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# City of Rochester, New York



## Contract Proposal Book for

# **PORT OF ROCHESTER MARINA DEVELOPMENT PROJECT**

### **CONTRACT 1**

#### **Utility, Roadway, Pedestrian Site and Marine Improvements**

**Project No. 13108**

Department of Environmental Services  
Bureau of Architecture and Engineering Services

James R. McIntosh, P.E. City Engineer

Issued August 5, 2013



The Federal Aid in Sport Fish Restoration Program is funding this construction thanks to your purchase of fishing equipment and motorboat fuels



This document was prepared for the New York State Department of State with funds provided under Title 11 of the Environmental Protection Fund Act

**THIS CONTRACT CONTAINS M/WBE REQUIREMENTS**

***THIS PROJECT CONTAINS A PROJECT LABOR AGREEMENT WHICH CONTAINS APPRENTICESHIP REQUIREMENTS***

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## City of Rochester

Department of Environmental Services  
City Hall Room 300B, 30 Church Street  
Rochester, New York 14614-1290  
www.cityofrochester.gov



Bureau of Architecture  
and Engineering

August 19, 2013

### Addendum Number 1

Invitation to Bid #C03420

### Port of Rochester Marina Development Project

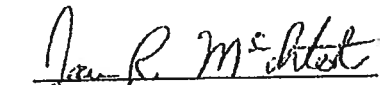
Contract 1: Utility, Roadway, Pedestrian, Site and Marine Improvements  
Project Number 13108

### Instructions to Bidders:


1. In the Proposal section of the Contract Proposal Book, **REPLACE** pages as instructed in this Addendum and **RETURN** these replaced pages with your Bid.
2. In the Contract Proposal Book make modifications as set forth in the attached, Page ADD1- 1 of 9 through ADD1- 9 of 9.
3. **SIGN** this Addendum below acknowledging receipt and understanding, **INSERT** this page (ADD1-1 of 9) in the bidding document, and **RETURN** it with your Bid.

The date of the Bid opening has changed to 2:00 pm local time, Thursday September 5, 2013.

CITY OF ROCHESTER

  
James R. McIntosh, P.E.  
City Engineer

CITY OF ROCHESTER

  
Charles Zettek, Jr.  
Purchasing Agent

The undersigned bidder acknowledges receipt and understanding of Addendum No. 1

September 11, 2013

The Pike Company, Inc. Name of Company

  
Authorized Signature  
Edward Kurowski, Director of Estimating

Phone: 585.428.6828

Fax: 585.428.6253

TTY: 585.428.6054

EEO/ADA Employer



## MODIFICATIONS TO THE CONTRACT DOCUMENTS AND/OR DRAWINGS

1. In the Supplementary Instructions to Bidders, B.2 Time and Location of Bid Opening, **REPLACE** the second sentence of the Paragraph with the following:

The Bid opening is scheduled at **2:00 pm local time on Thursday September 5, 2013**, at City Hall, 30 Church Street, Rochester, NY, at which time and place all Bids will be publicly opened, read and recorded.
2. In the Proposal Section of the Contract Proposal Book **REPLACE** Page P4-5 with the attached P4-5, ADD1- 4 of 9 thereby adding Items S410.01050006 and 490.15 to the Contract
3. In the Proposal Section of the Contract Proposal Book **REPLACE** Page P4-10 with the attached P4-10, ADD1- 5 of 9 thereby changing the units of Item S604.60 to EA
4. In the Proposal Section of the Contract Proposal Book **REPLACE** Page P4-12 with the attached P4-12, ADD1- 6 of 9 thereby adding Item S609.3001 to the Contract
5. In the Proposal Section of the Contract Proposal Book **REPLACE** Page P4-19 with the attached P4-19, ADD1- 7 of 9 thereby deleting Item S615.27 from the contract.
6. In the Proposal Section of the Contract Proposal Book **REPLACE** Pages P4-31 and P4-32 with the attached P4-31, ADD1- 8 of 9, and P4-32, ADD1- 9 of 9 thereby changing the Estimated Quantities and units of Items S961.01, S961.02, S961.03, S961.04.
7. In the Contract Proposal Book, Specification Section S604 – Catch Basin and Sewer Manhole, Page SS-221, **REVISE** Pay Unit S604.60 to be “Each”
8. In the Contract Proposal Book, Specification Section S615.27 - Historic Plaque, **REMOVE** this Section in its entirety **REPLACE** with pages having only the following text “This Page Left Intentionally Blank” (Pages SS-325 through SS-326)
9. In the Contract Proposal Book, Section S961 – Marine – Timber Fendering System, Pages SS-524 and SS-525, **REPLACE** Parts 4 and 5 with the following:

### **PART 4 - METHOD OF MEASUREMENT**

#### **4.1 TIMBER FENDERING SYSTEM**

- A. This work will be measured for payment on a LINEAR FOOT basis. Measurement will be based on linear foot of fully installed fendering system by type, not including gaps in system to accommodate ladders.

### **PART 5 - BASIS OF PAYMENT**

#### **5.1 MARINE-TIMBER FENDERING SYSTEM**

- A. The linear foot price for TIMBER FENDERING SYSTEM shall include all materials, labor, equipment, transportation, survey control, and supervision necessary to prepare the mounting surface, complete the installation of the timber fendering system, cleats, hardware, nuts and washers, modify chain and bollard fence per plans for Type D system only and any incidentals necessary for completion of the work specified herein and as shown on the Contract drawings or as directed by the Owner.

Payment will be made under:

ITEM NO.	ITEM	PAY UNIT
S961.01	Marine – Timber Fendering System - Type A	Linear Foot
S961.02	Marine – Timber Fendering System - Type B	Linear Foot
S961.03	Marine – Timber Fendering System - Type C	Linear Foot
S961.04	Marine – Timber Fendering System - Type D	Linear Foot

10. In the Contract Drawings, Drawing C1.02, **MODIFY** Keynote 20 to read:

“SALVAGE RIVERWAY TRAIL SIGN AT SOUTHEAST CORNER OF RIVER AND CORRIGAN STREETS. PROTECT FOR FUTURE REINSTALLATION. SEE DRAWING LS 1.02. – PAID FOR UNDER ITEM S686.0103 (1 TOTAL)”



## City of Rochester

Department of Environmental Services  
City Hall Room 300B, 30 Church Street  
Rochester, New York 14614-1290  
www.cityofrochester.gov



Bureau of Architecture  
and Engineering

August 26, 2013

Addendum Number 2

Invitation to Bid #C03420

### Port of Rochester Marina Development Project

Contract 1: Utility, Roadway, Pedestrian, Site and Marine Improvements

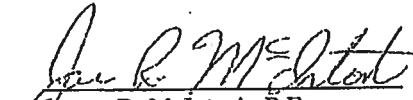
Project Number 13108

#### Instructions to Bidders:

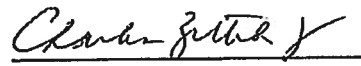
1. In the Contract Proposal Book make modifications as set forth in the attached, Pages ADD2-1 of 57 through ADD2-57 of 57.
2. In the Contract Proposal Book page SLR 33 strike the 3<sup>rd</sup> and 4<sup>th</sup> line in paragraph 1 and replace with:  
A combination of 20% Minority AND Woman-owned Businesses,  
to include at least 10% participation in either category
3. SIGN this Addendum below acknowledging receipt and understanding, INSERT this page (ADD2-1 of 57) in the bidding document, and RETURN it with your Bid.

The date, time and place of the bid opening shall remain unchanged.

CITY OF ROCHESTER

  
James R. McIntosh, P.E.  
City Engineer

CITY OF ROCHESTER

  
Charles Zettek, Jr.  
Purchasing Agent

The undersigned bidder acknowledges receipt and understanding of Addendum No. 2

September 11, 2013

The Pike Company, Inc. Name of Company

  
Edward Kurowski, Director of Estimating

Phone: 585.428.6828

Fax: 585.428.6253

TTY: 585.428.6054

EEO/ADA Employer





## MODIFICATIONS TO THE CONTRACT DOCUMENTS AND/OR DRAWINGS

1. In the Proposal Section of the Contract Proposal Book, **CLARIFICATION**, items without an S or R prefix refer to NYSDOT specification items.
2. In the Project Labor Agreement Section of the Contract Proposal Book **REPLACE** Pages PLA-1 thru PLA-42 (entire section) with the attached PLA 1-54, ADD2-4 of 57 thru PLA 54-54, ADD2-57 of 57.
3. In the Contract Proposal Book, Section S604.90 – Storm Water Treatment System, Pages SS-231, **REPLACE** Parts 4 and 5 with the following:

### **PART 4 - METHOD OF MEASUREMENT**

The quantity to be measured for payment shall be the number of storm water treatment systems **salvaged or** installed.

### **PART 5 - BASIS OF PAYMENT**

#### ***Salvage Existing Storm Water Treatment Unit***

***The unit price bid shall include the cost of excavating, removing, handling, protecting, delivering, unloading and placing for long-term storage the salvaged unit without damage to 444 East Henrietta Road, Rochester, NY or similar destination site identified by Monroe County Pure Waters. Cost to repair structure due to inappropriate handling or negligence by the Contractor shall be the responsibility of the Contractor.***

#### ***Stormwater Treatment System***

The or lump sum price bid shall include all labor, equipment, and materials including frames and covers, precast grade rings, and stone-leveling course necessary to complete the work as specified. Excavation, backfill, and surface restoration will be paid for separately under other appropriate items.

- A. Seventy five percent of the unit price bid for structures installed, complete in place, will be paid upon acceptable installation of the structures before successful completion of the required field tests.
- B. The full unit price bid for structures installed will be paid upon successful completion of the required field tests and substantial completion of all other work items including restoration.

4. In the Contract Proposal Book, Section S615.50 – Salvage Landscape Amenities, Pages SS-330, **REPLACE** Parts 4 and 5 with the following:

### **PART 4 - METHOD OF MEASUREMENT**

***The quantity to be measured for payment shall be the number of amenities salvaged.***

### **PART 5 - BASIS OF PAYMENT**

***The unit price bid shall include the cost of removing, handling, protecting, delivering, unloading and placing for long-term storage all salvaged amenities without damage at a destination site identified by the City's representative. Cost to repair or replace damaged amenities due to inappropriate handling or negligence by the Contractor shall be the responsibility of the Contractor. Delivery shall be made to a destination within the City of Rochester.***



5. In the Contract Drawings, Drawings C2.02 and, C2.04, **DELETE**, all 5' diameter water service manholes shown. No manholes will be installed as part of the dockside water service system.

6. In the Contract Drawings, Drawings E1.01 and E1.02 **ADD** following to the Feeder Schedules

“NOTE: SEE DETAIL 2, DRAWING E2.01 FOR ADDITIONAL WIRE/CONDUIT INFORMATION REQUIRED FOR POWERPOINT FEEDERS.”

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7. In the Contract Drawings, Drawings E3.01, Details 1-8, **CLARIFICATION** encase ductbank from the Link Bldg to the pad-mounted transformer, from the main ductbank run from the Link Bldg to each substation (SUB-A, B, C and D) and the main runs between the lighting and power handholes only

8. In the Contract Drawings, Drawings E3.01, Detail 11, **CLARIFICATION** This detail is intended to show the installation of typical single conduits from their respective handholes to surface features and between features. Encasement per this detail is only intended at the locations indicated on Drawings E1.01 and E1.02 with the word 'ENCASE'.

9. In the Contract Drawings, Drawing E3.01 **ADD** following General Note

“IN THE CASE OF CONDUIT SIZE/QUANTITY DISCREPANCIES BETWEEN SITE PLANS (E1.01/E1.02) AND THESE DETAILS, THE SITE PLANS SHALL HAVE PRECEDENCE”





## City of Rochester

Department of Environmental Services  
City Hall Room 300B, 30 Church Street  
Rochester, New York 14614-1290  
www.cityofrochester.gov



Bureau of Architecture  
and Engineering

September 5, 2013

### Addendum Number 3

Invitation to Bid #C03420

### Port of Rochester Marina Development Project

Contract 1: Utility, Roadway, Pedestrian, Site and Marine Improvements

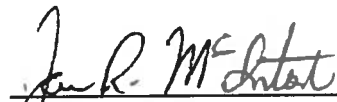
Project Number 13108

### Instructions to Bidders:


1. In the Contract Proposal Book make modifications as set forth in the attached, Page ADD3- 2 of 3.
2. **SIGN** this Addendum below acknowledging receipt and understanding, **INSERT** this page (ADD3- 1 of 3) in the bidding document, and **RETURN** it with your Bid.

The date of the Bid opening has **changed to 2:00 pm local time, Wednesday September 11, 2013.**

CITY OF ROCHESTER

  
James R. McIntosh, P.E.  
City Engineer

CITY OF ROCHESTER

  
Charles Zettik, Jr.  
Purchasing Agent

The undersigned bidder acknowledges receipt and understanding of Addendum No. 3

\_\_\_\_\_, September 11, 2013

\_\_\_\_\_, The Pike Company, Inc. Name of Company

\_\_\_\_\_, Authorized Signature  
Edward Kurowski, Director of Estimating



## MODIFICATIONS TO THE CONTRACT DOCUMENTS AND/OR DRAWINGS

1. In the Supplementary Instructions to Bidders, B.2 Time and Location of Bid Opening, **REPLACE** the second sentence of the Paragraph with the following:

The Bid opening is scheduled at **2:00 pm local time on Wednesday September 11, 2013**, at City Hall, 30 Church Street, Rochester, NY, at which time and place all Bids will be publicly opened, read and recorded.

2. In the Contract Proposal Book, Section S961 – Marine – TIMBER FENDERING SYSTEM, Page SS-524, **REPLACE** Part 2.1 A with the following:

*A. All timber to be used shall be untreated rough sawn White Oak.*

3. In the Contract Proposal Book, Section S970 – Marine – STEEL H-SECTION PILES, Page SS-579, Part 1.4 A., in the first sentence **DELETE** the words “and coating”.

4. In the Contract Proposal Book, Section S970 – Marine – STEEL H-SECTION PILES, Page SS-580, **REPLACE** Part 3.2 A with the following:

*A. Inspect piles in the leads, and where piles are damaged, the piles shall be repaired unless the pile is damaged to such extent that it is rejected. Rejected piles will be replaced at no additional cost to the Owner. Support pile laterally during driving, but not unduly restrained from rotation in the leads. Where pile orientation is essential, take special care to maintain the orientation during driving.*

5. In the Contract Proposal Book, Section S976 – Marine – GALVANIZED COATINGS, Page SS-601, **REPLACE** Part 1.1 B with the following:

*B. Scope of work includes but is not limited to, cleaning and coating of the following items and as required by drawings, except where welding is required:*

- 1. All steel tie rods and anchor bolts*
- 2. All hardware*

6. In the Contract Proposal Book, Section S976 – Marine – GALVANIZED COATINGS, Page SS-601, **REPLACE** Part 2.1 A with the following:

*A. Galvanizing: Hot dip galvanizing shall be in a dry kettle method, with a zinc-nickel alloy, in accordance with ASTM A 123, ASTM A 153 and ASTM A385, as applicable. Galvanizing shall be done with a nickel enrichment of the galvanizing tank such as "NiGalv" or approved equal.*

7. In the Contract Drawings, Sheet ME 1.01, MARINA LAYOUT PLAN, **REPLACE** the MARINA CONTROL POINTS table with the table on page ADD3-3 of 3.

MARINA CONTROL POINTS			
	NORTHING	EASTING	DESCRIPTION
CP1	1,187,165.47	1,407,960.87	END OF SHEET/FACE SHEET
CP2	1,187,179.59	1,407,942.12	FACE/CURB-BACK OF STONE & FACE/SHEET
CP3	1,187,236.92	1,407,928.18	FACE/CURB-BACK OF STONE
CP4	1,187,275.75	1,407,876.63	FACE/CURB-BACK OF STONE
CP5	1,187,659.85	1,407,773.26	FACE/CURB-BACK OF STONE
CP6	1,188,002.25	1,407,946.71	FACE/CURB-BACK OF STONE & FACE/SHEET
CP7	1,187,990.73	1,407,969.28	FACE/SHEET
CP8	1,187,997.87	1,407,972.89	FACE/SHEET
CP9	1,188,005.92	1,407,957.16	FACE/SHEET
CP10	1,187,913.19	1,408,093.64	RADIUS 165.0', ARC LENGTH 65.9'
CP11	1,188,051.67	1,408,003.93	FACE/SHEET
CP12	1,187,959.18	1,408,065.30	RADIUS 111.0', ARC LENGTH 301.6'
CP13	1,187,900.19	1,408,159.33	FACE/SHEET
CP14	1,187,911.32	1,408,143.28	FACE/SHEET
CP15	1,187,904.74	1,408,138.72	FACE/SHEET
CP16	1,187,889.72	1,408,160.39	FACE/CURB-BACK OF STONE & FACE/SHEET
CP17	1,187,540.81	1,408,134.34	FACE/CURB-BACK OF STONE & FACE/SHEET
CP18	1,187,526.64	1,408,124.61	FACE/SHEET
CP19	1,187,493.96	1,408,140.70	FACE/CURB-BACK OF STONE
CP20	1,187,316.30	1,408,017.78	FACE/CURB-BACK OF STONE & FACE/SHEET
CP21	1,187,324.04	1,408,006.60	INTERSECTION/FACE SHEET
CP22	1,187,322.36	1,407,999.68	INTERSECTION/FACE SHEET
CP23	1,187,199.99	1,408,029.44	END OF SHEET/FACE SHEET
CP24	1,187,608.42	1,407,726.29	INTERSECTION/FACE SHEET
CP25	1,187,658.21	1,407,751.83	INTERSECTION/FACE SHEET
CP26	1,187,645.74	1,407,712.78	RADIUS 41.0', ARC LENGTH 14.9'
CP27	1,187,647.93	1,407,715.40	RADIUS 41.0', ARC LENGTH 14.3'
CP28	1,187,614.24	1,407,776.24	RADIUS 50.3', ARC LENGTH 59.3'
CP29	1,187,144.83	1,407,972.44	LIMITS OF SCOUR PROTECTION
CP30	1,187,127.61	1,408,019.85	LIMITS OF SCOUR PROTECTION
CP31	1,187,152.11	1,408,052.17	LIMITS OF SCOUR PROTECTION
CP32	1,187,163.63	1,407,963.38	CENTER OF PILE
CP33	1,187,178.36	1,407,959.91	CENTER OF PILE
CP34	1,187,251.25	1,407,942.19	CENTER OF PILE
CP35	1,187,289.13	1,407,872.17	CENTER OF EMERGENCY FIRE ACCESS



# PROJECT SUMMARY

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## PROJECT TITLE

**Port of Rochester – Marina Development Project**

**Project No. 13108**

**Contract 1: Utility, Roadway, Pedestrian, Site and Marine Improvements**

## PROJECT DESCRIPTION

This Project consists primarily of the construction of utility, roadway, pedestrian, site and marine improvements including a new 4.7 acre marina within the Port of Rochester

Utility, Roadway and Pedestrian improvements include:

- Relocation of existing North River Street to west and extension southward for connection to South River Street
- Granite curb, concrete crosswalks
- Sanitary sewer and laterals
- Watermain and services
- Drainage and hydrodynamic stormwater treatment device
- Street lighting
- Power distribution systems
- Sidewalks and extension of Genesee Riverway trail
- Amenities including benches, bollards, bike racks and trash/recycling receptacles
- Traffic signage and striping
- Trees and landscape
- Topsoil and seeding

Marine improvements include the construction of a marina basin with a 13-foot+ water depth and approximately 84 boat slips consisting of the following:

- Steel sheet piling
- Stone revetment with concrete curb
- Concrete bulkheads
- Broadside dockage facilities
- Ladders
- Dredging
- Modifications to an existing debris fence

Site improvements include:

- Various utility improvements including water, sanitary and electric
- Granite curb
- Pavement improvements
- Stormwater management
- Dockside utility stations
- Site lighting
- Sidewalks and extension of Genesee Riverway trail
- Amenities including benches, bollards, bike racks and trash/recycling receptacles
- Traffic signage and striping

- Reinforced turf and porous paver system
- Trees and landscape

## **PROJECT DESIGN AND ADMINISTRATION**

### **Owner's Representative:**

Mark Gregor  
 City of Rochester  
 Department of Environmental Services  
 Division of Environmental Quality  
 30 Church Street, Room 300B  
 Rochester, NY 14614-1279  
 Phone: 585-428-5978  
 Fax: 585-428-6010  
 Email: [mgregor@cityofrochester.gov](mailto:mgregor@cityofrochester.gov)

### **Marine / Landscape Design Edgewater Resources, LLC**

Greg Weykamp  
 Edgewater Resources, LLC  
 518 Broad Street  
 Suite 200  
 St Joseph, MI 49085  
 Phone: 269-932-4502  
 Fax: 269-932-3542  
 Email: [gweykamp@edgewaterresources.com](mailto:gweykamp@edgewaterresources.com)

### **Roadway / Site / Utility Design LaBella Associates, PC**

Steve Metzger  
 LaBella Associates, P.C.  
 300 State Street  
 Suite 201  
 Rochester, New York 14614  
 Phone: 585-295-6223  
 Fax: 585-770-2523  
 Email: [smetzger@labellapc.com](mailto:smetzger@labellapc.com)

## **CONTRACT TYPE**

This is a UNIT PRICE contract.

## **CONTRACT DOCUMENTS**

A. *NYSDOT Standard Specifications: Construction and Materials January 2, 1990, and Addenda*

- B. *NYSDOT Standard Specifications (US Customary Units) May 1, 2008, and Addenda – specifications as referenced*
- C. *City of Rochester Standard Construction Contract Documents, November 1, 1991, Edition*
- D. Contract Proposal Book for **Port of Rochester – Marina Development Project, Contract 1: Utility, Roadway, Pedestrian, Site and Marine Improvements**
- E. Contract Proposal Forms for **Port of Rochester – Marina Development Project, Contract 1: Utility, Roadway, Pedestrian, Site and Marine Improvements**
- F. Contract Drawings 1 thru 87 (G1.01, G2.01, G3.01, G3.02, G3.03, G3.04, G4.01, G4.02, G4.03, G5.01, G5.02, G6.01, V1.01, V1.02, C1.01, C1.02, C1.03, C1.04, C1.05, C1.06, C2.01, C2.02, C2.03, C2.04, C3.01, C3.02, C3.03, C3.04, C3.05, C3.06, C3.07, C4.01, C4.02, C5.01, C5.02, C5.03, C6.01, C6.02, C7.01, C7.02, C8.01, C8.02, C8.03, C9.01, C9.02, C9.03, C10.01, C10.02, C11.01, C11.02, C12.01, C12.02, C12.03, C12.04, C13.01, C13.02, E1.01, E1.02, E2.01, E3.01, E100, E120, E200, E240, P1.01, P2.01, ME1.01, ME1.02, ME1.03, E1.04, ME3.01, ME5.03, ME5.04, ME5.05, ME5.06, ME5.07, LP1.01, LP1.02, LP5.01, LS1.01, LS1.02, LS5.01, LS5.02, LS5.03, LS5.04)

## **WORK BY OTHERS**

The intent of the “WORK BY OTHERS” portion of the Project Summary section is to advise the prospective Bidder of any anticipated work to be done by others for informational and coordination purposes. The information is furnished solely for the convenience of the Contractor, without any warranty expressed or implied as to its accuracy or completeness.

### **A. Rochester Gas & Electric – Gas & Electric**

RG&E will construct new and relocate existing facilities within the project area. The work of Contract 1 and other planned improvements within the project area have been shared with RG&E for coordination purposes. Portions of RG&E’s improvements to its facilities will be constructed in advance of commencement of Contract 1, including:

#### **Electric**

- RG&E will install a new electric duct bank in the spring/summer of 2013. The duct bank will commence at the intersection of Corrigan Street and the Drop Off Loop, and extend west along Corrigan Street, then south along the new alignment for North River Street to Portside Drive.
- Portions of this new duct bank include telecommunications conduits and structures for the City of Rochester, Fibertech, Time Warner, and Frontier.

Other improvements will require coordination with the activities of Contract 1, including:

#### **Gas**

- RG&E will cut dead an existing gas main along North River Street from Corrigan St to Portside Drive. RG&E will also cut dead approximately 140’ of an existing gas main on the east end of Portside Drive.
- RG&E will install a new gas service for the Terminal Building. The new service will commence at the SW corner of Corrigan and North River Streets, and extend east along Corrigan St and south along the Drop Off Loop to the west side of the existing generator room of the Terminal building.

- RG&E will install a new gas service for the Link Building. The new service will commence at the Terminal Building service (generator room), and extend through the new parking lot on the south side of the Terminal Building to the Link Building.

#### Electric

- RG&E will install a new electric service for the Link Building. This work will include installation of new conduit and conductors from an existing RG&E structure on the west side of the Terminal Building and extending through the new parking lot on the south side of the Terminal Building. RG&E's work will also include installation of new pad-mounted transformer and associated pad structure, grounding, and bollards near the Link Building.
- RG&E will replace the existing transformer on the west side of the Terminal building.

### **B. Frontier Corporation**

Frontier will install new telecommunications conductors for the Terminal Building. Conductors will be installed in a newly constructed duct bank commencing at Portside Drive, then North on North River St, East on Corrigan St, and south on the Drop Off Loop to the Terminal Building.

### **C. Time Warner Communications**

Time Warner will install new telecommunications conductors for the Terminal Building. Conductors will be installed in a newly constructed duct bank commencing at Portside Drive, then North on North River St, East on Corrigan St, and south on the Drop Off Loop to the Terminal Building.

### **D. Fibertech Networks**

Fibertech will install new telecommunications conductors for the Terminal Building. Conductors will be installed in a newly constructed duct bank commencing at Lake Ave and Portside Drive, then south on Portside Drive, North on North River St, East on Corrigan St, and south on the Drop Off Loop to the Terminal Building.

### **E. Monroe County Pure Waters**

Monroe County Pure Waters will relocate an existing fiber manhole located in the River Street right-of-way, in front of the Monroe County Pure Waters Charlotte Pump Station.

### **F. Monroe County Water Authority**

No Monroe County Water Authority work is planned as part of project.

### **G. Contract 2: Floating Dock System and Related Improvements**

The City of Rochester intends to execute a separate contract for the furnishing and installation of a floating dock system, complete. This contract is anticipated to include the following: floating docks and appurtenances, gangways, floating dock utilities and standpipe system, anchorage system, and launch dock rehabilitation. The City anticipates that the majority of the work of Contract 2 will occur following the completion of the work of Contract 1; however, some overlap and coordination is expected including: installation of anchorage, utilities, and site staging

## **H. Contract 3: Link Building Renovations for Boater Services**

The City of Rochester intends to execute a separate contract for the completion of renovations to the existing Link Building to create a viable space to house Boater Service facilities for use by patrons of the Marina and other Port of Rochester facilities. The City anticipates that the majority of the work of Contract 3 will occur independently of the work of Contract 1; however, some overlap and coordination is expected including: repair of canopy demolition at link building and the main terminal building, relocation of existing HVAC condenser unit located on link building canopy structure, new link building utilities where applicable and coordination of access to link building for construction vehicles and personnel.

## **I. Special Events**

Coordination with the City of Rochester Special Events Office (Margaret Reichert, 428-6694), or others listed below, will be required to ensure that construction activities under this contract do not interfere with events that may be impacted by the work in this contract. The contractor's attention is specifically drawn to the events below, however this list is not all inclusive and the contractor shall be responsible to coordinate his work with any other events that may be scheduled. Note that dates for 2013 are included, but these events are expected to be held in 2014 as well.

## **2013 COMMUNITY EVENTS**

*Information accurate to date (12/27/12).*

*Please confirm details with event sponsors.*

### **BLACK HERITAGE MONTH CELEBRATIONS**

**February 2013**

Call 311 (outside city limits call 585-428-5990)

[www.cityofrochester.gov](http://www.cityofrochester.gov)

### **LAKESIDE WINTER CELEBRATION**

**February 10, 2013**

11 am – 4 pm

Ontario Beach Park – Lake Ave. & Beach Ave.

Call 311 or 585-428-6755

[www.cityofrochester.gov](http://www.cityofrochester.gov)

### **SPECIAL OLYMPICS NY STATE WINTER GAMES**

**February 22-24, 2013**

**\*Feb. 22 – Opening Ceremonies**

**\*Feb. 23 – Snowshoeing at Cobbs Hill/Lake**

**Riley Lodge**

**Skating at GVP Ice**

**Rink**

**Call 585-586-7400**

[www.nyso.org](http://www.nyso.org)

### **ST. PATRICK'S DAY RUNNIN' OF THE GREEN**

**March 16, 2013**

10:30 am

Sponsored by Johnny's Irish Pub

Call 585-473-8337

[www.catspage.com](http://www.catspage.com)

### **ST. PATRICK'S DAY PARADE**

**March 16, 2013**

12:30 pm

Sponsored by Rochester St. Patrick's Day  
Parade

Committee

Downtown Rochester

Call 585-234-5167

[www.rochesterparade.com](http://www.rochesterparade.com)

### **CITY LIVING SUNDAYS**

**March 17, 2013 – West Side**

School #43

1305 Lyell Ave.

12 Noon – 4 pm

Call 585-428-CITY

[www.cityofrochester.gov](http://www.cityofrochester.gov)

### **CITY LIVING SUNDAYS**

**March 24, 2013 – East Side**

East High School

1801 E. Main St.

12 Noon – 4 pm

Call 585-428-CITY

[www.cityofrochester.gov](http://www.cityofrochester.gov)

### **HEART WALK**

**April 13, 2013**

Downtown Rochester

Sponsored by the American Heart Association

Call 585-697-6269

[www.rochesterheartwalk.org](http://www.rochesterheartwalk.org)

### **ROCHESTER TARTAN DAY**

**April 16, 2013**

Sponsored by Scottish Heritage Society of  
Rochester

Call 585-234-3132

[www.rochestertartanday.com](http://www.rochestertartanday.com)

### **RED WINGS OPENING WEEKEND**

**April 6, 2013**

Frontier Field

Call 585-454-1001;

Ticket Information: 585-454-9464

[www.redwingsbaseball.com](http://www.redwingsbaseball.com)

### **BIG BAND DANCES – SPRING SERIES**

**Wednesdays, April 3 – May 29, 2013**

6:30-9 pm

Roger Robach Community Center  
Beach Ave.

Call 311 (outside city limits 585-428-5990)

Or 585-865-3320 for taped information.

[www.cityofrochester.gov](http://www.cityofrochester.gov)

**HIGH FALLS FILM FESTIVAL****April 18-20, 2013**

Various Locations

Call 585-586-6650

[www.highfallsfilmfestival.com](http://www.highfallsfilmfestival.com)**GREATEST COMMUNITY GARAGE SALES AND  
SUPER FLEAS "AT THE MARKET"****Sundays: April 21, 28; May 5; June 16, 23,  
30;****July 7, 14, 21, 28; August 4, 11, 18, 25;****Sept. 8, 22, 29; Oct. 6, 13, 2013**

8 am – 2 pm

Rochester Public Market

280 N. Union St.

Call 311 (outside city limits call 585-428-5990)

or 585-428-6770

[www.cityofrochester.gov](http://www.cityofrochester.gov)**ROCHESTER FLOWER CITY CHALLENGE****April 27 & 28, 2013\***

Produced by YellowJacket Racing

Co-sponsored by City of Rochester

585-697-3388 or 311 (outside of city limits

call 585-428-5990)

[www.flowercitychallenge.com](http://www.flowercitychallenge.com)[www.cityofrochester.gov](http://www.cityofrochester.gov)**\*April 27, 2013****River Challenge Duathlon & Paddle Triathlon**

7:30 am

Genesee Waterways/Genesee Valley Ice

Arena

131 Elmwood Ave.

**\*April 28, 2013****Unity Health System Flower City Half****Marathon**

7:30 am

Blue Cross Arena - One War Memorial

Square

**\*April 28, 2013****Family 5K**

7:50 am

Blue Cross Arena – One War Memorial Square

**NOT CONFIRMED CLEAN SWEEP**

April 28, May 5, 12, 19, 2012

Call 311 (outside city limits call 428-5990)

[www.cityofrochester.gov](http://www.cityofrochester.gov)**WALK MS****May 5, 2013**

Sponsored by National Multiple

Sclerosis Society

Call 585-271-0805

[www.msupstateny.org](http://www.msupstateny.org)**KITE FLIGHT****May 5, 2013**

11 am – 4 pm

Ontario Beach Park

Call 311 (outside of Rochester call

585-428-5990) or 585-428-6755

[www.cityofrochester.gov/kiteflight](http://www.cityofrochester.gov/kiteflight)**COLOR RUN****May 5, 2013**

Downtown Rochester

**LILAC FESTIVAL****May 10-19, 2013 (Tentative)**

Highland Park

Sponsored by the City, Monroe County and

Visit Rochester

Call 311 (outside city limits 585-428-5990),

585-256-4960 or 800-677-7282

[www.cityofrocheshter.gov](http://www.cityofrocheshter.gov) or[www.lilacfestival.com](http://www.lilacfestival.com)**LILAC FESTIVAL PARADE****May 11, 2013 (Tentative)**

Highland Park

Call 311 (outside city limits 585-428-5990),

585-256-4960 or 800-677-7282

[www.cityofrochester.gov](http://www.cityofrochester.gov) or[www.lilacfestival.com](http://www.lilacfestival.com)**ROCHESTER BLOSSOMS!****(includes perennial swap)****May 11, 2013**

8 - 11 am

Call 311 (outside of city 585-428-5990) or

585-428-6755

[www.cityofrochester.gov](http://www.cityofrochester.gov)

**FLOWER CITY DAYS "AT THE MARKET"****May 12, 19, 24, 26, 27; June 9, 2013**

8 am – 2 pm

Rochester Public Market

280 N. Union St.

Call 311 (outside of city limits 585-428-5990)

or 585-428-6755

[www.cityofrochester.gov/](http://www.cityofrochester.gov/)**NOT CONFIRMED JP MORGAN CHASE  
CORPORATE CHALLENGE****May 31, 2012**

7 pm

Rochester Institute of Technology (RIT)

Sponsored by JP Morgan Chase

Call 585-367-9307

[www.jporganchasecc.com](http://www.jporganchasecc.com)**MVP TUESDAY NATURE NIGHTS****May 7 – Aug. 27, 2013**

6 pm

Call 311 (outside of Rochester call

585-428-5990 or 585-428-6755)

[www.cityofrochester.gov](http://www.cityofrochester.gov)**MVP THURSDAY NIGHT HIKES****May 9 – Aug. 29, 2013**

6 pm

Call 311 (outside city limits call

585-428-5990 or 585-428-6755)

[www.cityofrochester.gov](http://www.cityofrochester.gov)**MEMORIAL DAY PARADE****Monday, May 27, 2013**

10:30 am

Downtown Rochester

Sponsored by the Veterans Memorial and  
Executive Council

Call 585-544-2839

[www.cityofrochester.gov](http://www.cityofrochester.gov)**SOAP BOX DERBY****May 31 & June 1, 2013**Call 311 (outside city limits 585-428-5990) or  
585-261-8881[www.cityofrochester.gov](http://www.cityofrochester.gov) or [www.grsbd.com](http://www.grsbd.com)**WEGMANS CONCERTS BY THE SHORE****Wednesdays, June 5 – August 28, 2013**

7-9 pm

Ontario Beach Park

Co sponsored by Wegmans and the Ontario  
Beach Park Program Committee

Call 311 (outside city limits 585-428-5990) or

585-865-3320

[www.cityofrochester.gov](http://www.cityofrochester.gov)**EAST END FESTIVAL****June 7, July 12, August 16, 2013**

5-11 pm

East End District

Sponsored by Downtown Fitness Club

585-234-0630

[www.eastendmusicfestival.com](http://www.eastendmusicfestival.com)**19<sup>th</sup> WARD SQUARE FAIR****June 1, 2013**

8 am – 4 pm

Aberdeen Square

Sponsored by 19<sup>th</sup> Ward Community Assoc.

