



**Thruway  
Authority**

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**AUDIT COMMITTEE MEETING NO. 63  
TUESDAY, SEPTEMBER 24, 2024  
ALBANY, NEW YORK**



**Thruway  
Authority**

**AUDIT COMMITTEE AGENDA**

Meeting No.63

September 24, 2024

Albany, New York

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1. Approval of Minutes of Audit Committee Meeting No. 62
  2. Recommend the Appointment of BST & Co. CPAs, LLP to provide Auditing Services, approving the scope of services, the compensation terms, the terms and conditions for such firm and authorizing the Chair of the Board to execute a contract with BST & Co. CPAs, LLP for Auditing Services
  3. Other Business
  4. Adjournment

TO: The Audit Committee

DATE: September 24, 2024

FROM: Julie Greco  
Board Secretary

SUBJECT: Approval of Minutes for Audit Committee Meeting No. 62

Copies of the Minutes of Audit Committee Meeting No. 62 were made available to the Committee Members as part of the agenda.

RECOMMENDATION

It is recommended that the Minutes of Audit Committee Meeting No. 62, held on April 9, 2024, be approved by the Committee.



**MINUTES  
AUDIT COMMITTEE MEETING NO. 62  
April 9, 2024**

Meeting minutes of the New York State Thruway Authority Audit Committee was held in the boardroom at 200 Southern Boulevard, Albany, New York, and via video conference at SUNY College of Environmental Science and Forestry, 229 Bray Hall, 1 Forestry Drive, Syracuse, NY 13210.

**The following Committee Members were present, constituting a quorum:**

Jose Holguin-Veras, Ph.D., Chair  
Heather Briccetti-Mulligan, Committee Member  
Joanne M. Mahoney, (ex-officio)

**In addition, the following Board Members were present:**

Robert Megna, Vice-Chair  
Norman Jones, Board Member

**Staff Present:**

Tom McIntyre, Deputy Executive Director of Operations & Special Projects  
Nicole Leblond, Chief of Staff  
Dave Malone, Chief Financial Officer  
Joe Igoe, First Deputy General Counsel  
Brent Howard, Chief Engineer  
Josh Klemm, Chief Information Officer  
Selica Grant, Director of Administrative Services  
Erika Beardsley, Director for Strategic Management  
Jennifer Givner, Director of Media Relations & Communications  
Andrew Trombley, Director of Procurement Services  
Andrew Nagy, Superintendent of Maintenance  
Sean Lasher, Information Technology Specialist  
William Hewitt, Information Technology Specialist  
Julie Greco, Board Secretary  
Danielle Adams, Director of Compliance  
Jeffrey Mysliwicz, Auditor

**Also Present:**

Brendan Kennedy, BST & Co. CPAs, LLC.

Murray Bodin, Constituent

Dr. Veras, Committee Chair, called the meeting of the Audit Committee to order at 1:23 pm.

Ms. Greco recorded the minutes as contained herein (public notice of the meeting had been given).

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**Item 1 (18:25)**

**Approval of Minutes of the Audit Committee Meeting No. 61**

Upon motion duly made and seconded, the Audit Committee approved the minutes of the previous meeting held on January 29, 2024. Copies of the meeting minutes were provided to the Committee Members and are maintained in Authority records.

**Item 2 (18:55)**

**Report of BST & Co. CPAs, LLC's Audit of the Authority's Financial Statements, Report of Single Audit, Report on Compliance with Investment Guidelines, and Required Communications to the Authority's Board**

Brendan Kennedy (BST) presented an overview of the Audit of the Authority's Financial Statements, Report of Single Audit, Report on Compliance with Investment Guidelines, and Required Communications to the Audit Committee.

Copies of BST's presentation and related exhibits was provided to the Committee Members and are maintained in Authority records. Details of the presentation and Committee Member's discussion is included in the video recording of the meeting and maintained by the Authority.

Upon motion duly made and seconded, the Audit Committee approved the Report from BST & Co. CPAs, LLC's Audit of the Authority's Financial Statements, Report of Single Audit, Report on Compliance with Investment Guidelines, and Required Communications to the Authority's Board, and authorized their submission to the Authority Board for consideration.

**Adjournment (29:30)**

There being no other business to come before the Audit Committee, upon motion duly made and seconded, the meeting was adjourned at 1:34 p.m.

