

Request for Proposal

For

Extending RiverWalk under New NY Bridge and Connecting RiverWalk to New Bridge Shared-Use Path

Engineering, Design, and Environmental Review Services

Scenic Hudson Inc. is seeking proposals to conduct engineering feasibility and design services to determine a preferred route for Westchester County RiverWalk to connect under the new bridge and up to the new shared-use path across the northern span of the New NY Bridge. The goal is to improve multi-modal transportation and recreation options in the area by increasing the connectivity of the regional trail system.

Project Description

Scenic Hudson works to protect and restore the Hudson River and its majestic landscape while also working to ensure it is a publicly accessible resource that enhances the quality of life in the Hudson River Valley. Over the past two years, Scenic Hudson has worked with the communities of Sleepy Hollow and Tarrytown to develop a regional trails strategy, which has since been approved by both communities. Two recommendations of that strategy are:

- Connect RiverWalk, which currently exists both north and south of the Tappan Zee, under the new bridge.
- Connect the new bridge's shared-use path to RiverWalk.

Scenic Hudson has convened a working group to advance those connections. That group, which includes the Village of Tarrytown, New NY Bridge project staff, Metro-North Railroad, and Westchester County Planning, has mapped and field verified potential trail connections. See route alternatives map.

We now seek consulting services to conduct a multidisciplinary engineering (landscape architecture, structural and civil engineering) and environmental feasibility assessment on the routes to determine a single preferred route for each connection (RiverWalk and up to shared-use path).

Site Variables

The project intent is to develop a context-sensitive trail route and design. Key site variables that will need to be balanced to achieve that aim include:

Adjacent Neighborhoods: There are two neighborhoods immediately adjacent to the project area. The Van Wart neighborhood south of the bridge and the Quay neighborhood north of the bridge. Both have been subject to disruption over the past years as the bridge reconstruction project has advanced. Minimizing additional impact to them from this project is a priority.

Land Ownership: The property in the project area is owned by either the NYS Thruway Authority or Metro-North Railroad. Additionally, there is a sewer easement under the bridge which could be used for some of the trail route.

Site Constraints: The project area has a number of physical and environmental constraints that the trail design will need to contend with, particularly in meeting ADA design standards. These include steep topography under the bridge, railroad tracks, the Hudson River, a small wetland area, and security buffers required by Homeland Security (bridge) and Metro-North (rail line).

Sea Level Rise: One route option for RiverWalk includes a trail between the tracks and the river. Design will therefore need to address the role and risk posed by sea level rise and storm surge to a future trail as well as how the trail might be able to provide the train tracks with some level of protection. Sea level rise mapping for this project will apply the state's recently adopted sea level rise projections for this coastal region.

Materials That Will Be Made Available

The project committee will make the following materials available to the selected consultant:

- Topography, including as-built topographical information for the bridge project area (see boundary as delineated in the project study area map)
- RiverWalk Design Guidelines
- Losee Park RiverWalk extension site plan
- TZB shared-use path plan, including Westchester side trailhead with parking
- Site map indicating security buffer areas as required by Metro-North Railroad and Homeland Security under the bridge and in the rail right of way
- Tax maps of parcel boundaries with ownership information

Anticipated Project Deliverables, Timeframe, and Budget

1. A topographical and metes and bounds survey of the project area. Note that topography information is available for the bridge project area but will be needed for the portions of this project study area outside of the bridge project area.
2. Preliminary Feasibility Assessment:
 - Conduct thorough feasibility assessment on all routes and determine a single alignment for each of the two desired connections.
 - Field assessment including GPS coordinates for route alternatives. Note: field assessment on Metro-North property will require an entry permit and MTA flaggers. The time and cost implications of this should be reflected in the proposal.
3. Community outreach program sufficient to inform and receive input from both critical stakeholders (including the steering committee and municipal officials) and general community on the project route and design.
4. Environmental review and engineering design should be advanced to the greatest degree possible within the time and budget allowed. It is understood that the need for a full environmental review will be a critical fork in the project scope whereby resources will either

need to be diverted to the environmental review of the preferred route or to its engineering and design to construction-level documents. Proposals should be structured to account for this if/then.

5. Permitting needs for the preferred route should be thoroughly defined and preliminary outreach conducted to all permitting entities.

The total maximum budget for this project is **\$400,000**.

All final deliverables must be completed by **April 30, 2018**.

Project deliverables will become the property of Scenic Hudson. Format for interim and final deliverables:

- All drawings in AutoCAD (*.dwg) format and where applicable a sheet index drawing shall be provided.
- All GIS maps shall be in (.msd) file compatible with Arcview GIS10 and all linked shapefiles (.shp) must be included in the submittal.
- All reports or other text documents, in PDF or MS Word (.doc) format.
- Project tabular data in Excel spreadsheet (.xls) file format.
- Photographs in JPEG or TIF format.

Proposal Submission

Proposals must include:

- A written description of your understanding of this project and your team's approach.
- Project team, past experience and resumes of key personnel.
- Project schedule that complies with the specified timeframe. This should also identify the timing of key deliverables and schedule of committee and other meetings needed to successfully complete the project.
- List of subconsultants, if any, and their qualifications.
- Descriptions of **three** completed projects of similar scope and budget. Please include client contact as a reference for each.
- Not-to-exceed fee broken down by task with deliverables specified for each task.

A site tour will be held on **March 31** starting at 11:00 am. Responding firms are strongly encouraged to attend. RSVP is **mandatory** for the tour and attendance will be limited to two people per team. Safety and security information will be provided to attendees on the RSVP list prior to the tour. Please RSVP by 5:00 pm on **March 24th** to Amy Kacala at akacala@scenichudson.org to be added to the list.

All proposals must be received by **3:00pm on Friday, April 7, 2017** to be considered.

Please submit four (4) hard copies of the full proposal, plus an electronic (PDF) version on a thumb drive to:

Amy Kacala, Senior Planner
Scenic Hudson, Inc. One Civic Center Plaza; Suite 200
Poughkeepsie, NY 12601

Anticipated selection schedule

- Committee RFP review completed by 4/12/17
- Consultants contacted for interviews on or around 4/12/17
- Interviews will be held on either the afternoon of the 19th or 20th. Please hold time on one of these days to facilitate us sticking to that interview schedule.
- Winning consultant will be notified by 4/24/17
- Contract execution to begin 4/24/17 (see attached Scenic Hudson contract template)

SELECTION CRITERIA

The contract will be awarded to the responsible consultant(s) whose proposal is price competitive, can perform all tasks by the project deadline, and is determined to be the most qualified to work with Scenic Hudson and its partners on this project based on the qualities listed below.

Required Qualities in Responding Firms

Responding firms/teams should adequately be able to demonstrate:

1. Understanding of the project, including the importance of achieving a context-sensitive design that simultaneously achieves, or balances, multiple objectives.
2. Technical expertise for trail engineering, design, and environmental review.
3. Experience with complex projects with multiple agency partners and an engaged community.
4. Staff capacity to achieve period of performance requirements set by funding source.
5. MBE/WBE – a minimum of 30% of contracted work must be performed by a minority- or woman-owned business.
6. Conformance with state contract terms. (See attached.)