585-328-6571

[www.19wca.org](http://www.19wca.org)**XEROX ROCHESTER INTERNATIONAL JAZZ  
FESTIVAL****June 21-29, 2013**

Various locations, various artists

Co-sponsored by the City of Rochester

Call 585-454-2060

[www.rochesterjazz.com](http://www.rochesterjazz.com)**7<sup>th</sup> ANNUAL FASTEST & FURRIEST 10 K RACE  
& 1 MILE DOG WALK****June 8, 2013**

Downtown Rochester

Call 311 (outside city limits 585-428-5990) or  
585-428-6898[www.cityofrochester.gov](http://www.cityofrochester.gov) or [www.vsas.org](http://www.vsas.org)**PARTY ON THE BRIDGE****June 14, 2013**

7 – 10 pm

Driving Park Ave.(off Lake Ave.)

Call 311 (outside city limits 585-428-5990) or  
585-428-6755[www.cityofrochester.gov](http://www.cityofrochester.gov)

**MAPLEWOOD ROSE FESTIVAL****June 15 & 16, 2013**

10 am – 6 pm

Maplewood Park, Driving Park &amp; Lake Avenues

Call 311 (outside of city limits, call

585-428-5990) or 585-428-6755

[www.cityofrochester.gov/maplewoodrosefest](http://www.cityofrochester.gov/maplewoodrosefest)**PARTY IN THE PARK!****Concert series every Thurs.****June 6, 13, 20, 27; July 4, 11, 18, 25;****Aug. 1, 8, 15 2013**

5 - 10 pm

Riverside Festival Site

Court St. and Exchange Blvd. (directly across

Court St. from the Blue Cross Arena)

Call 311 (outside city limits call 585-428-5990)

[www.cityofrochester.gov/pip](http://www.cityofrochester.gov/pip)**ROCHESTER REAL BEER WEEK****June 14-23, 2013**

Various Locations/Times

[www.rochesterrealbeer.com](http://www.rochesterrealbeer.com)**ROCHESTER REAL BEER EXPO****June 15, 2013**

6-10 pm

Gregory St.

Hosted by BASWA (The Business

Association of the South Wedge)

[www.rochesterrealbeer.com](http://www.rochesterrealbeer.com)**FOOD TRUCK RODEOS****Wednesdays -June 26; July 31, Aug. 28;****Sept. 25, Oct. 30, 2013**

5-9 pm

Rochester Public Market

280 N. Union St.

Call 311 (outside city limits 585-428-5990)

[www.cityofrochester.gov/foodtruckrodeos](http://www.cityofrochester.gov/foodtruckrodeos)**JULY 4 RPO CELEBRATION & FIREWORKS****July 4, 2013**

Main St. Bridge, Downtown

Family entertainment and fireworks

Call 311 (outside city limits call 585-428-5990)

[www.cityofrochester.gov](http://www.cityofrochester.gov)**DATES NOT CONFIRMED****NIGHT MARKET/BANDS ON THE BRICKS**

6 – 10 pm

Rochester Public Market

280 N. Union St.

Call 311 (outside of city limits, call

585-428-5990)

[www.cityofrochester.gov/nightmarkets](http://www.cityofrochester.gov/nightmarkets)**CORN HILL ARTS FESTIVAL****July 13 & 14, 2013**

Corn Hill Neighborhood

Sponsored by the Corn Hill Neighbors

585-262-3142

[www.cornhill.org](http://www.cornhill.org)**NOONTIME CONCERTS****DATES TBD**

12 Noon – 1 pm

Sponsored by Thomson Reuters

Aqueduct Park, Main St. at the Genesee River

Call 311 (outside city limits 585-428-5990)

[www.cityofrochester.gov](http://www.cityofrochester.gov).**MONROE COUNTY FAIR****July 10-14, 2013**

Monroe County Fairgrounds

2695 E. Henrietta Rd.

Sponsored by County of Monroe

Call 585-334-4000

[www.mcfair.com](http://www.mcfair.com)**ROCHESTER PRIDE WEEK****July 12-21, 2013****PRIDE FLAG RAISING****July 12, 2013****PRIDE Parade****July 13, 2013****PARK AVENUE ARTS FESTIVAL****Aug. 3 & 4, 2013**

Park Avenue (Alexander St. to Culver Rd.)

Produced by The Springut Group

Call 585-473-4482

[www.rochesterevents.com](http://www.rochesterevents.com)

**PUERTO RICAN FESTIVAL****August 9 – 11, 2013**

Frontier Field VIP Parking Lot

Sponsored by the Puerto Rican Festival  
Committee of Rochester

Call 585-234-0909

[www.prfestival.com](http://www.prfestival.com)**PUERTO RICAN PARADE****2013 Date TBD**Main Street, Downtown Rochester (Liberty  
Pole to Main St. to N. Plymouth to Morrie  
Silver Way)Sponsored by the Spanish Action Coalition  
Call 585-232-4050[www.prfestival.com](http://www.prfestival.com)**CARIFEST****August 10, 2013 (Tentative)**

Location TBD

Parade: 11 am

Festival: 1-10 pm

Sponsored by Rochester West Indian  
Festival Organization

Call 585-227-2183

[www.rwifo.com](http://www.rwifo.com)**CLARISSA ST. REUNION**

August 18, 2012

Corn Hill Neighborhood

Sponsored by the Clarissa St. Reunion  
Committee

585-234-4177

**US ROWING DIVERSITY INVITATIONAL**

August 25 &amp; 26, 2012

Genesee River Corridor

[www.ccminorityrowing.com](http://www.ccminorityrowing.com)**LABOR DAY PARADE**

September 2, 2013

11 am

Downtown Rochester

Sponsored by the Rochester Labor Council  
Call 585-263-2650[www.rocheserlabor.org](http://www.rocheserlabor.org)**BIG BAND DANCES – FALL SERIES****Wednesdays, Sept. 4 – Oct. 30, 2013**

6:30-9 pm

Roger Robach Community Center  
Beach Ave.

Call 311 (outside city limits 585-428-5990)

Or 585-865-3320 for taped information.

[www.cityofrochester.gov](http://www.cityofrochester.gov)**URMC WOMEN'S HEALTH FAIR AND  
SCREENING****September 7, 2013**

9 am – 1 pm

Rochester Public Market

Call 311 (outside city limits 585-428-5990)

[www.cityofrochester.gov](http://www.cityofrochester.gov)**CLOTHESLINE ARTS FESTIVAL****September 7 & 8, 2013**

Memorial Art Gallery Grounds

Sponsored by the Memorial Art Gallery

Call 585-276-8949

[www.mag.rochester.edu](http://www.mag.rochester.edu)**TUNNEL TO TOWERS 5K****Sept. 8, 2013**

Genesee Valley Park

Call 585-354-7708

**GREENTOPIA FESTIVAL****Sept. 9 –15, 2013**

High Falls

60 Brown's Race

Sponsored by the Philipson Group

Call 585-287-5555

[www.greentopiafest.com](http://www.greentopiafest.com)**ARTISTS' ROW****September 15, 2013**

9 am – 4 pm

Rochester Public Market

Call 311 (outside city limits 585-428-5990)

or 585-428-6755

[www.cityofrochester.gov](http://www.cityofrochester.gov)

**FESTIVAL OF FOOD****September 16, 2013**

5-9 pm

Sponsored by FoodLink  
Rochester Public Market  
280 N. Union St.  
Call 585-328-3380

[www.festivaloffood.org](http://www.festivaloffood.org)**ROCHESTER FRINGE FESTIVAL****Sept. 19-28, 2013**

Various locations, various artists

[www.rochesterfringe.com](http://www.rochesterfringe.com)**MVP ROCHESTER MARATHON****September 22, 2013**

Frontier Field  
Sponsored by MVP Healthcare  
585-264-1480

[www.rochestermarathon.com](http://www.rochestermarathon.com)**BREAST CANCER WALK****Sept. 30, 2012****IMAGE OUT FILM FESTIVAL****Oct. 11-20, 2013****Various Locations**

585-271-2640

[www.imageout.org](http://www.imageout.org)**ROCHESTER RIVER ROMANCE AND THE HEAD  
OF THE GENESEE REGATTA WEEKEND****October 6 & 7, 2013**

Genesee River Corridor  
Call 311(outside city limits 585-428-5990) or  
585-428-6755; Tapeline: 585-428-6767

[www.cityofrochester.gov/riverromance](http://www.cityofrochester.gov/riverromance)**HOLIDAYS AT THE MARKET****December 1, 8, 15, 2013**

9 am – 3 pm

Rochester Public Market  
280 N. Union St.

Call 311 (outside of city limits call  
585-429-5990)

[www.cityofrochester.gov/holidaysatmarke](http://www.cityofrochester.gov/holidaysatmarke)[t](#)

## **J. Notification of Property Owners**

In addition to the above, the Contractor shall contact property owners within 200 feet of the limits of the work site and any additional persons or organizations that the Engineer deems necessary a minimum of ten (10) days prior to starting work at that site. The Contractor shall notify property owners of the upcoming work activities and provide the Engineer with a list of Property Owners Contacted (Name and phone numbers).

For all events described above, the Contractor shall verify that all vehicular, pedestrian (sidewalk and trail), and boater access and clearances are adequate, safe, presentable and acceptable to the satisfaction of the Engineer. Any and all modifications to the Contractor's schedule, operations or work plan required to comply with these provisions shall be undertaken by the contractor at no cost to the City. Failure to act upon these provisions shall be just cause for the assessment of liquidated damages in the amount of \$5,000.00 per day.

No other work is anticipated at this time.

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# **SUPPLEMENTARY INSTRUCTIONS TO BIDDERS**

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## **SUPPLEMENTARY INSTRUCTIONS TO BIDDERS**

These Supplementary Instructions to Bidders amend or supplement the Instructions to Bidders of the City of Rochester Standard Construction Contract Documents and other provisions of the City's Contract Documents as are indicated below. All provisions which are not so amended remain in full force and effect.

### **A. RECENT CHANGES TO THE CONTRACT DOCUMENTS**

The following is a brief recap of the major changes that have been made to the Contract Documents:

- Updated multiple items on the Contingent Item List on pages P-6A thru P-6D of the Proposal (6/1/2013)
- Revised subsection STC 10.2 Asphalt Price Adjustment (6/1/2013)
- Revised subsections SIB 9. Requirements for Preparation and Submission of Bids, SIB 12. Basis of Award, SIB 14. Execution of the Agreement (11/28/2012)
- Revised subsection SIB 6 Subcontractors and Assignments and the Proposal summary bid page to include the requirement that the Contractor perform not less than twenty percent (20%) of the original total contract bid price with its own organization (11/28/2012)

**An incomplete package will be declared informal and will not be considered for award.**

The Bidder should familiarize themselves not only with these major changes, but also should thoroughly review all of the Contract Documents as other minor changes may also have been made that are not specifically noted herein.

The Bidder is to comply not only with these new requirements, but with all of the other requirements that are listed within the Contract Documents.

## **B. PROJECT SPECIFIC INFORMATION**

### **1. Pre-Bid Conference**

A pre-bid conference will be held on **Tuesday August 13, 2013 at 10:00 am in Room 321B**, City Hall, 30 Church Street, Rochester, New York 14614.

All Bidders are urged to attend so that their bid is not rejected due to lack of adequate documentation. Any statements made at the pre-bid meeting do not constitute changes in the Contract Documents. Amendments to the Contract Documents can only be accomplished by means of addenda issued by the City Engineer.

### **2. Time and Location of Bid Opening**

Sealed Proposals for the following improvement:

**Port of Rochester – Marina Development Project**

**Project No. 13108**

**Contract 1: Utility, Roadway, Pedestrian, Site and Marine Improvements**

endorsed with the name of the Bidder and stating the Bidder's address must be received by the Office of the Purchasing Agent, City Hall Room 105-A, 30 Church Street, Rochester, NY 14614 prior to the Bid opening. The Bid opening is scheduled at **2:00 pm local time on Thursday August 29, 2013**, at City Hall, 30 Church Street, Rochester, NY, at which time and place all Bids will be publicly opened, read and recorded. When the Bidder submits their Bid, the Purchasing Office will inform the Bidder of the room location where the Bids will be opened.

### **3. Start and Completion of the Work**

The Contractor will start the work within ten (10) days of receipt of the written Notice to Proceed as issued by the City Engineer.

The Contractor shall complete the work within **six hundred and fifty** (calendar days from the date the Notice to Proceed was issued less the number of days by which one (1) or more of the following submittals are overdue: Completed M/WBE Utilization Forms; performance and payment bonds required by Article 4.1.2 of the General Terms and Conditions; and certificates of insurance required by Article 4.2 of the General Terms and Conditions.

### **4. Project Labor Agreement**

The Contractor and its subcontractors of whatever tier, shall become bound by, and signatory to the Project Labor Agreement Covering **Port of Rochester – Marina Development Project**. The Bidder and all Subcontractors are required to sign the Letter of Assent, Schedule B of the Project Labor Agreement, at the time of execution of the Agreement.

## 5. Federal and New York State Requirements

The Contractor is required to comply with Federal (US Fish and Wildlife Service) and New York State (Department of State; Office of Parks, Recreation and Historic Preservation; Environmental Facilities Corporation) contract conditions including those related to M/WBE utilization goals bound within this document beginning on page SLR-11. The M/WBE utilization goals for this contract are 10% for MBE, and 10% for WBE (see SLR-74) of the total dollar amount of this contract.

## 6. Permits Included for Reference

Copies of certain permits that the Contractor will need to obtain, or comply with the conditions of are included in this Contract Proposal Book for reference beginning on SLR-135

## C. MODIFICATIONS TO THE INSTRUCTIONS ON THE USE OF THE STANDARD CONSTRUCTION CONTRACT DOCUMENTS

### SIN 1. Standard and Supplementary Documents

**Delete** the fourth paragraph of Subsection 1 Standard and Supplementary Documents on page IN-1 in its entirety, and **Replace** with the following:

The Supplementary Documents pertain to specific conditions that exist for a particular Project and list any deviations from the Standard Documents. When a Bidder purchases Supplementary Documents from the City of Rochester for a particular Project, the Bidder will receive one (1) set of Proposal sheets. This set of Proposal sheets is bound separately from but included with the Contract Proposal Book. The Bidder shall submit this set of Proposal sheets along with a bid bond as the bid.

## D. MODIFICATIONS TO THE INSTRUCTIONS TO BIDDERS

### SIB 2. Qualifications of Bidders

**Add** the following at the end of Subsection 2 Qualifications of Bidders on page IB-1:

Upon request by the City of Rochester (City Engineer or Purchasing Agent), Bidders will be required to fill out a Confidential Questionnaire - Statement of Bidder's Qualifications. The Confidential Questionnaire is not attached to the Proposal as stated on Page IB-1, Subsection 2. Qualifications of Bidders of the Instruction to Bidders in the *City of Rochester Standard Construction Contract Documents, November 1, 1991, Edition*.

In the event that the City shall require certified supporting data regarding the qualifications of the Bidder in order to determine whether the Bidder is a responsible Bidder, the Bidder will be required to complete and furnish a Confidential Questionnaire within forty-eight (48) hours of the request by the City Engineer or Purchasing Agent. On the Confidential Questionnaire the Bidder will be required to list:

- a. The Bidder's performance record;
- b. The address and description of the Bidder's plant and place of business, principals of the firm and detailed account of work committed;
- c. An itemized list of equipment in inventory. Such list shall include the age and condition of the equipment;
- d. Dollar value of the largest contract that the Bidder has been awarded and completed within the last 5 years;
- e. Description of other contract work the Bidder is engaged in at present time;
- f. Manner in which the Bidder inspected this Project;
- g. Names and experience of personnel responsible for field work on this Project;

- h. Description and dollar value of work to be performed on site with the Bidder's forces;
- i. Number of the Bidder's workers to be assigned to this Project;
- j. Name of the Bidder's bonding company;
- k. Description and dollar value of work to be sublet;
- l. A description of any similar projects which the Bidder has constructed in a satisfactory manner and other pertinent information;
- m. Type of equipment to be rented for this Project.

The City Engineer or Purchasing Agent may also request the Bidder to furnish within forty-eight (48) hours a certified or authenticated financial statement, dated within thirty (30) days prior to the opening of bids. The City may require that any items be further verified. The Bidder agrees to permit the City to verify the line of credit extended to the Bidder by banks or other financial institutions. The City may also use the services of a national mercantile agency such as Dunn & Bradstreet, Inc, in checking financial responsibility. The Bidder agrees further that the City will incur no liability as a result of this procedure. A copy of the Confidential Questionnaire is available in the City of Rochester Purchasing Office, City Hall.

### **SIB 3. Inspections and Review of Contract Documents before Submitting Bid**

**Add** the following at the end of Subsection 3 Inspections and Review of Contract Documents Before Submitting Bid on page IB-1:

The following Contract Documents shall be components of the Agreement between the City of Rochester and the Contractor by reference:

a. *The City of Rochester Standard Construction Contract Documents, November 1, 1991, Edition:*

- |  |                         |
|--|-------------------------|
| 1. Instructions on the Use of the Standard Construction Contract Documents | (pages IN-1 thru IN-3)  |
| 2. Instructions to Bidders   | (pages IB-1 thru IB-6)  |
| 3. Bonds and Insurance Forms   | (pages BI-1 thru BI-10) |
| 4. Laws and Regulations  | (pages LR-1 thru LR-7)  |
| 5. General Terms and Conditions  | (pages GC-1 thru GC-55) |
| 6. Specifications  | (pages S-1 thru S-266)  |
| 7. Details   | (No.R206-1 thru R917-3) |

b. *New York State Department of Transportation Standard Specifications: Construction and Materials, January 2, 1990 Edition, and Addenda; and State of New York Department of Transportation Standard Specifications (US Customary Units), May 1, 2008 Edition, and Addenda;* specifications as referenced. In the event of a conflict, the 2008 Edition shall supersede 1990 Edition.

c. Notice to Bidders (Advertisement)

d. The Contract Proposal Book:

- |  |                            |
|--|----------------------------|
| 1. Project Summary                       |                            |
| 2. Supplementary Instructions to Bidders | (pages SIB-1 thru SIB-7)   |
| 3. Proposal                              | (pages P-1 thru P-22)      |
| 4. Supplementary Laws and Regulations    | (pages SLR-1 thru SLR-138) |
| 5. Supplementary Terms and Conditions    | (pages STC-1 thru STC-6)   |
| 6. Supplementary Specifications          | (pages SS-1 thru SS-629)   |

e. Additional Contract Documents:

1. Drawings G1.01, G2.01, G3.01, G3.02, G3.03, G3.04, G4.01, G4.02, G4.03, G5.01, G5.02, G6.01, V1.01, V1.02, C1.01, C1.02, C1.03, C1.04, C1.05, C1.06, C2.01, C2.02, C2.03, C2.04, C3.01, C3.02, C3.03, C3.04, C3.05, C3.06, C3.07, C4.01, C4.02, C5.01, C5.02, C5.03, C6.01, C6.02, C7.01, C7.02, C8.01, C8.02, C8.03, C9.01, C9.02, C9.03, C10.01, C10.02, C11.01, C11.02, C12.01, C12.02, C12.03, C12.04, C13.01, C13.02, E1.01, E1.02, E2.01, E3.01, E100, E120, E200, E240, P1.01, P2.01, ME1.01, ME1.02, ME1.03, E1.04, ME3.01, ME5.03, ME5.04, ME5.05, ME5.06, ME5.07, LP1.01, LP1.02, LP5.01, LS1.01, LS1.02, LS5.01, LS5.02, LS5.03, LS5.04
2. Addenda (as issued)
3. Agreement, Bonds and Insurance Forms (pages A-1 thru A-11)
4. Any Change Orders Issued after execution of this Agreement

*The City of Rochester Standard Construction Contract Documents, November 1, 1991, Edition* is issued separately in a bound volume. Copies of this book can be purchased from the City of Rochester Purchasing Office, City Hall, for \$25.00.

*The City of Rochester Standard Construction Contract Documents, November 1, 1991, Edition* references the *New York State Department Standard Specifications: Construction and Materials, January, 2, 1990, Edition*. Copies of this book can be purchased from the City of Rochester Purchasing Office, City Hall, for \$25.00.

Certain Supplementary Specifications may make reference to *State of New York Department of Transportation Standard Specifications (US Customary Units), May 1, 2008 Edition*. Copies of this book may be obtained by contacting NYSDOT Plan and Publication Sales, (518) 457-2124.

The Water Bureau maintains a list of *Materials Approved for Use by the City of Rochester, NY - Water Bureau*. It is recommended that the Bidder obtain a copy of this list before preparing and submitting a bid. Copies of this list may be obtained either by calling the Water Bureau, at (585) 428-7569, or on the City of Rochester's website at <http://www.cityofrochester.gov/waterbureau/>, under Helpful Documents for Contractors.

Any conflicts or questions between these documents are to be identified by the Bidder at the pre-bid meeting.

## **SIB 6. Subcontractors and Assignments**

**Add** the following after the first paragraph of Subsection 6 Subcontractors and Assignments on page IB-2:

The Contractor shall perform with its own organization contract work amounting to not less than twenty percent (20%) of the original total contract bid price, except that any items designated by the City as "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the original total contract bid price before computing the amount of work required to be performed by the Contractor with its own organization. The contract amount upon which the twenty percent (20%) requirement is computed includes the cost of materials and manufactured products which are to be purchased or produced by the Contractor under the contract provisions.

"Its own organization" shall be construed to include only workers employed and paid directly by the Contractor and equipment owned or rented by it, with or without operators. Employee leasing and other similar arrangements under which workers are employed by a service organization are not considered part of the Contractor's "own organization".

"Specialty Items" shall be construed to be limited to work that requires specialized knowledge, skill or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole, and in general are to be limited to minor components of the overall contract.

#### **SIB 9. Requirements for Preparation and Submission of Bids**

**Add** the following after the first paragraph of Subsection 9 Requirements for Preparation and Submission of Bids on page IB-3:

No Bidder will be allowed to price unit items in increments less than one hundredths of a dollar (\$0.01). Bidders must assign unit prices to the nearest penny. Submission of unit prices in increments of less than one hundredths of a dollar (\$0.01) will result in those increments being dropped from the unit prices and the total cost for that unit item recalculated, and the subtotal and total base bids adjusted accordingly. Figures will not be rounded up or down. For example, a unit price submission of \$1.759 will be considered a bid of \$1.75.

**Add** the following after the fifth paragraph of Subsection 9 Requirements for Preparation and Submission of Bids on page IB-3:

#### **SIB 11. Owner's Discretion to Accept, Reject, or Waive Bid**

**Add** the following under paragraph 3 of Subsection 11 Owner's Discretion to Accept, Reject, or Waive Bid on page IB-5:

K. Failure to submit M/WBE Form P pages 1 and 2.

#### **SIB 12. Basis of Award**

**Delete** Subsection 12 Basis of Award on page IB-6 in its entirety, and **Replace** with the following:

The contract will be awarded to the lowest responsible Bidder complying with all of the provisions of the Instructions to Bidders and the Supplementary Instructions to Bidders.

For purposes of this article, Contractor shall mean an entity which directly employs labor under a construction contract. A construction contract shall mean a City of Rochester public works contract for an amount in excess of \$250,000 for construction, reconstruction, or improvement of any building, facility or physical structure of any kind, or any subcontract thereto which exceeds \$100,000 in value.

The City may conduct such investigations as it may deem necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications and financial ability of the Bidders, in accordance with the Contract Documents to the City's satisfaction within the prescribed time.

**Add** the following new subsections after Subsection 13 Notice of Award on page IB-6:

#### **SIB 14. Execution of the Agreement**

The successful Bidder shall be required to execute an agreement upon award of the contract. This agreement provides specific information and highlights contract requirements in the General Terms and Conditions of the *City of Rochester Standard Construction Contract Documents, November 1, 1991, Edition*. The following articles are included in this agreement:

- Article 1. Scope of Work
- Article 2. City Engineer, Design Professional, Project Manager (responsibilities of in accordance with Article 9)
- Article 3. Contract Time
- Article 4. Liquidated Damages (in accordance with Article 10.4)
- Article 5. Contract Price
- Article 6. Payment Procedures (in accordance with Article 13)
- Article 7. Final Payment (in accordance with Article 14)
- Article 8. Availability of Funds (in accordance with Article 15)
- Article 9. Contractor's Representations (in accordance with Article 9)
- Article 10. Accounting Records (the Contractor shall maintain accounting records in accordance with Article 6.10)
- Article 11. Contract Documents (the Contract Documents that comprise the Agreement shall be the same as those stated under SIB 3.d and SIB 3.e with addenda as issued)
- Article 12. Miscellaneous (terms used in this agreement shall have the meaning as defined in Article 1.1)

A Performance Bond and Labor and Material Payment Bond shall be submitted in accordance with Article 4.1 of the General Terms and Conditions. Samples of the City forms are available in the *City of Rochester Standard Construction Contract Documents, November 1, 1991, Edition*.

A Certificate of Insurance shall be submitted in accordance with Article 4.2 of the General Terms and Conditions. A sample of the Certificate of Insurance Form is in the *City of Rochester Standard Construction Contract Documents, November 1, 1991, Edition*.

#### **SIB 15. Incentive Program for Public Works Contracts**

The City of Rochester provides an Incentive Program for hiring City residents residing within certain ZIP code areas for public works contracts for which the final contract price is for an amount in excess of \$250,000. The Contractor may apply for a monetary incentive of seven percent (7%) of the payroll paid to disadvantaged City residents residing within these ZIP code areas, up to a maximum incentive amount of \$50,000, provided that more than seventeen percent (17%) of the gross payroll for the Project was paid to disadvantaged City residents. The Incentive Program is described in detail in the Supplementary Laws and Regulations section, pages SLR-3 thru SLR-6.

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# **AGREEMENT BONDS AND INSURANCE FORMS**

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## AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Rochester, New York, a municipal corporation, hereinafter referred to as the "City", and **The Pike Company, Inc.** a corporation organized under the laws of the State of New York; a partnership; or an individual d/b/a/ \_\_\_\_\_ whose address is One Circle Street, Rochester, NY 14607 hereafter referred to as the "Contractor".

WITNESSETH, that the City and the Contractor, for the consideration hereafter names, agree as follows:

### ARTICLE 1. SCOPE OF WORK

The Contractor hereby agrees to perform all work in accordance with the *City of Rochester Standard Construction Contract Documents, November 1, 1991*, and Contract Documents issued August 5, 2013, and addenda thereto, all which are a part of this Agreement whether or not attached.

The work is generally described as follows:

PROJECT NUMBER **13108**

PROJECT TITLE: **PORT OF ROCHESTER MARINA DEVELOPMENT PROJECT**

CONTRACT NUMBER **C03420**

### ARTICLE 2. CITY ENGINEER, DESIGN PROFESSIONAL, PROJECT MANAGER

The City Engineer is the agent of the City and has ultimate responsibility for the Project as provided in the Standard Construction Contract Documents.

The Project was designed by **Marine / Landscape Design : Edgewater Resources, LLC** and **Roadway / Site / Utility Design : LaBella Associates, PC.**

The Project Manager is the representative of the City Engineer, and will assume all duties and responsibilities and will have the rights and authority assigned to the Project Manager in the Standard Construction Contract Documents in connection with completion of the work in accordance with the Contract Documents. The City Engineer will appoint the Project Manager prior to the start of construction.

### ARTICLE 3. CONTRACT TIME

The Contractor agrees that the work will be started within ten (10) days of the receipt of the written Notice to Proceed issued by the City Engineer.

The Contractor agrees that the work will be completed within the number of calendar days or by the date specified in the Supplementary Instructions to Bidders.

#### **ARTICLE 4. LIQUIDATED DAMAGES**

The City and the Contractor recognize that time is of the essence and that prompt completion of the work is a matter of public importance. Therefore, if the work is not completed in the number of days or by the date specified in the Supplementary Instructions to Bidders, plus any extension granted in accordance with Section 10.3 of the General Terms and Conditions, the Contractor agrees to pay liquidated damages to the City as specified in the table in Paragraph 10.4.1 of the General Terms and Conditions.

#### **ARTICLE 5. CONTRACT PRICE**

The City will pay the Contractor for the total number of each of the units of work in the attached schedule completed, at the UNIT PRICES stated in the Proposal, adjusted by any changes as provided in Section 10.2 of the General Terms and Conditions.

#### **ARTICLE 6. PAYMENT PROCEDURES**

The Contractor shall have the right to submit an application for progress payment each month as provided in Section 13.1 of the General Terms and Conditions. Applications for progress payments will be processed by the Project Manager as provided in Section 13.3 of the General Terms and Conditions.

The City will retain five percent (5%) of the approved progress payment due the Contractor each month until the City Engineer certifies that the work is substantially complete. At such time, the City Engineer will authorize payment of the contract balance, including release of the five percent (5%) retainage, less any assessed liquidated damages and a withheld sum as provided in Section 14.2 of the General Terms and Conditions.

All progress payments will be based on the actual units completed and the unit prices submitted in the Proposal.

The Contractor may, from time to time, withdraw the whole or any portion of the amount retained from payments to the Contractor, upon depositing with the City Finance Director: (a) bonds or notes of the United States of America, or obligations, the payment of which is guaranteed by the United States of America; or (b) bonds or notes of the State of New York; or (c) bonds of any political subdivision in the State of New York, of a market value equal to the amount so withdrawn. The City Finance Director, from time to time, shall collect all interest and income on the obligations so deposited, and shall pay the same, when and as collected to the Contractor. However, the Contractor shall not be entitled to interest or income on any such obligations deposited if the proceeds of the obligations have been used or applied by the City pursuant to the terms of these Contract Documents. The City Finance Director may impose upon the Contractor such service charges for receiving, handling, and disbursing funds as may be allowed by law.

#### **ARTICLE 7. FINAL PAYMENT**

Upon written notification by the Contractor and verification by the City Engineer that the remaining deficiencies of the work have been remedied, and all claims, liens, and judgments have been satisfied, the City Engineer will authorize payment of the final payment as provided in Section 14.4 of the General Terms and Conditions.

## **ARTICLE 8. AVAILABILITY OF FUNDS**

The City shall be obligated to pay for goods and services received only to the extent that money has been appropriated and encumbered for such purpose. The Contractor in turn shall be obligated to perform only so long as money is available to pay for the goods and services it supplies.

## **ARTICLE 9. CONTRACTOR'S REPRESENTATIONS**

In order to induce the City to enter into the Agreement, the Contractor makes the following representations:

The Contractor is familiar with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress, or performance of the work.

The Contractor has studied carefully all reports of investigations and tests of the subsurface and latent physical conditions at the Site or otherwise affecting cost, progress or performance of the work, which were relied upon by the Project Designer in the preparation of the contract Documents; and, which have been identified in the Supplementary Terms and Conditions.

The Contractor has made or caused to be made examinations, investigations and test and studies of such report and related data in addition to those referred to in the above paragraph as is deemed necessary by the Contractor for the performance of the work at the contract price, within the contract time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by the Contractor for such purposes.

The Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.

The Contractor has given the City Engineer written notice of all conflicts, errors, or discrepancies that the Contractor has discovered in the Contract Documents and the written resolution thereof by the City Engineer is acceptable to the Contractor.

## **ARTICLE 10. ACCOUNTING RECORDS**

The Contractor shall check all products, equipment and labor entering into the work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the accounting methods shall be satisfactory to the City. The City shall be afforded access to all of the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the cost of the work. The Contractor shall preserve all such documents for a period of three (3) years after the final payment by the City.

## **ARTICLE 11. CONTRACT DOCUMENTS**

The Contract Documents which comprise the Agreement between the City and the Contractor are made a part hereof and consist of the following:

A. *The City of Rochester Standard Construction Contract Documents, November 1, 1991, Edition:*

1. Instructions on the Use of the Standard Construction Contract Documents (pages IN-1 thru IN-3)
2. Instructions to Bidders (pages IB-1 thru IB-6)
3. Bonds and Insurance Forms (pages BI-1 thru BI-10)
4. Laws and Regulations (pages LR-1 thru LR-7)
5. General Terms and Conditions (pages GC-1 thru GC-55)
6. Specifications (pages S-1 thru S-266)
7. Details (No.R206-1 thru R917-3)

B. *New York State Department of Transportation Standard Specifications: Construction and Materials, January 2, 1990 Edition, and Addenda; and State of New York Department of Transportation Standard Specifications (US Customary Units), May 1, 2008 Edition, and Addenda; specifications as referenced.*

C. Notice to Bidders (Advertisement)

D. The Contract Proposal Book:

1. Project Summary
2. Supplementary Instructions to Bidders (pages SIB-1 thru SIB-7)
3. Proposal (pages P-1 thru P-22)
4. Supplementary Laws and Regulations (pages SLR-1 thru SLR-138)
5. Supplementary Terms and Conditions (pages STC-1 thru STC-6)
6. Supplementary Specifications (pages SS-1 thru SS-629)
7. Project Labor Agreement (pages PLA-1 thru PLA-54)

E. Additional Contract Documents:

1. Drawings G1.01, G2.01, G3.01, G3.02, G3.03, G3.04, G4.01, G4.02, G4.03, G5.01, G5.02, G6.01, V1.01, V1.02, C1.01, C1.02, C1.03, C1.04, C1.05, C1.06, C2.01, C2.02, C2.03, C2.04, C3.01, C3.02, C3.03, C3.04, C3.05, C3.06, C3.07, C4.01, C4.02, C5.01, C5.02, C5.03, C6.01, C6.02, C7.01, C7.02, C8.01, C8.02, C8.03, C9.01, C9.02, C9.03, C10.01, C10.02, C11.01, C11.02, C12.01, C12.02, C12.03, C12.04, C13.01, C13.02, E1.01, E1.02, E2.01, E3.01, E100, E120, E200, E240, P1.01, P2.01, ME1.01, ME1.02, ME1.03, E1.04, ME3.01, ME5.03, ME5.04, ME5.05, ME5.06, ME5.07, LP1.01, LP1.02, LP5.01, LS1.01, LS1.02, LS5.01, LS5.02, LS5.03, LS5.04
2. Addenda (as issued)
3. Agreement, Bonds and Insurance Forms (pages A-1 thru A-11)
4. Any Change Orders Issued after execution of this Agreement

There are no Contract Documents other than those above listed.

## **ARTICLE 12: MISCELLANEOUS**

Terms used in this Agreement, which are defined in Section 1.1 of the General Terms and Conditions, shall have the meanings indicated in the General Terms and Conditions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first written above.

