and a simplified plant community. Landscape restoration efforts from 2004 to 2008 involved seeding with native grass species and planting trees and shrubs across the Penn and Fountain sites. A 30-year Monitoring Plan was developed for the Penn and Fountain sites following the restoration. However, in the urban, highly disturbed setting, IS populations occurred in areas near the site. Many IS exhibit competitive characteristics, such as rapid growth rates and high seed production, enabling them to move into a site with disturbed soil quickly and aggressively. Thus, several IS colonized the site shortly following the restoration efforts.

As per NYCDEP guidance in the 30-year Monitoring Plan, both line transects and macro-level meander surveys were employed in 2019 to assess IS occurrence and distribution in the park (NYCDEP 2009). According to the 2019 macro-level meander surveys, an estimated 325 acres had over 5% IS cover (94% of the approximately 346 acres surveyed), and an estimated 139 acres had over 50% IS cover (40% of the surveyed acreage). The survey results indicated that mugwort, Lespedeza, and Phragmites are the IS with the widest distribution and highest abundance across the 407-acre site. Estimated overall IS cover for each site subunit is presented in Figure 3-1. This IPRP assumes that invasive species abundance and distribution across the park are similar to what was observed in 2019.

3.2 MUGWORT

Summary Description

Mugwort is a perennial with an extensive rhizome system. Mugwort spreads largely through vegetative expansion and the anthropogenic dispersal of root propagules. Shoots emerge during the spring, and flowering occurs from July to late September. The small seeds (about 1 millimeter in diameter) are primarily wind dispersed. Seed production does not seem to be a major factor in the spread of mugwort. Stems are smooth and longitudinally ridged, with numerous axillary branches towards the upper portions of the plant. The stems become somewhat woody as they age. The leaves are alternate, densely covered with wooly, silver-white hairs on the underside, and slightly hairy on the upper surface. The lower leaves are petiolate and generally coarsely toothed and pinnately lobed. The upper leaves are sessile and lanceolate with smooth or toothed margins. The numerous flowers are 5 millimeters in size, green, and grow in clusters at the end of stems and branches. The foliage is aromatic (NYIS.INFO 2019).



Photo 3-1 Immature mugwort foliage emerging in spring from remnants of the previous year's plant



Photo 3-2 Slope infested with mugwort on Penn side of SCSP

Distribution and Abundance

Overall, mugwort was the most widespread and abundant IS during the 2019 surveys (see Figure 3-2), occurring in nearly all control subunits at both Penn and Fountain. Based on the mugwort percent cover estimates for each subunit, there is approximately 90 acres of mugwort across the six control sites. There were portions of three control subunits on the Fountain side of the park where mugwort was not observed (F2, F9, and F13) and four smaller areas on the Penn side (P4, P5, P10 and P11). It occurred along a gradient from low density of small, scattered patches to densely populated monocultures that exclude the growth of all other plant species. Mugwort

monocultures were often found on steep side-slopes, where drainage and relatively xeric conditions appear to provide mugwort a competitive advantage. Its tendency to form dense patches makes it readily detectable during meander surveys.

3.3 LESPEDEZA

Summary Description

Lespedeza is a perennial, warm-season, herbaceous legume. The species is 3-6 feet tall, with leafy slender stems, often branching in the upper half with crowded whitish flowers toward the terminals. Leaves are alternate, numerous with 3-leaflet leaves 3/8-3/4 inches long. The leaves are green above, but dense whitish hairy to light gray-green beneath. Flowers appear in July through late September (in New York City) in clusters ranging from 1-3 per flowers 1/4 inch long, white with purple marks. Seeds appear in October through November in legume pods clustered in terminal axils and scattered along the stems. Lespedeza is a nitrogen fixer, which displays allelopathic properties to surrounding species. Once established, lespedeza is long-lived and a prolific seed producer (NYCDEP 2009).



Photo 3-4 Lespedeza in flower



Photo 3-4 Patch of Lespedeza in foreground with native flowers (white) in background; photo taken at SCSP

Distribution and Abundance

Lespedeza was most typically found on the landfill caps, often in dense, localized clusters among native grasses or pioneering plants. Lespedeza was also observed interspersed with mugwort in more degraded habitats (e.g., lower frequency of native plant species). Lespedeza is relatively uncommon at the Penn Site but is more widespread and abundant at the Fountain Site (see Figure 3-3). At both sites it occurs along the Ring Roads and the next layer inland on the cap. It is worth noting that in areas where Lespedeza is abundant, it is likely accurately assessed during macro-level meander surveys. However, there is the potential to underestimate its cover where it is not a dominant species, as localized Lespedeza patches can be obscured by taller vegetation. Based on the Lespedeza percent cover estimates for each subunit, there is approximately 48 acres of Lespedeza across the six control sites, with the distribution and abundance more prominent on the Fountain side of the park.

3.4 PHRAGMITES

Summary Description

Phragmites is a perennial, warm season grass that grows into dense stands and usually progresses into a monoculture. Plants can reach 15 feet in height, yet more than 80 percent of the yearly biomass is contained below ground in a dense mass of roots and rhizomes. Stalks support flat, stiff leaves that are one half to two inches wide near the base, tapering to a point at the end. Phragmites has gray-green foliage during the growing season, with purple-brown-silver seed head plumes appearing in late August (in New York City). The plumes are 6-20 inches long at the end of stalks and have many branches. Phragmites turns tan in the fall and most leaves drop off, leaving only the stalk and plume-topped shoot throughout winter. Rhizomes generate roots and stalks at regularly spaced nodes. An individual plant can multiply into a large stand through its rhizomes. Rhizomes may exceed 60 feet in length, grow more than 6 feet per year and readily grow into new plants when fragmented. In addition to facilitating reproduction, Phragmites

rhizomes can penetrate the soil to a depth of more than 6 feet. This allows the plant to reach low-lying groundwater and tolerate a variety of conditions, including dry upland sites and wetlands with considerable water depth. Germination occurs in the spring, generally on exposed moist soils. Although seed viability is considered low and germination is a slower process than spreading by rhizome fragments, new stands of Phragmites will develop from seed. Water depths greater than 2 inches typically prevent germination of seeds (NYCDEP 2009).



Photo 3-5 Mature Phragmites with inflorescence



Photo 3-6 Dormant Phragmites outside the growing season

Distribution and Abundance

Phragmites was most abundant along shoreline edges both below and above the riprap line, inland of smooth cordgrass beds. In places with suitable moisture Phragmites forms dense monocultures to the exclusion of other species. The thickest patches occurred along the northeast shorelines of both the Penn and Fountain sites (see Figure 3-4). There is noticeable overlap between shoreline Phragmites and mapped wetland habitat. Phragmites also occurred on both landfill caps and along the fence line, typically at low to moderate densities, interspersed with

other native and non-native species. Although dense stands of *Phragmites* occur near the shorelines of the Penn and Fountain sides of the park, the species is widely distributed across the park. Its height makes it readily detectable during meander surveys. Based on the *Phragmites* percent cover estimates for each subunit, there is approximately 65 acres of *Phragmites* across the six control sites.