Additional Desired Qualities:

7. Positive prior history of working with Metro-North Railroad and/or MTA.
8. Demonstrated experience working with sea level rise engineering challenges.
9. Prior experience working in New York State and its regulatory framework related to permitting and environmental review.

Scenic Hudson reserves the right to award the contract in its best interests; to reject any or all proposals; to waive any informalities in bidding when such waiver is in the best interest of the Scenic Hudson; and to hold all proposals, which shall remain in force and effect, for a period of not less than 60 days after opening date.

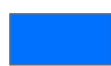
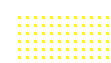
Scenic Hudson is a not-for-profit organization and we would give preference to responses that include pro bono and/or reduced fees to help us complete this important project. Please indicate as specifically as possible what portion, if any, of your proposal and its value would be provided on a pro bono basis. If selected, the consultant must produce a W9 and provide certificates of insurance as stipulated in NYS contract requirements. Insurance certificates shall be on file at Scenic Hudson offices prior to commencement of work.

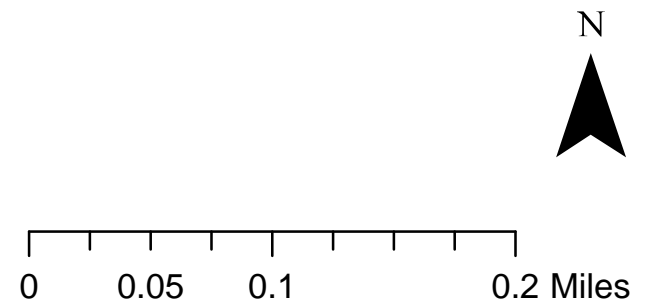
If you have any questions, please submit them via email to Amy Kacala at akacala@scenichudson.org



PROJECT STUDY AREA

Legend

-  Study Area
-  Bridge Topo Data Available



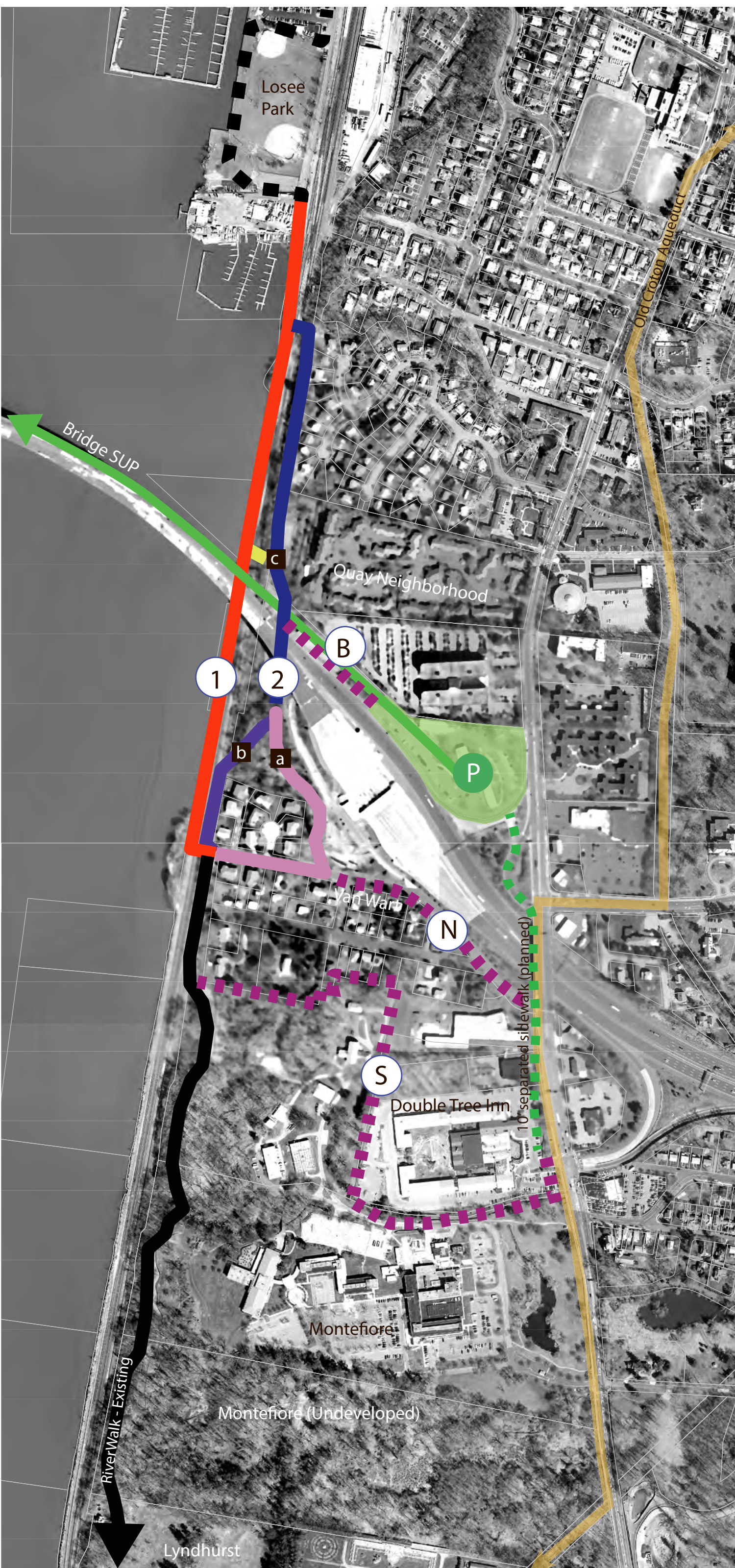
RiverWalk Under New NY Bridge Route Alternatives

RiverWalk

- Existing RiverWalk
- RW Under Construction
- 1 Riverfront Trail
- 2 River View Trail
- a Van Wart - east
- b Van Wart - ledge
- c Quay diversion

SUP Connector

- Bridge Shared Use Path
- P SUP Parking Area
- 10' Sidewalk
- B Bridge side
- N Van Wart
- S Montefiore



**AGREEMENT BY and AMONG THE NEW YORK STATE THRUWAY AUTHORITY and
SCENIC HUDSON INC.**

THIS AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, 20__ by and among Scenic Hudson Inc. ("Scenic Hudson") having an address for the conduct of business located at One Civic Center Plaza, Suite 201, Poughkeepsie, NY 12601 and the New York State Thruway Authority ("Authority") created pursuant to Title 9 of the Public Authorities Law, having an address for the conduct of business located 200 Southern Boulevard, Albany, NY 12209.