SEAL \_\_\_\_\_CONTRACTOR

BY\_\_\_\_\_

THE CITY OF ROCHESTER

APPROVED FOR FUNDS

By \_\_\_\_\_ By \_\_\_\_\_  
Purchasing Agent Director of Finance

STATE OF NEW YORK )  
COUNTY OF MONROE ) ss:  
CITY OF ROCHESTER )

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a  
Notary Public in \_\_\_\_\_ and \_\_\_\_\_ said \_\_\_\_\_ State, \_\_\_\_\_ personally appeared  
\_\_\_\_\_ personally known to me or proved to me on the  
basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies),  
and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of  
which the individuals(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

## PERFORMANCE BOND

Bond Number \_\_\_\_\_

KNOWN TO ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_ as Principal, hereinafter called Principal, and \_\_\_\_\_ a corporation organized and existing under the laws of \_\_\_\_\_ and authorized to do business in the State of New York as Surety, hereinafter called Surety, are held and firmly bound unto \_\_\_\_\_ as Obligee, hereinafter called Obligee, in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a contract with Obligee for \_\_\_\_\_ in accordance with drawings and specifications prepared by \_\_\_\_\_ which contract is by reference made a part hereof, and is hereinafter referred to as the contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever Principal shall be, and be declared by Obligee to be in default under the contract, the Obligee having performed Obligee's obligation thereunder:

- (1) Surety may promptly remedy the default subject to the provisions of paragraph 3 herein; or
- (2) Obligee after reasonable notice to Surety, or Surety upon demand of Obligee, may arrange for the performance of Principal's obligation under the contract subject to the provisions of paragraph 3 herein;
- (3) The balance of the contract price, as defined below, shall be credited against the reasonable cost of completing performance of the contract. If completed by the Obligee, and the reasonable cost exceeds the balance of the contract price, the Surety shall pay to the Obligee such excess, but in no event shall the aggregate liability of the Surety exceed the amount of this bond. If the Surety arranges completion or remedies the default, that portion of the balance of the contract price as may be required to complete the contract or remedy the default and to reimburse the Surety for its outlays shall be paid to the Surety at the times and in the manner as said sums would have been payable to Principal had there been no default under the contract. The term "balance of the contract price" as used in this paragraph, shall mean the total amount payable by Obligee to Principal under the contract and any amendments thereto, less the amounts heretofore properly paid by Obligee under the contract.

Any suit under this bond must be instituted before the expiration of two (2) years from date on which final payment under the contract falls due.

The Surety hereby waives any notice of a change in the contract price or contract time.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_

BY \_\_\_\_\_ Principal

BY \_\_\_\_\_ Surety

STATE OF NEW YORK )  
COUNTY OF MONROE )                    ss:  
CITY OF ROCHESTER )

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a  
Notary            Public            in            and            said            State,            personally            appeared  
\_\_\_\_\_ personally known to me or proved to me on the  
basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies),  
and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of  
which the individuals(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

## LABOR AND MATERIAL PAYMENT BOND

Bond Number \_\_\_\_\_

KNOWN TO ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_ as Principal, hereinafter called Principal, and \_\_\_\_\_ a corporation organized and existing under the laws of \_\_\_\_\_ and authorized to do business in the State of New York as Surety, hereinafter called Surety, are held and firmly bound unto \_\_\_\_\_ as Obligee, hereinafter called Owner, for the use and benefit of Claimants as hereinbelow defined, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a contract with Owner for \_\_\_\_\_ in accordance with drawings and specifications prepared by \_\_\_\_\_ which contract is by reference made a part hereof, and is hereinafter referred to as the contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all Claimants as hereinafter defined, for labor and material used or reasonably required for use in the performance of the contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- (1) A Claimant is defined as one having direct contract with the Principal or with the Subcontractor of the Principal for labor, material or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the contract.
- (2) The above named Principal and Surety hereby jointly and severally agree with the Owner that every Claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labor was done or performed, or materials were furnished by such Claimant, may sue on this bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant and have execution thereon. The Owner shall not be liable for payment of any costs or expenses of any such suit.
- (3) No suit or action shall be commenced hereunder by any Claimant,
  - (a) Unless Claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such Claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business or served in any manner in which legal process may be served in the state in which the aforesaid Project is located, save that such service need not be made by a public officer.

(b) After the expiration of one (1) year following the date on which Principal ceased work on said contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

(c) Other than in a State court of competent jurisdiction in and for the County or other political subdivision of the State in which the Project, or any part hereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

- (4) The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

The Surety hereby waives any notice of a change in the contract price or contract time.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

Principal

(Seal)

\_\_\_\_\_

Surety

(Seal)

STATE OF NEW YORK )  
COUNTY OF MONROE ) ss:  
CITY OF ROCHESTER )

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in \_\_\_\_\_ and \_\_\_\_\_ said State, \_\_\_\_\_ personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individuals(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public  
Commission expires: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**CITY OF ROCHESTER  
CERTIFICATE OF INSURANCE**

To the City of Rochester:

The subscribing insurance company certifies that insurance of the kinds and types and for limits of liability not less than those herein stated, covering the work herein designated, has been procured by and furnished on behalf of the insured Contractor named in Item 1.

1. Name of Insured \_\_\_\_\_

Address of Insured \_\_\_\_\_

2. Location and Description of Work: **PORT OF ROCHESTER MARINA DEVELOPMENT PROJECT**  
(Projlimit)

3. Kinds and Types of Insurance:

<b>Types of Insurance</b>	<b>Policy Number</b>	<b>Effective Date</b>	<b>Expiration Date</b>	<b>Limits of Liability</b>
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CONTRACTOR'S GENERAL  
LIABILITY

- Comprehensive Form
- Independent Contractors
- Premises Operation
- Completed Operations Hazard
- Broad Form Property Damage
- Underground Hazard
- Explosion and Collapse Hazard
- Contractual Insurance

MOTOR VEHICLE  
INSURANCE

BUILDER'S ALL RISK  
INSURANCE

WORKER'S COMPENSATION  
INSURANCE

DISABILITY  
INSURANCE

Such insurance as is herein certified applies to all operations of said insured in connection with the work herein described at the locations stated, and is written in accordance with the company's regular policies and endorsements, subject to the company's applicable manuals of rules and rates in effect, except

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The insurance provided by the subscriber shall include the City of Rochester as an additional insured.

The \_\_\_\_\_,  
additional Funding Agencies, shall be named as an additional insured for liability arising under this agreement except for the Workers' Compensation and Disability Insurance.

No exclusion from coverage shall be made for any municipal operations performed as a term of the contract for which this insurance is issued.

The subscribing company agrees that no policy referred to herein shall be changed or cancelled until ten (10) days written notice has been given to the City of Rochester.

This certificate is furnished in accordance with and for the purpose of the specifications of the City of Rochester covering the operations herein described.

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
\_\_\_\_\_  
(Address of Company)

By \_\_\_\_\_  
(Authorized Representative)

Dated \_\_\_\_\_



# SUPPLEMENTARY LAWS AND REGULATIONS

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SLR 2. Compliance with Policies Prohibiting Discrimination	
A. Anti-Apartheid .....	SLR-1
SLR 3. Compliance with Labor Laws .....	SLR-1
SLR 9. Safety and Health Requirements	
B. Drilling and Blasting .....	SLR-1
C. Explosives in Demolition .....	SLR-2
F. OSHA Ten (10) Hour Construction Safety and Health Course Certification .....	SLR-2
SLR 17. Apprenticeship Training Program for Construction Contracts.....	SLR-3
SLR 18. Incentive Program for Public Works Contracts .....	SLR-3
SLR 19. Minority and Women Business Enterprise (M/WBE) Requirements .....	SLR-7
SLR 20. Prevailing Wage Schedule and List of Employers Ineligible to Bid on or be Awarded any Public Work.....	SLR-8
SLR 21. New York State Office of Parks Recreation and Historic Preservation Requirements ...	SLR-11
SLR 22. New York State Department of State Requirements .....	SLR-41
SLR 23. New York State Environmental Facilities Corporation Requirements .....	SLR-85
SLR 24. City of Rochester – Application for Electrical Permit.....	SLR-135
SLR 25. City of Rochester – Application for Plumbing Permit .....	SLR-137



## SUPPLEMENTARY LAWS AND REGULATIONS

### SLR 2. Compliance with Policies Prohibiting Discrimination

*The City of Rochester Standard Construction Contract Documents, November 1, 1991, Edition*, is modified by City Council Ordinance 93-399 that repealed prior Ordinance 85-133 as follows:

**Delete** the following Subsection A Anti-Apartheid on page LR-1 in its entirety:

#### A. Anti-Apartheid

The Council of the City of Rochester, New York has reaffirmed its commitment to racial equality and has established in Ordinance Number 85-133, a policy prohibiting any City agency or department from Contracting goods or services with any company or person who supports a policy of apartheid as defined herein except where competitive bidding is required by the General Municipal Law. The Contractor agrees to not support a policy of apartheid as defined herein.

SUPPORTS A POLICY OF APARTHEID shall mean providing loans directly to, underwriting securities of, advertising or otherwise promoting the sale of gold on behalf of, or otherwise providing financial services to the government of the Republic of South Africa or its agencies.

### SLR 3. Compliance with Labor Laws

**Add** the following after the second paragraph of Subsection 3 Compliance with Labor Laws on page LR-2:

Effective April 27, 2008, in addition to the schedule of wage rates, the Contractor is required to post in a conspicuous location at the Project site the name and contact information of the individual who is responsible to collect certified payrolls and review for facial validity.

### SLR 9. Safety and Health Requirements

**Delete** Subsection B Drilling and Blasting on page LR-3 in its entirety, and **Replace** with the following:

#### B. Drilling and Blasting

The Contractor shall employ only experienced supervisors and workers in the handling, loading and firing of explosives. The Contractor shall fulfill the requirements of the City of Rochester Fire Prevention Code Chapter 54 regarding explosives and blasting agents which, together with other conditions indicated herein shall provide for the possession, handling, storage, transportation, and use of all explosives used at the site. Overnight storage of explosives within the City limits is prohibited unless a specific authorization of such storage is granted in writing to the Contractor, by the City of Rochester Fire Marshal.

**Delete** Subsection C Explosives in Demolition on page LR-4 in its entirety, and **Replace** with the following:

**C. Explosives in Demolition**

Demolition work, subject to requirements of OSHA standards and New York Industrial Code Rule 39 and 53, shall not be performed by the use of explosives unless a specific variation of such use is granted in writing to the Contractor, by the City of Rochester Fire Marshal.

**Add** the following at the end of Subsection 9 Safety and Health Requirements on page LR-4:

**F. OSHA Ten (10) Hour Construction Safety and Health Course Certification**

The Contractor shall be responsible for ensuring observance of all OSHA provisions and the State of New York Labor Law, including but not limited to Section 240, pertaining to safe performance of the work. Further, the Contractor shall ensure that the methods of performing the work do not involve undue danger to the personnel employed thereon, the public, and public and private property. Should charges of violation of any of the above be issued to the Contractor in the course of the work a copy of each charge shall be immediately forwarded to the Project Manager.

Where the total cost of all work to be performed under the contract is at least \$250,000, all personnel employed in performance of the work on the Project site, either by the Contractor, Subcontractor, or other person or entity doing or Contracting to do the whole or any part of the work under the contract, shall be certified prior to performing any work on the Project site as having successfully completed a course in construction safety and health that is approved by the United States Department of Labor's Occupational Safety and Health Administration (OSHA) that is at least ten (10) hours in duration.

If the Contractor or any Subcontractor performing work under the contract fails to submit its proof of certification, the City may retain five percent (5%) of payment due the prime Contractor on any progress payment until receipt of proper documentation of certification.

**Add** the following new subsections after Subsection 16 Content of Sub-Agreements on page LR-7:

### **SLR 17. Apprenticeship Training Program for Construction Contracts**

The City of Rochester's Apprenticeship training requirements per Ordinance 2003-347 of the City Council, as amended by Ordinance 2009-76, do not apply to this contract. Refer to the Project Labor Agreement for Apprenticeship requirements.

### **SLR 18. Incentive Program for Public Works Contracts**

#### **Section 1 Incentive Program**

The City of Rochester will provide an incentive program for hiring City residents residing in certain City zip codes for public works contracts for which the final contract price is for an amount in excess of \$250,000.

The City of Rochester, for public work contracts in excess of \$250,000, will provide a monetary incentive equal to seven percent (7%) of payroll paid to disadvantaged City residents residing in the City in zip codes: 14604, 14605, 14608, 14611, 14614, and 14621. A listing of City property addresses in the above listed zip codes is available for review at the office of the Purchasing Agent, 30 Church Street, Room 105-A, Rochester, NY, 14614. The zip codes extend beyond City boundaries, and the employees residing in these zip codes must live in the City for the wages paid to qualify for the incentive payment.

In order to qualify for the incentive, the Contractor must prove that more than seventeen percent (17%) of the total gross payroll for the project was paid to disadvantaged City residents. The maximum incentive under any contract shall not exceed \$50,000.

#### **Section 2 Definitions**

Residence - the term residence shall be deemed to mean that place where a person maintains a fixed, permanent and principal home and to which they, wherever temporarily located, always intends to return.

Resident - the individual residing at the residence as heretofore defined.

Disadvantaged City resident - an individual residing at the residence as heretofore defined in City zip codes 14604, 14605, 14608, 14611, 14614, and 14621.

Contractor - the individual, partnership, corporation or joint venture undertaking the execution of the work with the City under the terms of the Contract Documents, and acting directly or through their or its agents or employees. The term Contractor shall mean a Contractor which directly employs labor under a public works contract and includes Subcontractors.

Total Gross Payroll - the total payroll dollars paid to Contractor employees working on the project for which the incentive payment is requested.

City Residents Total Gross Payroll - the total payroll dollars paid to City residents residing in prescribed zip codes for work performed on City projects for which a residency incentive is requested. This amount would be reported in box 5 on the W-2.

### **Section 3 Documentation Required**

To request an incentive payment the Contractor must provide to the City Director of Finance, 30 Church Street, Room 109-A, Rochester, NY, 14614 upon obtaining certificate of substantial completion and/or final completion/final payment, proof of wages paid to all employees and wages paid to City residents in the format as per Exhibit A. The employee must also sign an attestation as per Exhibit B attesting to that the address represented is the permanent and principal place of residency. Any false information provided may lead to the Contractor's being found a non-responsible Bidder on subsequent City bids.

The Contractor shall retain payroll data and make available such records, for random audit by the City, for a period of three years.

The Contractor must apply for the residency incentive within ninety (90) days of obtaining a certificate of substantial completion and/or final completion/project completion. The residency incentive will be paid upon submission, review, and approval of information required as per Section 3, Documentation Required.

EXHIBIT A

[illegible]

Excel spreadsheet available from Director of Finance, City of Rochester, (585) 428-7151

EXHIBIT B

EMPLOYEE ATTESTATION OF ADDRESS

I, \_\_\_\_\_, hereby attest that my residence and principal home from \_\_\_\_\_ to \_\_\_\_\_, while employed on \_\_\_\_\_ date \_\_\_\_\_ date \_\_\_\_\_ by \_\_\_\_\_ contract number - contract job description \_\_\_\_\_ name of Contractor \_\_\_\_\_

was/is as listed below.

Address \_\_\_\_\_

City, town, village \_\_\_\_\_

State \_\_\_\_\_, Zip Code \_\_\_\_\_

\_\_\_\_\_  
Signature of Employee

STATE OF NEW YORK )  
COUNTY OF MONROE )  
CITY OF ROCHESTER )

ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed above and acknowledged to me that they executed the same.

\_\_\_\_\_  
Notary Public  
Commission expires: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

## **SLR 19. Minority and Women Business Enterprise (M/WBE) Requirements**

The Contractor is required to comply with Federal (US Fish and Wildlife Service) and New York State (Department of State; Office of Parks, Recreation and Historic Preservation; Environmental Facilities Corporation) contract conditions including those related to M/WBE utilization goals bound within this document beginning on page SLR-11.

The M/WBE utilization goals for this contract are 10% for MBE, and 10% for WBE (see SLR-74) of the total dollar amount of this contract.

**SLR 20. Prevailing Wage Schedule and List of Employers Ineligible to Bid on or be Awarded any Public Work**

Paper copies of the "Prevailing Wage Schedule" and "List of Employers Ineligible to Bid on or be Awarded any Public Work" will no longer be included with City of Rochester bid documents. A paper copy of the current documents will be provided to the successful Bidder(s) upon award of the contract.

The "Prevailing Wage Schedule" and "List of Employers Ineligible to Bid on or be Awarded any Public Work" for this contract are available on the New York State Department of Labor's website. They can be accessed by visiting the New York State Department of Labor's website at **<http://wpp.labor.state.ny.us/wpp/doFindProject.do?method=showIt>**, and entering the assigned PRC# at the proper location on the website. The PRC# can be found on the PW 200 form which immediately follows this page.

Contractors and subcontractors must pay laborers, workers and mechanics employed in the performance of a public work contract not less than the most current prevailing rate of wage and supplements (fringe benefits).

The City of Rochester will not be responsible for any of the Contractor's increased labor costs which result from defects in the Prevailing Wage Schedule provided, or from amendments to the Prevailing Wage Schedule, whether that increase occurs before advertisement, before bid opening, before award of the contract, after the contract has been let, or during construction. No change in the contract price shall be allowed to the Contractor for any such increases.

Information about current wage rates may be obtained on an advisory basis by contacting the City of Rochester Contract Administration office at (585) 428-7398.



Andrew M. Cuomo, Governor

Peter M. Rivera, Commissioner

City of Rochester

David Crocker, Contract Administrator  
Dept. of Finance  
City Hall, Room 106-A  
30 Church St.  
Rochester NY 14614-1282

Schedule Year 2012 through 2013

Date Requested 06/20/2013

PRC# 2013005635

Location Port of Rochester

Project ID#

Project Type Port of Rochester Marina Development Project: Contract 1, Utility, Roadway, Pedestrian, Site, and Marine Improvements

### PREVAILING WAGE SCHEDULE FOR ARTICLE 8 PUBLIC WORK PROJECT

Attached is the current schedule(s) of the prevailing wage rates and prevailing hourly supplements for the project referenced above. A unique Prevailing Wage Case Number (PRC#) has been assigned to the schedule(s) for your project.

The schedule is effective from July 2012 through June 2013. All updates, corrections, posted on the 1st business day of each month, and future copies of the annual determination are available on the Department's website [www.labor.state.ny.us](http://www.labor.state.ny.us). Updated PDF copies of your schedule can be accessed by entering your assigned PRC# at the proper location on the website.

It is the responsibility of the contracting agency or its agent to annex and make part, the attached schedule, to the specifications for this project, when it is advertised for bids and /or to forward said schedules to the successful bidder(s), immediately upon receipt, in order to insure the proper payment of wages.

Please refer to the "General Provisions of Laws Covering Workers on Public Work Contracts" provided with this schedule, for the specific details relating to other responsibilities of the Department of Jurisdiction.

Upon completion or cancellation of this project, enter the required information and mail **OR** fax this form to the office shown at the bottom of this notice, **OR** fill out the electronic version via the NYSDOL website.

#### NOTICE OF COMPLETION / CANCELLATION OF PROJECT

Date Completed: \_\_\_\_\_ Date Cancelled: \_\_\_\_\_

Name & Title of Representative: \_\_\_\_\_

Phone: (518) 457-5589 Fax: (518) 485-1870  
W. Averell Harriman State Office Campus, Bldg. 12, Room 130, Albany, NY 12240

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STATE AGENCY (Name & Address)

**New York State Office of Parks,  
Recreation and Historic  
Preservation  
Albany, New York 12238 (For USPS Mail)  
625 Broadway  
Albany, New York 12207 (For Physical Delivery)**

NYS COMPTROLLER'S NUMBER: **C0Y15D1**

NYS AGENCY NUMBER: **Y-15-D-1**

ORIGINATING AGENCY CODE: **49070**

REGION: **AB**

CONTRACTOR (Name & Address):  
City of Rochester

TYPE OF PROGRAM: Boating Infrastructure Grant Program

CHARITIES REGISTRATION NUMBER:  
**n/a**

INITIAL CONTRACT PERIOD:

**CONTRACTOR IS UP-TO-DATE**  
with filing all required annual written reports  
with the Attorney General's Charities Bureau,  
or the appropriate oversight Agency

FROM:  
TO:

FEDERAL TAX ID NUMBER:  
**N/A**

**SFS Vendor #:**

MUNICIPALITY NUMBER:

FUNDING AMOUNT FOR INITIAL PERIOD: \$

STATUS:

MULTI-YEAR TERM: (if applicable)

**CONTRACTOR IS NOT A  
SECTARIAN ENTITY  
CONTRACTOR IS A: Municipality**

FROM: N/A  
TO: N/A

**APPENDICES ATTACHED AND PART OF THIS AGREEMENT:**

APPENDIX A...Standard Clauses for All New York State Contracts.  
APPENDIX A1...Clauses Required by Office of Parks, Recreation and Historic Preservation  
APPENDIX B...Budget  
APPENDIX C...Payment and Reporting Schedule  
APPENDIX D...Program Workplan  
APPENDIX X...Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)  
APPENDIX E...Special Conditions and Requirements  
APPENDIX F...Program Specific Requirements

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IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

PROJECT NUMBER: Y-15-D-1

CONTRACT NUMBER: **C0Y15D1**

CONTRACTOR:

STATE AGENCY: 49070

**City of Rochester**

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

By:

By:

Printed Name:

Printed Name:

Printed Title:

Printed Title: Director of Financial Administration

Date:

Date:

State Agency Certification:

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

STATE OF NEW YORK )  
 ) SS.:  
County of )

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

Notary Public, State of New York

ATTORNEY GENERAL:

Approved:

Thomas P. DiNapoli  
State Comptroller

By\_\_\_\_\_

Date \_\_\_\_\_

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## STATE OF NEW YORK AGREEMENT

This AGREEMENT is hereby made by and between the State of New York agency (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

## WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT.

NOW THEREFORE, in consideration of the promises, responsibilities and covenants herein, the STATE and the CONTRACTOR agree as follows:

**I. Conditions of Agreement**

A. This period of this AGREEMENT shall be as specified on the face page hereof. Should funding become unavailable, this AGREEMENT may be suspended until funding becomes available. In such event the STATE shall notify the CONTRACTOR immediately of learning of such unavailability of funds, however, any such suspension shall not be deemed to extend the term of this AGREEMENT beyond the end date specified on the face page hereof.

B. Funding for the entire contract period shall not exceed the amount specified as "Funding Amount for Initial Period" on the face page hereof.

C. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.

D. To modify the AGREEMENT, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, change in scope, or change in the term, is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A1.

E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Workplan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.

G. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.

**II. Payment and Reporting**

A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.

B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services, a sum not to exceed the amount noted on the face page hereof. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.

C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

### **III. Terminations**

A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.

B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.

C. The STATE may terminate this AGREEMENT without cause by ninety (90) days prior written notice.

D. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A1.

E. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.

F. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.

G. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

### **IV. Indemnification**

A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.

B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

### **V. Property**

Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A1.

### **VI. Safeguards for Services and Confidentiality**

A. Services performed pursuant to this AGREEMENT are secular in nature and shall

be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.

C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the contract and in conformity with applicable provisions of laws and regulations, or specified in Appendix A1.

## STANDARD CLAUSES FOR NYS CONTRACTS

## APPENDIX A

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his

office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. 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

**STANDARD CLAUSES FOR NYS CONTRACTS**

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

**APPENDIX A**

days of such conviction, determination or disposition of appeal (2NYCRR 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

**STANDARD CLAUSES FOR NYS CONTRACTS**

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 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

**APPENDIX A**

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 section. 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

**STANDARD CLAUSES FOR NYS CONTRACTS**

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

**APPENDIX A**

contractor to establish to meet with the approval of the State.

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

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

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

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

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

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

NYS Department of Economic Development  
Division of Minority and Women's  
Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<http://esd.ny.gov/MWBE/directorySearch.h>

## STANDARD CLAUSES FOR NYS CONTRACTS

## APPENDIX A

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The Omnibus Procurement Act of 1992 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) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law

Section 899-aa; State Technology Law Section 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 Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 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 Section 5-a, if the contractor fails to make the certification required by Tax Law Section 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.

## APPENDIX A1

Clauses Required by  
Office of Parks, Recreation and Historic Preservation

1. Changes to Budget and Program Workplan. Changes shall not be made in the work described in the Program workplan as described in Appendix D or the proposed expenditure of funds as shown in the Budget, Appendix B, without the prior written approval of the STATE. Such approval will be granted if the changes are not substantive and do not alter the scope, intent or basic elements of the contract. Changes may be made in the Budget to reallocate funds between budget items provided such changes do not equal or exceed ten percent of the total contract value and have the STATE's written approval. Changes in the Program Workplan which are substantive or alter the scope, intent or basic elements of the contract, or Budget changes which equal or exceed ten percent of the total contract value, if agreed to by the STATE, will be implemented by an amendment to this AGREEMENT which shall be approved by the Office of the State Comptroller (See Section I, Paragraph D of the AGREEMENT).
2. Termination.
  - A. In the event the project cannot be completed as agreed upon by the STATE and the CONTRACTOR, the CONTRACTOR shall bring it to a point of recreational usefulness agreed upon by the STATE and the CONTRACTOR.
  - B. The CONTRACTOR agrees that the benefit to be derived by the United States, the State of New York and the CONTRACTOR from compliance with the terms of this agreement is the preservation, protection and net increase in the availability and quality of public outdoor recreation facilities and resources available to the people of the United States, the State of New York and the CONTRACTOR and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished under this agreement. Further, payment to the STATE of an amount equal to the amount of money made available under this agreement would be inadequate compensation for any breach by the CONTRACTOR of this agreement. Therefore, the appropriate remedy in the event of a breach of this agreement by the CONTRACTOR shall be the specific performance of this agreement.
3. Participation by New York State Businesses and Minority Group Members and Women with Respect to State Contracts; Omnibus Procurement Act. It is the policy of New York State to maximize opportunities for the participation of minorities and women as employees, and of New York State business enterprises, as subcontractors and suppliers on its procurement contracts.
  - A. Omnibus Procurement Act Provisions.
    - I. Information on the availability of New York State subcontractors and suppliers is available from:
 

Empire State Development  
Division Minority and Women's Business Development  
30 South Pearl Street  
Albany, NY 12245  
Phone: (518) 292-5250 / Fax: (518) 292-5803

Note: When requesting lists of potential subcontractors and suppliers please identify the SIC code, size and location of vendors.
    - II. If located in a foreign country the contractor is hereby notified that New York State may seek to obtain and assign or otherwise transfer offset credits created by this contract to third parties located in New York State. The contractor agrees to cooperate with the State in efforts to get foreign countries to recognize offset credits created by this contract.
  - B. Equal Employment Opportunity Provisions.
    - I. The CONTRACTOR and its subcontractors shall undertake or continue existing programs of affirmative action 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, affirmative action 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.
    - II. No later than seven days after being notified of the award of this contract the CONTRACTOR shall submit an Equal Employment Opportunity (EEO) policy statement to the STATE.

III. The CONTRACTOR's EEO policy statement shall contain, but not necessarily be limited to, and the CONTRACTOR, as a precondition to entering into a valid and binding State contract, shall, during the performance of the contract, agree to the following:

- (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 programs of affirmative action 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 on State contracts.
- (b) The CONTRACTOR shall state in all solicitations or advertisements for employees that, in performance of this 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) At the request of the STATE 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 obligation herein.

IV. No later than seven days after being notified of the award of this contract the CONTRACTOR may be required to submit to the STATE a staffing plan of the anticipated work force to be utilized on this contract or, where required, information on the CONTRACTOR's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the STATE. The form of staffing plan shall be supplied by the STATE.

V. On a schedule to be determined by the STATE, and in a form and manner required by the STATE, the CONTRACTOR shall submit to the STATE a work force utilization report, of the work force actually utilized on this contract, broken down by specified ethnic background, gender, and Federal occupational Categories or other appropriate categories specified by the STATE. The form of the staffing plan shall be supplied by the STATE.

VI. The CONTRACTOR shall include the language of sub-paragraphs (I) through (V) in every subcontract in such a manner that the requirements of the provisions will be binding upon each subcontractor as to work in connection with this contract, including the requirement that subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the CONTRACTOR information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on this contract.

VII. The CONTRACTOR agrees to comply with all applicable Federal, State and local Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services.

C. Minority/Women Owned Business Enterprise Provisions.

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

Empire State Development  
Division Minority and Women's Business Development  
30 South Pearl Street  
Albany, NY 12245  
Phone: (518) 292-5250 / Fax: (518) 292-5803

II. Definition. For the purposes of these clauses, the following definition shall apply:

- (a) "Certified business" shall mean either a business certified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law.
- (b) "Director" shall mean the Director of the Division of Minority and Women's Business Development established by section 311 of the Executive Law.
- (c) "Minority group member" shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

- (1) Black persons having origins in any of the Black African racial groups;

- (2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
  - (3) Native American or Alaskan native persons having origins in any of the original peoples of North America;
  - (4) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.
- (d) "Minority-owned business enterprises" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:
- (1) at least fifty-one percent owned by one or more minority group members;
  - (2) an enterprise in which such minority ownership is real, substantial and continuing;
  - (3) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
  - (4) an enterprise authorized to do business in this state and independently owned and operated.
- (e) "Subcontract" shall mean an agreement providing for total expenditures in excess of \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a contractor and any individual or business enterprise, including a sole proprietorship, partnership, corporation or not-for-profit corporation, in which a portion of a contractor's obligation under a state contract is undertaken or assumed.
- (f) "Women-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:
- (1) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
  - (2) an enterprise in which the ownership interest of such women is real, substantial and continuing;
  - (3) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise ; and
  - (4) an enterprise authorized to do business in this state and independently owned and operated.

### III. Utilization Program Waivers.

- (a) If goals have been established by the STATE for the participation of certified M/WBE's on this agreement, at the direction of the STATE, but in no case later than execution of the agreement the contractor shall submit to the STATE a utilization program on forms to be provided by the STATE. The utilization program shall list all subcontractors and suppliers the contractor intends to use on the contract and indicate which are certified M/WBE's.
- (b) The STATE will review the utilization program and will issue to the contractor a written notice of acceptance or deficiency within twenty days of receipt. A notice of deficiency shall include;
  - (1) the name of any M/WBE which is not acceptable for the purpose of complying with M/WBE participation goals;
  - (2) elements of the contract scope of work which the STATE has determined can be reasonably structured by the contractor to increase the likelihood of participation of M/WBES; and
  - (3) other information which the STATE determines to be relevant to the utilization program.
- (c) The contractor shall respond to the notice of deficiency within seven days of receipt by submitting to the STATE a written statement which remedies the deficiencies in the original plan. If the written remedy which the contractor submits is not timely or is found by the STATE to be inadequate, the STATE shall so notify the contractor within five days and direct the contractor to submit a request for a partial or total waiver of M/WBE participation goals on forms to be provided by the STATE. The request for waiver must be submitted within

five days of the contractors receipt of a notice that the statement of remedy was untimely or inadequate.

- (d) A contractor who has made good faith efforts to obtain commitments from M/WBE subcontractors and suppliers prior to submitting its utilization program may request a waiver at the same time it submits its utilization program. If a request for waiver is submitted with the utilization program, and is not accepted by the STATE at that time, the provisions of clauses (b) and (c), regarding the notice of deficiency and written remedy will apply. In this case, the contractor may submit a second request for waiver as directed by the STATE.
- (e) If the contractor does not submit a request for waiver, or if the STATE determines that the utilization program does not indicate that the M/WBE participation goals will be met and that the good faith efforts of the contractor have been inadequate to justify the granting of the request for waiver, the STATE shall terminate the contract, or if the contract has not been executed, the STATE shall withdraw from contract negotiations. Notice of termination or withdrawal, along with a denial of a request for waiver, where applicable, shall be delivered to the contractor no later than twenty days after the STATE receives the request for waiver.
- (f) The contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its utilization program, at least to the extent indicated in the program.

#### IV. Administrative Hearing on Disqualification of Contractor.

- (a) If the STATE disqualifies the contractor on the ground that the contractor has failed to remedy deficiencies in its utilization program or document good faith efforts to remedy such deficiencies, the contractor shall be entitled to an administrative hearing, on the record, before a hearing officer appointed by the STATE, to review the determination of disqualification of the contractor.
- (b) The hearing officer's determination shall be a final administrative determination of the STATE and shall be reviewable by a proceeding brought pursuant to the Civil Practice Law and Rules, provided such proceeding is commenced within thirty days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of section 313 of the Executive Law.
- (c) Such review shall be commenced in the Supreme Court, Appellate Division, Third Department, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Appeals taken to the Court of Appeals of the State of New York shall be subject to the same preference.

#### V. Good Faith Efforts. In order to show that it has made good faith efforts to comply with the M/WBE participation goals of this contract, the contractor shall submit such documentation as will enable the STATE to make a determination in accordance with the following criteria:

- (a) Did the contractor submit a completed, acceptable utilization program and EEO program aimed at meeting the goals for the participation of minorities and women in the contract?
- (b) Did the contractor place advertisements in appropriate general circulation, trade and minority or woman-owned publications in a timely fashion?
- (c) Did the contractor make written solicitations to women and minority-owned business enterprises listed in the directory of certified businesses in a timely fashion and include plans, specifications and contract terms. Did the businesses solicited respond in a timely fashion?
- (d) Could the contractor have reasonably structured the work to be performed under subcontracts so as to increase the likelihood of participation by certified businesses?
- (e) Did the contractor attend any prebid or preaward meetings scheduled by the STATE with M/WBE's which the STATE determined were capable of performing work or supplying materials on the contract?
- (f) Were the subcontract terms and conditions offered to M/WBE's comparable to those offered in the ordinary course of the contractor's business to other subcontractors on the contract?
- (g) Did the contractor make payments to M/WBE subcontractors and suppliers in a timely fashion?

#### VI. Reports. The contractor shall submit, and shall require subcontractors to submit, reports showing the participation of all business enterprises on this contract, including minority and women-owned business enterprises on forms and at intervals to be established by the STATE. Reports not submitted at such times as shall be required

by the STATE shall be cause for the STATE to delay implementing scheduled payments to the contractor.

VII. Contractor's Failure or Inability to Meet M/WBE Participation Goals.

- (a) If the contractor, after making good faith efforts, is unable to comply with a contract's M/WBE participation goals, the contractor may submit a request for a partial or total waiver on forms provided by the STATE. If the documentation required with the request for a waiver is complete, the STATE shall evaluate the request and issue a written notice of acceptance or denial within twenty days of receipt.
- (b) If the STATE, upon review of the contractor's utilization program and compliance reports, determines that the contractor is failing or refusing to comply with M/WBE participation goals, and no waiver has been issued in regards to such non-compliance, the STATE may issue a notice of deficiency to the contractor. The contractor must respond to the notice within seven days of receipt. This response may include a request for partial or total waiver of M/WBE participation goals.