3.5 JAPANESE KNOTWEED

Summary Description

Japanese knotweed is a large, herbaceous perennial plant native to eastern Asia. Japanese knotweed has hollow stems with distinct raised nodes. The leaf is a broad oval with a truncated base, 5–15 cm long and 5–12 cm broad. The flowers are small, creamy white, produced in erect racemes in late summer and early autumn. It is a frequent colonizer of temperate riparian ecosystems, roadsides and landfills. It forms thick, dense colonies that completely crowd out any other herbaceous species, forming a monoculture. It is considered one of the worst invasive exotics in parts of the eastern United States. The species' success has been partially attributed to its tolerance of a very wide range of soil types, pH and salinity. Japanese knotweed has a large underground network of rhizomes. Its rhizomes can extend 20 feet horizontally and 10 feet deep, making removal by excavation extremely difficult and often unsuccessful. The plant is also resilient to cutting, vigorously resprouting from the roots (NYCDEP 2009).



Credit: [Fallopia japonica MdE 2.jpg](#), © [MdE](#) at Wikimedia Commons, CC-BY-SA 3.0 German

Photo 3-7 Mature Japanese knotweed foliage with inflorescence, mid-to-late growing season

Distribution and Abundance

Patches of Japanese knotweed occur as infrequent patches, primarily along or near the Ring Roads or near wetlands outward from the landfill caps (see Figure 3-5). The 2019 surveys found there seemed to be less than one acre of Japanese knotweed across the six control sites. The relatively low occurrence of this highly impactful IS offers an opportunity for EDRR

management, with good probability for substantial reduction or elimination with proper, informed, and iterative treatments. While not widespread at the park compared to several other IS, Japanese knotweed appears to be spreading rapidly on the Penn Site. Mature plants and stands are infrequent yet readily detectable during meander surveys; seedlings and early growth would be less detectable.

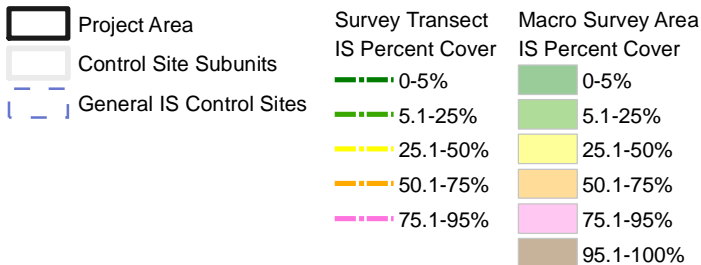
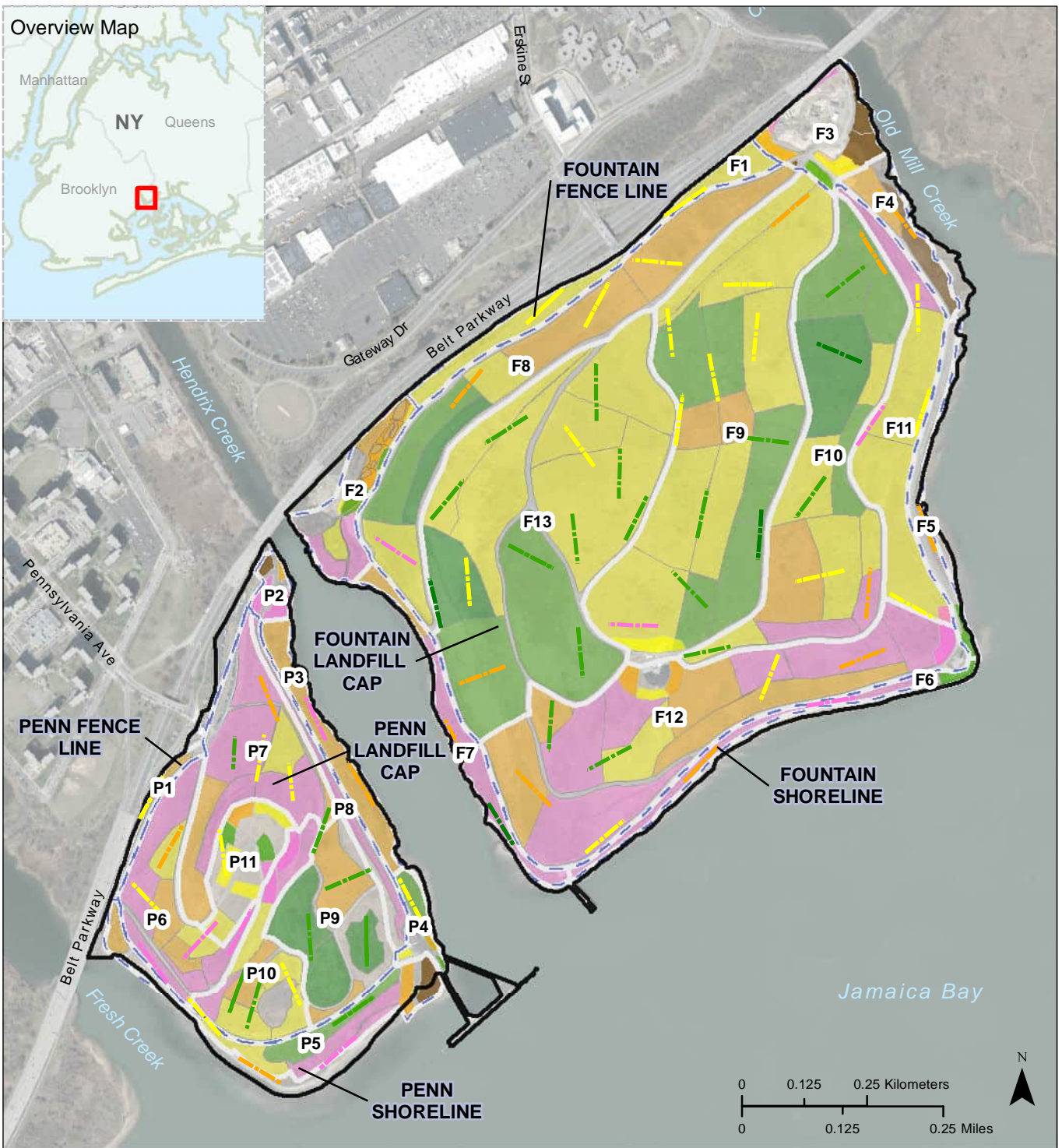
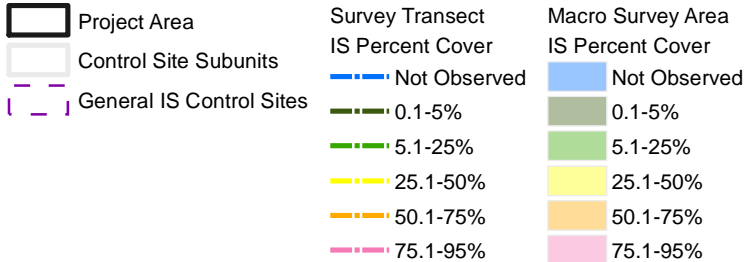