WITNESSETH:

WHEREAS, pursuant to Resolution No. 5935, adopted at Meeting No. 695 on December 17, 2012, authorizing the execution of the Design-Build Contract by its Board, the Authority has allocated funds for the New NY Bridge Project Community Benefit Fund to provide grants to eligible governmental entities and not-for-profit corporations located in Westchester and Rockland Counties; and

WHEREAS, for the benefit of the New York State Thruway Authority ("Authority") as owner pursuant to Contract D214134 ("DB Contract"), Tappan Zee Constructors ("TZC") is designing and constructing a replacement for the Tappan Zee Bridge (the "New NY Bridge Project"); and

WHEREAS, pursuant to the DB Contract, the Authority has created a Ten Million (\$10,000,000.00) Dollar Community Benefit Program Fund (the "CBF") which is to be used to help pay to address the effects of the construction of the New NY Bridge Project, which CBF is subject to (i) certain contractual obligations between TZC and the Authority, and (ii) certain procedures that have been established by the Authority relating to the Community Benefits Program; and

WHEREAS, pursuant to the CBF, the Authority has decided to support Scenic Hudson's efforts to enhance local recreation and expand pedestrian, bicyclist and transit user access to the New NY Bridge through the funding of a RiverWalk Feasibility Study (the "Project") by paying (\$300,000) three hundred thousand Dollars from the CBF to Scenic Hudson as provided for herein (the "Authority Funds"); and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Authority and Scenic Hudson; hereby agree as follows:

1. Agreement Term: This Agreement shall commence on September 1, 2014 and shall terminate on March 5, 2018. However, the Authority shall not be liable, or obligated in any manner, to make any payments under this agreement until all necessary approvals have been granted, including, when applicable, these approvals from the New York

State Attorney General's Office and the New York State Comptroller's Office. No payments to Scenic Hudson shall be made after March 5, 2018.

2. Agreement Amount: The Authority agrees to make available, subject to disbursement provisions set forth in Paragraph 4, to Scenic Hudson; a sum not to exceed \$300,000. The Authority makes no representation or warranty of any kind that the Authority Funds will be sufficient to pay for all costs and expenses incurred by the completion of the Project or which may be due by Scenic Hudson if the Authority Funds are not sufficient to pay for all costs and expenses relating to the Project. Such costs and expenses shall include, but not be limited to, all internal and external costs and expenses, including, but not limited to, consultant, contractor, subcontractor fees, costs and expenses. If the actual cost of completing the Project exceeds the Authority Funds, then Scenic Hudson shall be solely responsible for and agrees to fund and pay any additional moneys which may be required to complete the Project and pay any additional moneys due under any agreement or contract executed to plan, design, construct, maintain, or otherwise implement the Project. Neither the Authority nor TZC shall have any obligation whatsoever to increase the amount of the Authority Funds beyond the \$300,000 provided herein. In the event that the cost to complete the Project is less than the amount of the Authority Funds, then any unused portion of the Authority Funds shall be repaid to the Authority by Scenic Hudson. No payments from the Authority Funds to Scenic Hudson shall be made after March 5, 2018.
3. Project Description and Budget:
 - a. The CBF Application submitted by Scenic Hudson is hereby made part of this Agreement and attached hereto as "Schedule A". Scenic Hudson agrees to spend the Grant money pursuant to the Project description and budget contained in Schedule A.
 - b. Should it be determined by the Authority that additional information, documentation or other details regarding the Project description or budget is required, the Authority reserves the right to request from Scenic Hudson such information. Scenic Hudson shall cooperate and provide the requested information within a timely manner.
 - c. Substantive changes, or altering the budget, scope, intent or basic elements of the Project shall not be made by Scenic Hudson without the prior written approval of the Authority.
4. Disbursement Provisions:
 - a. At such time as Scenic Hudson determines that a disbursement is to be made from the Authority Funds Scenic Hudson shall provide written notice to the Authority of such determination and setting forth the amount of the disbursement that it is requesting be paid (each a "Disbursement Request").

Together with each Disbursement Request, Scenic Hudson shall provide to the Authority all of the following:

- (i). A written certification executed by a duly authorized officer of Scenic Hudson accompanied by such receipts and documents verifying expenditures as may be required by the Authority. Reimbursement request certifications shall include a statement by Scenic Hudson that the requested funds do not duplicate reimbursements for costs and services received from other sources or prior disbursements from the Authority Funds.
 - (ii). Copies of supporting invoices and requests for payments received by Scenic Hudson prior to the date of the Disbursement Request, which have not therefore been provided to the Authority, including invoices from the Contractor, subcontractors, consultants, laborers and/or material suppliers. These invoices shall total or exceed the amount of Scenic Hudson's submitted payment Disbursement Requests for the work/activity undertaken with regard to the Project, and shall be dated on or after the date of this Agreement in order to substantiate a Disbursement Request.
 - (iii). Such other documentation, information, receipts, and/or verifications as the Authority may reasonably require.
- b. No more than three Disbursement Requests will be accepted. The final Disbursement Request, which in no case will be for less than 20% of the Authority Funds set forth in paragraph 2 of this Agreement, will be processed for payment only after inspection of the completed Project by the Authority. The Authority shall have no liability whatsoever for its inspection and approval of the Project.
- c. In no event will the Authority process any Disbursement Requests which would cause the aggregate disbursements for the Project to exceed the Authority Funds set forth in paragraph 2 of this Agreement.
- d. Scenic Hudson shall keep accurate and separate accounting records of all receipts and disbursements of all funds attributed to this Agreement, and shall produce upon request of the Authority such records for examination. Records must be maintained so that they can be provided for examination at any time during the conduct of the Project and for a period of six (6) years following its completion.
- e. Scenic Hudson acknowledges and agrees that payments for invoices submitted by Scenic Hudson will only be rendered electronically unless payment by paper check is expressly authorized by the Authority, in its sole discretion, due to extenuating circumstances. Scenic Hudson shall comply with the Authority's procedures to authorize electronic payments. Authorization forms are available

at the Authority's website at <http://www.thruway.ny.gov/business/purchasing/epayments/index.html>, by email at suppliermgmt@thruway.ny.gov, or by telephone at (518) 436-2859. Scenic Hudson acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the Authority's electronic payment procedures, except where the Authority has expressly authorized payment by paper check as set forth above.

5. Representations, Warranties and Covenants:

Scenic Hudson represents, warrants and covenants that:

- a. Scenic Hudson hereby acknowledges that the Authority has relied upon the statements and representations made by Scenic Hudson in its CBF Application attached hereto as Schedule A in making the Authority Funds available to Scenic Hudson. Scenic Hudson hereby represents and warrants that it has made no material misstatement or omission of fact in Schedule A or otherwise in connection with this Agreement and that the information contained in Schedule A continues on the date hereof to be materially correct. In the event of any inconsistency between the conditions and terms of this Agreement and those contained in Schedule A, the provisions of this Agreement shall govern unless otherwise mutually agreed upon in writing by the parties.
- b. The Authority Funds shall be used solely for eligible expenses and no materials purchased with Authority Funds will be used for any purpose other than the Project.
- c. Authority Funds shall not be used for the following purposes:
 - i. Political activities, including, but not limited to, furthering the election or defeat of any candidate for public, political or party office, or for providing a forum for a candidate to promote the passage, defeat or repeal of any proposed or enacted legislation; and
 - ii. Religious worship or instruction as part of, or in connection with, the performance of this Agreement.
- d. Resolutions

Scenic Hudson's resolution attests that Scenic Hudson's governing body has approved the Project, authorized sufficient funding to first-instance the full amount of the grant, and authorized the appropriate signatory to execute the Agreement. Scenic Hudson will authorize Project spending either in their budgets or separate resolutions.

6. Independent Contractor: Scenic Hudson is and shall be, in all respects, an independent contractor in performing any services pursuant to this Agreement. In accordance with its status as an independent contractor, Scenic Hudson covenants and agrees that neither

it nor its agents and/or employees will hold itself or themselves out as or claim to be an officer or employee of the Authority and that neither Scenic Hudson nor its agents and employees shall make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Authority, including, but not limited to Workers' Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement System membership or credit.