*Note: Webcasts, which include dialogue of the Authority's Audit Committee Meeting, are available on the Thruway Authority website 48 hours after such meetings occur and remain on the website for a period of four months.*

TO: Audit Committee

DATE: September 24, 2024

FROM: David Malone  
Chief Financial Officer

SUBJECT: Recommend the Appointment of BST & Co. CPAs, LLP to provide Auditing Services, approving the scope of services, the compensation terms, the terms and conditions for such firm and authorizing the Chair of the Board to execute a contract with BST & Co. CPAs, LLP for Auditing Services.

The Authority retains the services of an independent public accountant to perform various auditing services to comply with current law, resolutions and recommendations. Currently, the Authority has an agreement with BST & Co. CPAs, LLP (BST) to perform said services. The Authority entered into the current contract with BST on December 1, 2019, for a three-year term with an option to renew the contract for one additional two-year term. The optional renewal has been exercised and the current agreement expires on November 30, 2024.

The Authority issued a Request for Proposal (RFP) for required and optional auditing services on April 29, 2024. The specific scope of the required and optional services can be found in Article 1 of the proposed agreement attached as Exhibit 1. The RFP indicated that the Authority intended to enter into an agreement for these services for a three-year term with an option to extend the agreement for one additional two-year term. The RFP established the criteria by which proposals would be evaluated. A weighting committee representing the Department of Finance and Accounts, Department of Audit & Management Services and Legal Department determined the weight for each criterion.

An RFP Announcement was sent to two hundred and sixty-eight (268) potential Contractors on the issue date of April 29, 2024, and twenty-one (21) potential Contractors downloaded the RFP from the Authority's website.

Five (5) proposals were received by the due date of June 10, 2024. An Evaluation Committee comprised of Authority staff representing the Department of Finance and Accounts and the Department of Audit and Management Services evaluated the proposals in accordance with the criteria set forth in the RFP. One (1) proposal was deemed non-responsive for not submitting a copy of their certified public accounting license. Numerical evaluation standards were provided and used by the Evaluation Committee to assist the evaluation process and to assure continuity and evenhandedness in approach. After the evaluations of the remaining four (4) proposals was concluded, the Bureau of Purchasing applied the previously established weights to the raw scores submitted by the Evaluation Committee. The Non-Engineering Personal Services Committee found that the best interests of the Authority would be served by entering into an agreement with BST, the firm having the highest weighted score.

BST is a regional certified public accounting firm with headquarters in Albany, NY. BST has decades of government auditing experience including audits of public authorities, as well as NYS state agencies, counties, cities, villages and other governmental entities. The firm has 20 partners and a total staff in excess of 100 employees. The staff they have proposed to perform our audit have experience auditing complex governmental entities, similar to and including the Authority. The RFP included an M/WBE participation goal of 30%. BST has submitted an M/WBE Utilization Plan with its proposal to meet this goal.

The Purchasing Bureau has undertaken an affirmative review of the proposed contractor's responsibility and has reasonable assurance that the proposed contractor is responsible.

Therefore, the Audit Committee is requested to recommend the appointment of BST, approve the scope of services, the compensation terms and the terms and conditions for such auditor as set forth in the form of the agreement attached hereto as Exhibit 1. The Audit Committee is also requested to authorize the Chair of the Board to negotiate and enter into an agreement, the form of which is attached hereto as Exhibit 1, with such changes as the Chair deems to be in the best interest of the Authority and are consistent with this item. The Audit Committee is also requested to authorize the Chair, if services are satisfactory during the initial three-year term, to exercise the Authority's option to extend the agreement for one additional two-year term.

The initial contract term is for three years with the option to renew for one additional two-year term. BST's fee schedule contains a maximum annual fee ranging from \$123,400 to \$133,600 per year to provide the Required Services for all five years covered by the RFP and their average blended rate is \$189 per hour. BST's maximum fee for all five years is \$791,900, consisting of \$641,900 for Required Services and \$150,000 for Optional Services. BST's maximum fee for the initial three-year term is \$527,600, consisting of \$377,600 for Required Services and \$150,000 for Optional Services.

Since this amount exceeds \$200,000 Board approval is required. With your approval, we will process a Board agenda item for a non-engineering personal service contract with BST.



RECOMMENDATION:

It is recommended that the Audit Committee adopt the following resolution and submit this recommendation and authorizations to the Authority Board for review and acceptance.