Figure 3-1
 Field Surveys
 Total Invasive Species (IS) Cover
 June, August, and September 2019
 Shirley Chisholm State Park
 Brooklyn, Kings County, New York



Figure 3-2
 Invasive Species (IS)
 Field Surveys - Mugwort
 June, August, and September 2019
 Shirley Chisholm State Park
 Brooklyn, Kings County, New York



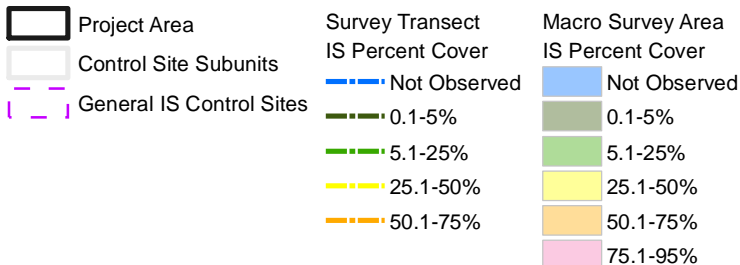


Figure 3-3
 Invasive Species (IS)
 Field Surveys - Lespedeza
 June, August, and September 2019
 Shirley Chisholm State Park
 Brooklyn, Kings County, New York

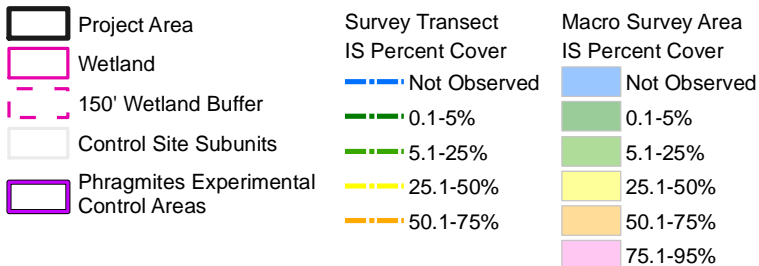
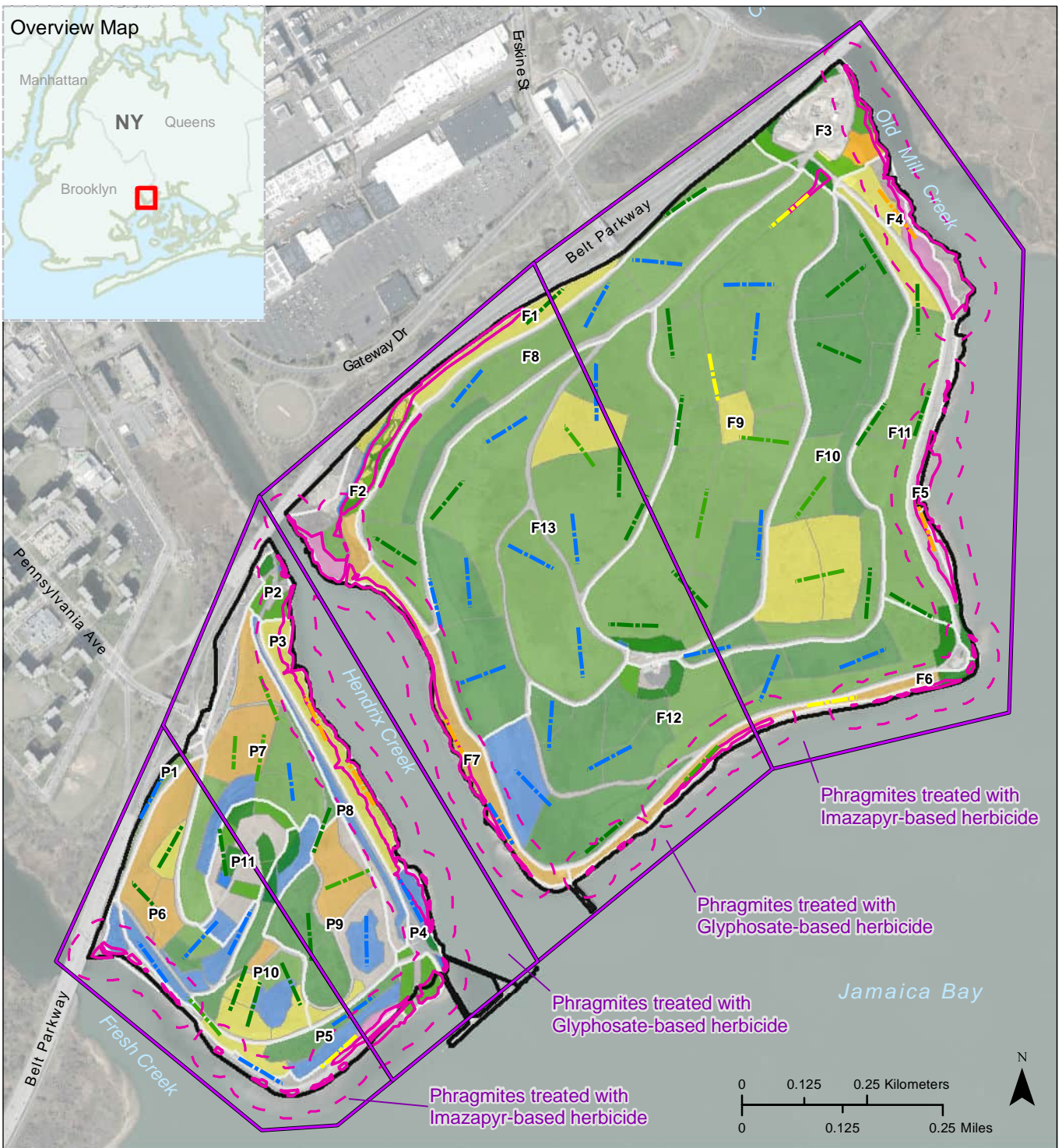


Figure 3-4
 Invasive Species (IS) Field Surveys -
 Phragmites Experimental Control Areas
 and Percent Cover
 (June, August, and September 2019)
 Shirley Chisholm State Park
 Brooklyn, Kings County, New York