7. Construction Requirements:
 - a. The Authority is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("M/WBE Regulations") for agreements with a value in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing. These requirements are set forth in Appendix B. All of Scenic Hudson's procurements for the Project shall conform to the requirements of Appendix B of this Agreement.
 - b. Scenic Hudson 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), Americans with Disabilities Act standards regulations contained in 28 CFR part 35 or 28 CFR part 36, the Americans with Disabilities Act Accessibility Guidelines (ADAAG-Appendix A to 28 CFR part 36 CFR part 1191, appendices B and D) and the New York State Uniform Fire Prevention and Building Code (Parts 1220 to 1228 of Article 13 of Title 19 of the NYCRR). Where there are discrepancies among these three sets of standards with regard to a particular design/construction requirement, the standard one providing the greatest degree of accommodation for the individuals with disabilities shall apply.
8. Inspections: Failure by Scenic Hudson to allow reasonable and timely access to the Authority's representatives to inspect the Project may result in the forfeiture and require repayment by Scenic Hudson of awarded Authority Funds.
9. Approvals: In the event that the performance of the Project requires the issuance of any permits, approvals, or consents by any federal, state, or local governmental entity, agency or regulatory body, including but not limited to the U.S. Army Corps of Engineers, the New York State Department of Environmental Conservation, or the New York State Office of Parks, Recreation and Historic Preservation, Scenic Hudson shall obtain such permit, approval, or consent at Scenic Hudson's sole cost and expense, all of which shall be obtained prior to the commencement of the performance of any of the work on the Project or the procurement of any materials relating to the Project. Scenic Hudson agrees that, and shall be solely responsible to ensure that, the conduct of the Project and all work related thereto shall at all times be conducted in a fashion so as to conform to all applicable laws, rules, regulations, ordinances, codes and requirements.

10. Soft Costs: Project administration costs by Scenic Hudson shall not exceed 10% of the Project amount set forth in Paragraph 2. Operational costs of governmental entities and not-for-profit corporations shall not be funded by CBP grant awards.

11. Default and Remedies:
 - a. Each of the following shall constitute default by Scenic Hudson under the terms of this Agreement:
 - i. Failure to perform or observe any obligation or covenant of Scenic Hudson contained herein to the reasonable satisfaction of the Authority;
 - ii. Failure to comply with any request for information reasonably made by the Authority for the purpose of determining compliance by Scenic Hudson with the terms of this Agreement or otherwise reasonably requested by the Authority in connection with the Authority Funds;
 - iii. The making of any false statement or the omission of any material fact by Scenic Hudson in or in connection with the Agreement or the Authority Funds.

 - b. Upon the serving of notice to Scenic Hudson of the occurrence of a default (which notice shall specify the nature of the default), the Authority shall have the right to terminate this Agreement, provided that if the default is pursuant to Paragraph 11(a)(i) or 11(a)(ii), no default shall be deemed to have occurred if Scenic Hudson cures such default within seven (7) days of notice from the Authority, or if the default cannot be reasonably cured within such seven day period, Scenic Hudson commences to cure such default within such seven day period and completely cures the default within ninety (90) days thereafter, provided further that the Authority shall not be obligated to make any disbursements during any such cure period.

12. Abandonment: Scenic Hudson 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 Authority may be deemed an abandonment of the Project and cause the suspension or termination of any obligation of the Authority. In the event Scenic Hudson 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 Scenic Hudson by the Authority and not expended in accordance with this Agreement shall be repaid to the Authority by Scenic Hudson on demand.

13. Termination: This Agreement may be terminated at any time upon mutual written consent of the Authority and Scenic Hudson. The Authority may terminate this Agreement immediately, upon written notice of termination to Scenic Hudson, if Scenic

Hudson fails to comply with the terms and conditions of this Agreement and/or with any laws, rules, regulations, policies or procedures affecting this Agreement.

14. Liability: Scenic Hudson shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of Scenic Hudson and/or any of its officers, directors, staff, agents, employees, contractors, subcontractors, assigns, successors, invitees and licensees in connection with this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.

15. Indemnification and Defense:
 - a. To the fullest extent permitted by law, Scenic Hudson shall indemnify and save harmless, without limitation, the Authority and the State of New York ("State"), and their respective officers, directors, board members, staff, agents, employees, successors and assigns ("Authority Indemnitees" and "State Indemnitees") as their interests may appear, from all claims, suits, actions, damages, liabilities, forfeitures, demands, losses, judgements, and costs of every kind and nature, and every name and description, arising out of the performance or non-performance by Scenic Hudson and/or any of its officers, directors, agents, employees, contractors, subcontractors, assigns, successors, invitees and licensees of the work or services provided for in connection with this Agreement ("Claims").

 - b. Scenic Hudson shall, at its own expense, defend the Indemnitees in any action or proceeding involving any Claims that may be brought against the Authority Indemnitees or the State Indemnitees or both of them. This obligation to defend shall include all attorneys' fees, disbursements, costs, and any other expenses incurred in connection with such Claims. The Authority shall give Scenic Hudson: (a) prompt written notice of any action, claim or suit for which Scenic Hudson is required to defend and indemnify the Authority; (b) the opportunity to take over, settle, or defend such action, claim or suit at Scenic Hudson's sole expense; and (c) assistance in the defense of any such action, Claim, or suit at the expense of Scenic Hudson. Notwithstanding the foregoing, if Scenic Hudson defends the Indemnities, or defends either the Authority Indemnitees or the State Indemnitees, the Authority reserves the right to join such action, at its sole expense, if it determines there is an issue of significant interest to it, and the State reserves the right to join such action, at its sole expense, if the State determines there is an issue involving a significant public interest.

 - c. The Authority may retain from any amount due to Scenic Hudson such monies as may be necessary to satisfy any Claim recovered against the Authority Indemnitees. Scenic Hudson's obligation under this section: (a) shall not be deemed waived by the Authority's failure to retain the whole or part of any monies due to Scenic Hudson, nor by such Claims not being resolved prior to the

release of such monies. Further, Scenic Hudson obligations under this Section shall not be limited or discharged by the enumeration in this Agreement, or procurement, of any insurance.

- d. Scenic Hudson's indemnification and defense obligations under this Section shall include any and all Claims that may arise from any products and services provided, or to be provided, under this Agreement by Scenic Hudson's agents, employees, and subcontractors, and by another party furnishing products and services under this Agreement.
- e. The provisions of this Section shall survive the expiration or termination of this Agreement.

16. Insurance: The following insurance documents for Scenic Hudson must be on file with the Authority prior to the commencement of the Project:

- a. Commercial General Liability – submitted on an ACORD 25/Thruway Authority – Canal Corporation Supplemental insurance certificate set, with no less than the following limits and coverages:

- Each Occurrence Limit: \$1,000,000
- General Aggregate: \$2,000,000

The Authority shall be included as an Additional Insured, using ISO Additional Insured Endorsement CG 20 10 11 85 or its equivalent, under the CGL. The Commercial General Liability insurance shall apply as primary insurance with respect to any other insurance or self-insurance program afforded to or maintained by the Authority.

- b. Workers' Compensation – as required by New York State Worker's Compensation and Disability Benefits Law.