# NEW YORK STATE THRUWAY AUTHORITY

## Agreement for Personal Services

### BST & Co. CPAs, LLP

This AGREEMENT (hereinafter "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the New York State Thruway Authority (hereinafter "Authority"), a public corporation organized and existing pursuant to Article 2, Title 9 of the New York State Public Authorities Law, as amended, whose principal office is located at 200 Southern Boulevard, Albany, New York 12209 (Mailing Address: P.O. Box 189, Albany, New York 12201-0189), and BST & Co. CPAs, LLP (hereinafter "Contractor"), a LLP, duly organized and existing under the laws of the State of NY, having its principal office at 10 British American Blvd. Latham, NY 12110

#### WITNESSETH:

[Note: appropriate Whereas clauses (i.e., also called recitals) will vary from contract to contract depending upon the type of services needed, the method used to obtain those services, the monetary cap on the services, etc. The following clauses are intended as examples and may need to be modified to accommodate individual contract circumstances.]

WHEREAS, the Authority is statutorily responsible for financing, constructing, reconstructing, improving, developing, maintaining, and operating a 570-mile superhighway system known as the Thruway; and

WHEREAS, in furtherance of these responsibilities, the Authority requires Professional Accounting and Auditing Services; and

WHEREAS, in conformance with the Authority's Procurement Policy, the Authority has determined that it is more beneficial for such services to be contracted for than performed by employees of the Authority; and

WHEREAS, on 04/29/24, the Authority placed an advertisement in the New York Contract Reporter announcing a Request for Proposals (hereinafter "RFP") for professional accounting & auditing services, and Contractor responded to such RFP by the due date of 06/10/24; and

WHEREAS, after engaging in a competitive selection process, the Authority has chosen Contractor to perform [insert type of services] and Contractor is ready, willing, and able to perform such services; and

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

#### ARTICLE I – SERVICES TO BE PROVIDED

Contractor will be required to provide the following services:

**Basic Financial Statements:** Annually conduct an audit of the Authority's Basic Financial Statements and issue an Independent Auditor's Report in conformity with auditing standards generally accepted in

the United States of America and the standards applicable to financial audits contained in 'Government Auditing Standards' issued by the Comptroller General of the United States.

**Investment Practices:** Annually conduct an audit of the Authority's investment practices and issue an Independent Auditor's Report on compliance with the Authority's Investment guidelines in conformity with Section 2925 of the Public Authorities Law. All work to be done in conformity with generally accepted auditing standards in the United States of America and the standards applicable to financial audits contained in 'Government Auditing Standards' issued by the Comptroller General of the United States.

**Federal Single Audit:** Annually conduct an audit of the Authority's Federal Financial Assistance programs and issue an Independent Auditor's Report in conformance with generally accepted auditing standards in the United States of America, the standards applicable to financial audits contained in 'Government Auditing Standards' issued by the Comptroller General of the United States and OMB Uniform Guidance and all supplements.

**Attendance at Meetings:** Contractor will be required to attend meetings at the request of the Authority and to satisfy reporting requirements to the Authority's Audit Committee.

**Due Dates:** The Authority's fiscal year begins on January 1st and ends on December 31st. All required reports will be due on March 10th following the year ending December 31st. The due date can be modified by mutual agreement of the Authority and Contractor.

**Inclusion in Authority Publications:** All reports may be included in various Authority publications and web sites including but not limited to the Annual Report and various debt instruments as appropriate without additional cost.

**Work Location:** Services will be performed primarily at the Authority's main office located in Albany, NY. However, travel to other regions may be necessary.

### **Section 1.2 - Optional Services:**

Contractor will, at the sole discretion of the Authority, provide the following service on an as-needed and non-exclusive basis. Prior to starting work on any Optional Services assignment, Contractor shall be required to submit to the Authority for approval the estimated amount of hours proposed for the completion of the assignment. Contractor shall not engage in any work on the assignment until such approval has been granted by the Authority Project Manager.

**Optional Service - Concessionaire Audit:** Perform agreed upon procedures of restaurant concessionaire financial records to confirm gross receipts being reported to the Authority are supported by the concessionaires underlying sales and accounting records; and compute the amount of rent due the Authority and to issue an Independent Auditor's Report disclosing the results. All work to be done in conformity with attestation standards established by the American Institute of Certified Public Accountants.

**Other Optional Services:** Contractor will at the sole discretion of the Authority, provide the following service on an as needed and non-exclusive basis.

Perform attestation engagements regarding subject matters to be determined by the Authority with the objective of ensuring compliance with laws, regulations, policies, procedures applicable to the business process being tested.

Perform forensic auditing services regarding subject matters to be determined by the Authority.