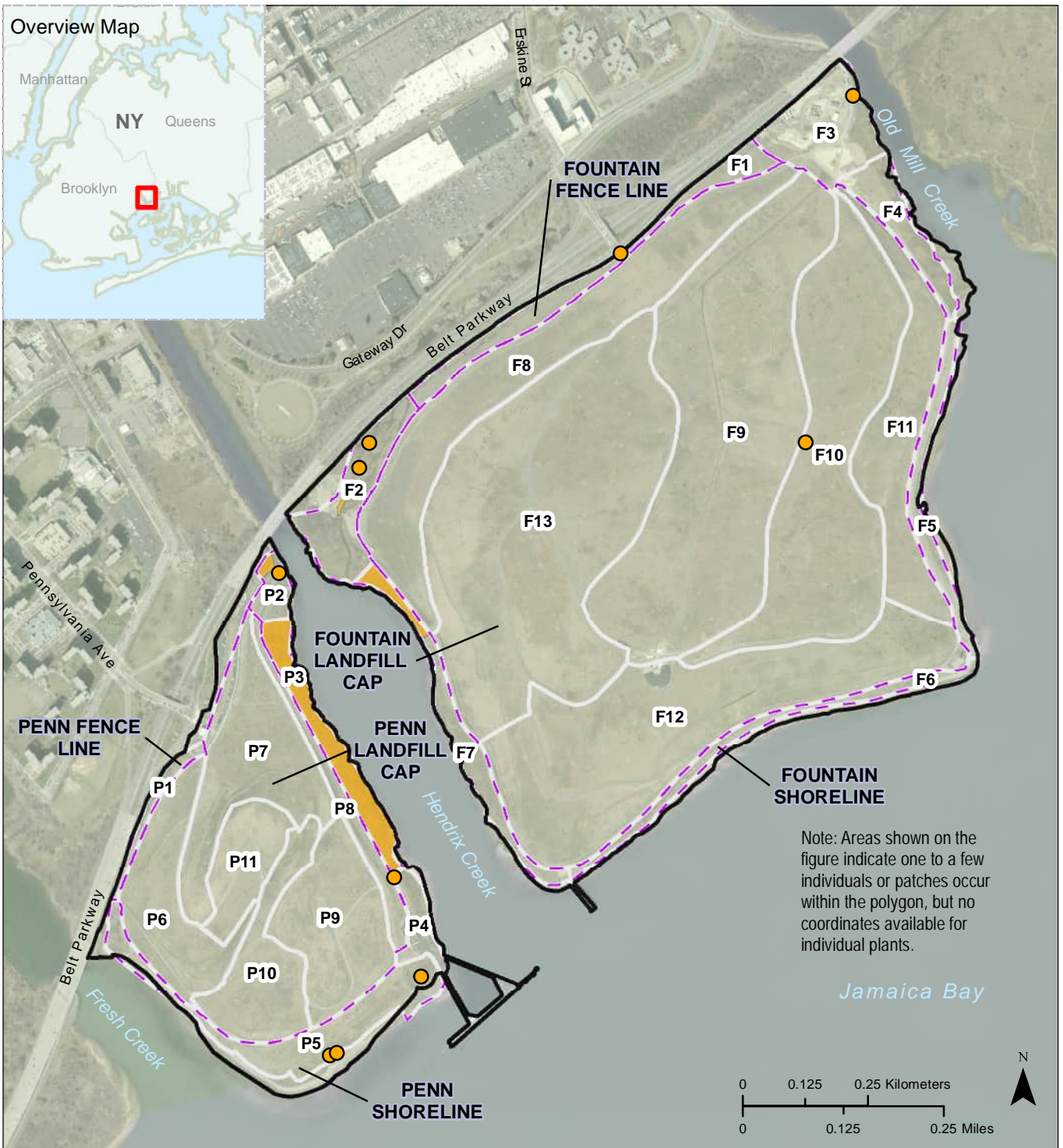


Figure 3-5
Invasive Species (IS)
Field Surveys - Japanese Knotweed
June, August, and September 2019
Shirley Chisholm State Park
Brooklyn, Kings County, New York

4 TREATMENT METHODS

4.1 OVERVIEW

The *New York State Invasive Species Management Strategy* and the *Management Plan: 2016–2018* identifies four general approaches to address all taxa of invasive plant species (NISC 2016):

1. Prevention (keep IS from entering a new ecosystem);
2. Eradication (remove the entire population of a nonnative species);
3. Control (contain or otherwise manage the population of an IS to minimize spread and impacts); and
4. Ecosystem restoration (recovering ecosystems post-removal of IS to build resistance and resilience to future introductions of non-native species).

Relative to the above-listed approaches, actions described in the IPRP can be characterized as “control” and “ecosystem restoration,” while the focus of site maintenance for park managers should be “prevention” and “eradication.” Even while control treatments occur, preventing spread of IS before they can reach areas with minimal IS impact is a sitewide objective.

There are a variety of types of treatments available for controlling IS, including mechanical, chemical, biological, and habitat modification (e.g., restoration plantings). Few invasive plant species have vetted and approved forms of biological control; however, the other three types of treatment are called for in this plan. This IPRP specifically involves implementing a series of mechanical and chemical treatments. Once appropriate levels of IS control have been achieved within a treated area(s), then habitat modification will be implemented in the form of restorative native species plantings. This IPRP implements a combination of treatments to act upon the target species in different ways that cumulatively should be more effective than just one approach.

4.2 MECHANICAL METHODS

Mowing is anticipated to be the primary mechanical treatment at SCSP for 2023 treatments. Native warm-season grasses can tolerate mowing (e.g., dormant-season mowing every few years), and may even stimulate growth. However, mowing as the sole method of IS treatment has shown to be ineffective for several of the most abundant IS at the park, and should be used in combination with herbicide treatments. Mechanical methods will be timed according to recommendations from the literature regarding the effectiveness for each of the target species. The timing of mechanical will be done with consideration to the timing of chemical treatments. Additionally, there are NYSDEC restrictions related to mowing in areas that are suitable habitat for nesting grassland birds and wintering raptors (see Section 5.2)

Mowing and clearing equipment typically prepares areas for additional treatments. Soil disturbance should be minimized, as this can stimulate a flush of growth from the seed bank for several IS, including mugwort. Heavy equipment will not be used in areas with soft ground conditions to help avoid soil disturbance. In the event that surface soil is exposed or disturbed, cleared areas will be seeded and/or planted with native vegetation. For example, erosion control seeding provides competitive resistance to recruitment and colonization of IS from seedbank sources, airborne and wildlife pathways.

4.3 CHEMICAL METHODS

4.3.1 GENERAL GUIDANCE

Chemical treatments are most effective when applied to actively growing foliage or conductive tissue of target species of plants, when spray solution can readily translocate through foliage to the root system of target species. Foliar spray treatments will thoroughly wet foliage without runoff. To ensure the herbicide is taken up by the plants, a state-approved nonionic surfactant must be used in conjunction with the herbicide(s) at the rate recommended on the label. Within wetland habitat (e.g., surface water present), only herbicides approved by the state for wetland use are to be used. The wetland restriction is anticipated to be applicable to the shoreline control sites but unlikely to be relevant for the landfill cap control sites.