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

- (1) C-105.2 – Certificate of Workers' Compensation Insurance.
- (2) U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund.
- (3) GSI-105/SI-12 – Certificate of Workers' Compensation Self Insurance

- c. Disability Benefits – as required by New York State Worker's Compensation and Disability Benefits Law. Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

- (1) DB-120.1 – Certificate of Insurance Coverage under the NYS Disability Benefits Law.

- (2) DB-155 – Certificate of Disability Self Insurance.
- (3) CE-200 – Certificate of Attestation of Exemption.

17. Notices: Any notice, demand, consent, approval, direction, agreement or other communication (any “Notice”) required or permitted hereunder shall be in writing and shall be validly given if sent by a nationally recognized overnight courier services, delivered personally by reputable courier that obtains receipts, or mailed by United States mail, certified or registered mail, return receipt requested, adequate postage prepaid, addressed as follows to the person entitled to receive the same:

New York State Thruway Authority
The New NY Bridge Project
303 South Broadway, Suite 413
Tarrytown, New York 10591
Attn: Project Director

With copy to:
New York State Thruway Authority
200 Southern Boulevard
Albany, New York 12209
Attn: General Counsel’s Office

Scenic Hudson Inc.
One Civic Center Plaza, Suite 201
Poughkeepsie, NY 12601
Attn: Steve Rosenberg, Senior Vice President

18. **Ethics:** During the term of this Agreement, Scenic Hudson shall not engage any person who is, or has been at any time, in the employ of the Authority or New York State to perform services under this Agreement in violation of: the provisions of the Public Officers Law, ("POL"); the rules, regulations, opinions, guidelines or policies promulgated or issued by other laws applicable to the service of current or former Authority or New York State employees, and/or the New York State Joint Commission on Public Ethics ("JCOPE") the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York Commission on Public Integrity and any other laws applicable to the service of current or former Authority or New York State employees ("Other Laws," and, together with POL and JCOPE, collectively, the "Ethics Provisions"). Scenic Hudson certifies that all of its employees who are former employees of the Authority or New York State and who are assigned to perform services under this Agreement shall be assigned in accordance with all Ethics Provisions. Further, during the term of this Agreement, no person who is employed by Scenic Hudson and who is disqualified from providing services under this Agreement pursuant to any Ethics Provision may share in any net revenues Scenic Hudson derives from this Agreement.

Scenic Hudson shall identify and provide the Authority with notice of those Scenic Hudson employees who are former employees of the Authority or New York State and will be assigned to perform services under this Agreement. The Authority may request that Scenic Hudson provide it with whatever information the Authority deems appropriate about each such person's engagement, work cooperatively with the Authority to solicit advice from JCOPE and, if deemed appropriate by the Authority, instruct any such person to seek the opinion of JCOPE. The Authority shall have the right to cancel or terminate this Agreement at any time if any work performed under this Agreement is in conflict with any Ethics Provision.

19. **Severability Clause:** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be effected, but shall remain binding and effective as against all parties hereto.
20. **New York State Finance Law §§ 139-j and 139-k Certification:** By execution of this Agreement, Scenic Hudson certifies that it shall require all subcontractors hired to perform work on the Project to submit all information required by New York State Finance Law §§ 139-j and 139-k and make such information available to the Authority upon demand therefor.
21. **Confidentiality and Non-Disclosure:**
- a. "Confidential Information" means any information not generally known to the public, whether oral or written, that the Authority claims is confidential and discloses to Scenic Hudson pursuant to this Agreement. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents,

plans, drawings, specifications, reports, product information and data; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Authority deems confidential. The Authority will identify written Confidential Information by marking it with the word “Confidential” and will identify oral Confidential Information as confidential at the time of disclosure to Scenic Hudson.

b. Confidential Information does not include information which, at the time of the Authority disclosure to Scenic Hudson: (a) is already in the public domain or becomes publicly known through no act of Scenic Hudson; (b) is already known by Scenic Hudson free of any confidentiality obligations; (c) is information that the Authority has approved in writing for disclosure; or (d) is required to be disclosed by Scenic Hudson of such disclosure requirement and an opportunity to defend prior to any such disclosure.

c. Scenic Hudson may use Confidential Information solely for the purposes of implementing the Project pursuant to this Agreement. Scenic Hudson shall not make copies of any written Confidential Information without the express written permission of the Authority. Scenic Hudson may share Confidential Information with third parties that agree to the confidentiality provisions of this Agreement and are necessary for the Project; however, Scenic Hudson shall share only that Confidential Information that is necessary to the third party’s development of its contribution to the Project. The Authority’s disclosure of Confidential Information to Scenic Hudson shall not convey to Scenic Hudson any right to or interest in such Confidential Information and the Authority shall retain all right and title to such Confidential Information at all times.

d. Scenic Hudson shall hold Confidential Information confidential to the maximum extent permitted by law. Scenic Hudson shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices and procedures that Scenic Hudson uses to maintain its own confidential information.

22. Exemption from Sales and Compensating Use Taxes: The Authority is exempt from the payment of all sales and compensating use taxes otherwise imposed by New York State and municipalities located therein. The Authority will not pay Scenic Hudson sales and compensating use taxes related to the Project.

23. Iran Divestment Act – Section 2879-c of the NYS Public Authorities Law

a. As used in this Section, “person” has the meaning set forth in paragraph (e) of subdivision 1 of Section 165-a of the State Finance Law.

b. By execution of the agreement, Scenic Hudson will certify each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of

perjury, that to the best of its knowledge and belief, that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the New York State Finance Law.

24. Suspension, Abandonment and Termination: The Authority shall have the right, in its sole discretion, to postpone, suspend, abandon or terminate this Agreement at any time and for any reason, and such action shall in no event be deemed a breach of contract. This includes the Authority's right to terminate this Agreement in the event the Authority finds that the certification made by Scenic Hudson in accordance with New York State Finance Law §§ 139-j and 139-k was intentionally false or intentionally incomplete. This also includes the Authority's right to terminate this Agreement at any time in the event the Authority finds that Scenic Hudson is non-responsible or has failed to accurately disclose vendor responsibility information.

In the event the Authority exercises its right to postpone, suspend, abandon or terminate this Agreement, the Authority will fix the value of the work performed as of such postponement, suspension, abandonment or cancellation date, as verified by audit, and compensate Scenic Hudson accordingly. Upon such a postponement, suspension, abandonment or termination, Scenic Hudson must within ten (10) days deliver to the Authority all records, documents and data pertaining to services rendered under this Agreement.

25. General Responsibility Obligations: Scenic Hudson shall at all times during the term of this Agreement remain responsible. Scenic Hudson agrees if requested by the Authority to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance and organizational and financial capacity.
26. Standard Contract Clauses and Appendices Incorporated by Reference: Scenic Hudson agrees to comply with all of the terms and conditions set forth in Appendix A and B, which are attached hereto and expressly made a part of this Agreement as if set forth fully herein.

Appendix A - Standard Clauses for Thruway Authority Agreements
Appendix B - Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures

27. The persons executing this Agreement on behalf of the parties to this Agreement hereby represent that they are properly authorized to execute this Agreement on behalf of the party for whom they are signing.

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IN WITNESS WHEREOF, the parties hereto executed this Agreement on the date first above written:

NEW YORK STATE
THRUWAY AUTHORITY

Scenic Hudson Inc.