Perform internal control reviews and testing regarding subject matters to be determined by the Authority.

Prepare reports for the Authority's audit committee and management documenting the results of the Optional Services provided, including any fraud, illegal acts, material noncompliance and/or other reportable conditions.

Contractor understands and expressly acknowledges that execution of this Agreement is not a guarantee of work or compensation.

Contractor understands and expressly acknowledges that execution of this Agreement is not a guarantee of work or compensation.

## **ARTICLE II – COMPENSATION FOR SERVICES**

### **Section 2.1 – Overall Compensation**

For the performance of services described in Article I, the Authority shall pay Contractor an amount equal to the actual hours devoted to a particular matter multiplied by the following hourly rates:

Such hourly rates shall not be applicable to time spent in travel.

Payment for the Required Services listed in Section 1.1 of the Agreement shall not exceed \$123,400 for the audit of fiscal year 2024, \$125,900 for the audit of fiscal year 2025, and \$128,300 for fiscal year 2026. Payment for Optional Services listed in Section 1.2 of this Agreement, if requested by the Authority, shall not exceed \$150,000. In no event shall the total payment pursuant to this agreement exceed \$377,600. Provided, however, if the Authority chooses to exercise its option to renew this Agreement for an additional two-year term, as set forth in Section 3.1 of this Agreement, payment for the Required Services listed in Section 1.1 of the Agreement shall not exceed \$130,700 for the audit of fiscal year 2027, and \$133,600 for audit of fiscal year 2028. Total payment pursuant to this Agreement shall not exceed \$791,900 if the Authority renews this Agreement for the additional two-year term, as set forth in Section 3.1 of this Agreement. The Authority's obligation to pay for such services is contingent upon the Authority's finding that Contractor has performed in a competent and professional manner satisfactory to the Authority.

### **Section 2.2 – Electronic Payment**

Contractor understands and agrees that payments for invoices submitted by Contractor will only be rendered electronically unless payment by paper check is expressly authorized by the Authority, in its sole discretion, due to extenuating circumstances. Contractor 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 e-mail at [suppliermgmt@thruway.ny.gov](mailto:suppliermgmt@thruway.ny.gov), or by telephone at (518) 436-2859. Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement unless Contractor complies with the Authority's electronic payment procedures, except where the Authority has expressly authorized payment by paper check as set forth above.

### **Section 2.3 – 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 Contractor sales and compensating use taxes on any services Contractor provides to the Authority pursuant to this Agreement.

## **ARTICLE III – TIME AND MANNER OF PERFORMANCE**

### **Section 3.1 – Term of Agreement**

This Agreement shall [commence on [insert date] [this is the date the program manager wants the service provider to start work, which date should be after the Authority fully executes the contract] or [be deemed to have commenced on [insert date]]] and shall terminate [insert #] years after commencement. [The Authority shall have the option, in its sole discretion, to renew this Agreement for [#] additional [#] year term(s)].

### **Section 3.2 – Personnel, Equipment and Supplies**

Contractor shall provide all resources, personnel, equipment, and supplies necessary to perform the services set forth in Article I. If in order to provide the services set forth in Article I, Contractor must make an external connection to the Authority's data communications infrastructure and/or access Authority information systems, Contractor shall in all respects comply with all Authority policies, procedures, and requirements regarding such connections and information systems access, including, but not limited to, Appendix D – Network Connection Requirements (TAP-372), attached hereto, and undertake whatever actions are necessary in the discretion of the Authority to ensure such compliance. Contractor shall be responsible for all costs associated with ensuring that its own network security measures comply with all Authority policies, procedures, and requirements regarding external connections.

Contractor's key management and supervisory staff intended for assignment to this Agreement shall be as follows: Johnathan Gibbs, Engagement Partner. Any employees designated as key management and supervisory staff are anticipated to fulfill the entire term of the Agreement. Contractor may not make any changes to such key management and supervisory staff without the Authority's prior approval, and any replacement staff must possess similar or better qualifications than their predecessors.

At the request of the Authority, Contractor shall promptly remove from assignment to Authority projects any of its employees performing services pursuant to this Agreement and shall promptly replace them with staff possessing similar or better qualifications. Any associated costs shall be borne by Contractor. The Authority recognizes that removal of an employee from Authority projects will not necessarily result in the termination or demotion of such employee.