VIII. Contractor and Agency Complaints, Arbitration.

- (a) If the contractor submits a request for a waiver of M/WBE participation goals and the STATE denies the request or fails to respond within twenty days of receiving it, the contractor may file a complaint with the Director according to the provisions of section 316 of Article 15-A of the Executive Law. The complaint must be filed within twenty days of the STATE's receipt of the request for waiver, if the STATE has not responded in that time, or within twenty days of a notification that the request has been denied by the STATE.
- (b) If the contractor fails to respond to a notice of deficiency, the STATE may file a complaint with the Director pursuant to section 316 of Article 15-A of the Executive Law.
- (c) A complaint shall set forth the facts and circumstances giving rise to the complaint together with a demand for relief.
- (d) The party filing a complaint, whether the contractor or the STATE, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by certified mail, return receipt requested.
- (e) Upon receipt of a complaint, the Director shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If within thirty days of receipt of the complaint, the Director is unable to resolve the complaint to the satisfaction of the STATE and the contractor, the complaint shall be referred to the American Arbitration Association for resolution pursuant to section 316 of Article 15-A of the Executive Law and the applicable requirements of Article 75 of the Civil Practice Law and Rules.
- (f) Upon conclusion of the arbitration proceedings, the arbitrator will submit to the Director his or her award regarding the alleged violation of the contract or the refusal of the STATE to grant a waiver request by the contractor. The award of the arbitrator with respect to an alleged violation of the contract or the refusal of the state agency to grant a waiver shall be final and may be vacated or modified only as provided by Article 75 of the Civil Practice Law and Rules.
- (g) Upon conclusion of the arbitration proceedings and the rendition of an award, the arbitrator will also recommend to the Director a remedy, including, if appropriate, the imposition of sanctions, fines or penalties. The Director will either;
  - (1) adopt the recommendation of the arbitrator;
  - (2) determine that no sanctions, fines or penalties should be imposed; or
  - (3) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or imposed by any new sanction, or increase the amount of any recommended fine or penalty.
- (h) The Director, within ten days of receipt of the arbitrator's award and recommendations, will file a determination of such matter and shall cause a copy of such determination to be served upon the parties by personal service or by certified mail, return receipt requested. The determination of the Director as to the imposition of any fines, sanctions, or penalties shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.
- (i) The determination of the STATE or the contractor to proceed with a complaint shall not preclude the STATE,

in its discretion, from pursuing any-other remedies which it may have pursuant to law and the contract.

- IX. Subcontracts. The contractor will include the provisions of sub-paragraphs (V) and (VIII) above in every subcontract, as defined in sub-paragraph (II), in such a manner that such provisions will be binding upon the subcontractor as to work in connection with this contract.

Non-Discrimination. The CONTRACTOR shall not limit access or discriminate in the operation of the facilities against any person on the basis of place of residence, race, creed, color, national origin, sex, age, disability or marital status

**APPENDIX B – BUDGET  
BIG PROJECTS**

Y-15-D1  
City of Rochester

The detailed estimated budget for the project as outlined in this AGREEMENT is as follows:

**EXPENSES:**

**TOTAL COST** \$

**FUNDING BREAKDOWN:**

FEDERAL Share \$  
CONTRACTOR Share \$

Percent of Reimbursement

## APPENDIX C - PAYMENT AND REPORTING SCHEDULE INSTALLMENTS

Y-15-D-1  
City of Rochester

- I. The STATE agrees to make available to the CONTRACTOR a sum not to exceed the funding amount identified on the face page hereof. The STATE share shall cover no more than \_\_\_ percent of eligible expenditures for any reimbursement request under this AGREEMENT. The grant reimbursement rate is determined by the ratio of funding amount to the total project cost in accordance with the budget (Appendix B). Cost overruns must be funded by the CONTRACTOR.
  
- II. The STATE'S share of the project cost as set forth in this AGREEMENT shall be paid to the CONTRACTOR as follows:
  - A. INSTALLMENTS: the CONTRACTOR shall be reimbursed up to 90% of the grant award as expenditures accrue for costs incurred from the project as outlined in Appendix B. Payment shall be made upon: (1) review and acceptance of appropriate plans, specifications, procurement, expenditure and project documentation, (2) satisfaction of conditions as outlined in Appendices E and F, (3) clear title documentation to the satisfaction of the Attorney General if the project involves the acquisition of real property, and (4) proof that the Preservation Covenant or Conservation Easement has been received by the appropriate county clerk's office for recording, if required. No more than three (3) installments shall be allowed prior to the final installment
  
  - B. A FINAL INSTALLMENT of not less than 10% of the STATE'S share of the total cost shall be made upon, to the satisfaction of the STATE:
    - (1) Completion of the project;
    - (2) Special conditions as outlined in Appendix E;
    - (3) Expenditure and project documentation;
    - (4) An accounting of all funds received in the form of a Financial Audit Certification signed by the Chief Executive Officer, which includes a detailed Summary of Grant Expenditures by Vendor and by Funding Source;
    - (5) A Final Report;
    - (6) A fully executed amendment, if required;
    - (7) Documentation showing efforts made to satisfy requirements for the participation by New York State Businesses and Minority Group Members and Women with Respect to State Contracts;
    - (8) Capital construction projects and/or acquisition projects with a grant amount of \$99,999 or less, or non-construction projects with a grant amount of \$100,000 or more, shall provide an *Agreed Upon Procedure Review* of the grant, performed by a certified public accountant currently licensed by the NYS Board of Public Accountancy, in accordance with attestation standards established by the American Institute of certified Public Accountants and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States of America;
    - (9) Capital construction projects and/or acquisition projects with a grant amount of \$100,000 or more shall provide an audit of the *Statement of Contract Revenues and Contract Expenditures* as performed by a certified public accountant currently licensed by the NYS Board of Public Accountancy in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.
  
- III. Payment shall be made upon approval by the STATE and audit and warrant of the State Comptroller of vouchers executed by an authorized officer of the CONTRACTOR accompanied by such receipts and documents verifying expenditures as may be required by the STATE.

- IV.** The CONTRACTOR shall submit, with each payment request, a certificate executed by an authorized officer, which shall attest that said payment does not duplicate a request for payment, or any payment received, from any other source for goods or services under this AGREEMENT.
- V.** The designated payment office shall be New York State Office of Parks, Recreation and Historic Preservation, Albany, New York 12238 Attention: Grants Unit (for USPS Mail) and 625 Broadway, Albany, New York 12207 (For Physical Delivery).
- VI.** Within fifteen days of receiving the voucher, the STATE shall notify the CONTRACTOR of any problem with the voucher; for example, whether there are mistakes on the voucher or additional documents must be submitted. Once the CONTRACTOR has submitted a voucher to the STATE, the STATE will review and audit the voucher and submit it to the State Comptroller within thirty days.
- VII.** The CONTRACTOR can receive reimbursements of all or any part of the above referenced schedule provided the appropriate expenditure and project documentation is submitted and approved by the STATE.

**APPENDIX D - PROGRAM WORKPLAN  
CONSTRUCTION PROJECTS - GOALS**

Y-15-D-1  
City of Rochester

**I. PROJECT NARRATIVE:**

**II. ARTICLE 15A PARTICIPATION:**

The STATE has established the following goals for the participation of certified minority and women-owned businesses (MWBEs) on this project:

A combination of 20% Minority AND Women-owned Businesses,  
to include at least 1% participation in either category.

The CONTRACTOR shall comply with the provisions of the document labeled Appendix A1, which is attached to and made a part of this AGREEMENT.

**III. PROJECT SCHEDULE:**

The following Schedule is a recommended timeframe for monitoring major thresholds, which will result in completion of the grant by the scheduled ending date. This does NOT describe all the required steps involved in meeting these thresholds, nor is it intended to be a precise calendar. Nevertheless, not only is the schedule to be used as a monitoring tool by the CONTRACTOR and by the STATE, non-adherence to these timeframes without acceptable justification will be used as criteria in determining grant cancellation. The project documentation listed below should be submitted for approval/acceptance by the STATE as follows:

ITEM

DATE DUE

**THE FOLLOWING ITEMS MUST BE SATISFIED BEFORE STARTING THE BIDDING PROCESS:**

Special Conditions (see Appendix E)

A copy of the Solicitation/RFP for Design Services

Final Plans and Specifications

**UPON SATISFACTION OF THE ABOVE, PROCEED WITH THE FOLLOWING:**

Bidding Process Commences

Bid Award

MWBE Utilization Program

Start of Construction

MWBE Required Reports

MONTHLY BEGINNING

Payment Requests

ONGOING

Project Completion

December 31,

Close-out Documentation Requirements (See Appendices C and E)

March 31,

APPENDIX X - MODIFICATION AGREEMENT FORM - **SAMPLE - do not sign**

Period From: \_\_\_\_\_ Agency Code: 49070  
 To: \_\_\_\_\_ Project #:  
 \_\_\_\_\_ Contract #:  
 Funding Amount for Period: \_\_\_\_\_

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the Office of Parks, Recreation and Historic Preservation, having its principal office at Albany, New York 12238 (For USPS postal mail), with offices at 625 Broadway, Albany, New York 12207 (For physical delivery), (hereinafter referred to as the STATE), and the City of Rochester having its principal office at City of Rochester, City Hall Room 308A, 30 Church Street, Rochester, New York 14614 (hereinafter referred to as the CONTRACTOR), for modification of Contract Number C0Y15D1, as amended in attached Appendix.

All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR:

STATE AGENCY:

New York State Office of Parks,  
Recreation and Historic Preservation

By:

By:

Printed Name:

Date:

Printed Title:

State Agency Certification:

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

Date:

STATE OF NEW YORK )  
 ) SS.:  
 County of )

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

\_\_\_\_\_  
 (Notary Public, State of New York)

ATTORNEY GENERAL:

Approved:

Thomas P. DiNapoli  
 State Comptroller

By \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX E - SPECIAL CONDITIONS AND REQUIREMENTS**  
**BIG PROJECTS**  
Y-15-D-1  
City of Rochester

**I. The following additional special conditions apply to this AGREEMENT:**

- The CONTRACTOR agrees to execute and keep in effect the Notice of Grant Agreement as the STATE deems appropriate.
- This AGREEMENT and the Notice of Grant Agreement must not be subordinate to any other security interest in the property including, but not limited to, purchase money mortgages.
- Facilities construction and/or renovation must be designed to last at least 20 years. This facility will be used and maintained for the purpose for what it was constructed or installed for the "reasonable" life of the facility.
- Facilities must allow reasonable public access to transient vessels, charging equitable fees, and be open for reasonable periods.
- Facilities must maintain access to funded services in water greater or equal to 6 feet of depth at the lowest tide or other measure of lowest fluctuation.
- Facilities must provide security, safety, and services for transient boats.
- Facilities are for temporary (less than 10 day visit) use by non-trailerable (greater than or equal to 26 feet) transient recreational vessels (operated primarily for pleasure).

**III. Prior to the commencement of work** on this project, the CONTRACTOR shall provide the following documentation, to the satisfaction of the State:

- This project requires permits from NYS DEC and the U.S. Army Corp of Engineers (COE). A copy of the permits are **needed prior to any construction for this project and must be filed with the STATE.**
- Any fees that are charged for the use of marina funded by this grant are subject to review by the STATE.
- In the event of any unanticipated archeological discoveries, the CONTRACTOR shall stop all work and notify the STATE immediately. Work shall not resume until the STATE determines how any previously undiscovered archeological remains will be treated. Special attention shall be given to any discovery of burials, graves, or human remains.

**IV. Prior to the final payment and administrative close-out of this AGREEMENT,** the CONTRACTOR shall provide the following documentation, to the satisfaction of the STATE:

- Performance of a Final On-Site Inspection by the STATE
- A List of facilities developed and/or acres acquired
- An as-built and as-acquired site map and a final boundary map (may be prepared on one map). When parkland is involved, a map of the entire park, even if the subject of the grant involves property that is less than the entire park. The boundary map should show both: {a} the actual boundaries of the entire park in yellow, and in enough detail to be legally sufficient to identify the parkland, and {b} the actual boundaries of those parcels that are the subject of an acquisition or donation, color-coded and keyed to the "Schedule 1 - Summary Sheet Per Parcel" form. Acceptable methods of identification are: {1} metes and bounds (preferred), {2} deed references, {3} adjoining water bodies or other natural landmarks, {4} government survey, {5} adjoining ownerships and/or {6} adjoining easements of record. Where one or more of these methods are not suitable for identification, measurements from permanent locators may be used. It is recommended that the map itself clearly show pertinent features such as roads, road names and numbers, bodies of water, buildings, structures, etc. The map must also identify all known outstanding rights and interests held

by others, as well as known easements, deed/lease restrictions, reversionary interests, etc. The map must also include the title and number of the project, date of map preparation and name and signature of authorized officer.

## **APPENDIX F - PROGRAM SPECIFIC REQUIREMENTS BIG PROJECTS**

Y-15-D1  
City of Rochester

**I. Equipment Purchase.** Defined as tangible non-expendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5000 or more per unit.

A. Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

B. The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

C. The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

- (1) Activities sponsored by the Federal awarding agency which funded the original project, then
- (2) Activities sponsored by other Federal awarding agencies.

D. During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

E. When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

F. The recipient's property management standards for equipment acquired with Federal funds and federally owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

- a) A description of the equipment.
- b) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.
- c) Source of the equipment, including the award number.
- d) Whether title vests in the recipient or the Federal Government.
- e) Acquisition date ( or date received, if the equipment was furnished by the Federal Government) and cost.
- f) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).
- g) Location and condition of the equipment and the date the information was reported.
- h) Unit acquisition cost.
- i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the cause of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage or theft of equipment shall be investigated and fully documented. If the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

G. When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has not need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

- (a) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.
- (b) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding (agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.
- (c) When the Federal awarding agency exercise its right to take title, the equipment shall be subject to the provisions for federally-owned equipment

## II. Construction Requirements.

A. Any consultant contract in the amount of twenty-five thousand dollars (\$25,000) or more for architectural, engineering or design services shall be awarded on a competitive basis after the CONTRACTOR has developed and publicized a Request for Proposal; a copy of the Request for Proposal and documentation of all responses shall be included with submission by the CONTRACTOR of any voucher for payment for such services.

- B. Contract plans, specifications, and cost estimates shall be submitted to the STATE for review prior to the letting of any construction contract by the CONTRACTOR. Once all changes have been made and agreed to by the STATE and the CONTRACTOR, the CONTRACTOR shall submit three copies of the plans, specifications and cost estimates to the STATE. The STATE shall verify that the plans, specifications and cost estimates are in conformance with the work described in "APPENDIX B - BUDGET" and shall so notify the CONTRACTOR in writing; the STATE shall further verify that appropriate documents have been prepared by a professional licensed to practice in the State of New York. A complete set shall be returned to the CONTRACTOR by the STATE and shall be kept on the project site at all times. All plans and specifications as reviewed shall become part of this AGREEMENT, and no change or revision may be made to such plans and specifications without the express written consent of the STATE.
  - C. Contracts for construction in excess of twenty thousand dollars (\$20,000) shall be awarded after competitive bidding in accordance with the provisions of the General Municipal Law. A certified copy of a summary of all bids shall be submitted to the STATE prior to awarding a contract, and an executed copy of the construction contract will thereafter be submitted to the STATE.
  - D. The CONTRACTOR shall be responsible for assuring that the project is designed and constructed in conformance with the Uniform Federal Accessibility Standards (UFAS -- Appendix A to 41 CFR part 101- 19.6), the Americans with Disabilities Act Accessibility Guidelines (ADAAG -- Appendix A to 28 CFR part 36) and the New York State Uniform Fire Prevention and Building Code (parts 1100-1102 of Title 9 NYCRR). Where there are discrepancies among the sets of standards with regard to a particular design/construction requirement, the one providing for the greatest degree of accommodation for the disabled shall apply.
  - E. It is the CONTRACTOR'S responsibility to assure that all work on the project complies with all applicable federal, state and/or local laws including, but not limited to, zoning ordinances and building codes.
  - F. All purchase contracts involving an expenditure of more than ten thousand dollars (\$10,000) shall be awarded to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided for in section 103 of the General Municipal Law.
  - G. It is the CONTRACTOR's responsibility, pursuant to Section 57 of the Workers' Compensation Law, to maintain for STATE audit and review either proof that they have Workers' Compensation coverage for any employees, or a waiver statement from the New York State Department of Labor. The CONTRACTOR must also obtain from any contractor or sub-contractor hired to provide a service pursuant to this AGREEMENT, similar proof or waiver from the contractor or sub-contractor, and must maintain such documentation on file for audit.
  - H. Goods and services which are not required by this contract to be procured by the CONTRACTOR pursuant to competitive bidding must be procured in a manner so as to assure the prudent and economical use of grant moneys, to facilitate the acquisition of good and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption.
- III. User Fees.** The CONTRACTOR shall be permitted to charge reasonable user fees for the facility, provided such fees are consistent, comparable to and at the same rate as fees charged by other facilities for similar use at equivalent facilities. Fees must neither discriminate against nor discourage anyone from using the facilities. Revenues from user fees must be utilized to offset their cost of operating and maintaining the facilities for its useful life. In the event that a user fee is charged, the owner shall establish a separate account for all funds received and expended in connection with the facility. The owner shall preserve such records and permit THE STATE to inspect and audit these records upon request. The CONTRACTOR shall provide documentation of all fees to be charged for use of the facility and shall provide any additional information upon request as to how the value of such fees were determined. No fees may be charged until the owner receives approval, in writing, from THE STATE, and fees may not be increased or modified without the written consent of THE STATE.
- IV. Funding.** The CONTRACTOR hereby certifies that the funds made available by the STATE under this AGREEMENT shall not supplant local funds already appropriated or identified by the CONTRACTOR for the project.
- V. Non-Sectarian Certification.** The CONTRACTOR certifies that funds made available under this agreement shall not be used directly or indirectly for any sectarian purpose.
- VI. Signage.** The CONTRACTOR must give credit to the Federal Aid in Sport Fishing Restoration program as the source of funding for the CONTRACTOR'S project by using crediting logo identified in 50 CFR Part 86.26 Suggested wording follows: The Federal Aid in Sport Fishing Restoration Program funded this facility thanks to your purchase of fishing

equipment and motorboat fuels.

**VII.** In the event of any unanticipated archeological discoveries, the CONTRACTOR shall stop all work and notify the STATE immediately. Work shall not resume until the STATE determines how any previously undiscovered archeological remains will be treated. Special attention shall be given to any discovery of burials, graves or human remains.

**VIII. Termination.** The CONTRACTOR shall complete the project as set forth in this AGREEMENT, and failure to render satisfactory progress or to complete the project to the satisfaction of the STATE, may be deemed an abandonment of the project and cause for the suspension or termination of any obligation of the STATE. In the event the CONTRACTOR should be deemed to have abandoned the project for any reason or cause other than a national emergency or an Act of God, all monies paid to the CONTRACTOR by the STATE and not expended in accordance with this AGREEMENT shall be repaid to the STATE upon demand. If such monies are not repaid within one year after such demand, the State Comptroller of the State of New York may cause to be withheld from any State assistance to which the CONTRACTOR would otherwise be entitled an amount equal to the monies demanded (see Section III of this AGREEMENT).

**IX. Alienation.**

- A. The CONTRACTOR shall not sell, lease or otherwise convey in any manner or permit a change in use of the project, in whole or in part, for the period of time specified in Appendix E of this AGREEMENT, unless it shall have first received the approval of the STATE.
- B. The CONTRACTOR agrees to own or hold by lease or agreement and to maintain and operate the project for the period of time specified in Appendix E of this AGREEMENT, from the date of the final disbursement of federal funds under this AGREEMENT. During such period, the CONTRACTOR shall not authorize the operation of the project, or any portion thereof, by any other person, entity, or organization pursuant to any management agreement, lease or other arrangement without first obtaining the written approval of the STATE.
- C. The CONTRACTOR shall operate, maintain and use the facility throughout its useful life (at least 20 years) for the purposes stated in the proposal and must obtain written approval from the appropriate U.S. Fish and Wildlife Service Regional Director before converting the facility to another use. The CONTRACTOR shall allow reasonable access to all recreational vessels and may charge equitable fees. Vessels should at least have access to the shore and basic features such as fuel, water, electricity, restrooms, and pump-out.

**Additional Federal Requirements**

- I. **Fiscal Management.** In addition to the terms detailed in this AGREEMENT, all Federal requirements governing grants including the provisions of the Single Audit Act of 1984 (P.L. 98-502) and the Single Audit Act Amendments of 1996 (P.L. 104-156) apply. Any Contractor receiving at least \$500,000 or more in Federal funds (from all sources), during the fiscal year, must provide a Single Audit Report or a program specific audit.
- II. **Stevens Amendment.** When issuing statements, press releases, requests for proposals, bid solicitations and other documents in relation to the project, the CONTRACTOR shall clearly state (1) the percentage of the total cost of the project which will be financed with Federal money and (2) the dollar amount of Federal funds available for the project.
- III. **Hatch Act.** A municipal official or employee whose principal employment is in connection with an activity which is financed in whole or pursuant to this agreement is subject to the requirements of the Hatch Act (5 USC sections 1501 et seq) and may not be a candidate in a partisan election, use his or her position for the purpose of interfering with or affecting the result of an election, or coerced or advise any employee to support any political organization or candidate. (This statement is a summary of the requirements of the Hatch Act and may not include all of the provisions which are applicable, including those relating to exemptions and sanctions.)
- IV. **Lobbying.** No part of the money appropriated by an enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or its Departments or agencies from communicating to Members of Congress at the request of any Member, or to Congress through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

- V. **Reporting.** All projects must submit an annual, quarterly and a final performance report complying with 43 CFR 12.80 to THE STATE which will forward same to U.S. Fish and Wildlife Service. Quarterly reports are due December 30, March 31, June 30 and September 30. These reports must include the following information:
- A. Identify the actual accomplishments compared to the objectives established for the period.
  - B. Identify the reason if established objectives were not met.
  - C. Identify any additional pertinent information, when appropriate, analysis and explanation of cost overruns.

DOS - 1  
**FACE PAGE**

<b>STATE AGENCY (Name and Address):</b>
NYS Department of State One Commerce Plaza 99 Washington Avenue - Suite 1010 Albany, NY 12231-0001

<b>NYS CONTRACT NUMBER:</b>	<b>C007144</b>
<b>ORIGINATING AGENCY CODE:</b>	19000/DOS01
<b>TYPE OF PROGRAM:</b> Environmental Protection Fund Title 11 - Local Waterfront Revitalization Program	

<b>CONTRACTOR (Name and Address):</b>
City of Rochester 30 Church Street Rochester, NY 14614

<b>VENDOR ID NUMBER:</b> 1000004320
<b>FEDERAL TAX ID NUMBER:</b> 16-6002551
<b>MUNICIPALITY NUMBER:</b>

<b>STATE SHARE FUNDING AMOUNT:</b> \$745,545.00
<b>LOCAL SHARE FUNDING AMOUNT:</b> \$745,545.00

<b>CONTRACTOR STATUS:</b>	
Sectarian Entity	Yes ____ No <u>X</u>
Not-for-Profit Organization	Yes ____ No <u>X</u>
<b>CHARITIES REGISTRATION NUMBER:</b> ____ - ____ - ____ / (E-1) - 3A Estates, Powers and Trusts Laws Reporting (E-2) - 02	

<b>INITIAL CONTRACT PERIOD</b>
<b>FROM:</b> April 1, 2011 <b>TO:</b> March 31, 2014

If you did not claim an exemption to both of the items above, you must circle appropriate response in the following statement:  Contractor [has/has not] timely filed with the Attorney General's Charities Bureau all required periodic or annual written reports.
---

**APPENDICES ATTACHED TO AND PART OF THIS AGREEMENT**

APPENDIX A: Standard Clauses for NYS Contracts
APPENDIX A1: Agency-Specific Clauses
APPENDIX B: Budget
APPENDIX C: Payment and Reporting Schedule
APPENDIX D: Program Work Plan
APPENDIX F: Notices
APPENDIX X: Modification Agreement Form

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

Contract No. C007144

## CONTRACTOR

City of Rochester

By: [Signature]  
Thomas S. Richards  
 (Print Name)  
 Title: Mayor  
 Date: 6/4/2012

## STATE AGENCY

New York State Department of State

By: [Signature]  
George A. Lipe  
 (Print Name)  
 Title: DIRECTOR OF FINANCIAL ADMINISTRATION  
 Date: 6/26/12

## State Agency Certification

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

## ACKNOWLEDGMENT

State of New York )  
 County of Monroe )ss:

On this 4th day of June, in the year 20 12, before me personally appeared Thomas S. Richards, to me known and known to me to be the person who is the Mayor of Rochester, NY, the organization described in and which executed the above instrument; and that he/she has the authority to sign on behalf of said organization; and that he/she executed the foregoing agreement for and on behalf of said organization.

Angela Sorber  
 NOTARY PUBLIC

ANGELA SORBER  
 Notary Public, State of New York  
 Monroe County  
 Registration # 01SO4888920  
 Commission Expires April 6, 2015

## ATTORNEY GENERAL'S SIGNATURE:

By: [Signature]  
 Date: JUN 28 2012  
James W. [Signature]  
 ATTORNEY GENERAL

## STATE COMPTROLLER'S SIGNATURE:

**APPROVED**  
 DEPT. OF AUDIT & CONTROL  
 By: [Signature]  
 Date: AUG 01 2012  
Patricia M. O'Donnell  
 FOR THE STATE COMPTROLLER

DOS - 3  
**STATE OF NEW YORK**  
**AGREEMENT**

This AGREEMENT is hereby made by and between the State of New York agency (STATE) and the public or private agency (CONTRACTOR) identified on the Face Page hereof.

WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT;

NOW, THEREFORE, in consideration of the promises, responsibilities and covenants herein, the STATE and the CONTRACTOR agree as follows:

**I. Conditions of Agreement**

A. This AGREEMENT may consist of successive periods (PERIOD), as specified within the AGREEMENT or within a subsequent Modification Agreement(s) (Appendix X). Each additional or superseding PERIOD shall be on the forms specified by the particular State agency, and shall be incorporated into this AGREEMENT.

B. Funding for the first PERIOD shall not exceed the funding amount specified on the Face Page hereof. Funding for each subsequent PERIOD, if any, shall not exceed the amount specified in the appropriate appendix for that PERIOD.

C. This AGREEMENT incorporates the Face Page attached and all of the marked appendices identified on the Face Page hereof.

D. For each succeeding PERIOD of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT.

To modify the AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, or change in the term, is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A1.

E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Work Plan (Appendix D) in accordance with: provisions of this AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.

G. Appendix A. (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of this AGREEMENT.

**II. Payment and Reporting**

A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.

B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to exceed the amount noted on the Face Page hereof or in the respective Appendix designating the payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.

C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

### III. Terminations

- A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.
- B. The STATE may terminate this AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.
- C. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A1.
- D. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with terms of the notice.
- E. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.
- F. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of this AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

### IV. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

### V. Property

Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A1.

### VI. Safeguards for Services and Confidentiality

- A. Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
- B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.
- C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under this Agreement and in conformity with applicable provisions of laws and regulations, or specified in Appendix A1.

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, 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 (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

**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 because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. 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 (2NYCRR 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 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 section. 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  
30 South Pearl St -- 7th Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

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  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 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) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 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 Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 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 Section 5-a, if the contractor fails to make the certification required by Tax Law Section 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.

*Revised December 2011*

**AGENCY-SPECIFIC CLAUSES**

- I. This Agreement has been entered into pursuant to the following understandings:
  - A. Title 11 of the Environmental Protection Fund Act provides for State assistance to municipalities for the State share of the cost of approved local waterfront revitalization projects as defined in the Act.
  - B. The Department of State (Department) is authorized by such Act to evaluate and determine eligibility of applications for funding of projects.
  - C. Based upon information, representations and certifications contained in Contractor's application for funding, including the Program Work Plan as set forth in Appendix D, the Department has made a determination of eligibility of funding for Contractor's project under such Act.
  - D. State funds (Funding Amount set forth on the Face Page) for this Project (Appendix D Program Work Plan) are provided pursuant to a reappropriation of funds originally made by Title 11 of the Environmental Protection Fund Act.
  - E. The Contractor has demonstrated its ability to finance its share of the Project and has agreed to fund its portion of the cost of the Project.
- II. General
  - A. For the purposes of this Agreement, the terms "State" and "Department" are interchangeable, unless the context requires otherwise. In addition, the terms "Agreement" and "Contract" are interchangeable, unless the context requires otherwise.
  - B. The contract period as set forth on the Face Page is the inclusive period within which the provisions of this Agreement shall be performed.
  - C. No liabilities incurred prior to the contract period will be eligible under this Agreement.
  - D. No liabilities are to be incurred beyond the contract period and no costs will be reimbursed for such liabilities unless: 1) funds have been reappropriated for the Project in the subsequent State fiscal year, 2) the Department determines that it is in the best interest of the Department and the State to provide additional time to complete the Project and 3) an extension agreement is approved in accordance with Section IA. of the Agreement.
  - E. Subject to the availability of funds, determination by the Department that it is in the best interest of the State, and upon mutual written consent of the parties, the State may provide a no-cost time extension for up to two contract periods not to exceed twelve months each. The parties shall revise or complete the appropriate appendix form(s), which may be subject to approval of the Office of the State Comptroller.
  - F. To modify any terms of this Agreement within an existing period, the parties shall revise or complete the appropriate appendix form(s), which may be subject to approval of the Office of the State Comptroller.
  - G. The Department shall not be liable for expenses of any kind incurred in excess of the State Funds as set forth on the Face Page, and shall not be responsible for seeking additional appropriations or other sources of funds for the Project.
  - H. The Contractor shall perform all services to the satisfaction of the Department. The Contractor shall provide all services and meet the program objectives described in Appendix D in accordance with: provisions of this Agreement; relevant State, federal and local laws, rules and regulations, administrative and fiscal guidelines; where applicable, operating certificates for facilities or licenses for an activity or program, and conditions of applicable permits, administrative orders and judicial orders.
  - I. The Contractor shall submit with its request for final payment a Final Project Summary Report (Appendix C - Attachment 1) and a final Project Status Report (Appendix C - Attachment 2).
  - J. The Contractor agrees to proceed expeditiously with the Project and to complete the Project in accordance with the timetable set forth in the Work Plan (Appendix D) as well as with the conditions of any applicable permits, administrative orders, or judicial orders and this Agreement.

- K. The Contractor shall submit a Quarterly Contractor Report (Appendix C - Attachment 4) pursuant to the Department's Minority and Women-owned Business Enterprises Program. In the event Contractor utilizes Minority and Women-owned Business Enterprises as discussed in Section XVI in Appendix A1, such report shall be provided to the Department at the address on the Quarterly Contractor Report.
- L. The Contractor shall submit a Project Status Report (Appendix C - Attachment 2) on a quarterly basis for the periods ending March 31, June 30, September 30 and December 31. Reports are due no later than 30 days following the end of each reporting period.

### III. Additional Requirements for Construction Projects

- A. Project design, including preparation of final plans and specifications, and supervision of construction shall be undertaken by a qualified architect and/or engineer licensed to practice in the State of New York. The Contractor shall submit final plans and specifications to the Department for its acceptance before initiating construction work or, if the Contractor intends to subcontract for construction work, before the work is advertised for bidding. No change to project plans may be made without the prior written approval of the Department. The Contractor shall also be responsible for erecting a project sign satisfactory to the Department identifying the Project. The project sign shall remain in place for the useful life of the improvements undertaken pursuant to this Agreement. Upon completion of the Project, the Contractor shall submit to the Department a proper certification from a licensed architect or engineer.
- B. The State shall make periodic inspections of the project both during its implementation and after its completion to ensure compliance with this Agreement. The Contractor shall allow the State unrestricted access to work during the preparation and progress of the work, and provide for such access and inspection by the State in all construction contracts relating to the project.
- C. The Contractor shall be responsible for ensuring that the project is designed and constructed in conformance with the Uniform Federal Accessibility Standards (UFAS - Appendix A to 41 CFR part 101-19.6), the Americans with Disabilities Act Accessibility Guidelines (ADAAG - Appendix A of Title 9 NYCRR). Where there are discrepancies among the sets of standards with regard to a particular design/construction requirement, the one providing for the greatest degree of accommodation for the disabled shall apply.
- D. It is the Contractor's responsibility, pursuant to Section 57 of the Workers' Compensation Law, to maintain for State audit and review either proof that they have Workers' Compensation coverage for any employees, or a waiver statement from the New York State Department of Labor. The Contractor must also obtain from any contractor or sub-contractor hired to provide a service pursuant to this Agreement, similar proof or waiver from the contractor or subcontractor, and must maintain such documentation on file for audit.

### IV. Reports, Documents and Maps

The Contractor shall, where appropriate, identify documents, reports, and maps produced in whole or in part under this Agreement by endorsing on said documents, reports, and maps the following:

*"This (document, report, map, etc.) was prepared for the New York State Department of State with funds provided under Title 11 of the Environmental Protection Fund Act."*

### V. License to use and reproduce documents and other works

By acceptance of this Agreement, Contractor transfers to the Department a nonexclusive license to use, reproduce in any medium, and distribute any work prepared for or in connection with the Project, including but not limited to reports, maps, designs, plans, analysis, and documents regardless of the medium in which they are originally produced. Contractor warrants to the Department that it has sufficient title or interest in such works to license pursuant to this Agreement. Such warranty shall survive the termination of this agreement. Contractor agrees to provide the original of each such work, or a copy thereof which is acceptable to the Department, to the Department before payments shall be made under this Agreement.

### VI. Contractors Insurance Requirements

- A. Prior to the commencement of the work, the Contractor shall file with the Department of State, Certificates of Insurance evidencing compliance with all requirements contained in this Agreement. Such certificate shall be of form and substance acceptable to the Department.

- B. Acceptance and/or approval by the Department does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Agreement.
- C. All insurance required by the Agreement shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State; shall be primary and non-contributing to any insurance or self insurance maintained by the Department; shall be endorsed to provide written notice be given to the Department, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail which shall be sent to New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231-0001; and shall name the People of the State of New York and their directors officers, agents, and employees as additional insured thereunder.
- D. The Contractor shall be solely responsible for the payment of all deductibles to which such policies are subject.
- E. Each insurance carrier must be rated at least "A" Class "VII" in the most recently published Best's Insurance Report. 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 Department and rated at least "A" Class "VII" in the most recently published Best's Insurance Report.
- F. The Contractor shall cause all insurance to be in full force and effect as of the date of this Agreement and to remain in full force and effect throughout the term of this Agreement and as further required by this Agreement. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.
- G. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply the Department updated replacement Certificates of Insurance, and amendatory endorsements.
- H. Unless the Contractor is self-insured, Contractor shall, throughout the term of the Agreement or as otherwise required by this Agreement, obtain and maintain in full force and effect the following insurance with limits not less than those described below and as required by the terms of this Agreement, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies). Where Contractor is self-insured, the Contractor shall provide suitable evidence of such to the Department relating to the risks and coverage amounts as provided hereunder.
  - 1. Comprehensive Liability Insurance with a limit of not less than \$1,000,000 each occurrence. Such liability shall be written on the Insurance Service Office's (ISO) occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, owners & contractors protective, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
    - a. If such insurance contains an aggregate limit, it shall apply separately to this location.
    - b. Products and Completed Operations coverage shall include a provision that coverage will extend for a period of at least twelve (12) months from the date of final completion and acceptance by the owner of all of contractors work.
  - 2. Where the Project described in Appendix D includes the construction of any structure or building, a Builder's Risk Policy until the Project is completed and accepted in the amount of the total project cost.
  - 3. Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. Workers Compensation Policy shall include the U.S. Longshore & Harbor Workers' Compensation Act endorsement.
  - 4. Comprehensive Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles.
  - 5. Commercial Property Insurance covering at a minimum, the perils insured under the ISO Special Clauses of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms, and property of the Department held in their care, custody and/or control.
  - 6. An Owner's Protective Liability Policy with limits no less than \$1,000,000 in the name of the Contractor.