By _____
Executive Director

By _____
Name/Title

EID# _____

Recommended By

Approved to Form

By _____
Project Director, New NY Bridge Project

By _____
General Counsel
New York State Thruway Authority

NEW YORK STATE

Approved as to Form:

Approved:

Attorney General
New York State

Thomas P. DiNapoli
New York State Comptroller

CERTIFICATION FOR DUPLICATES – D _____

In addition to the acceptance of this Agreement, the Authority certifies that original or original duplicates of this signature page will be attached to all original or original duplicates of this Agreement.

STATE OF NEW YORK)

:ss.:

COUNTY OF _____)

On this ____ day of _____, in the year 20__, before me, the undersigned, a Notary Public in and for 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 to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

:ss.:

COUNTY OF _____)

On this _____ day of _____, in the year 201_, before me, the undersigned, a Notary Public in and for 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 to the foregoing instrument and acknowledged to me that he executed the same in his capacity as the _____ of the NEW YORK STATE Thruway Authority, and that by his signature on the instrument, the individual, acting for and on behalf of the NEW YORK STATE Thruway Authority, executed the instrument.

Notary Public

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APPENDIX A

Standard Clauses For New York State Thruway Authority And New York State Canal Corporation Procurement Contracts

The parties to the attached contract, license, lease, amendment or other agreement of any kind (“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 and its agents, successors and assigns, other than the Thruway Authority (“Authority”) or Canal Corporation (“Corporation”), whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **NON-ASSIGNMENT CLAUSE.** This contract may not be assigned by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the Authority/Corporation and any attempts to assign the contract without the Authority’s/Corporation’s written consent are null and void.

2. **COMPTROLLER APPROVAL.** Unless otherwise provided by resolution of the Authority or Corporation Board, if this contract involves the expenditure of funds for goods or services in excess of \$50,000, or the expenditure of funds for any other purpose in excess of \$15,000, or if, by this contract, the Authority/Corporation agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, this contract shall not be valid, effective or binding upon the Authority/Corporation until it has been approved by the State Comptroller and filed in his office.

3. **WORKERS’ COMPENSATION AND DISABILITY BENEFITS.** 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 State Workers’ Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers’ Compensation Act endorsement must be included.

4. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the State 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, military status, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with State Labor Law §220-e, 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 State Labor Law §230, then, in accordance with §239 thereof, the 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. The Contractor is subject to fines of \$50 per person per day for any violation of State Labor Law §§220-e or 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

5. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the State Labor Law or a building service contract covered by Article 9 thereof, neither the 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 State Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the 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 State Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the New York State 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 New York State Labor Law shall be a condition precedent to payment by the Authority/Corporation of any Authority/Corporation approved sums due and owing for work done on the project.

6. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with State Public Authorities Law §2878, if this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further warrants that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the Authority/Corporation a non-collusive bidding certification on the Contractor's behalf.

7. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with State Labor Law §220-f, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this 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. §§2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the 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 Authority/Corporation within five (5) business days of such conviction, determination or disposition of appeal.

8. **SET-OFF RIGHTS.** The Authority/Corporation shall have rights of set-off. These rights shall include, but not be limited to, the Authority's/Corporation'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 by the Contractor to the Authority/Corporation with regard to this contract, or any other contract with the Authority/Corporation, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority/Corporation for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Authority/Corporation and third parties in connection therewith.

9. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively, "Records") for a period of six (6) years (or any other longer period required by law) following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Authority/Corporation, State Comptroller, State Attorney General and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within New York State, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, during the contract term, any extensions thereof and said six (6) year period thereafter, for purposes of inspection, auditing and copying. As used in this clause, "termination of this contract" shall mean the later of completion of the work of the contract or the end date of the term stated in the contract. The Authority/Corporation will take

reasonable steps to protect from public disclosure those Records which are exempt from disclosure under State Public Officers Law §87 (“Statute”) provided that: (i) the Contractor shall timely inform an appropriate Authority/Corporation official, in writing, that said records should not be disclosed; (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 Authority’s/Corporation’s right to discovery in any pending or future litigation.

10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Authority/Corporation must include the payee’s identification number, i.e., the seller’s or lessor’s identification number. The number is either the payee’s Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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 State Tax Law §5. Disclosure of this information by the seller or lessor to the Authority/Corporation 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 State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

The above personal information is maintained at the New York State Thruway Authority/Canal Corporation, Department of Finance and Accounts, P.O. Box 189, Albany, New York 12201.

11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with State Executive Law §312, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the Authority/Corporation 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 Authority/Corporation; or (ii) a written agreement in excess of \$100,000 whereby the Authority/Corporation 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 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, or major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this contract 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, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Authority/Corporation 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. As used in this clause, “affirmative action” shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off or termination, and rates of pay or other forms of compensation.

(b) At the request of the Authority/Corporation, 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.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that in the 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.

The Contractor shall include the provisions of (a), (b) and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such 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 Authority/Corporation will consider compliance by a Contractor or its subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The Authority/Corporation 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 Authority/Corporation may waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall 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 thereto.

12. **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.

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

14. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by State Public Authorities Law §2880 and 21 NYCRR Part 109.

15. **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.

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

17. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (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 Authority/Corporation.

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 State Finance Law §165. Any such use must meet with the approval of the Authority/Corporation; 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 Authority/Corporation.

18. 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 State Finance Law §165), and shall permit independent monitoring of compliance with such principles.

19. 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 Street – 7th Floor
Albany, NY 12245
Phone: (518) 292-5220
Fax: (518) 292-5884
<http://www.esd.ny.gov>

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

NYS Department of Economic Development Minority and Women’s Business Development Division
30 South Pearl Street – 2nd Floor
Albany, NY 12245
Phone: (518) 292-5250
Fax: (518)292-5803
<http://www.esd.ny.gov>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, the Contractor certifies 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 Authority/Corporation;

(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 NYS 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 Authority/Corporation upon request; and

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

20. 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 (Chapters 684 and 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

21. NON-PUBLIC PERSONAL INFORMATION. The 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). In addition to any relief or damages that may be imposed pursuant to the provisions of this Act, the Contractor shall be liable for the costs imposed upon the Authority which are associated with breach of the Act if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors.

22. OBSERVANCE OF LAWS. The Contractor agrees to observe all applicable Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

23. NO WAIVER OF PROVISIONS. The Authority's/Corporation's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Authority/Corporation of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Authority/Corporation, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

24. ENTIRE AGREEMENT. This contract, together with this Appendix A and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

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APPENDIX B

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES FOR NEW NY BRIDGE PROJECT COMMUNITY BENEFIT FUND AGREEMENTS WITH THE NEW YORK STATE THRUWAY AUTHORITY

I. General Provisions

- A. The New York State Thruway Authority (“AUTHORITY”) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“M/WBE 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.
- B. The Grantee to the subject Community Benefit Fund (“CBF”) Agreement (the “Grantee” and the “Agreement,” respectively) agrees, in addition to any other nondiscrimination provision of the Agreement and at no additional cost to the AUTHORITY, to fully comply and cooperate with the AUTHORITY 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 (“M/WBEs”). The Grantee’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.
- C. 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 remedies as allowed by the Agreement.