Multiple rounds of herbicide treatment within a growing season can improve the level of control on IS in treated areas. This IPRP is prescribing two treatments in a season to increase control while optimizing the use of available resources to treat sizable areas. A general schedule could be the first treatment in July and a second in September (see Section 5.2). Two rounds of chemical treatment would result in target species receiving at least one treatment during optimal timing for efficacy. For example, Lespedeza chemical treatment is most effective in early to mid-summer, while late summer to fall is the best time to treat Phragmites and Japanese knotweed to ensure translocation into root systems.

Application of chemical treatments during the growing season will be scheduled with consideration of public use of the site. Chemical treatment will typically be a foliar spray application of systemic herbicide with a backpack sprayer for targeted spot-treatments or larger, mechanized spray equipment for larger areas. Volume and complete coverage of target foliage is critical for efficacy and will be controlled by using specific sprayer-tip nozzles. Applicators will avoid overspray and subsequent damage to non-target species.

Herbicides should be applied as a foliar spray under the following conditions:

- Wind less than 5 miles per hour;
- Temperature above 60°F and less than 80°F
- Dry foliage with no precipitation expected within 4 hours of application; and
- Tidal wetland treatments will be completed at low tide when target areas are not inundated.

Due to the interspersed nature of IS with native species in areas within the park, it is expected that there will be some collateral damage through the course of implementing control treatments. Any areas on the site that contain rare plant species, such as New York State-listed endangered Roland's sea-blite (*Suaeda rolandii*), will be avoided during control treatments. Roland's sea-blite occurs in tidal wetland habitat; it was identified by NYNHP in tidal wetlands on the eastern shoreline of the Fountain site, approximately 0.3 miles north of the Fountain site's southeast corner (the NYNHP record is from 1992). While minimizing impacts on non-target species is the goal, the use of strategic and "surgical" methods is expected to result in modest levels of collateral damage and are likely necessary for reducing some species and areas to levels that would require far less management. Monitoring and close coordination with herbicide applicators will create a condition of close surveillance to minimize collateral damage, and to obtain consensus on where it is acceptable. Information prepared by the New York State Natural Heritage Program on Roland's sea-blite, including conservation and management guidance can be accessed at <https://guides.nynhp.org/rolands-sea-blite/> (NYNHP 2022).

4.3.2 USE OF GLYPHOSATE AT SCSP

Glyphosate is the active ingredient in a number of widely used herbicide products. However, there are concerns regarding the health risks posed by direct human exposure to glyphosate. On December 31, 2021, a New York State law went into effect prohibiting the use of glyphosate by state agencies, state departments, public benefit corporations, or their contractors and subcontractors on state property. The law has exemptions to allow these entities or their contractors and subcontractors to apply glyphosate on state properties under limited circumstances (Menrath 2022). One exemption is that a glyphosate use determination can be developed if the product is necessary to manage habitat by controlling invasive or noxious plant species injurious to ecosystem health. This circumstance is applicable to SCSP and the IS control needs for restoring native habitat and ecosystem functions and linkages. As a matter of balancing the State's prohibition with the need for active and effective intervention, this plan is integrating components for, at least during early stages of invasive species control and management activities, reducing the use of glyphosate across the park. Notably, triclopyr-based herbicides are recommended for the chemical treatment of mugwort, Lespedeza, and Japanese knotweed, as triclopyr can be effective against these target species while avoiding damage to non-target grass species. However, triclopyr is not effective against Phragmites, so alternatives such as imazapyr/imazamox and glyphosate will be used to determine comparative efficacy of the two herbicides for treating Phragmites.

Phragmites treatment at SCSP provides an opportunity to evaluate herbicide efficacy at the SCSP site. The approach for this IPRP involves the establishment of different treatment areas to evaluate the efficacy of variable herbicide applications side-by-side on a real-time basis for the control of Phragmites. Approximately half of the demonstration Phragmites-treated areas will be designated to be chemically treated with a glyphosate-based herbicide (e.g., the eastern half of Penn and the western half of Fountain; see Figure 3-4). The other Phragmites-treated areas will be treated with an imazapyr-based herbicide (e.g., the western half of Penn and the eastern half of Fountain). The specific herbicide applications and rates for the 2023 treatments are provided immediately below:

- Glyphosate Treatment Areas will be treated with glyphosate-based herbicide and surfactant at rates of 2% glyphosate product + 0.5% non-ionic surfactant (NIS); and

- Imazapyr/Imazamox Treatment Areas will be treated with imazamox (or imazapyr)-based product and surfactant at rates of 2% imazapyr product (or 3% to 4% imazamox product)+ 1% MSO.

Depending on the designation of the Phragmites treated area, specific volumes of herbicide to be used are expected to be:

- Glyphosate-based herbicide at 96 ounces /acre + 0.5% volume basis (% V/V) NIS; and
- Imazapyr-based herbicide at 64 ounces/acre (Imazamox-based herbicide at 96 to 128 ounces/acre) + 1% V/V MSO.

The implementation of this plan will include the “side-by-side” evaluation of the two herbicides for controlling Phragmites. Post treatment monitoring will inform future treatment regimes and prescriptions for the use of glyphosate and imazapyr on an annual basis. Accordingly, adjustments may be made relative to the division of herbicide type applications (e.g., percentage of Phragmites infested areas to receive glyphosate vs. imazapyr), and frequency and perhaps timing of treatments.

4.4 PERMITTING REQUIREMENTS AND ENVIRONMENTAL REGULATIONS

The application of aquatic pesticides is regulated by NYSDEC, and in order to implement chemical control activities within NYSDEC coastal wetlands and their 100-foot buffers, two permits are required prior to initiating activities: a Permit to use a Pesticide for the Control of an Aquatic Pest and a Freshwater Wetlands Permit. In both cases, early and frequent coordination with NYSDEC during the permit application process will be critical to ensure that the regulators understand what is proposed and as a result, can issue timely approvals. Chemical products and recommended application rates must conform to NYSDEC Pesticide Control Regulations (NYSDEC, n.d.). Regulatory compliance and permitting for chemical applications within NYSDEC coastal wetlands and 100-foot buffers are expected to require annual submittals from the certified pesticide applicator to NYSDEC Region 2 at least three months prior to herbicide applications.

Chemical treatments can only be conducted by a certified pesticide applicator with the appropriate licenses. Applicators may be appropriately certified contract consultants or staff. Applicators must coordinate treatment activities with site managers so appropriate measures can be taken to prevent members of the public from potential exposure to herbicide. For example, any trails leading to treated areas should be temporarily blocked with signage in place.

IS control activities within the two generalized shoreline control sites (Penn Shoreline and Fountain Shoreline) require permitting considerations, as these areas include tidal wetlands. The other two proposed control sites (Penn Landfill Cap and Fountain Landfill Cap) are terrestrial and would largely be expected to not require permitting approvals.