- I. Professional consultants retained by the Contractor in connection with the Project shall show evidence of professional liability insurance with limits no less than \$1,000,000.

#### VII. Property

- A. Pursuant to the provisions set forth in Section V, Page 3 of this Agreement, the ownership of all property described therein shall reside with the Contractor unless otherwise specified in writing by the Department at any time during the term of this Agreement and up to thirty (30) days following the issuance of the final payment.
- B. Contractor warrants that it has fee simple or such other estate or interest in the site of the Project, where the Project is undertaken at a site, including easements and /or rights-of-way sufficient to assure undisturbed use and possession for the purposes of construction and operation for the estimated life of the Project. Contractor further acknowledges that where such project is undertaken on or involves the use of lands for active or passive recreational use, it is a material term of this Agreement that such lands shall be available for such recreational use by the People of the State of New York. Additionally, Contractor shall not limit access or discriminate on the operation of the facilities against any person on the basis of place of residence, race, creed, color, national origin, sex, age, disability or marital status.

#### VIII. Date/Time Warranty

- A. Contractor warrants that product(s) 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.
- B. 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 there from, including but not limited to the failure or untimely performance of such services.
- C. This Date/Time Warranty shall survive beyond termination or expiration of this Contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

#### IX. Fees

The Contractor may charge a reasonable fee for the use of any facility which is part of the project.

- A. Except for the imposition of a differential fee schedule for non-residents of the municipality in which the project is located, the establishment of any preferential user fee for any person or entity is prohibited. Fees charged to non-residents shall not exceed twice those charged to residents.
- B. Where there is no charge for residents but a fee is charged to non-residents, non-resident fees cannot exceed fees charged for residents at comparable State or local public facilities.
- C. Reservation, membership or annual permit systems available to residents must also be available to non-residents and the period of availability must be the same for both residents and non-residents.
- D. This provision does not apply to non-residents' fishing and hunting license fees.

#### X. Alienation

Where the project is undertaken on or involves parklands or public waterfront land, the following additional provisions apply:

- A. The Contractor shall not at any time sell or convey any facility or any portion of the project acquired or developed pursuant to this Agreement or convert such facility or any portion of the project to other than public park or public waterfront purposes without

the express authority of an act of the Legislature, which shall provide for the substitution of other lands of equal fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by State.

- B. The Contractor agrees to own a property interest sufficient to maintain and operate the project in perpetuity. The Contractor shall not authorize the operation of the project, or any portion thereof, by any other person, entity, or organization pursuant to any management agreement, lease or other arrangement without first obtaining the written approval of the State.

XI. Subcontracting Requirements

- A. The Contractor may subcontract for all or any portion of the activities covered by this Agreement as provided for in Appendix D, subject to prior written approval by the Department of any subcontractor and the terms of any subcontract. Subcontractors shall comply with all applicable requirements of the Agreement between the Contractor and the State.

XII. Compliance with Procurement Requirements

- A. The municipal attorney, chief legal officer or financial administrator of the Contractor shall certify to the State (Appendix C - Attachment 3) that applicable public bidding procedures of General Municipal Law § 103 were followed for all public work involving an expenditure of more than \$35,000 and purchase contracts involving an expenditure of more than \$20,000.
- B. The municipal attorney, chief legal officer or financial administrator of the Contractor shall certify to the State (Appendix C - Attachment 3) that the procedures of the municipality established pursuant to General Municipal Law § 104-b were fully complied with for all public work and purchase contracts which are not applicable to the public bidding procedures of General Municipal Law § 103.
- C. For non-municipal entities such as community-based organizations, the chief legal officer or financial administrator of the Contractor shall certify to the State (Appendix C - Attachment 3) that alternative proposals and quotations for professional services were secured by use of written requests for proposals through a publicly advertised process, to ensure the prudent and economical use of public funds for professional services of maximum quality at reasonable cost.

XIII. Requirements for Contract GIS Products

- A. GENERAL MAP PRODUCT REQUIREMENTS — The following general cartographic requirements must be adhered to by the Contractor:
1. Map Products -- The Department requires delivery of digital map products, unless otherwise specified in the Request for Proposal (RFP), that meet the specifications outlined in this GENERAL MAP PRODUCT REQUIREMENTS section and the ADDITIONAL DIGITAL CARTOGRAPHIC FILE REQUIREMENTS section. If analog map products are required by the RFP, they must meet specifications outlined in this GENERAL MAP PRODUCT REQUIREMENTS section and the ADDITIONAL DIGITAL-READY MAP PRODUCT REQUIREMENTS section.
  2. Deliverable Format -- All digital map and attribute table files must be provided in MapInfo Tab file format on Recordable CD or DVD, 3.5" floppy diskette media, external hard drive, via e-mail attachment (preferably in a WinZIP file) or downloadable from an ftp site on the Internet. Alternatively, the digital products may be provided in ArcInfo/GIS export format (.c00) or ArcView shape file format on the same media types upon approval of the Department. All other digital formats require prior approval of the Department. Coordination with the Department prior to submission of digital media is required to ensure compatibility of the delivered materials.
  3. Documentation -- A data dictionary must be included along with the map files describing file contents and file names, as well as metadata for each file including map projection, horizontal and vertical datums used, coordinate system, RMS accuracy and log sheet, information sources and dates, the map maker and date of preparation, and creation methodology. Data provided under federal funds must be provided in a manner which meets Digital Geospatial Federal Geographic Data Committee Metadata Standard as executed by Executive Order 12906, April 11, 1994, "Coordinating Geographic Data Acquisition and Access: the National Spatial Data Infrastructure".
  4. Map Accuracy -- Unless otherwise stated in the RFP, all deliverable map products must conform to National Map Accuracy Standards for horizontal and vertical accuracy as established by the United States Bureau of the Budget, June 10, 1941, revised June 17, 1947. For example, for maps at 1:20,000 or smaller, not more than 10% of the well-defined map points tested must be more than 1/50 inch (0.508 mm) out of correct position. At 1:24,000, this tolerance translates to a required

horizontal accuracy of 40 feet. If by prior agreement with the Department the map product does not conform to National Map Accuracy Standards, then a statement of actual map accuracy should be included in the Documentation above. Furthermore, hydrographic surveys and maps should conform to recommended accuracy standard proposed in the joint USGS, NOS, Coastal Mapping Handbook, 1978, Melvin Ellis editor, U.S. Government Printing Office, Appendix 6.

5. Datums -- Unless otherwise specified in the RFP, all map products should be referenced to the North American Horizontal Datum of 1983 (NAD83) and the National Geodetic Vertical Datum of 1988 (NGVD88).

**B. ADDITIONAL DIGITAL CARTOGRAPHIC FILE REQUIREMENTS --** The following cartographic construction requirements must be adhered to by the Contractor:

1. Edge-matching -- All map sheets must be both visually and coordinate edge-matched with adjacent map sheets. No edge-match tolerance will be allowed. Attributes for splittable features must also be identical.
2. Common Boundaries -- All features that share a common boundary, regardless of map layer, must have exactly the same coordinate position of that feature in all common layers.
3. Point Duplication -- No duplication of points that occur within a data string is permitted.
4. Connectivity -- Where graphic elements visually meet, they must also digitally meet. All confluences of line and polygon data must be exact; "overshoots", "undershoots", "slivers", or "offshoots" are NOT permitted.
5. Line Quality -- A high quality cartographic appearance must be achieved. Transitions from straight lines to curvilinear elements must be smooth, with angular inflections at the point of intersection. The digital representation must not contain extraneous data at a non visible level. There should be no jags, hooks, or zero length segments. Any lines that are straight, or should be straight, should be digitized using only two points that represent the beginning and ending points of the line.
6. Polygon Closure -- For area features being digitized, the last coordinate pair must be exactly (mathematically) equal to the first coordinate pair. No line or polygon must cross itself except to join at an actual confluence. All digitized features across map boundaries must be edited to effect smooth and continuous lines.
7. Graphic Precision -- Positional coordinates for all digital graphic elements should not be reported to a level of precision greater than one thousandth (.001) of a foot.
8. Digitizer Accuracy -- The required RMS error for digitizer accuracy must be 0.003 or better for digital map registration.

**C. ADDITIONAL DIGITAL-READY MAP PRODUCT REQUIREMENTS --** The following requirements for large scale, non-digital map products must be followed to facilitate the future conversion of the maps to digital map products. All large format, non-digital map products must be provided on stable base material at a scale stipulated in the RFP. The map products must include an index map to all map sheets and thorough descriptions of all the cartographic elements portrayed on the maps.

1. Base Map Media -- All maps must be created on mylar or other stable base material.
2. Map Scale -- All maps of a similar series should be created using the same base scale. Unless otherwise stated by the Department, all maps should be compiled at 1:24,000. If other map scales are approved by the Department, where possible they will conform to standard map scales such as 1:9600; 1:50,000; 1:75,000; or 1:100,000.
3. Map Registration -- The maps must provide a minimum of four (4) corner and four (4) interior ticks tied to USGS/NYS DOT quadrangle Lat/Long or NYTM coordinates. The maps must be geometrically correct and should register when overlaid on the appropriate USGS/NYS DOT quadrangle control ticks.
4. Map Title and Legend -- The maps must provide a title and legend block describing the information contained on the maps, and including the Documentation and Datums information requested in the GENERAL MAP PRODUCT REQUIREMENTS above and the map scale.
5. Cartographic Quality -- The quality of all map line work and symbolization must conform to items 1 - 6 in the map criteria set forth in the ADDITIONAL DIGITAL CARTOGRAPHIC FILE REQUIREMENTS section outlined above.

## D. CONTRACT DATABASE STANDARDS

1. Delivery Media -- All database and tabular files must be provided on digital media as specified above in Deliverable Format.
2. Software Format - Database and tabular files can be provided in Corel Quattro, Microsoft Excel or Microsoft Access format. Other formats that are convertible to one of the aforementioned formats may be used with prior approval of the Department.
3. Geographic Attributes -- Database and tabular files that contain elements with a geographic reference must provide a corresponding data field and a geographic coordinate pair for each feature location.

XIV. Payment and Records Retention

- A. Payments shall be made as set forth in Appendix C.
- B. The Contractor shall maintain, at its principal place of business, detailed books and accounting records supported by original documentation relating to the incurring of all expenditures, as well as payments made pursuant to this Agreement. The Contractor shall make such records available for review by the Department upon request at any time. The Department shall have the right to conduct progress assessments and review books and records as necessary. The Department shall have the right to conduct an on-site review of the Project and/or books and records of the Contractor prior to, and for a reasonable time following, issuance of the final payment. The Department shall be entitled to disallow any cost or expense, and/or terminate or suspend this Agreement, if the Contractor has misrepresented any expenditures or Project activities in its application to the Department, or in this Agreement, or in any progress reports or payment requests made pursuant hereto. The Contractor shall maintain such books and accounting records in a manner so that reports can be produced therefrom in accordance with generally accepted accounting principles. The Contractor shall maintain separate fiscal books and records for all funds received through the Department pursuant to this Agreement.
- C. During the term of this Agreement and for a period of six years after its termination, the Contractor shall make all such books and records available to the Department and the Office of the State Comptroller, or their designated representatives, for inspection and audit.

XV. Equal Employment Opportunity

The Contractor hereby assures that it is, and shall be for the duration of this Agreement, in compliance with the Federal Equal Employment Opportunity Act of 1972 (Public Law 92-261), as amended.

XVI. Article 15-A of The New York State Executive Law

Article 15-A of the New York State Executive Law, as amended, authorized the creation of a division of Minority and Women's Business Enterprise Development to promote employment and business opportunities on state contracts for minorities and women. This law supersedes any other provision in state law authorizing or requiring an equal employment opportunity program or a program for securing participation by minority and women-owned business enterprises. Under this statute, State agencies are charged with establishing business participation goals for minorities and women. The Department of State administers a Minority and Women-owned Business Enterprises (MWBE) Program as mandated by Article 15-A.

## A. General Provisions

1. The Department of State is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
2. The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department of State (the "Agency"), to fully comply and cooperate with the Agency in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions

shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

3. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

#### B. Contract Goals

1. For purposes of this procurement, the Agency hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.csd.ny.gov/mwbe.html>.

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Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

3. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Agency for liquidated or other appropriate damages, as set forth herein.

#### C. Equal Employment Opportunity (EEO)

1. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
2. Contractor shall comply with the following provisions of Article 15-A:
  - a. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - b. The Contractor shall submit an EEO policy statement to the Agency within seventy two (72) hours after the date of the notice by Agency to award the Contract to the Contractor.
  - c. If Contractor or Subcontractor does not have an existing EEO policy statement, the Agency may provide the Contractor or Subcontractor a model statement (see Form A - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
  - d. The Contractor's EEO policy statement shall include the following language:
    - (1) 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.
    - (2) 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.

- (3) 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.
- (4) The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

### 3. Form B - Staffing Plan

To ensure compliance with this Section, 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. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

### 4. Form C - Workforce Employment Utilization Report ("Workforce Report")

- a. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Agency of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
  - b. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
  - c. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
5. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

### D. MWBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form D) either prior to, or at the time of, the execution of the contract.
2. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
3. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Agency shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

### E. Waivers

1. For Waiver Requests Contractor should use Form E - Waiver Request.
2. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Agency shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

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

**F. Liquidated Damages - MWBE Participation**

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

Questions regarding this program should be directed to the Department's Minority and Women-owned Business Program by calling (518) 473-2507. Potential contractors can access the NYS Directory of Certified Minority and Women-owned Business Enterprises on-line through the Empire State Development website at: <http://www.esd.ny.gov/MWBE.html>.

The Department makes no representation with respect to the availability or capability of any business listed in the Directory. See Appendix C - Attachment 4, for additional requirements of this program.

**XVII. Notice of Public Proceedings**

The Contractor agrees to provide the Department with prompt and timely written notice at least two weeks in advance of all public proceedings, including, but not limited to; public meetings or hearings, relating to the Project.

**XVIII. Submission of all correspondence and documentation**

- A. Unless otherwise stated in Appendix D, the Contractor agrees to provide the Department with the required products in the following formats. All products shall include the NYS contract number as indicated on the Face Page of this Agreement and where applicable, reflect the task number it relates to in Appendix D.
  1. Draft products: two paper copies of each product must be submitted.
  2. Final products: two paper copies of each product must be submitted. In addition all final products (including reports, designs, maps, drawings, and plans) must be submitted as an electronic copy (in Adobe® Acrobat® Portable Document Format - PDF), created using 300 dpi scanning resolution, and be submitted on a labeled CD-R type CD. The CD must be labeled with the contractor name, contract number, and project title.
  3. Pictures and photographs must be dated and captioned with the location and a brief description of the activity being documented.
- B. Contractor agrees to provide the Department with original and one copy of payment request documentation as described in Appendix C.

**XIX. Environmental Review**

- A. Contractor agrees to provide the Department, in a timely manner, with all documentation, including but not limited to, permit applications, environmental assessments, designs, plans, studies, environmental impact statements, findings, and determinations, relating to the Project.
- B. Contractor acknowledges that compliance with the State Environmental Quality Review Act is a material term and condition

of this Agreement. In no event shall any payments be made under this Agreement until Contractor has provided Department with appropriate documentation that contractor has met any requirements imposed on Contractor by the State Environmental Quality Review Act.

XX. Default and Termination

- A. The Department may terminate the Agreement in accordance with the terms and conditions in Section III of the Agreement.
- B. In addition to whatever other reserved rights it has to terminate the Agreement, the Department may terminate the Agreement when it is in the best interests of the State or (1) for cause, (2) for convenience, or (3) due to unavailability of funds.
- C. If the Department determines the Contractor has breached a term of the Agreement and if the Department determines the defect can be remedied, it may issue a written notice providing the Contractor with a minimum of 30 days to correct the defect and the notice may include a prospective termination date. If the Contractor fails to correct the defect or fails to make a good faith effort to do so as determined by the Department to the Department's satisfaction, the Department may terminate the Agreement for cause.
- D. The Department shall also have the right to postpone or suspend the Agreement or deem it abandoned without this action being a breach of the Agreement. The Department shall provide written notice to the Contractor indicating the Agreement has been postponed, suspended or abandoned. During any postponement, suspension or abandonment the Contractor agrees not to do any work under the Agreement without prior written approval of the Department.
- E. In the event the Agreement is postponed, suspended, abandoned or terminated, the Department shall make a settlement with the Contractor upon an equitable basis in good faith and under the general compensation principles and rates established in the Agreement by the Department. This settlement shall fix the value of the work which was performed by the Contractor to the Department's satisfaction prior to the postponement, suspension, abandonment or termination of the Agreement.
- F. Any funds paid to the Contractor by the Department which are not expended under the terms of the Agreement shall be repaid to the Department.

XXI. Fully-Executed Agreement or Amendment Thereto

- A. If this Agreement, or amendments thereto, allocates funds totaling \$50,000 or less, it shall be deemed to be fully executed when approved and signed by the Contractor and the Department.
- B. If this Agreement, or amendments thereto, allocates funds totaling more than \$50,000, it shall be deemed to be fully executed when approved by the Office of the State Comptroller.

DOS - 21  
APPENDIX B

BUDGET SUMMARY

A. Salaries & Wages	\$0.00
B. Travel	\$0.00
C. Supplies/Materials	\$0.00
D. Equipment	\$0.00
E. Contractual Services	\$1,491,090.00
F. Other	\$0.00

TOTAL PROJECT COST	\$1,491,090.00
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Total State Funds	\$745,545.00
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Total Local Share	\$745,545.00
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**APPENDIX B**  
**BUDGET DETAIL SHEET**

**A. SALARIES & WAGES (including fringe benefits)**

<u>Title</u>	<u>Annual Salary</u>	<u>Amount Charged to Project</u>
<b>SUBTOTAL</b>		<b>\$0.00</b>

**B. TRAVEL**

**SUBTOTAL** **\$0.00**

**C. SUPPLIES/MATERIALS**

**SUBTOTAL** **\$0.00**

**D. EQUIPMENT**

**SUBTOTAL** **\$0.00**

**E. CONTRACTUAL SERVICES**

Phase 1 construction of the Port of Rochester Public Marina

**SUBTOTAL** **\$1,491,090.00**

**F. OTHER**

**SUBTOTAL** **\$0.00**

DOS - 23  
APPENDIX C

**PAYMENT AND REPORTING SCHEDULE**

I. Payment Schedule

- A. The Department shall make interim payments for eligible costs incurred up to an amount not to exceed 90% of the State Share Funding Amount. The final payment will be made upon satisfactory completion of the Project.
- B. A properly executed payment request is to be submitted quarterly (included with every project status report), on forms prescribed by the Department documenting total project costs incurred to date.
  - 1. Payment shall be made to the Contractor upon the submission by the Contractor of a properly executed payment request. Such request shall contain the following: (1) Summary Sheet Documentation Forms, (2) a properly executed State Voucher, and (3) the required work products.
  - 2. Payment requests will be reviewed in accordance with the terms and conditions of this Agreement to determine total allowable project costs incurred and the number and percentage of allowable project tasks completed to date. For the purpose of determining the level of reimbursement, otherwise allowable project costs may be reduced if the percentage of task completion is deemed insufficient.
  - 3. Total allowable project costs, adjusted pursuant to 2. above, will be prorated between State Share and Local Share costs in the same proportions as State Share Funding Amount is to Local Share Funding Amount as set forth on the Face Page.
  - 4. Interim payments will be issued in amounts equal to the State Funds calculated in 3. above.
  - 5. The final payment will be issued upon receipt and approval of (1) a payment request marked "FINAL", (2) a final Status Report, and (3) Final Project Summary Report. Such final payment request shall be submitted within 60 days following the ending date of this Agreement.

II. Reporting

- A. Payment requests as described in I.B. above shall be certified by a duly authorized representative of the Contractor as accurately representing such accomplishments and expenses as recorded in the Contractor's accounting records, including, where goods or services are provided by third parties not party to this Agreement, a certification that any payment obligations arising from the provision of such goods or services have been paid or will be paid by the Contractor and do not duplicate reimbursement or costs and services received from other sources.
- B. Notwithstanding the above requirements, upon written notification by the Department, the Contractor may be required to submit source documentation and additional verification of allowable expenditures.
- C. Payment requests shall be submitted to:

New York State Department of State  
Division of Coastal Resources  
One Commerce Plaza - Suite 1010  
Albany, New York, 12231-0001
- D. Claimed expenditures per cost category may not exceed the amounts indicated in the Appendix B (Budget), without prior written approval of the Department. Changes to the cost categories in excess of 10% will require prior approval by the Office of the State Comptroller for contracts greater than \$50,000 in addition to the approval of the Department. No expenditures shall be allowed for items not set forth in the Project Budget.
- E. Project Status Reports are to be submitted on a quarterly basis (March 31, June 30, September 30 and December 31) on a form prescribed by the Department.

III. Other

- A. Notwithstanding the submission of timely and properly executed payment requests, the Department shall be under no obligation to make payment for expenditures incurred without the prior Department approvals and/or amendments required under this Agreement and, further, shall have the right to withhold any such payment pending the execution of such approval and/or amendment.
- B. Interest income earned on funds received pursuant to this Agreement shall be used to further the purpose of this Project or shall be deducted from total eligible cost to determine the net eligible costs to be reimbursed by the Department.
- C. The Department shall have the right to conduct on-site progress assessments and reviews of the Project and Contractor's books and records during the life of this Agreement and for a reasonable time following issuance of the final payment. The Contractor shall furnish proper facilities, where necessary or useful, for such access and inspection.
- D. The Department shall be entitled to disallow any cost or expense, or terminate or suspend this Agreement, if found that the Contractor has misrepresented any expenditures or project activities in this Agreement, or in any progress reports or payment requests made pursuant hereto.
- E. The Contractor shall maintain separate fiscal books and records for all funds received through the Department and project activities conducted pursuant to this Agreement, and shall make all such books and records available to the Department, the Office of the State Comptroller, or their designated representatives for inspection and audit for a period of six years following termination of this Agreement.
- F. The Contractor 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 and supporting documentation required by the Contract, the Agency and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Secretary of State, in the Secretary's sole discretion, due to extenuating circumstances. Such electronic payment 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's website at [www.osc.state.ny.us/cpay/index.htm](http://www.osc.state.ny.us/cpay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with State Comptroller's electronic payment procedures, except where the Secretary has expressly authorized payment by paper check as set forth above.

**Final Project Summary Report**

Final payment of the grant is dependent upon the satisfactory completion and acceptance by the Department of State of this Final Project Summary Report along with the requisite documentation. In addition to the other requirements of the contract, the grant recipient is responsible to relay the importance, the significance and the value of the completed project to the community, the region and the state through the completion of the report.

The following outline should be used to complete the Final Project Summary Report:

1. Project Title: \_\_\_\_\_
2. Name of Municipality: \_\_\_\_\_
3. Actual Project Costs:
  - a. State funds expended (identify source, eg. EPF, Clean Water/ Clean Air Bond Act, etc.): \_\_\_\_\_
  - b. Local funds expended: \_\_\_\_\_
  - c. Other funds expended: \_\_\_\_\_
4. Project Manager: Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Mailing address: \_\_\_\_\_  
 Tel. number: ( ) \_\_\_\_\_  
 Fax number: ( ) \_\_\_\_\_  
 E-mail address: \_\_\_\_\_
5. Federal Tax Identification Number: \_\_\_\_\_
6. Project Background (briefly explain in a short paragraph why this project was necessary, what its value is and/or its importance to the community):
7. Project Work (briefly describe the work that was done to complete the project):
8. Project Descriptions (use the following guidelines to describe the project and please be concise in the description):
  - a. For a Planning Project describe the findings or recommended strategies.
  - b. For a Design Project describe what is to be built.
  - c. For a Construction Project describe what was built.
9. Project Measurable Results: To be completed on forms attached.
10. Project Documentation: The Department of State requires a visual documentation of the Environmental Protection Fund projects. Project products should be visually documented using a 35mm camera or a digital camera. The 35mm color slides and/or digital camera disc should be labeled and dated when submitted along with the completed Final Project Summary Report.

Visuals should illustrate the final project product and, as appropriate, activities undertaken to complete the project. For example, some projects would call for visuals that include photographs of volunteers participating in a wetland restoration project (planting Spartina); photographs of historical signs markers, kiosks, etc. being placed; or photographs of an artist's rendering of a waterfront design.

Design, planning, and construction projects call for different visual documentation. Therefore, the following guidelines are suggested:

- ☑ For design projects, visuals of renderings and/or graphics that depict the final product.
- ☑ For planning projects, visuals of any graphics, where appropriate, that illustrate the final product.
- ☑ For construction projects, visuals of work in progress and the finished project.

In addition to the 35mm color slides/digital camera disc, a video (vhs format) of the project with a verbal description is desirable but not mandatory. The video may be used in a future documentary.

**Project Status Form**

RECIPIENT \_\_\_\_\_

CONTRACT # \_\_\_\_\_

PROJECT TITLE \_\_\_\_\_

Status Report Date: \_\_\_\_\_

<u>Task #</u>	<u>Brief Task Description</u>	<u>A/T</u>	<u>Date of Completion</u>	<u>Percent of Completion</u>	<u>Task Accomplishments</u>	<u>Product Submitted to DOS</u>
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**ADJUSTMENTS - Please indicate proposed adjustment(s) to work program/schedule, reason(s) for the proposed adjustment(s), and any other problems encountered during this reporting period:**

Person to contact if we have questions about the information provided on this form:

Name: _____	Email Address: _____
Title: _____	Affiliation: _____
Phone: _____	Fax: _____

**Procurement Certification**

I hereby certify that I am the municipal attorney, chief legal officer or financial administrator for the

\_\_\_\_\_ and that the contract/procurement with

\_\_\_\_\_, appended hereto pursuant in whole or in part to NYS

Department of State Contract No. \_\_\_\_\_, was awarded in accordance all requirements of law and the following provisions:

1. For Municipal Entities (except NYC or with Borough):

\_\_\_\_\_ Applicable public bidding procedures of General Municipal Law §103 relating to the procurement for service, labor, and/or construction involving more than \$35,000 or goods and equipment involving more than \$20,000.

\_\_\_\_\_ Procedures established by this municipality pursuant to the General Municipal Law §104-b relating to the procurement for service, labor, and/or construction involving not more than \$35,000 or goods and equipment involving not more than \$20,000.

\_\_\_\_\_ Procedures established pursuant to General Municipal Law Section 104-b relating to the procurement for professional services.

2. For New York City or Borough:

\_\_\_\_\_ Applicable public bidding procedures of General Municipal Law §103 and regulations of the Procurement Policy Board relating to the procurement for service, labor, and/or construction involving more than \$35,000 or goods and equipment involving more than \$20,000.

\_\_\_\_\_ Procedures established by the municipality pursuant to the General Municipal Law §104-b and regulations of the Procurement Policy Board relating to the procurement for service, labor, and/or construction involving not more than \$35,000 or goods and equipment involving not more than \$20,000.

\_\_\_\_\_ Procedures established pursuant to General Municipal Law Section 104-b relating to the procurement for professional services.

3. Not-for-Profit Organization or other entities not listed above are first subject to all requirements of law, including the NYS Not-for-Profit Corporation Law, the organization's bylaws, and:

\_\_\_\_\_ a formal competitive process to secure professional services involving not more than \$35,000 was used to solicit price quotes from no less than three qualified vendors to ensure the prudent and economical use of public funds to obtain maximum quality at reasonable cost; or

\_\_\_\_\_ a formal competitive process to secure professional services involving more than \$35,000 was used to solicit price proposals and quotations, through use of written request(s) for proposals through a publicly advertised process, to ensure the prudent and economical use of public funds to obtain maximum quality at reasonable cost; or

\_\_\_\_\_ a method of procurement that was previously reviewed and approved by the Department of State, which furthers the purpose of this contract.

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attached - Executed Contract between Contractor and Subcontractor

**FORM A**  
**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL**  
**EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

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

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

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO**

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

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

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

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

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

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2 \_\_\_\_\_

By \_\_\_\_\_

Print: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison  
(Name of Designated Liaison)

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

**M/WBE Contract Goals**

\_\_\_\_\_ 20% Minority and Women's Business Enterprise Participation

\_\_\_\_\_ % Minority Business Enterprise Participation

\_\_\_\_\_ % Women's Business Enterprise Participation

**EEO Contract Goals**

\_\_\_\_\_ % Minority Labor Force Participation

\_\_\_\_\_ % Female Labor Force Participation

\_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# FORM B

## STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

<b>Solicitation No.:</b>	<b>Reporting Entity:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force <input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor <b>Subcontractor's name</b> _____
<b>Offeror's Name:</b>		
<b>Offeror's Address:</b>		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

Work force by Gender														Work force by Race/Ethnic Identification													
EEO-Job Category	Total Work force	Total		White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)											
		Male (M)	Female (F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)										
Officials/Administrators																											
Professionals																											
Technicians																											
Sales Workers																											
Office/Clerical																											
Craft Workers																											
Laborers																											
Service Workers																											
Temporary /Apprentices																											
Totals																											

PREPARED BY (Signature):

TELEPHONE NO.:  
EMAIL ADDRESS:

DATE:

NAME AND TITLE OF PREPARER (Print or Type):

Submit completed with bid or proposal

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (FORM B) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

**Instructions for completing:**

- 1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
- 2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
- 3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
- 4. Enter the total work force by EEO job category.
- 5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
- 6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the DOS Permissible contact(s) for the solicitation if you have any questions.
- 7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
- 8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female

# FORM C

## WORK FORCE EMPLOYMENT UTILIZATION

<b>Contract No.:</b>	<b>Reporting Entity:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	<b>Reporting Period:</b> <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
<b>Contractor's Name:</b>		
<b>Contractor's Address:</b>	<b>Report includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force	

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

Work force by																	
EEO-Job Category	Total Work force	Gender		Race/Ethnic Identification								Disabled			Veteran		
		Male (M)	Female (F)	White		Black		Hispanic		Asian		Native American		(M)	(F)	(M)	(F)
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary /Apprentices																	
Totals																	

PREPARED BY (Signature):

TELEPHONE NO.:  
EMAIL ADDRESS:

DATE:

NAME AND TITLE OF PREPARER (Print or Type):

Submit completed form to:  
NYS Department of State  
Office of Affirmative Action Programs  
99 Washington Ave, Ste. 1150  
Albany, NY 12231

**General Instructions:** The work force utilization (FORM C) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to the MWBE Program Management Unit within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

**Instructions for completing:**

1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading 'Work force by Gender'
7. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the Office of Affirmative Action Programs at (518) 473-2507 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN OTHER CATEGORIES)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition. **NATIVE)**
- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female

# FORM D

## M/WBE UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Offeror's Name:

Address:

City, State, Zip Code:

Telephone No.:

Region/Location of Work:

Federal Identification No.:

Project/Contract No.:

M/WBE Goals in the Contract: MBE 10% WBE 10%

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/ Supplies/Services and intended performance dates of each component of the contract.
A.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B. SLR - 74	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			DOS - 34

6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM C.

PREPARED BY (Signature):

DATE:

TELEPHONE NO.:

EMAIL ADDRESS:

FOR M/WBE USE ONLY

REVIEWED BY:

DATE:

NAME AND TITLE OF PREPARER (Print or Type):

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.

UTILIZATION PLAN APPROVED: ☐ YES ☐ NO Date:

Contract No.:

Project No. (if applicable):

Contract Award Date:

Estimated Date of Completion:

Amount Obligated Under the Contract:

Description of Work:

NOTICE OF DEFICIENCY ISSUED: ☐ YES ☐ NO Date:

NOTICE OF ACCEPTANCE ISSUED: ☐ YES ☐ NO Date:

# FORM E REQUEST FOR WAIVER

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.	
Offeror/Contractor Name:	Federal Identification No.:
Address:	Solicitation/Contract No.:
City, State, Zip Code:	M/WBE Goals: MBE 10% WBE 10%
By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.	
Contractor is requesting a:	
1. <input type="checkbox"/> MBE Waiver - A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial 2. <input type="checkbox"/> WBE Waiver - A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial 3. <input type="checkbox"/> Waiver Pending ESD Certification - (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.) Date of such filing with Empire State Development: _____	
PREPARED BY (Signature):	Date: _____
SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.	
Name and Title of Preparer (Printed or Typed):	Telephone Number: _____ Email Address: _____
Submit with the bid or proposal or if submitting after award submit to:	***** FOR M/WBE USE ONLY ***** REVIEWED BY: _____ DATE: _____ Waiver Granted: <input type="checkbox"/> YES <input type="checkbox"/> MBE: <input type="checkbox"/> WBE: <input type="checkbox"/> <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued *Comments: _____

New York State Department of State  
Office of Affirmative Action Programs  
99 Washington Ave., Ste. 1150  
Albany, New York 12231

## REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

**When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:**

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

**Note:**

**Unless a Total Waiver has been granted, Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by DOS, to determine M/WBE compliance.**

# **FORM F** **MWBE Quarterly Report**

**SUBMIT TO:**

New York State Department of State  
Office of Affirmative Action Programs  
99 Washington Ave., Ste. 1150  
Albany, New York 12231

**NYS DOS Contract No.**

The following information indicates the payment amounts made by the grantee/contractor to the NYS Certified MWBE subcontractor on this project.  
The payments as shown made are in compliance with contract documents for the above referenced project.

Contractors Name and Address		Federal ID#	Goals/\$ Amt. MBE 10 % = _____ WBE 10 % = _____		( )	Telephone Number
Program			Work Location		Reporting Period: ____ 1 <sup>st</sup> Quarter (4/1-6/30) ____ 3 <sup>rd</sup> Quarter (10/1-12/31) ____ 2 <sup>nd</sup> Quarter (7/1-9/30) ____ 4 <sup>th</sup> Quarter (1/1-3/31)	
MWBE Subcontractor/Vendor	Description of Service/Product	Total Subcontractor Contract Amount	Payments this Quarter		Comments	
		MBE	WBE	MBE	WBE	
Name: FED ID#						
Name: FED ID#						
Name: FED ID#						
Name: FED ID#						
<b>Total</b>						

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Date \_\_\_\_\_ Name \_\_\_\_\_ Title \_\_\_\_\_ Signature \_\_\_\_\_  
*Failure to submit this form will result in non-compliance*

**PROGRAM WORK PLAN**

**Contractor:** City of Rochester  
**Contract Number:** #C007144  
**Program Contact Person:** Mark Gregor, Manager of Port Development  
**Phone:** 585-428-5978  
**Fax:** 585-428-6010  
**Email:** [mgregor@cityofrochester.gov](mailto:mgregor@cityofrochester.gov)

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**Port of Rochester Redevelopment Project**

**1. Project Description**

The City of Rochester (Contractor) will continue the first phase of construction of a five-acre public marina facility at the Port of Rochester. Project elements funded under this agreement include construction of floating docks, slip utilities, pilings, pumpout facilities, breakwaters, wave attenuators, and baffle walls.