### **Section 3.3 – Standards of Performance**

Contractor shall perform all services pursuant to this Agreement in accordance with Article I and Appendix A of this Agreement. Contractor warrants that, its employees, agents and subcontractors possess the qualifications, experience, knowledge, character, licenses and permits necessary to perform the services described in Article I. Contractor shall correct at no cost to the Authority any errors and/or omissions in its performance of services pursuant to this Agreement. Contractor shall perform such services in a competent and professional manner to the satisfaction of the Authority. Contractor shall at all times during the term of this Agreement, act with the utmost independence and exercise independent professional judgement in fulfilling its independent and professional role. The Authority shall have the right to inspect the performance

of such services at any time and Contractor shall fully and promptly cooperate with the Authority in the execution of such inspections.

Contractor shall correct at no cost to the Authority any errors and/or omissions in its performance of services pursuant to this Agreement.

### **Section 3.4 – Independent Contractor**

Contractor is and shall be, in all respects, an independent contractor in performing services pursuant to this Agreement. In accordance with its status as an independent contractor, Contractor 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 Contractor 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.

### **Section 3.5 – Subcontracting**

Contractor agrees not to subcontract any of its services without the prior written approval of the Authority.

Subject to such prior approval by the Authority, Contractor may arrange for a portion of its responsibilities under this Agreement to be subcontracted to qualified, responsible subcontractors. Prior to awarding any work to a subcontractor, Contractor shall submit to the Authority a written statement clearly identifying the proposed subcontractor and clearly stating the nature and extent of the proposed work a subcontractor is to perform, the qualifications of the subcontractor's personnel that will be providing the services, the fees the subcontractor will charge for such work, and such other information as the Authority may require. As part of this explanation, and prior to any approval by the Authority, the subcontractor must submit to the Authority a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, attached as Supplement 1, in the same form Contractor was required to complete prior to execution of this Agreement.

Contractor retains ultimate responsibility for all services performed under the Agreement and shall pay any subcontractors promptly for work performed under this Agreement. Contractor shall be fully responsible to the Authority for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, just as Contractor is fully responsible to the Authority for the acts and omissions of persons directly employed by Contractor.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this Agreement including, but not limited to, the body of this Agreement and Appendix A – Standard Clauses For New York State Thruway Authority Contracts. Unless expressly waived in writing by the Authority, all subcontracts between Contractor and subcontractors shall expressly name the Authority, as the sole intended third party beneficiary of such subcontract. The Authority reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the Authority a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the Authority.

The Authority shall have the right to withdraw its consent to a subcontract if, at the sole discretion of the Authority, it appears at any time that the subcontract will delay, prevent, or otherwise impair Contractor's performance of services under this Agreement, or if it appears that any subcontractor is not in compliance with this Section 3.5 or any other provisions of this Agreement. Upon request of the Authority, Contractor shall furnish to the Authority copies of any contracts between Contractor and its subcontractors related to the performance of services under or in fulfillment of this Agreement.

The Authority reserves the right, at any time during the term of the Agreement, to verify that the written subcontract between Contractor and any subcontractor is in compliance with all of the provisions of this Section 3.5 and any other applicable provisions contained in this Agreement.

Contractor shall give the Authority immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the duties of Contractor under this Agreement. Any subcontract shall not relieve Contractor in any way of any responsibility, duty and/or obligation of the Agreement.

If at any time during performance under this Agreement total compensation to a subcontractor exceeds or is expected to exceed \$100,000, said subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire. The Authority recommends that subcontractors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System and only provide a copy of the certification page to the Authority. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at <http://www.osc.state.ny.us/vendrep/enroll.htm> or go directly to the VendRep System online at <https://onlineservices.osc.state.ny.us/>.

Subcontractors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's IT Service Desk at 866-370-4672 or 518-408-4672 or by email at [ITServiceDesk@osc.state.ny.us](mailto:ITServiceDesk@osc.state.ny.us). Subcontractors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website: [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm) or may contact the Authority or the Office of the State Comptroller's Help Desk for a copy of the paper form.

Nothing contained in this Agreement shall create any contractual relationship between a subcontractor and the Authority.

## ARTICLE IV – INSURANCE REQUIREMENTS

[Based on the scope of services, term, and expected value of the agreement the Authority's Office of Investments and Asset Management will provide the recommended insurance, and, if applicable, bond requirements for the contract during the internal review phase of this Agreement. If there are additional factors that should be considered as the requirements are developed, this information should be included along with the draft of the contract.]