5 TREATMENT SCHEDULE AND SPECIFICATIONS

5.1 CONTROL STRATEGY

Several IS currently at the park have long-established populations, such as mugwort and Phragmites. Lespedeza and mugwort occur at varying densities across a large portion of the park while Phragmites has created near or complete monocultures along the shoreline areas. Japanese knotweed, while not widespread, occurs in pockets of high densities and in areas where there are fewer and more scattered plants. There is certainly the trajectory of those stands developing into monocultures. Therefore, this plan focuses on directed, focused, and iterative treatments that are expected to occur over a four-year period with the intent of substantially reducing these IS to more manageable, smaller scale spot and “search and destroy” based treatments. This plan provides the control strategy for the four aforementioned target species. The Phase 1 (2023) Contract Work for this plan is summarized in Section 8, which focuses on Phragmites and Japanese knotweed within shoreline areas in both the Penn and Fountain portions of the park.

Removal of IS within defined target areas will allow OPRHP to get a foothold in the control units. Local IS control efforts will protect native plantings from IS encroachment, which, over time, protects the investment and enhances the visitor experience by providing a more diverse native plant community.

Within the patches of high invasive cover, broad-scale treatments as described in this IPRP will efficiently treat patches of dense cover while maintaining relatively low collateral damage of natives. Treated areas have the potential to recruit from native existing seed sources, but it is important to supplement with planted seed mixes once an appropriate degree of IS control has been achieved. Following initial treatment, follow-up treatments within the same area will occur, with treatments continuing until a desired reduction threshold has been met (e.g., $\leq 15\%$; see Section 6.1). Depending on the level of response from native plants, it is anticipated methods will shift from broad-scale treatment to a more targeted spot treatment (e.g., “search-and-destroy”) approach that targets regenerating invasive plants. Transitioning to spot treatments may require more than one season of broadcast treatments. Monitoring will determine best approaches based upon changing conditions across the landscape. The spot-treatment approach will also be applied within low-invasive cover locations in the vicinities of treated patches.

This plan assumes up to four years of treatment gain substantive control of the target species. As noted elsewhere, the plan will adjust to changes on the ground relative to treatment efficacies. Species-specific treatments include:

- **Mugwort:** When cutting is used, mature plants will be cut to at most 12 inches in height in spring and then left to regenerate to a height of 12 inches to 24 inches prior to chemical treatment. Triclopyr-based herbicide will be used to treat mugwort at SCSP, as triclopyr does not impact grass species and will not injure the native grasses. Glyphosate is also effective but is not recommended for the site since there are effective alternatives.

- Lespedeza: Similar to mugwort, the most effective control combines mechanical and chemical methods. Lespedeza will be mowed during the flower bud stage (spring). Mowing will not occur during seed set in the fall, to avoid dispersing its seed. Mowing two to three consecutive years can reduce vigor and limit further spread. Herbicides with triclopyr will be applied in early to mid-summer. Glyphosate is also effective but is not recommended for the site since there are effective alternatives.
- Phragmites: Effective control, especially on established stands, can require multiple years of treatment. Glyphosate-based herbicide is recommended for herbicide treatments; herbicides with imazapyr or imazamox are alternatives. This IPRP proposes a demonstration experiment evaluating both herbicides by using each in different areas of the site (see Section 4.2.2). The priority time to chemically treat is in the fall after seed heads have grown; at this time the chemical is translocated from leaves to rhizome systems. Chemical treatment at other times of the growing season will stress the plants but not translocate well. Chemical treatments in tidal wetlands will be completed at low tide when target areas are not inundated. Mechanical treatment will occur at least 30 days after fall chemical treatment to provide time for translocation. Cut biomass and seed heads will be removed from the site, using techniques to avoid spreading the species to other locations.
- Japanese knotweed: Japanese knotweed will be chemically treated with systemic herbicides (e.g., triclopyr) twice a year close to the flowering stage (e.g., late summer then fall) using foliar spray. Stem injection is an alternative application method. Cutting mature stands in spring prior to chemical treatment will improve the efficacy of chemical treatments. This species is resilient to cutting alone, but mowing can be part of the treatment regime to stress the plants and prepare for subsequent years of herbicide treatment.

5.2 CONTROL TIMETABLE

A proposed timetable for 2023 control activities for this plan's four target IS is provided in Table 5-1.

As described in Table 5-1 and section 5.1, mowing is recommended for mugwort and Lespedeza in June prior to a summer chemical treatment. However, NYSDEC follows mowing restrictions for fields over 25 acres to avoid impacts to state-listed grassland bird species (NYSDEC 2022-2027). Specifically, mowing is to be avoided between April 23 and August 15 (for nesting grassland birds), and between November 1 and March 31 (for wintering raptor species). These exclusion windows leave August 16 to October 31 and April 1 to April 22 as potential times for mowing. Appropriate mowing opportunities are thus limited, as late season mowing (i.e., after seed set) is not advised for lespedeza to avoid dispersing seed during mowing activities. In addition, April may be too wet for mowing.

Mowing can occur within the April to August exclusion window if the areas targeted for management are first surveyed to confirm that active nesting by New York State endangered, threatened, or species of special concern is not occurring within the managed area (NYSDEC 2022-2027). Thus, if mowing outside the exclusion windows is not feasible, then pre-treatment bird surveys for nesting state-listed grassland bird species will be conducted within treatment areas. The proposed invasive species management activities are anticipated to provide long-term benefits to the habitat and wildlife.

A Daily Activity Summary Report should be completed by the selected contractor at the end of each onsite treatment day.

Table 5-1. 2023 Timetable of Invasive Plant Species Control Activities at SCSP

Timing	Mugwort	Lespedeza	Phragmites	Japanese Knotweed
Expected Locations	- Common on landfill caps - Near shorelines at top of slope near Ring Roads	- Common on landfill caps, uncommon near shoreline areas	- Dense patches along shorelines - North-facing slope of Penn landfill cap - Occasional in some other upland areas	- Distinct patches, particularly east edge of Penn site
June: Mechanical	Mow areas dominated by mugwort and/or Lespedeza ¹	Mow areas dominated by mugwort and/or Lespedeza (Lespedeza should be in bud stage) ¹	Early June cut dense patches by shorelines to improve efficacy of chemical treatments	Cut/mow Japanese knotweed to improve efficacy of chemical treatments
July: Chemical	First round: chemically treat mowed areas with triclopyr-based herbicide	Treatment: chemically treat mowed areas with triclopyr-based herbicide	First round: chemically treat (with wetland-approved herbicide where needed), focusing on areas designated to be treated with imazapyr-based herbicide	
August: Chemical			First round: chemically treat (with wetland-approved herbicide where needed), focusing on areas designated to be treated with glyphosate-based herbicide	First round (can be late July): Chemically treat Japanese knotweed across site with triclopyr-based herbicide
September: Chemical	Second round: retreat mugwort with triclopyr-based herbicide as needed		Second round: retreat Phragmites with appropriate glyphosate- or imazapyr-based herbicide (depending on location)	Second round: retreat Japanese knotweed with triclopyr-based herbicide as needed

¹ NYSDEC has mowing restrictions for fields over 25 acres, with mowing to be avoided between April 23 and August 15 (to avoid impacts to nesting grassland birds) and between November 1 and March 31 (to avoid impacts for wintering raptor species). If mowing outside the exclusion windows is not feasible, then pre-treatment bird surveys will be conducted within treatment areas to confirm there is no active nesting by state-listed (endangered, threatened, or species of special concern) grassland bird species.