This award will advance the City's effort to develop a new port, a priority project identified in the City's Local Waterfront Revitalization Program and support two 2009 EPF LWRP projects. Contract #C007069 (2009 EPF LWRP) included funding for site preparation, marina basin excavation (excludes spoils handling and disposal) and construction of a stone revetment marina basin perimeter; scour protection at the entrance to the marina; as well as construction phase engineering inspection. Contract #C007068 (2009 EPF LWRP) included funding for construction of a public promenade (approximately 2,000 feet long and 20-30 feet wide) around the perimeter of the Port of Rochester Marina including construction of a seawall as the promenade foundation, promenade concrete and paver surface treatments, decorative lighting and installation of associated lighting conduit.

Establishment of a project advisory committee; compliance with SEQRA; preparation of conceptual site plan and final designs and construction documents; and, receipt of permits and approvals have been completed. Funding for those elements is not part of this grant award. Construction will be undertaken according to the final designs and construction documents completed by the Contractor's marina project consultant, Edgewater Resources and LaBella Associates. The project match will be provided with City capital funding allocated through the City's five year capital improvement plan.

The Port of Rochester Public Marina is a large scale effort being funded by multiple grants and agencies. The new facility will increase public access, stimulate economic development, address the lack of transient slips in the harbor and adaptively reuse acres of underutilized city property.

**2. Project Attribution and Number of Copies**

The Contractor must ensure that all materials printed, constructed, and/or produced acknowledge the contributions of the Department to the project. The materials must include the Department of State logo and the following acknowledgment:

*"This (document, report, map, etc.) was prepared for the New York State Department of State with funds provided under Title 11 of the Environmental Protection Fund."*

The Contractor must submit to the Department all required products, clearly labeled with the NYS Comptroller's Contract # as indicated on the Face Page of this Agreement and where applicable, the related Task # from this Work Plan. The Contractor shall submit:

- Draft products: two paper copies of each product.
- Final products: two paper copies of each product. In addition, all final products (including reports, designs, maps, drawings, and plans) must be submitted as an electronic copy in Word Perfect or Microsoft Word and Adobe® Acrobat® Portable Document Format - PDF (created using 300 dpi scanning resolution) and be submitted on a labeled CD-R type CD. The CD must be labeled with the contractor name, contract #, and project title. Additionally, electronic data for all Geographic Information System-based mapping products must be included in either ArcGIS or MapInfo format.

- Pictures and photographs must be dated and captioned with the location and a brief description of the activity being documented.

The contributions of the Department must also be acknowledged in community press releases and other notices issued for the project, including web site postings and other forms of digital distribution. Project press releases and other notices shall be submitted to the Department for review and approval prior to release, to ensure appropriate attribution.

### **3. Compliance with Procurement Requirements**

The municipal attorney, chief legal officer or financial administrator of the municipality shall certify in writing to the Department that applicable provisions of General Municipal Law were fully complied with (Appendix A1-XII).

### **4. Project Components**

#### **Task 1: Project Kick-off Meeting**

The Contractor, the Department, project partners and any other appropriate entities shall hold an initial meeting to review the project scope, project schedule, project requirements, roles and responsibilities of project partners, and any other information which would assist in project completion. The Contractor, or a designated project partner, shall prepare and distribute to all project partners a brief meeting summary clearly indicating the agreements/understandings reached at the meeting. Work on subsequent tasks shall not proceed prior to Department approval of the proposed approach as outlined in the meeting summary.

**Products:** Project kick-off meeting held with appropriate parties. Written meeting summary outlining agreements/understandings reached. Project schedule finalized.

#### **Task 2: Submission of Documents**

The Contractor or its consultant shall provide to the Department, for review and approval, the following materials:

- schematic/concept design(s);
- documents necessary for compliance with the State Environmental Quality Review Act (SEQRA);
- final designs and construction documents - certified by a licensed professional engineer, architect, or landscape architect with appropriate seal affixed to documents;
- required permits and approvals - federal, state and local; and
- executed construction subcontract(s) and written certification of procurement procedures.

**Products:** Schematic/concept designs and SEQRA documents. Final designs and construction documents, certified by a licensed professional engineer, architect or landscape architect. All required permits and approvals received. Executed construction subcontract(s) and written certification of procurement procedures.

#### **Task 3: Installation of Project Sign**

The Contractor shall install a sign satisfactory to the Department identifying the Department's funding of the project. The project sign shall remain in place for the useful life of the improvements undertaken. To assist communities in fulfilling this requirement, the Department has developed an attractive low cost informational sign. A Sign Order Form is available upon request from the Department.

The project sign(s) fabricated for EPF LWRP awards #C007069 and #C007068 may serve as the project sign for this project.

**Products:** Department approved sign design and photo-documentation that sign is installed in project area.

**Task 4: Construction**

After receipt of all necessary permits, the Contractor or its construction subcontractor(s) may begin construction work according to the final design and construction documents. The Contractor or its subcontractor(s) shall notify the Department monthly (or more frequently) in writing of work progress, including any delays which have occurred. The Contractor or its consultant(s) shall submit periodic payment requests to the Department tied to project milestones identified in contract and subcontract work plans or during the project kick-off meeting. After 70% of the work is completed, the progress notification will include a punch list of any incomplete items and an estimated schedule for project completion.

Products: Written work progress reports. Punch list and construction completion estimates.

**Task 5: Site Inspections**

The Contractor, its consultant(s), and/or the Department shall verify progress and completion of the work through periodic site inspections and photo documentation. The Contractor or its consultant(s) shall submit to the Department written summaries of progress and identification of problems to be addressed based on periodic site inspections.

Products: Periodic site visits. Written summary of progress with photo-documentation and identification of any problems that need to be addressed.

**Task 6: Project Completion**

Following satisfaction of punch list items, the Contractor or its consultant(s) shall submit a statement that the work has been completed in accordance with the contract and subcontract(s), the final design and construction specifications, and all permit requirements. The completion statement must be prepared and/or certified by a licensed professional engineer, architect or landscape architect. Unless otherwise specified during project kick-off meeting, the Contractor or its consultant(s) shall submit two sets of as-built plans, certified by a licensed professional engineer, architect or landscape architect. When the Contractor is satisfied work is complete, it shall submit a final project report to the Department, including a copy of the completion statement and a copy of the certified as-built plans and photo-documentation in the form of digital images of the site prior to, during and upon completion of work. The Contractor shall not pay its consultant(s) or subcontractor(s) in full, and shall not submit a final payment request to the Department, until the Department concurs that the work is complete.

Products: Statement of completion, certified as-built plans, and final project report including photo-documentation.

**Task 7: Semi-annual Reporting**

The Contractor or its consultant(s) shall submit to the Department semi-annual reports on the form provided, including a description of the work accomplished, any problems encountered, and any assistance needed. The timeline and frequency of the submission of these reports is described in Appendix C, Section II, E.

Products: Semi-annual reports during the life of the contract.

**Task 8: Final Project Summary Report and Measurable Results forms**

The Contractor or its consultant(s) shall work with the Department project manager to complete the Final Project Summary Report and Measurable Results forms. Final payment shall not be authorized until these forms have been completed and filed with project deliverables.

Products: Completed Final Project Summary Report and Measurable Results forms.

## 5. Project Management Responsibilities

The Contractor shall administer the grant, execute a contract with the Department, and ensure the completion of work in accordance with the approved Work Plan. Unless otherwise specified in the Project Description or under Project Components, the Contractor and/or its approved consultant(s) or subcontractor(s) shall conduct all work as described in the component tasks.

The Contractor:

- will be responsible for conducting all project work in conformance with the Work Plan included in the executed contract with the Department.
- will be responsible for all project activities including drafting request for proposals and managing subcontracts with consultants and subconsultants.
- will certify to the Department that the procurement record for project consultants and subcontractors complies with the applicable provisions of General Municipal Law.
- will receive approval from the Department for any and all consultant subcontracts before beginning project work.
- will be responsible for submission of all products and payment requests.
- will be responsible for coordinating participation and soliciting comments from local government personnel, project volunteers, and the public.
- will keep the Department informed of all important meetings for the duration of this contract.
- will receive approval from the Department before purchase of any equipment.
- will secure all necessary permits and perform all required environmental reviews.
- will ensure that all materials printed, constructed, and/or produced reflect the Department logo, feature the Secretary of State and the Governor, and acknowledge the contributions of the Department to the project.
- will ensure that all products prepared as a part of this agreement shall include the NYS Comptroller's Contract # as indicated on the Face Page of this Agreement.
- will ensure the project objectives are being achieved.
- will ensure that comments received from the Department and the project advisory committee, or other advisory group, are satisfactorily responded to and reflected in subsequent work.
- will recognize that payments made to consultants or subcontractors covering work carried out or products produced prior to receiving approval from the Department will not be reimbursed unless and until the Department finds the work or products to be acceptable.
- will participate, if requested by the Department, in a training session or sessions focused on developing and implementing revitalization strategies. The purpose of the training session(s) is to build knowledge and provide support to community leaders to advance revitalization efforts and complete priority projects.

The Department:

- will review and approve or disapprove of subcontracts between the Contractor and consultant(s) and any other subcontractor(s).
- will participate in initial project kick-off meeting and subsequent meetings that are important to the project.
- will review all draft and final products and provide comments as necessary to meet the objectives.
- must approve or disapprove any and all design, site plan, and preconstruction documents before construction may begin.

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APPENDIX F

NOTICES

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

**State of New York Department of State**

Name: Laurissa Parent  
Title: Secretary I  
Address: 99 Washington Avenue, Suite 1010  
Albany, NY 12231  
Telephone Number: 518-486-9540  
Facsimile Number: 518-473-2464  
E-Mail Address: laurissa.parent@dos.state.ny.us

**City of Rochester**

Name: Thomas Richards  
Title: Mayor  
Address: 30 Church Street  
Room 300B  
Rochester, NY 14614  
Telephone Number: 585-428-7045  
Facsimile Number: 585-428-6059  
E-Mail Address: thomas.richards@cityofrochester.gov

2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

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APPENDIX X

MODIFICATION AGREEMENT FORM

Agency Code: 19000/DOS01

Contract Period: \_\_\_\_\_ to \_\_\_\_\_

Contract Number: C007144

Funding for Period: \$0.00

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the New York State Department of State, having its principal office in Albany, New York (hereinafter referred to as the STATE), and City of Rochester (hereinafter referred to as the CONTRACTOR), for modification of the contract number noted above, as amended herein and noted below.

Type of contract modification:

- ☐ Renewal: Revised total contract value: \$ \_\_\_\_\_ (renewals only)  
☐ No cost time extension  
☐ Amendment: \_\_\_\_\_  
☐ Attached Appendices: \_\_\_\_\_

All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR SIGNATURE

NYS DEPARTMENT OF STATE

By: \_\_\_\_\_  
\_\_\_\_\_  
(print name)

By: \_\_\_\_\_  
\_\_\_\_\_  
(print name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

State Agency Certification "In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract "

State of New York)

County of \_\_\_\_\_)ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known and known to me to be the person who is the \_\_\_\_\_ of \_\_\_\_\_, the organization described in and which executed the above instrument; and that he/she has the authority to sign on behalf of said organization; and that he/she executed the foregoing agreement for and on behalf of said organization.

\_\_\_\_\_  
NOTARY PUBLIC

ATTORNEY GENERAL'S SIGNATURE:

STATE COMPTROLLER'S SIGNATURE:

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Neighborhood and Business Development  
Permit Office  
City Hall Room 121B, 30 Church Street  
Rochester, New York 14614  
www.cityofrochester.gov

## APPLICATION FOR ELECTRICAL PERMIT

### PART A – GENERAL INFORMATION

**WORK ADDRESS:**

Address

**ELECTRICIAN:**

Name (Last, First)

License Number

Address

Phone Number

**PROPERTY OWNER:**

Name (Last, First)

Phone Number

Address

ESTIMATED COST \$ \_\_\_\_\_ COMPLETION DATE \_\_\_\_\_ WORK AREA (SQ/FT) \_\_\_\_\_

WILL PROPOSED ELECTRICAL WORK BE RELATED TO A GENERAL CONSTRUCTION PROJECT? ☐ No ☐ Yes

DESCRIBE WORK LOCATION-(i.e. Building Number, Suite Number, Floor Number, Apartment Number)

### PART B - SERVICE WORK (Check One)

☐ Restore Power (Circle one)

FIRE DAMAGE

☐ NEW SERVICE

SERVICE TERMINATED

☐ SERVICE REPAIR/UPGRADE

VACANT ACCOUNT

Will proposed work require an RG&E service spot? ☐ No ☐ Yes

Will Electrician be responsible for the service connection? ☐ No ☐ Yes

If Yes, RG&E Service Request Form must be attached

RG&E SN#: \_\_\_\_\_

#### (CHECK ONE – NEW SERVICES ONLY)

☐ 1 Phase 3 Wire 120/240

☐ 3 Phase 3 Wire 240

☐ 3Phase 4 Wire Delta 120/240

☐ 1 Phase 3 Wire Y 120/208

☐ 3 Phase 3 Wire Delta 480

☐ 3 Phase 4 Wire Y 277/480

☐ 3 Phase 4 Wire Y 120/208

PROPOSED WORK (SELECT ALL THAT APPLY / ADD ADDITIONAL ITEMS)					
DESCRIPTION	Quantity	Size	DESCRIPTION	Quantity	Size
SERVICE PANEL			REPAIR / REPLACE RISER CABLE		
SUB PANEL			TRANSFORMER		
METER CABINET			CT METER EQUIPMENT		
DISCONNECT					



**PART C—LIST OF ELECTRICAL WORK TO BE PERFORMED**

THIS SECTION MUST BE COMPLETED IF PLANS ARE NOT INCLUDED WITH THE MAIN CONSTRUCTION PERMIT

**WORK TYPE (CHECK ONE)**☐ New Construction☐ Renovations☐ Fire Damage☐ Legalize☐ Correct Notice & Order

PROPOSED WORK (SELECT ALL THAT APPLY OR ADD ADDITIONAL ITEMS)					
DESCRIPTION	Quantity	Size	DESCRIPTION	Quantity	Size )
Switches			Water Heater		
Receptacles			Boiler		
G.F.C.I. Receptacles			Furnace		
Fixtures			A/C		
Range			Electric Heat		
Dish Washer			RTU		
Garbage Disposal			Motor		
Washer / Dryer			Fire Alarm System / Devices		
Sign			Generator		
Emergency Lights			Elevator / Conveyance		
Exit Signs			Ext. Light poles		
Appliance Outlets			Fuel Dispenser		
Exhaust Hood (Residential)			Swimming Pool / Hot Tub		
Exhaust Hood (Commercial)			Sump Pump		
Hard Wired Smoke Detectors			Light Pole(s)		

I, the undersigned licensed electrician / owner, submit this electrical permit application to the Commissioner of Neighborhood and Business Development for issuance of a permit to perform electrical work as described herein and in so doing acknowledge that all electrical work will be performed in accordance with all applicable codes, regulations and the local utility serving. I also certify that all work will be performed: **(CHECK ONE)**

☐ By me personally☐ By an employee of my company\_\_\_\_\_  
Signature of Licensed Electrician / Property Owner\_\_\_\_\_  
Date**FOR OFFICE USE ONLY:**

SERVICE FEE

\_\_\_\_\_ WORK AREA FEE

PENALTY FEE

\_\_\_\_\_ TOTAL FEE



Neighborhood and Business Development  
Commissioner  
City Hall Room 223B, 30 Church Street  
Rochester, New York 14614  
www.cityofrochester.gov

## APPLICATION FOR PLUMBING PERMIT

### PART A – GENERAL INFORMATION

WORK ADDRESS:

Address

LICENSED PLUMBER:

Name (Last, First)

License Number

Address

Phone Number

PROPERTY OWNER:

Name (Last, First)

Phone Number

Address

ESTIMATED COST \$ \_\_\_\_\_ COMPLETION DATE \_\_\_\_\_

DESCRIPTION OF WORK LOCATION (i.e. Building Number, Floor Number, Suite Number, Apartment Number):

WILL PROPOSED PLUMBING WORK BE RELATED TO A GENERAL CONSTRUCTION PROJECT ☐ No ☐ Yes

### PART B–SITE WORK

Will this project require approval from Monroe County Pure Waters? ☐ No ☐ Yes  
Will a water main tap be required? ☐ No ☐ Yes If Yes, what is the permit number \_\_\_\_\_  
Will a DES Right of Way permit be required? ☐ No ☐ Yes If Yes, what is the permit number \_\_\_\_\_

(CHECK ALL THAT APPLY)

☐ New Site Work ☐ Alterations to Site Work ☐ New Water Service  
☐ Replace Water Service ☐ Lot Line Cleanout

PROPOSED WORK(SELECT ALL THAT APPLY / ADD ADDITIONAL ITEMS)					
DESCRIPTION	Quantity	Fee	DESCRIPTION	Quantity	Fee
Catch Basins			New Water Service >2 Inch		
Drains–Trench / Crock			Separator-Oil /Sand		
Drains–Roof			Sewer Laterals-		
Lot Line Cleanout			Pump Station		
Manholes					
Water Service renewal					
New Water Service <2 Inch					



**PART C-PLUMBING WORK TO BE PERFORMED****(CHECK ALL THAT APPLY)**☐ New Construction☐ Renovation☐ Fire Damage☐ Legalize☐ Backflow Test☐ Notice & Order Number \_\_\_\_\_☐ Other \_\_\_\_\_

<b>SELECT ALL WORK ITEMS</b>					
<b>DESCRIPTION</b>	<b>Quantity</b>	<b>Fee</b>	<b>DESCRIPTION</b>	<b>Quantity</b>	<b>Fee</b>
Backflow Test			Ice Machine		
Backflow Repair			Laundry Box		
Backflow Installation			Laundry Tray		
			Laundry Tub		
Dish Washer			Lavatory		
Disposal Garbage			Pump-Ejector		
Drain-Condensate			Pump-Sump		
Drain-Cooler					
Drain-Equipment			Shower		
Drain-Floor			Sink-bar		
Drain-Roof			Sink-hand		
Drain-Trench/Crock			Sink-mop		
Drinking Fountain			Sink-3 compartment		
Eye Wash			Tub		
Gas Line			Urinal		
Garbage Disposal			Water Closet		
Grease trap			Water Heater		
Hose Bib					
Miscellaneous equipment					

I, the undersigned licensed Plumber/owner, submit this plumbing permit application to the Commissioner of Neighborhood and Business Development for issuance of a permit to perform plumbing work as described herein and in so doing acknowledge that all plumbing work will be performed in accordance with all applicable codes and regulations. I also certify that all work will be performed: (check one only)

☐ By me personally☐ By an employee of my company\_\_\_\_\_  
Signature of Licensed Plumber / Property Owner\_\_\_\_\_  
Date**FEE SUMMARY:**

BASE FEE: \$55 SITE WORK FEE: \_\_\_\_\_ PLUMBING WORK FEE \_\_\_\_\_ TOTAL PERMIT FEE: \_\_\_\_\_

# SUPPLEMENTARY TERMS AND CONDITIONS

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STC 1.1	Definitions.....	STC-1
STC 5.2	Physical Conditions - Investigations and Reports .....	STC-2
STC 6.2	Labor, Products and Storage .....	STC-2
STC 10.2	Changes in the Contract Price	
10.2.2 A.	Unit Price .....	STC-2
10.2.6	Asphalt Price Adjustment.....	STC-3
STC 11.1	Warranty and Guarantee .....	STC-5
STC 13.3	Review of Applications for Progress Payments.....	STC-6



## SUPPLEMENTARY TERMS AND CONDITIONS

These Supplementary Terms and Conditions amend or supplement the General Terms and Conditions of the *City of Rochester Standard Construction Contract Documents, November 1, 1991 Edition* and other provisions of the City's Contract Documents as are indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Terms and Conditions which are defined in the General Terms and Conditions of the *City of Rochester Standard Construction Contract Documents, November 1, 1991 Edition* have the meanings assigned to them in the General Terms and Conditions.

### STC 1.1 Definitions

**Add** the following definitions on page GC-7:

**MAJOR ITEM** - Any contract pay item in the original bid documents for which the bid unit price multiplied by the estimated item quantity exceeds 2% of the total original contract bid price, or the following Minimum Major Item Value as based on the Original Total Base Bid, whichever is greater:

Original Total Base Bid	Minimum Major Item Value
\$0 - \$249,999	\$2,500
\$250,000 - \$499,999	\$7,500
\$500,000 - \$999,999	\$15,000
\$1,000,000 - \$2,499,999	\$35,000
\$2,500,000 - \$4,999,999	\$75,000
\$5,000,000 - \$9,999,999	\$150,000
\$10,000,000 - \$14,999,999	\$250,000
\$15,000,000 - \$19,999,999	\$350,000
\$20,000,000 and over	\$500,000

**MINOR ITEM** - Any contract pay item that does not meet the definition of a Major Item.

**Add** the following to the end of the definition for Substantial Completion on page GC-9:

Restoration work includes replacement of topsoil and full establishment and City acceptance of all turf grasses planted under the contract according to the requirements of the relevant contract specifications.

## **STC 5.2 Physical Conditions - Investigations and Reports**

**Add** the following to the end of Subsection 5.2 Physical Conditions - Investigations and Reports on page GC-22:

5.2.2 In the preparation of the drawings and the specifications, the design professionals have relied upon the following documents, reports and tests of subsurface and latent physical conditions at the site, or otherwise affect cost, progress or performance of the work. These documents are bound separately and are not part of the Contract Documents, but are made available to the Contractor for his use during the bidding and construction phases of the project. They are bound within a booklet entitled "*Reports and Documents Assembled for the Port of Rochester Marina Development Project*" and consist of:

1. Environmental Management Plan - *LaBella Associates, PC, March 2013*
2. Pump Test Report - *LaBella Associates, PC, March 2013*
3. Underground Utility Relocations – *Foundation Design, PC, March 2013*

The information within the *Pump Test Report* and *Underground Utility Relocations* documents is furnished solely for the convenience of the Contractor, without any warranty expressed or implied as to their accuracy or completeness. The Contractor shall make no claims against the City of Rochester with respect to the accuracy or completeness of such information if it is erroneous or if the conditions found at the time of construction are different from those shown or indicated.

## **STC 6.2 Labor, Products and Storage**

**Add** the following to the end of 6.2.2 on page GC-24:

The Water Bureau maintains a list of *Materials Approved for Use by the City of Rochester, NY - Water Bureau*. The list contains various water system products that are pre-approved for use in conjunction with water work and that do not need to be approved for use by the Project Manager. With prior approval of the Project Manager, the Contractor may substitute other equivalent products in the work.

## **STC 10.2 Changes in the Contract Price**

**Delete** Subsection 10.2.2 A. Unit Prices on page GC-39 in its entirety, and **Replace** with the following:

10.2.2 A. Unit Price. The unit price may be:

- those submitted by the Contractor in the original bid documents; or
- as stipulated by the City in the contingent item list included with the Contract Documents; or
- as fixed by agreement between the City and the Contractor for extra work items not originally provided for in the Contract Documents; or
- as adjusted by agreement between the City and the Contractor when the final quantity of a major item is more than one-hundred and twenty-five percent (125%) or less than seventy-five percent (75%) of the original estimated item quantity provided for in the Contract Documents as delineated below.

When the final quantity of a major item is more than one-hundred and twenty-five percent (125%) or less than seventy-five percent (75%) of the original estimated item quantity, the Contractor or the City may request an adjustment of the bid unit price of the item, or time of performance, if they so desire such

adjustment. The request by the Contractor or the City must be in the form of a written notice to the other party, and such written notice must be delivered to the other party within ten (10) work days of the time the party making the request had knowledge of conditions which result in such change in the estimated item quantity.

Any allowance for a change in the bid unit price of an item will apply only to that portion of the work that is in excess of one-hundred and twenty-five percent (125%) of the original estimated item quantity, or to the actual amount of work performed if the quantity decreases to be below seventy-five percent (75%) of the original estimated item quantity.

The total adjusted payment for all work on a major item that decreases to below seventy-five percent (75%) of the original estimated item quantity, is not to exceed the total payments which would have been made if the original estimated item quantity had been completed at the original bid unit price.

No agreed upon change in the bid unit price of an item will constitute a basis for a claim for damages of anticipated profits on the item that was adjusted.

**Delete** Subsection 10.2.6 Asphalt Price Adjustment on page GC-42 in its entirety, and **Replace** with the following:

#### 10.2.6 Asphalt Price Adjustment

A. The adjustment will provide for either an additional compensation to the Contractor for an increase, or a repayment to the City for a decrease, in the price of asphalt as based on the fixed index price. No adjustment will be made if the monthly average posted price is within fifteen dollars (\$15.00) of the fixed index price for asphalt. No consideration will be given to the situation where an individual supplier's price exceeds the monthly average posted price. Only those items that include asphalt, that are originally in the contract, and that are included in the general specification sections specified below, will be eligible for an asphalt price adjustment:

- R205 – Pavement Base Repair
- S205 – Pavement Base Repair
- 402 – Hot Mix Asphalt (HMA) Pavements (Superpave mixes)
- 403 – Hot Mix Asphalt Concrete Pavement
- 403 – Hot Mix Asphalt (HMA) Pavements for Municipalities
- R404 – Recycled Asphalt Concrete Pavement
- 18410 – Micro-Surfacing
- S410 – Micro-Surfacing
- S413 – Speed Hump
- S608 – Sidewalk and Driveway
- S609 – Curb
- S609CR – Curb (Curb Replacement)

B. The adjustment will be based solely on: the quantity of asphalt incorporated in the work, multiplied by the per cent (as expressed in decimals) of performance-graded binder or asphalt cement included in the mix, multiplied by the difference between the herein stipulated fixed index price plus fifteen dollars (+\$15.00) when the average posted price increases, minus fifteen dollars (-\$15.00) when the average posted price decreases, all as defined below.

C. The percentage factor of performance-graded binder or asphalt cement incorporated in the asphalt course mix as expressed in decimals to the nearest thousandth for each asphalt course mix type shall be as follows:

<b>Asphalt Course Mix (Q)</b>	<b>Section(s)</b>	<b>Factor (F)</b>
Type 1	R205, S205, S608, S609, S609CR	0.060
Type 3	R205, S205, S608, S609CR	0.065
Type 7F	S413, S609CR	0.080
Truing and Leveling	403	0.080
Recycled Base	R404	0.041
Recycled Binder	R404	0.046
Recycled Top	R404	0.055
Recycled Truing and Leveling	R404	0.055
9.5 F2 Top HMA, 80 Series	402	0.062
19 F9 Binder HMA, 80 Series	402	0.049
37.5 F9 Base HMA, 80 Series	402	0.040
HMA Type 1 Base	403	0.050
HMA Type 3 Binder	403	0.055
HMA Type 7F2 Top	403	0.0685
True & Leveling	402, 403	based on mix formula at time of construction
Micro-Surfacing Type II	18410, S410	0.090
Micro-Surfacing Type III	18410, S410	0.075
Micro-Surfacing Type III Rut Filling	18410, S410	0.075

D. Fixed Index Price: A fixed index price per ton of performance-graded binder used solely as a basis from which to compute price adjustments.

The fixed index price for original contract bid items and additional work at the original contract bid price, will be will be the monthly average posted price for the month of the bid letting.

The index price for additional work not in the original contract and added by an agreed price, will be the monthly average posted price for the month the agreed price was approved by the City.

E. Monthly Average Posted Price: The monthly average terminal price for unmodified PG 64-22 binder, without anti-stripping agent, will be determined by the State of New York Department of Transportation, as based on prices from approved primary sources of performance-graded binder, during the life of this Contract.

F. A listing of the average posted prices for asphalt (performance-graded binder), is posted on or about the twenty-fifth (25<sup>th</sup>) of each month by the State of New York Department of Transportation in an Engineering Bulletin entitled *Fuel, Asphalt and Steel price Adjustments*.

G. Also all discounts or allowances that reduce the asphalt price at the terminal will be deducted prior to calculating the price adjustment.

H. Price adjustment will be based on the following formulas:

1). When average posted price increases:

$$\text{Price Adjustment} = [ (APP) - (FIP + \$15.00) ] \times [ (Q) \times (F) ]$$

2). When average posted price decreases:

$$\text{Price Adjustment} = [ (APP) - (FIP - \$15.00) ] \times [ (Q) \times (F) ]$$

Where:

*APP* = Average posted price for the month within which the work is performed

*FIP* = Fixed index price for the month of the bid letting

*Q* = Asphalt course mix quantity incorporated in the work as expressed in tons

*F* = Percentage factor of performance-graded binder or asphalt cement incorporated in the asphalt course mix as expressed in decimals to the nearest thousandth

I. A price adjustment will be paid in addition to, or deducted from, the monthly estimate for material placed during the previous month. The average posted price is updated on or about the twenty-fifth (25th) of each month, with the price adjustment becoming effective on the first (1st) of the following month. All price changes received after the third (3rd) Wednesday of the month will be held in abeyance until the next scheduled price revision.

J. This asphalt price adjustment is based solely on changes in the price of unmodified PG 64-22 binder, without anti-stripping agent. The fact that an individual asphalt supplier's price exceeds the average posted price or that of a particular asphalt item such as emulsion base is more costly than unmodified PG 64-22 binder will have no bearing on the price adjustment.

K. If asphalt items are placed after the completion date specified in this contract or after any extensions of that date with engineering charges and/or liquidated damages, the average posted price used to compute price adjustments shall not exceed the average posted price on the original scheduled contract completion date. If the contract completion date is extended without the assessment of engineering charges, price adjustments for material placed during such extensions shall be based on the latest updated average posted price.

L. No price adjustment will be made unless the average posted price is either fifteen dollars (\$15.00) greater than or fifteen dollars (\$15.00) less than the fixed index price stated above. All price adjustments will be rounded to the nearest dollar.

### **STC 11.1 Warranty and Guarantee**

**Delete** the second sentence of Subsection 11.1.1 on page GC-46 in its entirety, and **Replace** with the following:

The Contractor warranty shall continue for a period of two (2) years from the date of certification of Substantial Completion of Work or, with the written approval of the City Engineer, from the time that all Project work other than acceptance of turf grasses planted under the contract are complete, accepted by the City, and can be utilized for its intended purpose.

**Add** the following under Subsection 11.1 Warranty and Guarantee on page GC-46:

11.1.7 The Guarantee Bond, which the Contractor shall furnish as set forth in Article 4.1.3 Guarantee Bond of these General Conditions, does not apply to items of maintenance or for items over which the Contractor, its suppliers or Subcontractors have no control.

### **STC 13.3 Review of Applications for Progress Payments**

**Renumber** Subsection 13.3.2 to 13.3.3 and Subsection 13.3.3 to 13.3.4 on page GC-53, and **Insert** the following:

13.3.2 The Contractor shall pay any Subcontractor(s) for undisputed work performed by the Subcontractor(s) within fifteen (15) days of receipt of payment by the City which includes such work.

**PROJECT LABOR AGREEMENT  
COVERING  
THE CITY OF ROCHESTER  
MARINA REDEVELOPMENT PROJECT**



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**PROJECT LABOR AGREEMENT  
COVERING THE MARINA REDEVELOPMENT PROJECT**

**ARTICLE 1- PREAMBLE**

WHEREAS, the City of Rochester, ("City"), desires the efficient, safe, quality, and timely completion of a construction project relating to the Marina Redevelopment Project in a manner designed to afford the lowest reasonable costs to the City, and the Public it represents, and the advancement of permissible statutory objectives;

WHEREAS, this Project Labor Agreement will foster the achievement of these goals, inter alia, by:

(1) providing a mechanism for achieving the most cost efficient means of construction including direct labor cost savings;

(2) avoiding the costly delays of potential strikes, slowdowns, walkouts, picketing and other disruptions arising from work disputes and promote labor harmony and peace for the duration of the Project;

(3) standardizing the terms and conditions governing the employment of labor on the Project;

(4) permitting wide flexibility in work scheduling and shift hours and times;

(5) providing comprehensive and standardized mechanisms for the settlement of work disputes, including those relating to jurisdiction;

(6) furthering public policy objectives as to improved employment opportunities for minorities, women and the economically disadvantaged in the construction industry; and

(7) ensuring a reliable source of skilled and experienced labor

and, WHEREAS, the signatory Unions desire the stability, security and work opportunities afforded by a Project Labor Agreement;

and, WHEREAS, the Parties desire to maximize Project safety conditions relating to the Project;

NOW, THEREFORE, the Parties enter into this Agreement:

**SECTION 1.1 PARTIES TO THE AGREEMENT**

This is a Project Labor Agreement ("Agreement") entered into by and between the PLA Administrator on behalf of the City; the Project's Contractor(s), and its successors and assigns, for certain construction and renovation work to be performed as part of the Marina Redevelopment Project; and by the Rochester, New York Building and Construction Trades Council, AFL-CIO, on behalf of itself and its

affiliated local union members; and the signatory Local Unions on behalf of themselves and their members.

## ARTICLE 2 - GENERAL CONDITIONS

### SECTION 2.1 DEFINITIONS

Throughout this Agreement, the Union parties and the signatory Local Unions and Council are referred to singularly and collectively as "Union(s)"; where specific reference is made to "Local Unions", that phrase is sometimes used; the term "Contractor(s)" shall include the Contractor(s), the PLA Administrator to the extent the PLA Administrator performs actual construction work covered by this Agreement, and all subcontractors of whatever tier, engaged in on-site Project construction work within the scope of this Agreement as defined in Article 3; \_\_\_\_\_, or any successor to its role, is referred to as the "PLA Administrator"; the City of Rochester is referenced as the "City"; the Rochester, New York Building and Construction Trades Council, AFL-CIO is referenced as the "Rochester Council," and the work covered by this Agreement (as defined in Article 3) is referred to as the "Project".

Wherever in this Agreement the PLA Administrator is authorized or permitted to take any action, such action may be taken by either the PLA Administrator or its designee.

### SECTION 2.2 CONDITIONS FOR AGREEMENT TO BECOME EFFECTIVE

This Agreement shall not become effective unless each of the following conditions are met: (1) the Agreement is signed by the Rochester Council and the Local Unions having jurisdiction over the Project work and is approved by the Building and Construction Trades Department, AFL-CIO; (2) the Agreement is signed by the PLA Administrator and the Contractor(s); and (3) the Agreement is authorized by the City Executive and the City Legislature.

### SECTION 2.3 ENTITIES BOUND & ADMINISTRATION OF AGREEMENT

This Agreement shall be binding on all signatory Unions, and their affiliates and all Contractors performing on-site Project work as defined in Article 3. The Contractor(s) shall include in any subcontract that they let for performance during the term of this Agreement, a requirement that their subcontractors, of whatever tier, become signatory to and bound by this Agreement with respect to subcontracted work performed within the scope of Article 3 and require each subcontractor, of whatever tier, sign a letter of assent (Schedule B). The Contractors shall use their best care, skill and diligence in supervising and directing the Work of the Contracts. The Contractors shall have total responsibility and control over the performance of the Contract work, including sole responsibility for construction means, methods, techniques, sequences, and procedures for coordinating and completing the various portions of the Contract Work. In no way will the PLA Administrator be considered to be responsible and have control over the performance of the Contract Work. This Agreement shall be administered by the PLA Administrator, on behalf of the City.