### Section 4.1 – Insurance Conditions

Contractor shall, and shall require its subcontractors to, procure prior to commencement of work under this Agreement, and maintain until this Agreement is completed and the Authority has accepted all work performed thereunder, insurance of the kinds and in the amounts specified herein, covering all services and operations under this Agreement, whether performed by Contractor or its subcontractors, in accordance with the following conditions:

- A. Contractor Cost and Expense. All insurance required by this Agreement shall be obtained at the sole cost and expense of Contractor.
- B. Insurer Qualifications. All insurance required by this Agreement shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to the Authority, with an A.M. Best rating of "A-" or better. The Authority may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documentation

are accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit. Notwithstanding the foregoing, nothing herein shall be construed to require the Authority to accept insurance placed with a non-authorized carrier under any circumstances.

- C. Primary Insurance. All insurance required by this Agreement shall be primary to any Authority insurance policy or Authority self-insurance program, which shall be excess and non-contributory.
- D. Certificates and Endorsements. Contractor shall furnish the Authority with certificate(s) of insurance on ACORD Form 25, accompanied by the Authority Supplemental Insurance Certificate (Exhibit 1 – TA-W51343 (11/2017)), for each insurance carrier involved. Such certificate(s) shall be executed by a duly authorized representative of the insurance carrier, certifying such authorization and showing compliance with the Authority's insurance requirements set forth herein. Contractor shall furnish the Authority with a copy of each endorsement required herein. For work to be performed within New York State, proof of Workers' Compensation and Disability Benefits Insurance shall be indicated on the appropriate Workers' Compensation Board forms as listed in Section 4.2 E. below. Contractor shall submit all certificates in .PDF file format via e-mail to: InsuranceCompliance@Thruway.NY.GOV.
- E. Notice of Cancellation, Nonrenewal or Material Alteration. All policies, by specific Endorsement, shall provide for written notice to the Authority no less than thirty (30) days prior to the cancellation, nonrenewal, or material alteration of any insurance policies referred to therein. Any such notice shall be sent by e-mail to: [Insurancecompliance@thruway.ny.gov](mailto:Insurancecompliance@thruway.ny.gov), attention Insurance Compliance Supervisor. Only in the event that such written notice cannot be delivered via e-mail, notice shall be sent to: Insurance Compliance Section, Office of Investments and Asset Management, New York State Thruway Authority, P.O. Box 189, Albany, New York 12201-0189.
- F. Deductibles and Self-Insured Retentions. If insurance policies utilized for Authority projects contain deductibles or self-insured retentions (SIRs), they must be declared as such with applicable levels on the certificate(s) of Insurance and the Authority Supplemental Insurance Certificate. Insurance policies with Deductibles in excess of \$100,000 will require review and approval by the Authority. Additional security or other requirements may be imposed at the sole discretion of the Authority. Any SIR will be subject to Section 4.1(G).
- G. Authority Approval of Self-Insured Retentions. Insurance policies with Self-Insured Retentions (SIRs) must receive prior approval by the Authority. All applications for SIR approval must be submitted to the Authority's Office of Investments and Asset Management, indicate whether the program is administered by a third party, and contain a complete description of the program. SIR programs in excess of \$100,000 must be administered by a third-party administrator and must also meet additional security requirements. The Authority, at its sole discretion, reserves the right to require Contractor to provide additional collateral, or to reject the use of an SIR by Contractor. Contractor will be solely responsible for all claims, expenses, and loss payments within the retention limit.
- H. Copies of Insurance Documents. Contractor shall provide certified copies of all declarations, pages, or of the insurance policies themselves upon request by the Authority, and within twenty (20) days of such request.
- I. No Waiver of Contractor's Insurance Obligations. Failure of the Authority to demand such certificates, policies, endorsements, or other evidence of full compliance with the Authority's insurance requirements, or failure of the Authority to identify a deficiency from evidence that is provided, shall not constitute or be construed as a waiver of Contractor's obligation to maintain such insurance.