5.3 ADAPTIVE MANAGEMENT

Each invasive species control strategy is part of the larger adaptive management approach. Adaptive management is the systematic acquisition and application of reliable information to improve natural resource management (Wilhere 2002). In the spirit and intent of adaptive management, the *Shirley Chisholm State Park Invasive Species Management and Control Plan* (ISMCP; E & E 2021) plan is a living document created to support Park management and regional management as they evaluate the effectiveness of management efforts throughout the course of treatments. As part of the ISMCP, the park has established targets for both IS control and active restoration efforts. Treated areas (control sites or locations therein) will be reassessed at the beginning of each field season and should be used to inform future goal setting.

The 2023 IPRP is considered the first iteration, or version, of the Four-Year Plan. It is assumed that there will be re-issuances in 2024, 2025, and 2026 that may include varying degrees of adjustment (from the 2023 version) to account for observations/monitoring regarding treatment performance for the adaptive management of the invasive species management effort across the park. Frequent monitoring increases effective decision making, which results in improved treatment effectiveness and more efficient use of funds.

Targets (control sites or locations therein) will be reassessed at the end/beginning of each field season and should be used to inform future goal setting. Adaptive management is a vital component for directing ongoing IS control and management strategies over time.

6 PERFORMANCE INDICATORS AND MONITORING

6.1 PERFORMANCE INDICATORS

Measurable objectives will generally be similar across the various control sites in terms of: implementing IS control and management efforts; initiating, monitoring, and completing some degree of local control of sitewide abundant IS and realizing success in terms of reduction of IS abundance and distribution over time.

Treatment (Implementation) Objectives

- All areas planned for treatment within each control site will be mechanically and chemically treated per the prescribed control schedule, with an anticipated two rounds of chemical treatment per growing season.
- All treatments will be recorded in daily summaries to support documentation of treatments and analysis of treatment-specific information to support future decision making and budget determinations.
- All treatment areas within the control site will be mapped and or inventoried to inform change over time. Pre- and post-treatment mapping/treatment documentation will provide updates to IS distribution, abundance, and densities.

Local Control Performance Objectives

- Confirmation that prescribed schedules and number of rounds of treatment are completed, noting any differences. Treated areas and treated species will be monitored to confirm adequate execution of treatments. .
- Monitoring will be completed to confirm efficacy of treatments and to identify the need for adjustments to subsequent treatments.
- Demonstrated reduction in overall IS abundance and cover year over year, until the threshold of $\leq 15\%$ IS cover is achieved. With time and further treatments, acceptable minimum percent cover thresholds can be developed for the entire control site or for specific species within the control site.

6.2 MONITORING TREATED AREAS

6.2.1 IS TREATMENT ACTIVITIES

An important component for implementing this plan is to ensure that treatments are being conducted to the specifications provided. Monitoring will include documenting the execution of treatment activities such that there is confirmation of methods, frequencies, and completeness of each treatment. In combination with post-treatment performance monitoring, treatment reporting

will support the evaluation of treatment efficacies. The information collected will be included in an annual treatment report.

Treatment reports will be based upon the completed daily summaries, which include information on the date, locations where treatments occurred, species treated, treatment method(s) employed, product type(s) and amount of product used, cut material removed, photos taken during monitoring, confirmation that all areas targeted for treatment were treated, and any modifications to treatment methods. The daily summaries will be in the form of Daily Activity Summary Reports, which will further support the tracking of contractor execution of treatments. The selected contractor should complete a Daily Activity Summary Report for every day of treatment, seeding, and/or other site activities. Completion of the daily summaries will contribute to the preparation of annual treatment reports and will provide opportunities for review of contractor actions and follow-through.

The treatment report and will inform OPRHP and SCSP resource managers' decision making regarding the adaptive implementation of IPRP re-issuances in 2024, 2025, and 2026, which may include varying degrees of adjustment.

6.2.2 POST-TREATMENT VEGETATION MONITORING

Monitoring treated areas within control sites will focus on documenting results of IS control methods, along with coincident recovery and establishment of native plant communities where IS dominated prior to treatment activities. Reduction of IS presence in treated areas across the park and recruitment of native plant species are considered key indicators of control performance. Macro-level meander surveys are recommended methods to track IS occurrence and distribution in treated areas. Tools such as ArcGIS Online Collector can be useful for demarcating treated areas and tracking IS.

IS meander surveys within treated areas should be conducted at the end of the growing season, typically after chemically treatments for the season have been completed but not necessarily (e.g., in September while some areas are still receiving a second round of treatment). Late season monitoring should occur prior to mechanical mowing or cutting in order to capture IS extent for the growing season (see Table 5-1). The post-treatment monitoring can be used to assess changes in IS over the course of a growing season, but is particularly useful for making comparisons between years, such as for the first year of treatment followed by subsequent treatments. The purpose is to assess the total percent reduction in IS percent cover for a given treated area. Field protocols for conducting macro-level meander surveys and recommendations for data presentation are provided in the ISMCP.

6.2.3 PHOTO MONITORING

Fixed-point photo-monitoring stations can be used to record site changes at a location over time and can be accomplished relatively quickly and easily. Digital photographs can be taken at various location that will be treated for IS in order to record baseline conditions as well as during and after IS control treatments. Photo monitoring stations should focus on capturing the range of treatment areas and vegetation restoration areas, with views amenable to detecting habitat changes over time. As park IS management progresses, comparisons of photos from the monitoring stations can support documentation of changes from year to year regarding IS and

native species presence and abundance. Recommended timing for taking pictures at photo-monitoring stations at a treatment area is during the growing season, prior to treatment activities (e.g., late May, June), and again following chemical or mechanical treatments (e.g., September, October). For IS treatment or restoration planting conducted in the fall, it is recommended to take pictures the following growing season to document IS regeneration or restoration planting success.

7 POST-TREATMENT REVEGETATION AND RESTORATION

SCSP has chosen to implement an ecosystem-based management (EBM) approach to restoration. Ecosystem-based management is an integrated organizational approach to decision making that considers an entire ecological community, including humans, to create a sound blueprint for the near- and long-term ecological health and development of the site and surrounding areas (NOAA, n.d.).