II. Agreement Goals

- A. For all of Grantee’s procurements being funded by the Agreement, the AUTHORITY hereby establishes an overall goal for Minority and Women-Owned Business Enterprises (“M/WBE”) participation, based on the availability of qualified MBEs and WBEs, which is equal to 30% of the Authority Funds under this Agreement.
- B. For purposes of providing meaningful participation by M/WBEs on the Agreement and achieving the M/WBE Agreement Goals established in Section II-

A hereof, the Grantee should reference the directory of New York State Certified M/WBEs found at the following internet address: <https://ny.newnycontracts.com>.

The Grantee is also encouraged to contact the AUTHORITY to discuss additional methods of maximizing participation by M/WBEs on the Agreement. The contact information for this purpose is as follows:

Tracey Mitchell
Diversity Compliance Manager – New NY Bridge Project
303 Broadway – Suite 413
Tarrytown, New York 10591
(914) 524-5482
Tracey.Mitchell@newnybridge.com.

Lawrence H. Norville
Chief Compliance Officer
NYS Thruway Authority
200 Southern Blvd
Albany, NY 12209
(518) 471-5830
Larry.Norville@thruway.ny.gov

- C. Where M/WBE Agreement Goals have been established herein, pursuant to 5 NYCRR §142.8, the Grantee must document “good faith efforts” to provide meaningful participation by M/WBEs as subcontractors or suppliers in the performance of the Grantee’s procurements. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Grantee acknowledges that if it is found to have willfully and intentionally failed to comply with the M/WBE participation goals set forth in the Agreement and this Appendix B, such a finding constitutes a breach of contract and the Grantee shall be liable to the AUTHORITY for liquidated or other appropriate damages, as set forth herein.

III. M/WBE and EEO

- A. The Grantee agrees to be bound by the provisions of Article 15-A - M/WBE 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.
- B. The Grantee shall comply with the following provisions of Article 15-A:
- (i) Grantee and Grantee’s contractors and subcontractors performing work in connection with this Agreement and the Authority Funding Agreement (“Grantee’s Contractors”) shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded

equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. The Grantee shall submit its M/WBE AND EEO POLICY STATEMENT to the AUTHORITY within seventy two (72) hours after the date of the notice by AUTHORITY to award the grant of Authority Funds to the Grantee. Furthermore, the Grantee shall provide Grantee's Contractor's M/WBE and EEO POLICY STATEMENTS to the Authority within seventy two (72) hours after the Grantee providing a Grantee's Contractor with notice of an award of contract.

- (ii) The Grantee shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Grantee and Grantee's Contractors 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.

**IV. TA-1022– Proposed Utilization Plan for ALL Subcontractors/Suppliers
AAPHC89 – D/M/WBE Utilization Worksheet – Part 1**

- A. The Grantee's Contractors must submit to the Grantee, to be forwarded to the AUTHORITY, a M/WBE Utilization Plan and a signed, AAPHC89 – D/M/WBE Utilization Worksheet – Part 1 as evidence thereof through the New York State Contract System ("NYSCS"), however, the AUTHORITY may arrange for such evidence to be provided via a non-electronic method to the AUTHORITY, either prior to, or at the time of, the Grantee's first Disbursement Request as defined Section 4 of the Agreement.
- B. The Grantee agrees to use such M/WBE Utilization Plan for the performance of M/WBEs in connection with this Agreement and the Authority Funding pursuant to the prescribed M/WBE goals set forth in Section III-A of this Appendix B.
- C. The Grantee further agrees that a failure to submit and/or use such M/WBE Utilization Plan shall constitute a material breach of the terms of the Agreement. Upon the occurrence of such a material breach, the AUTHORITY shall be entitled to any remedy provided herein, including but not limited to, a finding the Grantee to be non-responsiveness.

V. TA-1077 – Contractor/Consultant M/WBE Waiver Request

- A. If the Grantee, after making good faith efforts, is unable to comply with M/WBE goals, the Grantee may submit a M/WBE Waiver Request documenting good faith efforts (GFE) by the Grantee to meet such goals. A waiver request shall be provided to the contact information set forth in Section II.B. of this Appendix B. If the documentation included with the waiver request is complete, the AUTHORITY shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- B. If the AUTHORITY, upon review of the M/WBE Utilization Plan determines that the Grantee is failing or refusing to comply with the M/WBE Agreement Goals and no waiver has been issued in regards to such non-compliance, the AUTHORITY may issue a notice of deficiency to the Grantee. The Grantee 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 M/WBE Agreement Goals.

VI. Grantee Compliance Report

The Grantee is required to submit all compliance reports by the 15th day of the following month documenting the progress made towards achievement of the M/WBE goals of the Agreement.

VII. Liquidated Damages - M/WBE Participation

- A. Where the AUTHORITY determines that the Grantee is not in compliance with the requirements of the Agreement and the Grantee refuses to comply with such requirements, or if the Grantee is found to have willfully and intentionally failed to comply with the M/WBE participation goals, the Grantee shall be obligated to pay to the AUTHORITY liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:

All sums identified for payment to M/WBEs had the Grantee achieved the obligated M/WBE goals; and all sums actually paid to M/WBEs for work performed or materials supplied under the Agreement and any Grantee's contracts with Grantee's Contractors.

- C. 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 AUTHORITY, the Grantee shall pay such liquidated damages to the AUTHORITY within sixty (60) days after they are assessed by the AUTHORITY unless prior to the expiration of such sixtieth day, the Grantee 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 AUTHORITY.

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

M/WBE AND EEO POLICY STATEMENT

I, Scenic Hudson Inc., the (grantee/awardee/contractor) grantee agree to adopt the following policies with respect to the project being developed or services rendered at RiverWalk.

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

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

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise
Liaison

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SCHEDULE A

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Contract for
Professional Design Services

This contract (this “Contract”) is entered into as of February, __, 2017, between **The Scenic Hudson Land Trust, Inc.**, located at One Civic Center Plaza, Suite 200, Poughkeepsie, New York 12601 (“Scenic Hudson”) and _____, located at _____, (“Consultant”), which sets forth the terms and conditions for the performance of certain services by Consultant at _____ in _____, NY. This contract, together with all attachments hereto, is referred to herein as the “Contract.”

1) Scope of Work

Scenic Hudson hereby engages Consultant, and Consultant agrees to perform, the work described in the Proposal set forth on Attachment A hereto (the “Work”).

2) Compliance with Applicable Law

In performing the Work, Consultant shall comply with all applicable laws, regulations and ordinances.

3) Subconsultants

A “Subconsultant” means a person or entity which has a direct contract with Consultant to perform work in connection with this Contract. No direct contractual relationship shall exist between Scenic Hudson and any Subconsultants related to the performance of the Work. Consultant shall be solely responsible for the management and, except as otherwise required by law, payment of its Subconsultants in and for the performance of its activities.

4) Fees

The fees payable to Consultant by Scenic Hudson in consideration for the satisfactory completion of the Work are set forth on Attachment A, hereto (the “Fees”).

Any fees payable in connection with any services other than the Work will be as set forth in an amendment to this Contract.

5) Payment

Payments for services shall be made monthly based upon percentage of each task completed.