- J. Failure to Maintain or Provide Proof of Coverage. Failure to maintain the required insurance, and failure to provide proof of such coverage to the Authority at its request, may, in the Authority's sole discretion, result in termination of this Agreement, removal of any subcontractor, or in delay or stoppage of payments.
- K. Evidence of Renewal or Replacement. At least two weeks prior to the expiration of any policy required by this Agreement, evidence of renewal or replacement policies of insurance with terms at least as favorable to the Authority as the required minimum amounts set forth in Section 4.2. of this Agreement must be submitted to the Authority by email to: [Insurancecompliance@thruway.ny.gov](mailto:Insurancecompliance@thruway.ny.gov), attention Insurance Compliance Supervisor. Only in the event that such certificates cannot be delivered via e-mail, notice shall be sent to: Insurance Compliance Section, Office of Investments and Asset Management, New York State Thruway Authority, P.O. Box 189, Albany, New York 12201-0189.
- L. Adequacy of Required Insurance. By requiring insurance, the Authority does not represent that certain coverages and limits will necessarily be adequate to protect Contractor or its subcontractors, and such coverages and limits shall not be deemed a limitation on Contractor's liability under the indemnities granted to the Authority under any provision of this Agreement.
- M. Waiver of Rights Against the State and Authority. Contractor shall, and shall require its subcontractors to, waive all rights against the State of New York, the Authority, and their respective agents, officers, directors, and employees, for recovery of damages to the extent these damages are covered by the Commercial General Liability ("CGL") policy, the Business Auto Policy or the Commercial Umbrella Liability policy, as required.
- N. Authority Insurance Requirements. Contractor shall, and shall require its subcontractors to, provide a copy of the Authority's Insurance Requirements as set forth in Article IV (Insurance Requirements) of this Agreement to its insurance producer(s) and insurance carrier(s).
- O. Subcontractor Insurance. Contractor shall require that any approved subcontractors carry insurance with the same limits and provisions set forth herein.

**Section 4.2 - Required Insurance Coverages**

The specific types and amounts of insurance that Contractor must provide pursuant to this Agreement are set forth in this Section 4.2 as follows:

- A. Commercial General Liability Insurance – Contractor shall maintain through a combination of Commercial General Liability (CGL) and Commercial Umbrella Liability insurance (see Section 4.2(B)), with no less than the following limits and coverages:

<u>Agreement Value:</u>	<u>Occurrence</u>	<u>General Aggregate</u>
Under \$10 Million	\$2,000,000	\$2,000,000
\$10 Million - \$25 Million	\$5,000,000	\$5,000,000
\$25 Million - \$50 Million	\$10,000,000	\$10,000,000
Over \$50 Million	\$25,000,000	\$25,000,000

- Products/Completed Operations Aggregate: (Equal to General Aggregate)
- Personal/Advertising Injury Liability: \$1,000,000
- Fire Damage Legal Liability: \$ 100,000

- Medical Expense: \$ 5,000

CGL Insurance shall cover liability arising from premises, operations, independent contractors, products/completed operations, personal injury, advertising injury, and contractual liability. The Authority and the State of New York shall be listed as primary and non-contributory additional insureds on the CGL, and as applicable, on the Business Automobile, and pollution liability policies required under Section 4.2(A), Section 4.2(B), and Section 4.2(D) of this Agreement.

- B. Commercial Umbrella Liability Insurance – When the limits of the CGL and business automobile liability policies procured are insufficient to meet the limits specified in Section 4.2(A) and Section 4.2(D), Contractor shall procure and maintain commercial umbrella liability insurance and/or excess liability policies with limits in excess of the primary; provided, however that the total amount of insurance coverage is at least equal to the requirements set forth in Section 4.2(A) and Section 4.2(D). Such policies shall be issued on a “follow form” basis of the primary policies.

The Authority and the State of New York shall be included as additional insureds, using ISO Additional Insured Endorsement CG 20 10 04 13 and CG20 37 04 13 or an equivalent, under the CGL and Commercial Umbrella Liability policies, as required.

As noted above, all insurance required by the Agreement shall be primary to any Authority insurance policy or Authority self-insurance program, which shall be excess and non-contributory.

- C. Professional Liability or Errors and Omissions Insurance – With regard to the furnishing of any professional services in connection with this Agreement, Contractor shall procure and maintain professional liability or errors and omissions insurance to cover claims, damages, and losses that occur as a result of errors, omissions, malpractice, or breach of professional obligations by Contractor’s or its subcontractor’s furnishing of or failure to furnish such professional services; and such coverage shall be maintained with no less than the following limits:

<u>Agreement Value:</u>	<u>Limit:</u>
Less than \$25 Million	\$2,000,000
\$25 Million or greater	\$5,000,000

The professional liability insurance may be issued on a claims-made policy form provided that, at minimum, Contractor, shall purchase at its sole expense, coverage that provides for (a) reporting circumstances or incidents that may give rise to future claims and (b) tail coverage with an extended reporting period of no less than three (3) years after work is completed to cover events that occurred but were not reported during the term of the policy. If applicable, such professional liability or errors and omissions insurance shall cover any negligent act, error or omission in rendering or failing to render professional services required by this Agreement or in fulfillment of this Agreement arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants. Such insurance shall apply to professional acts, errors or omissions arising out of the scope of services covered by this Agreement.