## SECTION 2.4 SUPREMACY CLAUSE

This Agreement, together with the local Collective Bargaining Agreements appended hereto as Schedule A, represents the complete understanding of all signatories and supersedes any national agreement, local agreement or other collective bargaining agreement of any type which would otherwise apply to this Project, in whole or in part, except that in the event a Contractor is signatory to the NTL Article of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, or the National Agreement of the International Union of Elevator Constructors those agreements shall apply (except that notwithstanding the foregoing National Agreements, Articles 7, 9, and 10 of this Agreement shall still apply). Where a subject covered by the provisions, explicit or implicit, of this Agreement is also covered by a provision in Schedule A, the provisions of this Agreement shall prevail, including specifically the provisions of the Management Rights clause of Article 6. It is further understood that no Contractor shall be required to sign any other labor agreement as a condition of performing work on this Project. No practice, understanding or agreement between a Contractor and a Local Union which is not explicitly set forth in this Agreement shall be binding on this Project unless endorsed in writing by the PLA Administrator.

## SECTION 2.5 LIABILITY

The liability of any Contractor and the liability of any Union under this Agreement shall be several and not joint. The PLA Administrator and any Contractor shall not be liable for any violations of this Agreement by any other Contractor; and the Rochester Council and Local Unions shall not be liable for any violations of this Agreement by any other Union and no, grievance shall be brought directly against the PLA Administrator.. Further, no arbitration decision or award may provide retroactivity of more than twenty (20) days prior to the date of service of a written grievance as described herein.

## SECTION 2.6 THE CITY

The City shall require in its bid specification for the work within the scope of Article 3 that the successful bidder, and its subcontractors of whatever tier, become bound by, and signatory to, this Agreement. The City is not a party to this Agreement and shall not be liable in any manner under this Agreement. It is understood that nothing in this Agreement shall be construed as limiting the sole discretion of the City (or its designee) in determining which Contractors shall be awarded contracts for Project work. It is further understood that the City has sole discretion at any time to terminate, delay or suspend the work, in whole or part, on this Project, or to undertake any of the work itself, without regard to this Agreement.

## SECTION 2.7 AVAILABILITY AND APPLICABILITY TO ALL SUCCESSFUL BIDDERS

The Unions agree that this Agreement will be made available to, and will fully apply to any successful bidder for Project work who becomes signatory thereto (and to its subcontractors of any tier), without regard to whether that successful bidder (or its

subcontractors) performs work at other sites on either a union or non-union basis and without regard to whether employees of such successful bidder (or its subcontractors) are, or are not, members of any unions. The PLA Administrator shall provide the Rochester Council a copy of the signed Letter of Assent for each Contractor and Subcontractor prior to the Contractor or Subcontractor performing any work on the Project. This Agreement shall not apply to the work of any Contractor (or subcontractor) which is performed at any location other than the Project site, as defined in Article 3, Section 3.1.

### ARTICLE 3 - SCOPE OF THE AGREEMENT

The Project work covered by this Agreement shall be as defined and limited by the following sections of this Article.

#### SECTION 3.1 THE WORK

This Agreement shall only apply to that on-site work expressly designated by the City as Project Work. Without restricting the City's right to designate, or not designate, work as Project Work, the parties understand that generally included within covered work will be work as defined by the limits of work contained in the bid documents (drawings and specifications) for construction contracts designated Marina Redevelopment Project.

To the extent there is any conflict between the above general description and the City's express designation (or the absence of any designation) of work as Project Work, the City's express designation (or absence of designation) shall be controlling and determinative of whether work is within the scope of this Agreement. Work not receiving the City's designation as Project Work is not covered under this Agreement.

Specifically excluded from coverage under this Agreement is all work relating to the purchase and water side installation of pre-manufactured dock systems, M/WBE work required by the City of Rochester for the installation of pre-manufactured dock systems is not excluded. bids solicited prior to the execution of this Agreement by the parties and approval of it by the City Administration and City Council, maintenance and repair work performed in the normal course of City operations, any work to be completed by the City or any of its contractors, operating under annual term contracts (whether related to this Project or not), off-site work of any kind, except to the extent permitted by law, including fabrication, and any other work not designated Project Work.

#### SECTION 3.2 TIME LIMITATIONS

This Agreement shall be limited to Project work performed under City construction contracts which are both bid and awarded after the effective date of this Agreement and performed prior to the October 31, 2015, termination date of this Agreement. This Agreement, together with all of its provisions, shall remain in effect for the foregoing Project work even if not completed by October 31, 2015. If the Project work described above is not bid and awarded by October 31, 2015, this Agreement may be extended by mutual agreement of the parties.

### SECTION 3.3 EXCLUDED EMPLOYEES

The following persons are not subject to the provisions of this Agreement, even though performing work on the Project:

- a. Superintendents and supervisors when not performing duties covered by a craft's Schedule A (excluding general and forepersons specifically covered by a craft's Schedule A), engineers, inspectors and testers, quality control/assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, technicians, non-manual employees, and all professional, engineering, administrative and management persons;
- b. Employees of the City, or of any State agency, authority or entity or employees of any municipality or other public employer or employees of any contractor (or any successor to it) employed by the City with respect to work which is not designated "Project Work";
- c. Employees and entities engaged in off-site manufacture, modifications, repair, maintenance, assembly, painting, handling or fabrication of project components, materials, equipment or machinery or involved in deliveries to and from the Project (dedicated off-site work to which Section 220 of New York's Labor Law applies is not excluded from coverage);
- d. Employees of the PLA Administrator, excepting those performing manual, on-site equipment installation and employees engaged in on-site or off-site equipment guarantee or warranty work;
- e. Employees of equipment suppliers or vendors performing or assisting in on-site equipment installation and start-up and employees engaged in on-site or off-site equipment guarantee or warranty work;
- f. Employees engaged in geophysical testing;
- g. Employees engaged in laboratory; specialty testing, inspections, or surveying pursuant to a professional services agreement between the City, the PLA Administrator, or any of the City's other professional consultants, and such laboratory, testing, inspection or surveying firm (individuals engaged in on-site surveying as direct hires of a signatory contractor, rather than pursuant to a professional services contract with the City, the PLA Administrator or any of the City's other professional consultants, are covered by this Agreement);
- h. Employees engaged in ancillary Project work performed by third parties such as electric utilities, gas utilities, telephone companies, and railroads.
- i. Employees engaged in transportation off-site of scrap, surplus, spoilage or waste materials.

### SECTION 3.4 NON-APPLICATION TO CERTAIN ENTITIES

This Agreement shall not apply to the parents, affiliates, subsidiaries, or

other joint or sole ventures of any Contractor which do not perform work at this Project. It is agreed, for the purposes of this Agreement only, that this Agreement does not have the effect of creating any joint employment, single employer or alter ego status among the City, the PLA Administrator and/or any Contractor. The Agreement shall not apply to the City or any state agency, authority, or other municipal or public entity and nothing contained herein shall be construed to prohibit or restrict the City or its employees or any City or state authority, agency or entity and its employees from performing on or off-site work related to the Project. As the contracts which comprise the Project work are completed and accepted, the Agreement shall not have further force or effect on such items or areas except where inspections, additions, repairs, modifications, check-out and/or warranty work are designated in writing (copy to Local Union involved) by the PLA Administrator as work to be performed under the terms of this Agreement.

## ARTICLE 4 - UNION RECOGNITION AND EMPLOYMENT

### SECTION 4.1 PRE-HIRE RECOGNITION

The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees who are performing on-site Project work within the scope of this Agreement as defined in Article 3.

### SECTION 4.2 UNION REFERRAL

A. The Contractors agree to hire Project craft employees covered by this Agreement through the job referral systems and hiring halls (where the referrals meet the qualifications set forth in items 1, 2 and 4 of subparagraph B) established in the Local Unions' area collective bargaining agreements (attached as Schedule A to this Agreement), and the Unions agree to provide such craft employees (including apprentices) to all Contractors on a non-discriminatory basis. Notwithstanding this, the Contractors shall have sole right to determine the competency of all referrals; the number of employees required; the selection of employees to be laid-off (except as provided in Article 5, Section 3); and the sole right to reject any applicant referred by a Local Union. In the event that a Local Union is unable to fill any request for qualified employees within a 48-hour period after such requisition is made by the Contractor, the Contractor may employ qualified applicants from any other available source. In the event that the Local Union does not have a job referral system, the Contractor shall give the Local Union first preference to refer applicants, subject to the other provisions of this Article. The Contractor shall notify the Local Union of Project craft employees hired within its jurisdiction from any source other than referral by the Union.

B. A Contractor may request by name, and the Local must honor, referral of persons who have applied to the Local for Project work and who meet the following qualifications:

- (1) possess any license required by NYS law for the Project work to be performed;
- (2) have worked a total of at least 1000 hours in the Construction craft during the prior 3 years;

- (3). were on the Contractor's active payroll for at least 60 out of the 270 calendar days prior to the contract award;
- (4) have the ability to safely perform the basic functions of the applicable trade.

No more than 25 percent of the employees covered by this Agreement, per Contractor by craft, shall be hired through the special provisions above (any fraction shall be rounded to the next highest whole number). Craft forepersons and/or general forepersons shall be included in this 25 percent. The Contractor may hire per craft, one (1) employee who is employed by the Contractor, three (3) employees referred by the applicable trade or craft. Thereafter, beginning with the fifth employee, the Contractor may hire three (3) employees referred by the applicable trade or craft, and then one (1) employee who is employed by that Contractor and shall repeat the process, three and one, until the crew requirements for that craft are met. If requested by the appropriate Union, a Contractor utilizing this provision for by-name referrals shall furnish the Union with a written certification that the individuals requested for referral meet the requirements of (1) - (4) above.

Contractors shall be exempt from the referral process for work included in change orders requiring less than 16 hours of labor.

#### SECTION 4.3 NON-DISCRIMINATION IN REFERRALS

The Local Unions represent that their hiring halls and referral systems will be operated in a non-discriminatory manner and in full compliance with all applicable federal, state and local laws and regulations which require equal employment opportunities. Referrals shall not be affected in any way by the rules, regulations, bylaws, constitutional provisions or any other aspects or obligations of union membership, policies or requirements and shall be subject to such other conditions as are established in this Article. No employment applicant shall be discriminated against by any referral system or hiring hall because of the applicant's union membership, or lack thereof.

#### SECTION 4.4 MINORITY AND FEMALE REFERRALS

The Unions recognize and acknowledge that workforce diversity of 20% minority and 6.9% women are labor employment goals. These percentage goals are based upon hours worked, by craft, without waiver or exception. To support the workforce diversity goals, The Contractor shall make payment in the amount of \$14,000 to Rochester Careers in Construction, Inc., a non-profit 501(c)(3) corporation administered in accordance with applicable law, for the express purpose of recruiting and training minority and female workers for employment on the Project. Two equal payments of \$7,000 shall be made; the first payment shall be three months after award of the contract to the Contractor, and the second payment shall be twelve months after award of the contract to Contractor. Each payment shall be made by check in the amount of \$7,000 payable to Rochester Careers in Construction. In the event a Local Union either fails, or is unable, to refer qualified minority or female applicants in percentages equaling the diverse workforce goals, the Contractor shall make a good faith effort to employ qualified minority or female applicants from any other available source.

For the purpose of tracking, the PLA Administrator shall produce and each Contractor and Subcontractor shall submit a weekly report to the PLA Administrator of total hours by craft worked and of minority/women hours worked by craft. Copies of the weekly reports will be provided to the Unions upon request.

#### SECTION 4.5 CROSS AND QUALIFIED REFERRALS

The Local Unions shall not knowingly refer to a Contractor an employee then employed by another Contractor working under this Agreement. The Local Unions will exert their utmost efforts to recruit sufficient numbers of skilled and qualified crafts employees to fulfill the requirements of the Contractor.

#### SECTION 4.6 UNION DUES

All employees covered by this Agreement shall be subject to the union security provisions contained in the applicable Schedule A local agreements, as amended from time to time, but only for the period of time during which they are performing on-site Project work and only to the extent of tendering payment of the applicable agency shop fee or union dues uniformly required for union membership in the Local Union, signatory to this Agreement, which represents the craft in which the employee is performing Project work. No employee shall be discriminated against at the Project site because of the employee's union membership or lack thereof. In the case of unaffiliated employees, the dues payment will be received by the Unions as an agency shop fee.

Each Contractor and/or Subcontractor shall be responsible for the authorized withholding and remittance to the appropriate Local Union of the applicable union dues or agency shop fee payable by employees working on the Project. Upon the City's receipt of a progress payment request by a Contractor (on behalf of the Contractor or its Subcontractor) for Project Work the PLA Administrator will notify the applicable Local Union to which that Contractor or a Subcontractor is required to remit union dues or agency shop fees that a request for payment has been made. Notification, which may be either by fax or e-mail, will provide that the Local Union has 48 hours from the time the fax or e-mail is sent in which to advise the PLA Administrator of any failure to remit union dues or agency shop fees by that Contractor or Subcontractor. If written notice of such failure to remit is received by the PLA Administrator within that 48-hour period, the City shall withhold from any funds due that Contractor the amount of the remittance delinquency, up to the total amount due the Contractor and/or Subcontractor, until any dispute regarding the delinquent remittance has been resolved. The City and PLA Administrator shall have no other obligation with respect to remittance of union dues or agency shop fees by any Contractor or Subcontractor. If notice of a delinquent remittance is not received by the PLA Administrator in response to such notice within the 48-hour period, the City shall have no obligation to withhold, with respect to that delinquent remittance, any part of a payment which is otherwise due.

#### SECTION 4.7 CRAFT FOREPERSONS AND GENERAL FOREPERSONS

The selection of craft forepersons and/or general forepersons and the

number of forepersons required shall be solely the responsibility of the Contractor. All forepersons shall take orders exclusively from the designated Contractor representatives. All forepersons shall be designated as working forepersons at the request of the Contractor.

## ARTICLE 5 - UNION REPRESENTATION

### SECTION 5.1 LOCAL UNION REPRESENTATIVE

Each Local Union signatory to this Agreement shall be entitled to designate in writing (copy to Contractor involved and PLA Administrator) one representative, and/or the Business Manager, who shall be afforded reasonable access to the Project.

### SECTION 5.2 STEWARDS

(a) Each Local Union shall have the right to designate from among those referred to the Project one working journeyman as a Steward and one alternate for each Contractor per shift, and shall notify the Contractor and PLA Administrator of the identity of the designated Steward (and alternate) prior to the assumption of such duties. Stewards shall not exercise supervisory functions and will receive the regular rate of pay for their craft classifications. There will be no non-working Stewards on the Project and there is no requirement that a particular Steward be assigned to work a shift if it will result in overtime.

(b) In addition to their work as an employee, the Steward shall have the right to receive complaints or grievances and to discuss and assist in their adjustment with the Contractor's appropriate supervisor; such activities, however, are not to interfere with the Steward's work unless an emergency situation exists. Each Steward shall be concerned with the employees of the Steward's Contractor and, if applicable, subcontractors of that Contractor, but not with the employees of any other Contractor. The Contractor will not discriminate against the Steward in the proper performance of Union duties.

(c) The Stewards shall not have the right to determine when overtime shall be worked or who shall work overtime.

### SECTION 5.3 LAYOFF OF A STEWARD

If a Steward is protected against layoff by a Schedule A, such provisions shall be recognized to the extent the Steward possesses the necessary qualifications to perform the work required. In any case in which a Steward is discharged or disciplined for just cause, the Local Union involved shall be notified immediately by the Contractor.

## ARTICLE 6 - MANAGEMENT'S RIGHTS

### SECTION 6.1 RESERVATION OF RIGHTS

Except as expressly limited by a specific provision of this Agreement, Contractors retain full and exclusive authority for the management of their Project operations including, but not limited to: the right to direct the work force, including determination as to the number to be hired and the qualifications therefore; the promotion, transfer, layoff of its employees; or the discipline or discharge for just cause of its

employees; the assignment and schedule of work; the promulgation of reasonable Project work rules; and the requirement, timing and number of employees to be utilized for overtime work. Notwithstanding the limitations and responsibilities of construction means, methods, techniques, sequences and procedures set forth in Article 2 Section 2.3 no rules, customs, or practices which as determined by the PLA Administrator and in the sole discretion of the PLA Administrator, limit or restrict productivity or efficiency of the individual (as determined by the Contractor or PLA Administrator) and/or joint working efforts with other employees shall be permitted or observed.

## SECTION 6.2 MATERIALS, METHODS & EQUIPMENT

There shall be no limitation or restriction upon the Contractors' choice of materials, techniques, methods, technology or design, or, regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices. Contractors may, without restriction, install or use materials, supplies or equipment regardless of their source. Except as provided in Article 3, Section 3.3, the on-site installation or application of such items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that other personnel having special qualifications may participate, in a supervisory capacity, in the installation, check-off or testing of specialized or unusual equipment or facilities as designated by the Contractor. There shall be no restrictions as to work which is performed off-site for the Project except as may be imposed by law.

## ARTICLE 7 - WORK STOPPAGES AND LOCKOUTS

### SECTION 7.1 NO STRIKES-NO LOCK OUT

There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns, hand billing, demonstrations or other disruptive activity at or in proximity to any Project Work site for any reason by any Union or employee against any Contractor or employer while performing work at the Project. There shall be no other Union, or concerted or employee activity which disrupts or interferes with traffic (vehicular, pedestrian, or marine) in or around Marina Redevelopment Project or any access roads to or from either, or with the operation of any City facility. Failure of any Union or employee to cross any picket line established by any union, signatory or non-signatory to this Agreement, or the picket or demonstration line of any other organization, at or in proximity to any Project Work or, regardless of location, if it has the effect of interfering with Project Work is a violation of this Article. There shall be no lockout at the Project by any signatory Contractor. Contractors and Unions shall take all steps necessary to ensure compliance with this Section 1 and to ensure uninterrupted construction, the free flow of traffic in, out and around Project sites, and unimpeded operation of City facilities for the duration of this Agreement.

### SECTION 7.2 DISCHARGE FOR VIOLATION

A Contractor may discharge any employee violating Section 7.1, above, and

any such employee will not be eligible thereafter for referral under this Agreement for a period of 100 working days.

### SECTION 7.3 NOTIFICATION

If a Contractor contends that any Union has violated this Article, it will notify the Rochester Council of the Local Union involved, with copies of the notification to the Local Union. The Rochester Council shall instruct, order and otherwise use its best efforts to cause the employees, and/or the Local Unions to immediately cease and desist from any violation of this Article. If the Rochester Council complies with these obligations, it shall not be liable for the unauthorized acts of a Local Union or its members.

### SECTION 7.4 EXPEDITED ARBITRATION

Any Contractor or Union alleging a violation of Section 1 of this Article may utilize the expedited procedure set forth below (in lieu of, or in addition to, any actions at law or equity) that may be brought.

- a. A party invoking this procedure shall notify Douglas Bantle, Robert Rabin, Mona Miller, Richard Chapman who shall alternate as Arbitrator under this expedited arbitration procedure. If the Arbitrator next on the list is not available to hear the matter within 48 hours of notice, the next Arbitrator on the list shall be called. Copies of such notification will be simultaneously sent to the alleged violator and, if a Local Union is alleged to be in violation, the Rochester Council, and the PLA Administrator.
- b. The Arbitrator shall thereupon, after notice as to time and place to the Contractor, the Local Union involved, the Council and the PLA Administrator, hold a hearing within 48 hours of receipt (excluding Sundays and holidays) of the notice invoking the procedure if it is contended that the violation still exists. The hearing will not, however, be scheduled for less than 24 hours (excluding Sundays and holidays) after the notice required by Section 3, above.
- c. All notices pursuant to this Article may be by telephone, telegraph, hand delivery, or fax, confirmed by overnight delivery, to the Arbitrator, Contractor and Union involved. The hearing may be held on any day including Saturdays or Sundays. The hearing shall be completed in one session, which shall not exceed 8 hours duration (no more than 4 hours being allowed to either side to present their case, and conduct their cross examination) unless otherwise agreed. A failure of any Union or Contractor to attend the hearing shall not delay the hearing of evidence by those present or the issuance of an award by the Arbitrator.
- d. The sole issue at the hearing shall be whether a violation of Section 7.1, above, occurred. If a violation is found to have occurred, the Arbitrator shall issue a cease and Desist Award restraining such violation and serve copies on the Contractor and Union involved. The Arbitrator shall

have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages, which issue is reserved solely for court proceedings, if any. The Award shall be issued in writing within 3 hours after the close of the hearing, and may be issued without an Opinion. If any involved party desires an Opinion, one shall be issued within 15 calendar days, but its issuance shall not delay compliance with, or enforcement of, the Award.

- e. An Award issued under this procedure may be enforced by any court of competent jurisdiction upon the filing of this Agreement together with the Award. Notice of the filing of such enforcement proceedings shall be given to the Union and Contractor involved. In any court proceeding to obtain a temporary or preliminary order enforcing the arbitrator's Award as issued under this expedited procedure, the involved Union and Contractor waive their right to a hearing and agree that such proceedings may be ex parte, provided notice is given to opposing counsel. Such agreement does not waive any party's right to participate in a hearing for a final court order of enforcement or in any contempt proceeding.
- f. Any rights created by statute or law governing arbitration proceedings which are inconsistent with the procedure set forth in this Article, or which interfere with compliance thereto, are hereby waived by the Contractors and Unions to whom they accrue.
- g. The fees and expenses of the Arbitrator shall be equally divided between the involved Contractor and Union.

## SECTION 7.5 ARBITRATION OF DISCHARGES FOR VIOLATION

Procedures contained in Article 9 shall not be applicable to any alleged violation of this Article, with the single exception that an employee discharged for violation of Section 1, above, may have recourse to the procedures of Article 9 to determine only if the employee did, in fact, violate the provisions of Section 9.1 of this Article; but not for the purpose of modifying the discipline imposed where a violation is found to have occurred.

## ARTICLE 8 - LABOR MANAGEMENT COMMITTEE

### SECTION 8.1 SUBJECTS

The Project Labor Management Committee will meet on a regular basis to:

- 1) promote harmonious relations among the Contractors and Unions;
- 2) enhance safety awareness, cost effectiveness and productivity of construction operations;
- 3) protect the public interest;
- 4) discuss matters relating to staffing and scheduling with safety and productivity as considerations; and
- 5) review Affirmative Action and equal employment opportunity matters pertaining to the Project.

## SECTION 8.2 COMPOSITION

The Committee shall be comprised of three designees of the Rochester Council (all designees shall be local representatives) and the PLA Administrator (with Owner Approval), and two other designees of the City, and representatives of the Local Unions and Contractors involved in the issues being discussed. The Committee may elect its own chair. The Committee may conduct business through mutually agreed sub-committees.

## ARTICLE 9 - GRIEVANCE & ARBITRATION PROCEDURE

### SECTION 9.1 CLOSE COOPERATION

This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a local representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

### SECTION 9.2 IMPORTANCE TO ALL PARTIES

The Contractors, Unions, and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

### SECTION 9.3 PROCEDURE

Any question or dispute arising out of and during the term of this Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1:

(a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she shall, through the Local Union business representative or job steward shall, within five (5) working days after the occurrence of the violation, give notice to the work site representative of the involved Contractor stating the provision(s) alleged to have been aggrieved. The business representative of the Local Union or the job steward and the work site representative of the involved Contractor and the Prime Contractor, if the involved Contractor is a Sub-Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the involved Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Prime Contractor) at the conclusion of the meeting but no later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party, may, within forty-eight (48) hours thereafter, pursue Step 2 of the grievance procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Local Union(s) or the Prime Contractor or any Contractor have a dispute with the other party (excepting jurisdictional disputes) and, after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

**Step 2:**

The International Union Representative and the involved Contractor, shall meet within seven (7) working days of referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provision of Step 3 within seven (7) calendar days thereafter.

**Step 3:**

(a) If the grievance has been submitted but not resolved under Step 2, either party may request in writing within seven (7) calendar days thereafter, that the grievance be submitted to Douglas Bantle, Robert Rabin, Mona Miller, Richard Chapman who shall act, alternately, as the Arbitrator under this procedure. The Labor Arbitration Rules of the American Arbitration Association shall govern the conduct of the arbitration hearing, at which all Step 2 participants shall be parties. The decision of the Arbitrator shall be final and binding on the involved Contractor, Local Union and employees and the fees and expenses of such arbitrations shall be borne equally by the involved Contractor and Local Union(s).

(b) Failure of the grieving party to adhere to the time limits herein shall render the grievance null and void. These time limits may be extended only by written consent of the involved Contractor and involved Local Union at the particular step where the extension is agreed upon. The Arbitrator shall have authority to make decisions only on the issues presented to him and shall not have the authority to change, add to, delete or modify any provision of this Agreement.

## **SECTION 9.4 PARTICIPATION BY PLA ADMINISTRATOR AND CITY**

The PLA Administrator and City shall be notified by the involved Contractor of all actions at Steps 2 and 3 and, at its election, may participate in full in all proceedings at these Steps, including Step 3 arbitration.

## **ARTICLE 10 - JURISDICTIONAL DISPUTES**

### **SECTION 10.1 ASSIGNMENT**

The assignment of the work will be solely the responsibility of the Contractor performing the work involved: and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry ("the Plan") or any successor Plan.

### **SECTION 10.2 PROCEDURE FOR SETTLEMENT OF DISPUTES**

All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and employers, parties to this Agreement, shall be settled and

adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.

#### SECTION 10.3 NO INTERFERENCE WITH WORK

All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

#### SECTION 10.4 PRE-JOB CONFERENCE

Each Contractor will conduct a pre-job conference with the Rochester Council and appropriate Local Unions prior to commencing work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

In conjunction with the pre-job conference, each Contractor shall fill out the attached Proposed Trade Assignments form (Schedule C) to identify all Subcontractors and indicating what trades will be used to perform the Project work. If any Local Union(s) objects or disagrees to the Proposed Trade Assignment of either The Contractor or Subcontractor, the Local Union will state its objection and there shall be a good faith discussion among the Contractor or Subcontractor and the objecting Local Union and other affected Unions to resolve objections to the trade assignment. If no resolution is reached, any involved Local Union may submit their position in writing together with support documentation within seven (7) calendar days to The Contractor or Subcontractor with a copy to all affected Local Unions. The Contractor or Subcontractor will review all submitted supporting documentation regarding the Proposed Trade Assignments and will submit to The, the Rochester Council, and all affected Local Unions a "Final Trade Assignment" letter within fourteen (14) days calendar days of the pre-job meeting at which the Proposed Trade Assignments were made. Any unresolved disputes concerning trade assignments shall be handled in accordance with Section 10.1, 10.2, and 10.3 of this Article in accordance with the present Plan established by the Building and Construction Trades Department.

### ARTICLE 11- WAGES AND BENEFITS

#### SECTION 11.1 CLASSIFICATION AND BASE HOURLY RATE

Subject to the provisions of this Agreement, all covered employees will be classified in accordance with the work performed and paid the base, straight time hourly wage rates applicable for those classifications as required by the applicable New York State Labor Law Section 220 ("Section 220") prevailing wage determination and applicable Davis-Bacon wage determination, if any. Recognizing, however, that special conditions may exist or occur on the Project, the parties may, by mutual agreement, establish rates and/or hours for one or more classifications that differ from the prevailing wage and/or

those in the agreements contained in Schedule A. Parties to such agreements will include The Contractor involved, the Local Unions involved and the Rochester Council.

## SECTION 11.2 EMPLOYEE BENEFITS/SUPPLEMENTS

A. Unless expressly provided differently in this Agreement, Contractors agree to pay employee benefits/supplements on behalf of all of their employees covered by this Agreement in the amounts required by the applicable Section 220 schedule in effect.

Except as provided below and in 11.2B, the Contractors agree that such payments shall be made to those established jointly trustee employee benefit funds designated in Schedule A, and in the amounts so designated, to the extent such payments are required by and satisfy the Section 220 obligation. Bona fide jointly trustee fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added if they similarly fall within Section 220. The difference, if any, between the Section 220 amount required to be paid and those Schedule A benefit fund contributions which qualify under Section 220 shall be paid to the employee in cash. Under no circumstances is a Contractor required to pay benefits except as required under Section 220 or otherwise explicitly required by this Agreement.

B. Notwithstanding Section 11.2A, Contractors who designate employees pursuant to Article 4, Section 4.2. B, and who maintain bona fide private benefit plans which satisfy the requirements of Section 220 of the Labor Law, may satisfy the above benefit obligation with respect to those employees by providing those employees with coverage under their separate, applicable private benefit plans (to the extent consistent with Section 220) or by electing to pay into the applicable jointly trustee funds designated on Schedule A on their behalf, at the Contractor's option. The total benefit payments to be made by a Contractor on behalf of those employees must equal the total Section 220 supplement amount and any shortfall must be paid by cash supplement to the employee. The option for a cash equivalent supplement shall not apply to contributions into JATC or similar apprentice funds designated on Schedule A if the Contractor does not have an apprentice training program approved by the Department of Labor. The Contractor would be required to pay into the remaining applicable jointly trustee funds designated in Schedule A on behalf of its Article 4, Section 4.2.B designated employees.

This same option shall apply with respect to any other employee who is referred to the Contractor through the hiring hall process provided such employee was previously employed by the Contractor and was a participant in a bona fide private benefit plan maintained by the Contractor and which satisfies the requirements of Section 220.

C. Contractors who exercise the option under Section 11.2B of this Article to pay into their own private benefit plans rather than the applicable jointly trustee funds designated at Schedule A shall be responsible for and guarantee employee benefit/supplement payments and shall indemnify and hold harmless the jointly trustee funds designated in Schedule A against any and all benefit/supplement claims by its employees

D. Contractors who contribute to jointly trustee funds under this Section agree to be bound by the written terms of the legally-established jointly trustee

Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Trust Funds but only with regard to work done on this Project and only for those employees for whom this Agreement requires such benefit Payments. Notwithstanding the foregoing, a Contractor's liability shall be at all times limited to the amount of contributions required to be made to the Trust Funds.

E. Each Contractor shall be responsible for and guarantee the payment of all required fringe benefits on the Project. Upon the City's receipt of a progress payment request by a Contractor (on behalf of the Contractor or its subcontractor) for Project Work, the PLA Administrator will notify the applicable union and any fund to which that Contractor or subcontractor is contributing that a request for payment has been made. Notification, which may either be by fax or email, will provide that the fund has 48 hours from the time the fax or email is sent in which to advise the PLA Administrator of any current contribution delinquencies for that Contractor or subcontractor. If written notice of such a delinquency is received by the PLA Administrator within that 48-hour period, the City shall withhold from any funds due that Contractor the amount of that delinquency, up to the total amount due the Contractor and/or subcontractor, until any dispute regarding the delinquency has been resolved. The City and PLA Administrator shall have no other obligation with respect to contributions owed by any Contractor or subcontractor. If notice of a delinquency is not received by the PLA Administrator in response to such notice within the 48-hour period, the City shall have no obligation to withhold, with respect to that delinquency, any part of a payment which is otherwise due.

## ARTICLE 12 - HOURS OF WORK, PREMIUM PAYMENTS, SHIFTS AND HOLIDAYS

### SECTION 12.1 WORK WEEK AND WORK DAY

A. The standard work week shall be a Five-Day Work Week: Monday - Friday; 5 days, 8 hours plus 1/2 hour unpaid lunch period each day consisting of 40 hours of work at straight time rates.

The City or its designee, at its sole discretion, may modify the work week per one of the following schedules:

(1) Four-Day Work Week: Monday - Thursday; 4 days, 10 hours plus 1/2 hour unpaid lunch period each day.

(2) Schedule selected shall be set by the City or its' designee and may change day by day with notice.

B. The Day Shift shall commence between the hours of 6:00 a.m. and 9:00 a.m. and shall end between the hours of 2:30 p.m. and 7:30 p.m. Starting and quitting times shall occur at the Project site as designated by the City or its' designee

C. Scheduling -The City or its' designee, shall have the option of scheduling either a five-day or four-day work week and work day hours consistent with Project requirements, the Project schedule, and minimization of public inconvenience and City operations. When conditions beyond the control of the Contractor, including but not limited to weather, power failure, fire or natural disaster, prevent the performance of Project work on a regularly scheduled work day, or when a holiday falls during a regularly

scheduled work day and is not worked, the Contractor, with approval of the City or its' designee may schedule Friday, Saturday and/or Sunday (where on 4, 10's) or Saturday and/or Sunday (where on 5, 8's) during that calendar week in which a workday was lost, at straight time pay (except that Sundays shall be at double time or "at two times the regular rate of pay"); provided the employees involved have not otherwise worked more than 40 hours during that work week. In the event the employees involved have actually worked more than 40 hours during that work week they will receive time and one half pay for the hours worked in excess of 40. Provided the Union is able to refer sufficient men to meet a Contractor's make-up needs, an Individual employee will not be penalized for an occasional inability to work a Saturday or Sunday make-up day.

D. Notice – The City or its' designee shall provide not less than 24 hours prior notice to the Local Union involved as to the work week and work hour schedules (including any changes in the work schedule) to be worked or such lesser notice as may be mutually agreed upon.

## SECTION 12.2 OVERTIME/PREMIUM PAY

Subject to Section 12.1, overtime and/or premium pay for hours worked outside of the standard work week and work day, described in Section 12.1 A above, shall be paid in accordance with the applicable Schedule A, except that overtime/premium pay shall not exceed 1 ½ times the regular rate except Sundays, which shall be paid at 2 times the base rate. There will be no restriction upon the Contractor's scheduling of overtime or the non-discriminatory designation of employees who shall be worked. There shall be no pyramiding of overtime/premium pay under any circumstances. The Contractor shall have the right to schedule work so as to minimize overtime. Holiday pay, if any, will be paid in accordance with Article 12, Section 12.4 below.

## SECTION 12.3 SHIFTS

A. Flexible Schedules - Scheduling of shift work shall remain flexible in order to meet Project schedules and existing Project conditions including the minimization of interference with City operations and public inconvenience. It is not necessary to work a day shift in order to schedule a second or third shift. Shifts must have prior approval of the PLA Administrator, and must be scheduled with not less than five work days notice to the Local Union.

B. Second and/or Third Shifts – To the extent permitted by law, there shall be no shift differential for either second shift (normally starting between 2 p.m. and 8 p.m.) and/or the third shift (normally starting between 10 p.m. and 2 a.m.) work for any craft, if there is also a first shift involving that same craft working on the Project. There shall be no reduction in hours worked on a second and/or third shift, except that when 3 shifts are working together, the length of one or more shifts can be reduced to accommodate a 24 hour day and only actual hours worked will be paid.

C. Flexible Starting Times - Shift starting times will be adjusted by the Contractor, with approval of the City or its' designee as necessary to fulfill Project requirements subject to the notice requirements of paragraph A. Special shifts can be created outside normal shift hours if necessary to facilitate construction and to minimize

traffic congestion problems.