6) Changes to the Scope of Work

Consultant agrees that the services to be provided under the Contract shall be limited to those described in the Scope of Work, and that Consultant is not authorized to perform or provide, and Scenic Hudson shall have no liability for, any services or materials provided by Consultant or SubConsultants other than those expressly included in the Scope of Work. Unless and until Scenic Hudson has expressly approved of such changes in a written, executed contract amendment in the form described in Attachment B hereto (such order, a “Contract Amendment”), any changes or additions to the Scope of Work shall be of no effect, and Consultant’s compensation shall be limited to the Fee, regardless of any additional services it has performed or costs it has incurred. The requirements for handling and processing Contract modifications described in the Contract Modification Procedures attached hereto as Attachment C shall be the sole means of amending the Scope of Work.

7) Schedule

Consultant shall complete the Work in accordance with the Project Schedule and Estimated Completion Date set forth on Attachment A hereto.

Scenic Hudson, in its sole discretion, may grant time extensions for the performance of the Work if any event reasonably beyond the control of Consultant delays the completion of the performance of the Work in accordance with the Project Schedule; provided that, Consultant shall have given Scenic Hudson written notice thereof within 48 hours after the occurrence of such event. The amount of additional time granted shall be equal to the period of actual delay, as determined in the sole discretion of Scenic Hudson. If any delay occurs, Consultant's sole remedy shall be an extension of time granted pursuant to this paragraph, and Consultant shall not be entitled to any additional compensation, including but not limited to the payment of consequential damages resulting from any such delay. Notwithstanding any schedule relief granted by Scenic Hudson in accordance with the foregoing, Consultant shall at all times use its reasonable best efforts to adhere to the Project Schedule and to minimize the length of any delay in Consultant's performance of the work in accordance with the Project Schedule.

8) Default by Consultant

If Consultant (i) does not commence the Work by the Deadline, (ii) fails to advance the Work in a timely fashion, such that Scenic Hudson determines, in its reasonable discretion, that the Work will not be completed in accordance with Section 7 above, or such that the Work is actually not completed in accordance with Section 7 above, or (iii) is in default of any other obligation hereunder (each of the foregoing, a "Default"), Scenic Hudson may, at its option: (1) suspend payment of any invoiced and not yet paid Fees and reimbursable expenses, (2) by written notice to Consultant, require Consultant to stop performing all or any portion of the Work until such time Scenic Hudson determines Consultant may resume the performance of the Work or (3) terminate this Contract in accordance with Section 9 below.

If this Contract is terminated due to a Default, all products developed by Consultant in connection with the Work up to the date of termination ("Products") become the property of Scenic Hudson and Consultant shall deliver, or cause the delivery of, such Products to Scenic Hudson within seven days in both electronic and paper versions.

9) Termination

Scenic Hudson may, at any time and for any reason, terminate this Contract upon 14 days written notice to the Consultant and this Contract may be terminated by either party hereto in case of substantial breach by the other (including a Default by the Consultant), upon 7 days written notice by the non-breaching party to the breaching party; provided that, in each case, if the Contract is terminated, the Consultant shall be entitled to recover an amount equal to any invoiced but not yet paid Fees and reimbursable expenses, *less* the cost, if applicable, to cure or remedy any deficiencies in the Work performed.

10) [Reserved]

11) Indemnity

To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend Scenic Hudson, its affiliates, and Scenic Hudson's or any of its affiliates' directors,

officers, shareholders, agents and employees from any and all losses, costs (including, without limitation, reasonable attorneys' fees, charges and disbursements), expenses, claims, demands, causes of action, liabilities and damages of every and any nature whatsoever, asserted or incurred as a result of, or in connection with, the breach of this Contract by, or due to the fault, negligence, willful misconduct or wrongdoing of, Consultant, its agents, employees, or subConsultants or any other person acting on behalf of the foregoing.

12) Consultant's and Subconsultant's Insurance

Consultant and Subconsultants of every tier shall, at their sole expense, procure and maintain insurance with carriers acceptable to Scenic Hudson and Scenic Hudson, Inc. and authorized to do business in the State of New York, which shall insure Consultant, Scenic Hudson and Scenic Hudson, Inc., against all claims for injuries to persons (including death) and against all claims for damages to or loss of property caused by, or in relation to, Consultant's performance of the Work. Such insurance shall include the following coverages:

- a. Comprehensive General Liability and/or Commercial General Liability Insurance covering all operations;
- b. Automobile Liability Insurance, including coverage for all hired and non-owned automobiles of Scenic Hudson, Inc. and The Scenic Hudson Land Trust, Inc.; and
- c. Professional Liability Insurance (Errors and Omissions).

All insurance coverages shall be in amounts and for durations acceptable to Scenic Hudson and Scenic Hudson, Inc., but in no event less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate for General Liability and \$500,000 aggregate for Errors and Omissions. Consultant's deductible shall not exceed \$5,000 without the advance written consent of Scenic Hudson and Scenic Hudson, Inc.

Consultant shall name Scenic Hudson and Scenic Hudson, Inc., and each of their respective officers, agents, employees, directors and shareholders, as additional insureds under the Comprehensive General Liability and/or Commercial General Liability Insurance. Consultant shall provide certificates of insurance and copies of all additional insured endorsements to Scenic Hudson and Scenic Hudson Land, Inc. prior to commencement of the Work. The certificates of insurance shall provide that Consultant shall not cancel or reduce the coverage provided thereunder without 30 days prior written notice to Scenic Hudson and Scenic Hudson, Inc.

13) No Agency

Consultant is an independent Consultant, and this Contract does not in any way designate Consultant as the agent, employee, or legal representative of Scenic Hudson for any purpose whatsoever and shall not be construed as creating a partnership or agency relationship between Scenic Hudson and Consultant.

14) Assignment

This Contract may not be assigned by Consultant to any person, entity, or public body without the prior written consent of Scenic Hudson, which consent Scenic Hudson shall have no obligation to grant. This Contract may be assigned by Scenic Hudson to any wholly owned subsidiary or affiliate of Scenic Hudson without the consent of Consultant.

15) No Oral Waiver; Entire Contract

The provisions of this Contract, including, for the avoidance of doubt, the Schedules hereto, shall not be changed, amended, waived or otherwise modified in any respect except by a writing signed by the parties hereto. No person is authorized on behalf of Scenic Hudson to orally change, amend, waive or otherwise modify the terms of this Contract or any of Consultant's duties or obligations under or arising out of this Contract. Any change, waiver, approval or consent granted to Consultant shall be limited to the specific matters stated in the writing signed by Scenic Hudson and shall not relieve Consultant of any other of the duties and obligations under this Contract. No "constructive" changes shall be allowed.

This Contract, including, for the avoidance of doubt, the Schedules hereto, constitutes the entire agreement between the parties superseding all prior oral and written understandings.

16) Choice of Law; Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of New York. The parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of New York and the federal courts of the United States of America located in the State of New York, the City of Poughkeepsie and the County of Dutchess in respect of any dispute hereunder.

17) Counterparts

This Contract may be executed in one or more counterparts (including by facsimile or other means of electronic transmission), each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have caused this Contract to be duly executed and delivered on the date and year first written above.

By _____
Steve Rosenberg
Executive Director,
The Scenic Hudson Land Trust, Inc.

By _____

Date _____

Date _____

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Attachment A

Proposal dated
(attached)

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