2023 Post-Treatment Seeding

The planting plan developed as part of the 2023 IPRP focuses entirely on specifying seed mixes to be used post-treatments, including disturbance (erosion control/cover crop) seeding and restoration seeding. Japanese knotweed and Phragmites have very deep roots and rhizomes. Since these species can regenerate from the smallest remains of rhizomes, it is imperative to continue treating until only sporadic small patches remain and spot treatments are demonstrating effectiveness. Routine monitoring of IS aerial cover will determine when efficacy thresholds have been reached.

Following invasive species treatments there will be a need for seeding disturbed soils; assumed to be 85% of the 2023 invasive species treatment areas. Exposed soil areas will be seeded with an erosion control mix consisting of 98% pure live seed or better, with 100% annual ryegrass (*Lolium multiflorum*). Seeding shall occur at the end of the invasive species treatment period at a rate of thirty-five (50) pounds per acre. Straw mulch (weed free) will be spread over seeded areas per seed vendor specification.

Following invasive species treatments restoration seeding will occur using Water's Edge Mix (pinelandsnursery.com) plus annual ryegrass for cover crop; assumed to be 15% of the 2023 invasive species treatment areas. Seeding shall occur at the end of the invasive species treatment period at the rate of twenty (20) pounds per acre – Water's Edge Mix and thirty (30) pounds per acres annual ryegrass.

Long-Term Restoration Seeding and Planting

All IS treatment areas are distinct, given the occurrence of specific IS (and combinations of IS) and the extent of desirable vegetation. Accurate field data collection on a routine basis will contribute to developing a revegetation schedule based on adaptive management. It can be expected that some areas will require more time than others for attaining acceptable control levels and those that will continue to require area-wide spot treatments. Scenarios such as these will affect the commencement and scheduling of restoration planting. Depending on the size of the area being considered for planting, and the distribution of IS within it, the criteria for planting suitability could range from less than 5% IS aerial cover to as high as 25% IS aerial cover. Another consideration will be the degree of difficulty to control each of the IS being treated whereby each of the species may have different thresholds for initiating larger scale restoration seeding and planting.

It is anticipated that IS will not be sufficiently controlled within 2023 treatment areas to warrant investment in broader restoration plantings beyond erosion control, post-disturbance seeding, and

the assumed percentage of restoration seeding. However, as treatments proceed and control of invasive plants progresses (e.g., more expansive areas with lower percent/abundance of invasive species present), future additions to the planting plan are expected to include other types of plantings, including more expansive seeding with native seed mixes and the planting of herbaceous plugs, shrubs, and trees. The application of native seed mixes, and native species plantings, will be applied more in the areas where a greater degree of efficacy of treatments has been observed.

Monitoring into the future will provide specific thresholds however generalized guidance may include the following.

- Iterative disturbance seeding across all areas treated.
- Restoration seeding in areas where IS occur at 75% total percent cover or less, within defined locations (control site subunits or smaller). Conversely, restoration seeding in areas where 25% IS removal has been demonstrated.
- Native plantings (plugs, shrubs, and trees) in areas where IS occur at 25% or less within defined locations (control site subunits or smaller). Conversely, native plantings in areas where 75% or greater IS removal has been demonstrated.

The restoration approach is expected to be adaptive as performance of treatments concludes that planting may proceed. The restoration approach is also expected to be iterative for the same reason.

ISMCP Guidance

The SCSP ISMCP presents a listing of candidate species for SCSP restoration areas based on existing populations at SCSP as well as genetic plasticity and characteristics indicating suitability for use in multiple moisture regimes across the site. Hydric and halophytic species on the list are well established and occur in various densities within SCSP and the greater Jamaica Bay area. Regions or areas within the Fountain cap relatively free of IS and outside treated areas (e.g., locations with robust populations of switchgrass, big bluestem, and/or Indian grass) provide model sites for revegetation and habitat enhancement efforts.

The ISMCP candidate species list for restoration plantings is anticipated to be incorporated and specified in the IPRP re-issuances in 2024, 2025, and 2026 for areas with suitable levels of control of IS.

8 PHASE 1 (2023) CONTRACT WORK

8.1 2023 WORK SUMMARY

This IPRP is the guidance document for implementing and monitoring IS treatments from 2023 through 2026. As noted elsewhere in this document, modifications to the IPRP will occur in response to the performance of IS treatments and therefore the gains made in reducing IS abundance and distribution across SCSP. Future adjustments to the plan are expected to involve increasing the number of target species and the expansion of Control Units (and respective subunits) within which treatment activities will occur in a given year.

The Phase 1 (2023) Contract Work will target IS treatments on Phragmites and Japanese knotweed in the shoreline areas within the Penn and Fountain portions of the park. The selection of areas, and species, to be treated have been determined through the process of estimating IS treatment costs as a measure of available funding for work to be completed in 2023. Table 8-1 provides the estimated percent cover and the total acreage of Phragmites and Japanese knotweed for the 2023 IS control work. Table 8-2 summarizes the 2023 Treatment Schedule.

Table 8-1. Estimated Percent Coverage and Total Acreage of each Subunit of the Proposed Control Sites

Subunit ID	Subunit Acreage	Estimated Acres Impacted by Target IS ¹	Estimated Percent Cover within Subunit	
			Phragmites (%)	Japanese Knotweed (%)
Penn Shoreline Control Site				
P2	2.1	1.1	13	7
P3	6	2.9	37	15
P4	1.7	0.1	2	1
P5	9	3.5	14	<1
Total Acres	19 ²	7.6		
Fountain Shoreline Control Site				
F2	8	6.3	35	X
F3	4	2.6	25	2
F4	4	4.3	59	
F5	0.5	0.0	2	
F6	5	2.0	56	
F7	6	2.5	58	<1
Total Acres	27.5	17.7		

Notes

X = Species present but estimate of the species' percent cover within the Buffered Constructed Area was not available. The 2019 IS surveys were complicated by active construction activities at the Fountain Bike Connector (F2).

1 = Estimate of acreage impacted by Phragmites and/or Japanese knotweed

2 = Rounded up from 18.8 acres.

Table 8-2. 2023 Treatment Schedule

Timing	Phragmites	Japanese Knotweed
Expected Locations	- Dense patches along shorelines.	- Distinct patches, particularly east edge of Penn site.
June: Mechanical	Early June cut dense patches by shorelines to improve efficacy of chemical treatments.	Hand cut and manually remove Japanese knotweed to improve efficacy of chemical treatments.
July: Chemical	First round: chemically treat (with wetland-approved herbicide where needed), focusing on areas designated to be treated with imazapyr-based herbicide .	
August: Chemical	First round: chemically treat (with wetland-approved herbicide where needed), focusing on areas designated to be treated with glyphosate-based herbicide	First round: (can be late July): Chemically treat Japanese knotweed across site with triclopyr-based herbicide.
September: Chemical	Second round: re-treat Phragmites with appropriate glyphosate- or imazapyr-based herbicide (per specified locations).	Second round: re-treat Japanese knotweed with triclopyr-based herbicide as needed.

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