D. Four Tens - When working a four-day work week, the standard work day shall consist of 10 hours work for 10 hours of pay at the straight time rate exclusive of an unpaid 1/2 hour meal period and regardless of the starting time.

E. Rolling Workweeks – In recognition of the unique nature and needs of this Project, the parties agree that during the time period required for the excavation, trucking, and disposal of soils, slag, and regulated waste materials from the marina basin a Contractor may opt to utilize a “rolling 40” schedule in which work can be performed on a continuous basis with multiple crews. This option may be utilized in conjunction with either a 5-8 schedule or a 4-10 schedule and/or first, second and/or third shifts for work not related to excavation, trucking and disposal. Under this rolling schedule, Saturdays (as a regular workday) will be paid at straight time and Sundays (as a regular workday) will be paid at time and one-half.

#### SECTION 12.4 HOLIDAYS

A. Schedule - There shall be 6 recognized unpaid holidays on the Project:

New Years Day	Labor Day
Memorial Day	Thanksgiving Day
Fourth of July	Christmas Day

All said holidays shall be observed on the dates designated by New York State Law. In the absence of such designation, they shall be observed on the calendar date except those holidays which occur on Sunday shall be observed on the following Monday.

B. Payment - Premium pay for work performed on such a recognized holiday shall be in accordance with the applicable Schedule A.

C. Exclusivity - No holidays other than those listed in Section 4-A above shall be recognized or observed.

#### SECTION 12.5 REPORTING PAY

A. Except for weather related events, for which there will be no compensation, employees who report to the work location pursuant to the regular schedule and who are not provided with work or whose work is terminated early by a Contractor, shall receive, in lieu of reporting guarantee or any similar pay provided in Schedule A, the greater of an allowance for travel costs equal to one hour's pay or pay for any hours actually worked, but not both. This Section 12.5A shall apply to all work with the exception of the work conducted under the Rolling Workweek Shifts as described in Section 12.3E. The allowance for travel costs is to be considered as wages and is to be included in the calculation of any benefits.

B. When working using the Rolling Workweek as described in Section 12.3E above employees who report to the work location pursuant to the regular schedule and who are not provided with work for any reason, including weather, or whose work is terminated early by a Contractor, shall receive, in lieu of reporting guarantee or any similar pay provided in Schedule A, the greater of an allowance for travel costs equal to two hour's pay or pay for any hours actually worked, but not both to a maximum of eight hours in any

given 40 hour shift.

C. When an employee who has completed their scheduled shift and left the Project site is "called out" to perform special work of a casual, incidental or irregular nature, the employee shall receive pay for actual hours worked with a minimum guarantee of 1 hour, at the employee's straight time rate.

D. When an employee leaves the job or work location of their own volition or is discharged for cause or is not working as a result of the Contractor's invocation of Section 12.7 below, they shall be paid only for the actual time worked.

E. Except as specifically set forth in this Article there shall be no premiums, bonuses, hazardous duty (unless required under Section 220), high time or other special payments of any kind.

F. There shall be no pay for time not actually worked except as specifically set forth in this Article 12.

#### SECTION 12.6 PAYMENT OF WAGES

A. Payday - Payment shall be made by check, drawn on a New York bank with branches located within commuting distance of the job site. Paychecks shall be issued by the Contractor at the job site by 3 p.m. on Thursdays. Where necessary, an out-of-town Contractor, with the approval of the PLA Administrator and upon advance notice to the Unions, may establish a Friday morning payday provided Friday is typically a scheduled work day. In the event that the following Friday is a bank holiday, paychecks shall be issued on Wednesday of that week. Not more than one week's wages shall be held back in any pay period. Paycheck stubs shall contain the name and business address of the Contractor, together with an itemization of deductions from gross wages.

B. Termination- Employees who are laid off or discharged for cause shall be paid in full for that which is due them at the time of termination. The Contractor shall also provide the employee with a written statement setting forth the date of lay off or discharge.

#### SECTION 12.7 EMERGENCY WORK SUSPENSION

A Contractor may, if considered necessary for the protection of life, property, and/or safety of employees or others, suspend all or a portion of Project work. In such instances, employees will be paid for actual time worked; provided, however, that when a Contractor requests that employees remain at the job site available for work, employees will be paid for "stand-by" time at their hourly rate of pay.

#### SECTION 12.8 INJURY/DISABILITY

An employee who, after commencing work, suffers a work-related injury or disability while performing work duties, shall receive no less than 8 hours wages for that day. Further, the employee shall be rehired at such time as the employee is able to return to duties provided there is still work available on the Project for which the employee is qualified and able to perform.

## SECTION 12.9 TIME KEEPING

A Contractor may utilize brassing or other systems to check employees in and out.

## SECTION 12.10 MEAL PERIOD

A Contractor shall schedule an unpaid meal period of not more than 1/2 hour duration at the work location between the 3rd and 5th hour of the scheduled shift. A Contractor may, for efficiency of operation, establish a schedule which coordinates the meal periods of two or more crafts. If an employee is required to work through the meal period, the employee shall be compensated in a manner established in the applicable Schedule A.

## SECTION 12.11 BREAK PERIODS

There will be no rest periods, organized coffee breaks or other non-working time established during working hours. Individual coffee containers will be permitted at the employee's work location.

# ARTICLE 13 - APPRENTICES

## SECTION 13.1 RATIOS

Recognizing the need to maintain continuing supportive programs designed to develop adequate numbers of competent workers in the construction industry and to provide craft entry opportunities for minorities, women and economically disadvantaged non-minority males, Contractors may employ apprentices in their respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. Contractors may utilize apprentices and such other appropriate classifications as are contained in the applicable Schedule A in a ratio of not less than 25% of the work force by craft (without regard to whether a lesser ratio is set forth in Schedule A), unless the applicable Schedule A provides for a higher percentage. Apprentices and such other classifications as are appropriate shall be employed in a manner consistent with the provisions of the appropriate Schedule A.

## SECTION 13.2 DEPARTMENT OF LABOR

To assist the Contractors in attaining a maximum effort on this Project, the Unions agree to work in close cooperation with, and accept monitoring by, the New York State Department of Labor to ensure that minorities and women are afforded every opportunity to participate in apprenticeship programs which result in the placement of apprentices on this Project. To further ensure that this Contractor effort is attained, up to 50% of the apprentices placed on this Project may be first year, minority, women or economically disadvantaged apprentices. The Local Unions will cooperate with Contractor requests for minority, women or economically disadvantaged referrals to meet this Contractor effort.

### SECTION 13.3 HELMETS TO HARDHATS

The Employers and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeships programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

## ARTICLE 14 - SAFETY PROTECTION OF PERSON AND PROPERTY

### SECTION 14.1 SAFETY REQUIREMENTS

Each Contractor will ensure that applicable OSHA and City mandated safety requirements are at all times maintained on the Project and the employees and Unions agree to cooperate fully with these efforts. Employees must perform their work at all times in a safe manner and protect themselves and the property of the Contractor and City from injury or harm. Failure to do so may be grounds for discipline, including discharge. Prevention of accidents at the site is the responsibility of the Contractors, its employees, subcontractors and suppliers, persons, and entities at the site. The Contractors shall establish their own safety programs implementing safety measures, policies, and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction. The PLA Administrator is not responsible for identifying unsafe practices, and the PLA Administrators failure to stop the Contractors' unsafe practices shall not relieve the Contractors of the responsibility therefore.

### SECTION 14.2 CONTRACTOR RULES

Employees covered by this Agreement shall at all times be bound by the reasonable safety, security, and visitor rules as established by the Contractors for this Project. Such rules will be published and posted in conspicuous places throughout the Project.

### SECTION 14.3 INSPECTIONS

The Contractors and PLA Administrator retain the right to inspect incoming shipments of equipment, apparatus, machinery and construction materials of every kind.

## ARTICLE 15 - NO DISCRIMINATION

### SECTION 15.1 COOPERATIVE EFFORTS

The Contractors and Unions agree that they will not discriminate against any

employee or applicant for employment because of race, color, religion, sex, national origin, marital status, age, union or non-union status, or any other status protected by law, in any manner prohibited by law or regulation. It is recognized that special procedures may be established by Contractors and Local Unions and the New York State Department of Labor for the training and employment of persons who have not previously qualified to be employed on construction projects of the type covered by this Agreement. The parties to this Agreement will assist in such programs and agree to use their best efforts to ensure that the goals for female and minority employment are met on this Project. Nothing in this section shall be grievable.

## SECTION 15.2 LANGUAGE OF AGREEMENT

The use of the masculine or feminine gender in this Agreement shall be construed as including both genders.

## ARTICLE 16 - GENERAL TERMS

### SECTION 16.1 PROJECT RULES

The PLA Administrator and/or the Contractors may establish from time to time such reasonable Project rules as are necessary for the good order of the Project. It is agreed that such rules may include pre-hire and post-hire alcohol and/or drug testing rules, including but not limited to post-accident testing, applicable to all covered employees, provided those rules utilize testing procedures and standards as contained in U.S. Department of Labor C.D.L. Regulations. These rules will be explained at the pre-job conference (if then existing) and posted at the Project site and may be amended thereafter as necessary. Failure of an employee to observe these rules and regulations shall be grounds for discipline, including discharge. The fact that no order was posted prohibiting a certain type of misconduct shall not be a defense to an employee disciplined or discharged for such misconduct when the action taken is for cause.

### SECTION 16.2 TOOLS OF THE TRADE

The welding/cutting torch and chain fall are tools of the trade having jurisdiction over the work performed. Employees using these tools shall perform any of the work of the trade. There shall be no restrictions on the emergency use of any tools or equipment by any qualified employee or on the use of any tools or equipment for the performance of work within the employee's jurisdiction.

### SECTION 16.3 SUPERVISION

Employees shall work under the supervision of the craft foreperson or general foreperson.

### SECTION 16.4 TRAVEL ALLOWANCES

There shall be no payments for travel expenses, travel time, parking, subsistence allowance or other such reimbursements or special pay except as expressly set forth in this Agreement.

## SECTION 16.5 FULL WORKDAY

Employees shall be at their work area at the starting time established by the Contractor. The signatories reaffirm their policy of a fair day's work for a fair day's wage.

## SECTION 16.6 ENGINEERS AND MASTER MECHANICS

No Master Mechanic needs to be employed by a Contractor unless and until that Contractor regularly employs more than 15 Engineers (excluding Oilers) on a shift. In addition, any Master Mechanic employed is expected to operate equipment on the same basis as any other Engineer until such time as the Contractor regularly employs more than 20 Engineers(excluding Oilers) on a shift.

## SECTION 16.7 MANDATORY PRE-JOB CONFERENCE

The Contractors agree to meet with the Union for a mandatory pre-job conference prior to the commencement of work on the project and the same shall apply to any and all subcontractors, the names of such subcontractors shall be provided to the Union together with the completed Proposed Trade Assignments form (Schedule C). (Article 10, Section 10.4). Any Subcontractor not in attendance at the pre-job conference must submit a completed Proposed Trade Assignment form to The Contractor and the Rochester, New York Building and Construction Trades Council a minimum of seven (7) calendar days prior to the commencement of its portion of work on the contract. If requested by any signatory member of the Rochester Council, the Subcontractor must have a "Proposed Trade Assignment" meeting..

## SECTION 16.8 INDUSTRY TRAINING/ADVANCEMENT FUNDS

Any payment otherwise required under any collective bargaining agreement which would otherwise be applicable to this PLA for industry training/advancement funds or other payments separate and apart from wages and fringe benefits shall be null and void with the exception of those expressly allowed under Section 220.

## SECTION 16.9 LOADING AND TRUCKING OF UNREGULATED SOILS

It is recognized that a portion of the soil excavated from this site will be designated as unregulated soil. The City of Rochester or its authorized representatives will have sole responsibility for making that designation. For soils designated as unregulated the Contractor will determine the final location for disposal. It is agreed that drivers operating vehicles hauling unregulated materials from the site shall be allowed to operate the vehicle on the project site. There shall be no requirement for replacement of these drivers at the project fence line with other drivers for the purposes of operating vehicles within the project site.

## ARTICLE 17 - COOPERATION

To the fullest extent permitted by law, the parties intend for the provisions of this Agreement to control in the event of a conflict between this Agreement and any provision of New York State Labor Law. Towards that end, the PLA Administrator,

Contractors and the Unions will cooperate in seeking any NYS Department of Labor approvals that may be required for implementation of any terms of this Agreement.

## ARTICLE 18 - SAVINGS AND SEPARABILITY

### SECTION 18.1 THIS AGREEMENT

In the event that the application of any provision of this Agreement is enjoined, on either an interlocutory or permanent basis, or otherwise found in violation of law, the provision involved shall be rendered, temporarily or permanently, null and void. In such event, the remainder of the Agreement shall remain in full force and effect, to the extent allowed by law, for contracts already bid and/or awarded and still in construction provided the Contractor then voluntarily accepts the Agreement. The parties to this Agreement will enter into negotiations for a substitute provision in conformity with the law and the intent of the parties for contracts to be let in the future.

### SECTION 18.2 THE BID SPECIFICATIONS

In the event that the City's bid specifications, or any other action taken by the City or any Contractor, requiring that a Contractor become signatory to this Agreement is enjoined, on either an interlocutory or permanent basis, or otherwise found in violation of law, then such specification or other action, and with it Article 2, Section 2.6, shall be rendered, temporarily or permanently, null and void. In such event, this Agreement shall remain in full force and effect to the extent allowed by law for contracts already bid and awarded and still in construction provided the Contractor then voluntarily accepts the Agreement. The parties will enter into negotiations as to modifications to the Agreement to reflect the court action taken and the intent of the parties for contracts to be let in the future.

### SECTION 18.3 NON-LIABILITY

In the event of an occurrence referenced in Section 18.1 or Section 18.2 of this Article, neither the City, the PLA Administrator, any Contractor, nor any signatory Union shall be liable under this Agreement or otherwise, directly or indirectly, for any action taken, or not taken, in order to comply with any court order, injunction or determination. Project bid specifications will be issued in conformance with court orders then in effect and no retroactive payments or other retroactive action will be required if the original court determination is reversed. Contracts shall be awarded on the basis of the specification issued unless that specification has been enjoined or otherwise ruled unlawful, in which case the award, if any, shall be in accordance with any applicable court order.

### SECTION 18.4 NON-WAIVER

Nothing in this Article shall be construed as waiving the prohibitions of Article 7 as to signatory Contractors and signatory Unions.

## ARTICLE 19- FUTURE CHANGES IN SCHEDULE A AREA CONTRACTS

### SECTION 19.1 CHANGES TO AREA CONTRACTS

A. To the extent applicable to the Project, Schedule A to this Agreement shall continue in effect until the Contractor and/or Union parties to the Area Collective Bargaining Agreements which are the basis for Schedule A notify the PLA Administrator in writing of the mutually agreed upon changes in provisions of such agreements which are applicable to the Project, and their effective dates. Such changes, including changes in wage and benefit/supplement rates, shall only be effective to the extent consistent with this Agreement.

B. It is agreed that any provisions negotiated into Schedule A will not apply to work on this Project if such provisions are less favorable to this Project than those uniformly required of contractors for construction work, other than this Project, normally covered by those agreements; nor shall any provision be recognized or applied on this Project if it may be construed to apply exclusively, or predominantly, to work covered by this Project Agreement.

C. Any disagreement between signatories to this Agreement over the incorporation into Schedule A of provisions agreed upon in the renegotiation of Area Collective Bargaining Agreements shall be resolved in accordance with the procedure set forth in Article 9 of this Agreement.

### SECTION 19.2 LABOR DISPUTES DURING AREA CONTRACT NEGOTIATIONS

The Unions agree that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity or other violations of Article 7 affecting the Project by any Local Union involved in the renegotiation of Area Local Collective Bargaining Agreements nor shall there be any lock-out on this Project affecting a Local Union during the course of such renegotiations.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and effective as of the \_\_\_\_ day of \_\_\_\_\_, 2013

For: Project Labor Agreement Administrator

BY: \_\_\_\_\_

**FOR THE BUILDING & CONSTRUCTION TRADES**

**ROCHESTER BUILDING & CONSTRUCTION TRADES COUNCIL**

BY: \_\_\_\_\_  
(Name/Title)

**FOR THE LOCAL UNIONS**

INTERNATIONAL ASSOCIATION OF BRICKLAYERS & MASONS, LOCAL NO.3

BY: \_\_\_\_\_  
(Name/Title)

NORTHEAST REGIONAL COUNCIL OF CARPENTERS, LOCAL 276

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS UNION LOCAL  
NO. 86

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 27

BY: \_\_\_\_\_  
(Name/Title)

GLAZIERS, ARCHITECTURAL METAL AND GLASS WORKS LOCAL NO. 677

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL  
AND REINFORCING IRON WORKERS LOCAL NO. 33

BY: \_\_\_\_\_  
(Name/Title)

LABORERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, LOCAL  
NO. 435

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 158, DISTRICT  
832

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES LOCAL NO. 150

BY: \_\_\_\_\_  
(Name/Title)

UNITED ASSOCIATION OF JOURNEY AND APPRENTICES OF THE PLUMBING  
AND PIPEFITTING INDUSTRY LOCAL NO. 13

BY: \_\_\_\_\_  
(Name/Title)

UNITED UNION OF ROOFERS, WATERPROOFERS AND ALLIED WORKERS  
LOCAL NO. 22

BY: \_\_\_\_\_  
(Name/Title)

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL NO. 46

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS LOCAL NO. 118

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND  
ALLIED WORKERS, LOCAL 26

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS,  
BLACKSMITHS, FORGERS AND HELPERS LOCAL 7

BY: \_\_\_\_\_  
(Name/Title)

ROAD SPRINKLER FITTERS LOCAL UNION 669

BY: \_\_\_\_\_  
(Name/Title)

MILLWRIGHTS LOCAL UNION 1163

BY: \_\_\_\_\_  
(Name/Title)

## **SCHEDULE A – LOCAL COLLECTIVE BARGAINING AGREEMENTS**

- EASTERN CONTRACTORS ASSOCIATION, INC. And BRICKLAYERS AND ALLIED CRAFTWORKERS OF THE LOCAL NO. 3, NEW YORK ROCHESTER COUNCIL May 1, 2005 – April 30, 2010
- EASTERN CONTRACTORS ASSOCIATION, INC. AND BRICKLAYERS AND ALLIED CRAFTWORKERS LOCAL NO. 3, New York, AFL-CIO and Construction Industry Association of Rochester, New York. May 1, 2005 – April 30, 2010
- NORTHWEST REGION AGREEMENT between “THE ASSOCIATIONS” and the NORTHEAST REGIONAL COUNCIL OF CARPENTERS AND JOINERS OF AMERICA, June 1, 2011 – May 31, 2016
- AGREEMENT BETWEEN LABOR RELATIONS DIVISION WESTERN NEW YORK REGION ASSOCIATED GENERAL CONTRACTORS OF AMERICA, NEW YORK STATE CHAPTER, INC. AND NORTHEAST REGIONAL COUNCIL OF CARPENTERS. May 1, 2012 – April 30, 2015
- LOCAL UNION #86, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS and ROCHESTER NEW YORK CHAPTER NECA May 27, 2013 – May 26, 2014
- ELEVATOR CONTRACTORS OF AMERICA WITH INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, July 9, 2012 to July 8, 2017
- GLAZIERS AND GLASS WORKERS - LOCAL UNION #677 AND EMPLOYERS OF ROCHESTER AND/OR SYRACUSE, NEW YORK May 1, 2009 – April 30, 2014
- IRONWORKERS UPSTATE LOCALS OF NEW YORK. AND VICINITY, CONSISTING OF INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL, and REINFORCING IRON WORKERS, LOCAL UNION NO. 33, 9, 440, 6, AND 12 And UPSTATE IRON WORKER EMPLOYERS ASSOCIATION, INC. May 1, 2012 - April 30, 2015
- LABOR RELATIONS DIVISION, ROCHESTER REGION, ASSOCIATED GENERAL CONTRACTORS, NEW YORK STATE CHAPTER, LLC. And LOCAL 435 LABORERS INTERNATIONAL UNION OF NORTH AMERICA AFFILIATED WITH THE AFL-CIO July 1, 2013 – June 30, 2015
- LOCAL UNION NO. 435 LABORERS INTERNATIONAL UNION OF NORTH AMERICA AND CONSTRUCTION INDUSTRY ASSOCIATION OF

ROCHESTER, NY, INC. May 1, 2009 – April 30, 2014

- LABOR RELATIONS DIVISION, ROCHESTER REGION, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, NEW YORK STATE CHAPTER, INC. And INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 832, AFFILIATED WITH THE AFL-CIO April 1, 2013 – March 31, 2018
- OPERATING ENGINEERS BUILDING AGREEMENT BETWEEN “THE ASSOCIATIONS” AND LOCAL NO.158 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS OF ROCHESTER NEW YORK June 1, 2012 – February 28, 2015
- PAINTERS DISTRICT COUNCIL NO. 4 AND PAINTERS, DECORATORS, AND CONSTRUCTORS ASSOCIATION OF ROCHESTER NEW YORK, May 1, 2012 – April 30, 2017
- LOCAL UNION NO. 13 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA AND INDIVIDUAL EMPLOYER May 1, 2011 – April 30, 2015
- ROOFING CONTRACTORS Of The ROOFING CONTRACTORS INDUSTRY FUND OF ROCHESTER, NY and LOCAL UNION #22 Of The UNITED UNION OF ROOFERS, WATERPROOFERS And ALLIED WORKERS May 31, 2010 – June 1, 2014
- SHEET METAL, ROOFING, HEATING, VENTILATING AND AIR CONDITIONING CONTRACTING DIVISIONS OF THE CONSTRUCTION INDUSTRY covering Monroe, Wayne, Livingston, Ontario, Seneca and Yates Counties in the State of New York between LOCAL UNION #46, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION and SHEET METAL CONTRACTORS OF SMACNA - ROCHESTER, INC. May 4, 2009 – May 4, 2014
- AGREEMENTS BETWEEN LABOR RELATIONS DIVISION, ROCHESTER REGION, CERTAIN INDEPENDENT EMPLOYERS AND LOCAL 118, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, April 1, 2012 – March 31, 2014
- INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED WORKERS LOCAL NO. 26, ROCHESTER, NEW YORK, And THE MASTER INSULATORS ASSOCIATION OF ROCHESTER, NEW YORK June 1, 2013 – May 31, 2015

- INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS AND THE NORTHEASTERN STATES BOILERMAKER EMPLOYERS January 1, 2013 – December 31, 2015
- AGREEMENT BETWEEN NATIONAL FIRE SPRINKLER ASSOCIATION, INC. AND ROAD SPRINKLER FITTERS LOCAL UNION 669 Effective April 5, 2010
- MILLWRIGHT AGREEMENT Between THE EASTERN MILLWRIGHT REGIONAL COUNCIL Representing MILLWRIGHTS LOCAL UNION 1163 And the MILLWRIGHT CONTRACTORS ASSOCIATION, INC. July 1, 2012 through June 30, 2015
- Up-state Technical Engineers Agreement 2013-2016 between Independent Employers and International Union of Operating Engineers Locals 17, 463, 158

## SCHEDULE B - LETTER OF ASSENT

This is to certify that the undersigned Contractor/Subcontractor has examined a copy of the subject Project Labor Agreement negotiated by and between \_\_\_\_\_, PLA Administrator and the Rochester Building & Construction Trades Council and the signatory Unions to be utilized on the Marina Redevelopment Project.

The undersigned Contractor or Subcontractor agrees to comply with all terms and conditions of the aforementioned Project Labor Agreement. It is understood that the signing of the Letter of Assent shall be binding on the undersigned Contractor to the same degree as though it signed the Project Labor Agreement.

The Letter of Assent shall become effective and binding upon the undersigned Contractor or Subcontractor (Contractor) and said Unions this \_\_\_\_ day of August, 2013, and shall remain in full force and effect through the completion of the project.

NAME OF CONTRACTOR/SUBCONTRACTOR

\_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE C – PRE-JOB QUESTIONNAIRE**

**THE CITY OF ROCHESTER  
MARINA REDEVELOPMENT PROJECT**

**PROPOSED TRADE ASSIGNMENTS  
PRE-JOB CONFERENCE**

**TO:** Rochester, New York Building and Construction Trades Council

**CLIENT:** City of Rochester

**ADMINISTRATOR:** The PLA Administrator  
Fax: (XXX) XXX-XXXX

**CONTRACTOR:** \_\_\_\_\_

**CONTRACT#:** \_\_\_\_\_

**NAME OF PROJECT:** \_\_\_\_\_

**PURPOSE:** To make proposed jurisdictional trade assignments, broken down by craft and classification, as well as to discuss details and answer questions relating to the project scope of work, safety and job requirements.

**MEETING PLACE:** Rochester, New York Building and Construction Trades Council,  
Rochester, New York  
(XXX) XXX-XXXX Office  
(XXX) XXX-XXXX Fax

**MEETING DATE:** \_\_\_\_\_

**RESPONSE DATE:** \_\_\_\_\_

**MEETING DATE:** \_\_\_\_\_

**\*\* PLEASE TYPE IN ALL INFORMATION \*\***

**1. SCOPE OF WORK:**

**2. ESTIMATED WORK SCHEDULE:**

**Approximate Commencement Date:**

\_\_\_\_\_

**Approximate Completion Date:**

\_\_\_\_\_

**3. ADDRESSES:**

**Job Location:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Company's Local Mailing Address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Trust Fund Billing Address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4. CONTRACTOR PERSONNEL:**

**Project Manager:**

Office Telephone # \_\_\_\_\_  
Mobile Telephone # \_\_\_\_\_  
Fax Telephone # \_\_\_\_\_

**Superintendent:**

Office Telephone # \_\_\_\_\_  
Mobile Telephone # \_\_\_\_\_  
Fax Telephone # \_\_\_\_\_

**Safety Representative:**

Office Telephone # \_\_\_\_\_  
Mobile Telephone # \_\_\_\_\_  
Fax Telephone # \_\_\_\_\_

**Drug Test Result Coordinator:** (List in order of contact priority)

Name of First Contact: \_\_\_\_\_  
Office Telephone # \_\_\_\_\_  
Mobile Telephone # \_\_\_\_\_

Name of Second Contact: \_\_\_\_\_  
Office Telephone # \_\_\_\_\_  
Mobile Telephone # \_\_\_\_\_

Name of Third Contact: \_\_\_\_\_  
Office Telephone # \_\_\_\_\_  
Mobile Telephone # \_\_\_\_\_

**Dispatch Contact Personnel:** The following Contractor personnel are the only ones authorized to call the hiring halls to have craft workers dispatched out to this project:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Referral procedures will be in accordance with the provisions contained within the Project Labor Agreement. The referral procedures are to be posted in the hiring halls in order to be in full compliance with the law.

**5. MANPOWER:**

Marina Redevelopment Project PLA\_Rev1\_8-21-13

<b><u>Craft</u></b>	<b><u>Peak</u></b>	<b><u>Average</u></b>
<b>Asbestos Workers</b>	_____	_____
<b>Boilermakers</b>	_____	_____
<b>Bricklayers</b>	_____	_____
<b>Carpenters</b>	_____	_____
<b>Cement Masons</b>	_____	_____
<b>Electrical Workers (Inside Wiremen)</b>	_____	_____
<b>Electrical Workers (Outside Line)</b>	_____	_____
<b>Elevator Constructors</b>	_____	_____
<b>Glaziers</b>	_____	_____
<b>Insulators</b>	_____	_____
<b>Ironworkers (Structural)</b>	_____	_____
<b>Ironworkers (Rebar)</b>	_____	_____
<b>Laborers</b>	_____	_____
<b>Millwrights</b>	_____	_____
<b>Operating Engineers</b>	_____	_____
<b>Painters</b>	_____	_____
<b>Pile Drivers</b>	_____	_____
<b>Pipefitters/Plumbers</b>	_____	_____
<b>Plasterers</b>	_____	_____
<b>Roofers</b>	_____	_____
<b>Sheetmetal Workers</b>	_____	_____

**Teamsters** \_\_\_\_\_

**6. OPERATIONAL INFORMATION**

**Shift Schedule:** AM \_\_\_\_\_ to PM \_\_\_\_\_

**Number of Shifts:** \_\_\_\_\_

**Pay Day:** Thursday

**End of Pay Period:** \_\_\_\_\_

**First Aid Facilities:** Kits \_\_\_\_\_

**Sanitary Facilities:** Portable \_\_\_\_\_

**Job Site Telephone Number:** \_\_\_\_\_

**Job Site Fax Number:** \_\_\_\_\_

## PROPOSED TRADE ASSIGNMENTS

**NAME OF CONTRACTOR:** \_\_\_\_\_  
\_\_\_\_\_

**CONTRACT #** \_\_\_\_\_  
\_\_\_\_\_

The following jurisdictional trade assignments are proposed and any Union in disagreement with any of these assignments shall state such disagreement at the pre-job conference and follow the procedure set forth at Article 10, Section 10.4.

**Asbestos Workers:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Boilermakers:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Bricklayers:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Carpenters:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Cement Masons:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Electrical Workers (Inside Wiremen):** \_\_\_\_\_

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**Electrical Workers (Outside Line):** \_\_\_\_\_

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**Electrical Constructors:** \_\_\_\_\_

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**Glaziers:** \_\_\_\_\_

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**Insulators:** \_\_\_\_\_

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**Ironworkers (Structural):** \_\_\_\_\_

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**Ironworkers (Rebar):** \_\_\_\_\_

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**Laborers:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Millwrights:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Operating Engineers:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Painters:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Pile Drivers:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Asbestos Workers:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Pipefitters/Plumbers:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Plasterers:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Roofers:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Sheetmetal Workers:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Teamsters:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### UTILIZATION OF EQUIPMENT

NAME OF CONTRACTOR: \_\_\_\_\_  
\_\_\_\_\_

CONTRACT #: \_\_\_\_\_  
\_\_\_\_\_

List of equipment and the proposed assignment of craft for full time use of operation of each piece:

**EQUIPMENT:**

**CRAFT:**

1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____
13. _____	_____
14. _____	_____
15. _____	_____

**TOOLS-OF-THE-TRADE:** (Part-time use -- lo listing of craft is necessary)

**EQUIPMENT:**

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

## **SCHEDULE D - SIDE LETTER OF AGREEMENT**

To the Project Labor Agreement Covering the  
Marina Redevelopment Project

This Side Letter of Agreement shall be binding on all entities (Unions, Contractors and/or others) covered by the Project Labor Agreement covering the Marina Redevelopment Project ("PLA"), entered into on the \_\_\_\_ day of August, 2013, to the same extent as if incorporated therein.

Notwithstanding Article 4, Section 2 of the PLA, or any provision of that agreement, and to the full extent permitted by law, a Contractor may designate subcontractors, who have been identified in the Contractor's approved Minority/Women's Business Utilization Plan and whose subcontracts in total represent approximately 15% for minority businesses and 5% for women's businesses, as exempt from the hiring hall referral procedure of Article 4, Section 2, and instead that subcontractor may use one of its existing employees first. To the extent such a subcontractor uses more than one employee on Covered Work, the PLA hiring hall provision will apply beginning with the 2<sup>nd</sup> employee and continue with one (contractor's employee) and one (hiring hall referral) until the requirements for that craft are met. For purposes of applying this exemption to individual subcontractors, the work of each building trade craft discipline shall be considered separately in striving for compliance with the contractor's approved Minority/Women's Business Utilization Plan. This provision will not be used if the resulting participation totally excludes or completely prevents a building trades craft discipline from participating. Any excluded subcontractor has the option of using the above hiring hall (with the 25% drag along) procedure of Article 4, Section 2 starting with its first employee for Covered Work.

In addition, and notwithstanding Article 11, Section 2A of the PLA, subcontractors exempt under the above provision shall also have the option to elect to satisfy the benefit obligations of the PLA with respect to their existing employees by electing to pay into one or more of the applicable jointly trusted funds designated on Schedule A or by paying those employees an equivalent amount in cash, to the extent otherwise permitted by Section 220. This option for a cash equivalent shall not apply to contributions into JATC or similar apprentice funds designated on Schedule A. In the event payments are made in cash in lieu of benefit coverage, employees will be required to sign the attached waiver.

Any disputes arising under this Side Letter of Agreement are subject to Article 7 (Work Stoppages and Lock Outs) and Article 9 (Grievance and Arbitration Procedure) of the PLA.

Agreed to this \_\_\_\_ day of August, 2013:

Project Labor Agreement Administrator

BY: \_\_\_\_\_

**FOR THE BUILDING & CONSTRUCTION TRADES**

ROCHESTER BUILDING & CONSTRUCTION TRADES COUNCIL

BY: \_\_\_\_\_  
(Name/Title)

**FOR THE LOCAL UNIONS**

INTERNATIONAL ASSOCIATION OF BRICKLAYERS & MASONS, LOCAL NO. 3

BY: \_\_\_\_\_  
(Name/Title)

NORTHEAST REGIONAL COUNCIL OF CARPENTERS, LOCAL 276

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS UNION LOCAL  
NO. 86

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 27

BY: \_\_\_\_\_  
(Name/Title)

GLAZIERS, ARCHITECTURAL METAL AND GLASS WORKS LOCAL NO. 677

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL  
AND REINFORCING IRON WORKERS LOCAL NO. 33

BY: \_\_\_\_\_  
(Name/Title)

LABORERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, LOCAL  
NO. 435

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 158, DISTRICT 832

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES LOCAL NO. 150

BY: \_\_\_\_\_  
(Name/Title)

UNITED ASSOCIATION OF JOURNEY AND APPRENTICES OF THE PLUMBING  
AND PIPEFITTING INDUSTRY LOCAL NO. 13

BY: \_\_\_\_\_  
(Name/Title)

UNITED UNION OF ROOFERS, WATERPROOFERS AND ALLIED WORKERS  
LOCAL NO. 22

BY: \_\_\_\_\_  
(Name/Title)

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL NO. 46

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS LOCAL NO. 118

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND  
ALLIED WORKERS, LOCAL 26

BY: \_\_\_\_\_  
(Name/Title)

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL  
289 REPRESENTING PILE DRIVERS, DOCK BUILDERS, DIVERS, TRESTLE, CRIB  
AND BREAKWATER BUILDERS

BY: \_\_\_\_\_  
(Name/Title)

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS,  
BLACKSMITHS, FORGERS AND HELPERS LOCAL 7

BY: \_\_\_\_\_  
(Name/Title)

ROAD SPRINKLER FITTERS LOCAL UNION 669

BY: \_\_\_\_\_  
(Name/Title)

MILLWRIGHTS LOCAL UNION 1163

BY: \_\_\_\_\_  
(Name/Title)

**SCHEDULE E - WAIVER OF EMPLOYEE BENEFIT CONTRIBUTIONS**

**Concerning the Project Labor Agreement Covering  
the Marina Redevelopment Project**

Notwithstanding the provisions of Article 11, Section 2 of the Project Labor Agreement covering the Marina Redevelopment Project, I am hereby waiving the right to payment on my behalf of contributions into one or more of the applicable jointly trusteed funds designated on Schedule A and, in lieu of such payments and benefit coverage, am requesting and directing that I receive an equivalent amount of such benefit payments in cash.

Date: \_\_\_\_\_