- D. Business Auto Liability Insurance – In order to cover any liability arising out of Contractor’s use of any motor vehicle, whether owned, leased, hired, or non-owned, Contractor shall maintain Business Automobile Liability coverage, with no less than a \$1,000,000 combined single limit.

If this Agreement involves the removal of hazardous waste or environmental exposures, pollution liability coverage equivalent to that provided under the ISO Broadened Pollution Liability Coverage for Covered Autos endorsement (CA 9948) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached.

E. Workers' Compensation & NYS Disability Benefits Insurance – This Agreement shall be void and of no force and effect unless Contractor shall provide and maintain coverage during the term of this Agreement for the benefit of such employees as are required to be covered by the New York State Workers' Compensation/Disability Benefits Law. If the Agreement involves work on or near a shoreline, a U.S. Longshore and Harborworkers' Compensation Act Endorsement must be provided. The Maritime Coverage Endorsement, on an "if any" basis, shall be attached to the policy. Contractor must provide proof of exemption, certified by the Workers' Compensation Board, to obtain a waiver from the requirements of this provision.

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; or
4. CE-200 – Certificate of Attestation of Exemption.

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; or
3. CE-200 – Certificate of Attestation of Exemption.

Disability benefits coverage must also include a rider providing Paid Family Leave insurance in form and substance satisfactory to the Authority. Evidence of coverage shall be provided to the Authority and may be in the form of a Notice of Compliance provided by your insurance carrier stating that you have Paid Family Leave insurance. The Notice will include information about your carrier. If you are self-insured, you can get this notice by contacting the NYS Workers' Compensation Board at [certificates@wcb.ny.gov](mailto:certificates@wcb.ny.gov).

F. Privacy and Network Security (Cyber Liability) Insurance – the Contractor shall maintain Privacy and Network (Cyber Liability) insurance covering liability arising from (1) hostile action, or a threat of hostile action, with the intent to affect, alter, copy, corrupt, destroy, disrupt, damage, or provide unauthorized access/unauthorized use of a computer system including exposing or publicizing confidential electronic data or causing electronic data to be inaccessible (2) computer viruses, Trojan horses, disabling codes, trap doors, back doors, time bombs drop-dead devices, worms and any other type of malicious or damaging code (3) dishonest, fraudulent, malicious, or criminal use of a computer system by a person, whether identified or not, and whether acting alone or in collusion with other persons, to affect, alter, copy, corrupt, delete, disrupt, or destroy a computer system or obtain financial benefit for any party or to steal or take electronic data (4) denial of service for which the Insured is responsible that results in the degradation of or loss of access to internet or network activities or normal use of a computer system (5) loss of service for which the Insured is responsible that results in the inability of a third party, who is authorized to do so, to gain access to a computer system and conduct normal internet or network activities (6) access to a computer system or computer system resources by an unauthorized person or persons or an authorized

person in an unauthorized manner with a limit not less than one million dollars (\$1,000,000) per occurrence. This insurance shall provide coverage for personal injury (including emotional distress and mental anguish), and a separate limit of not less than \$1,000,000 for credit monitoring services.

## **ARTICLE V – LIABILITY, ETHICS, CONFIDENTIALITY AND REQUIRED CERTIFICATIONS**

### **Section 5.1 – Liability, Indemnification and Defense**

#### **A. Liability**

Contractor shall be responsible for the acts and omissions of its agents, employees, and subcontractors, and any other persons furnishing products and services on its behalf under or in fulfillment of this Agreement.

#### **B. Indemnification and Defense**

- (1) To the fullest extent permitted by law, Contractor shall indemnify and save harmless, without limitation, the Authority and the State of New York (the “State”), and their respective officers, directors, board members, agents, employees, successors, and assigns (“Authority Indemnitees” and “State Indemnitees,” respectively, and, collectively, “Collective Indemnitees”) as their interests may appear, from any and all claims, suits, actions, damages, liabilities, fines, forfeitures, demands, losses, judgments, and costs of every kind and nature, and every name and description, arising from the products and services provided, or to be provided, under this Agreement (“Claims”). Such defense and indemnity shall not be limited to the insurance coverage herein prescribed.
- (2) Contractor shall, at its own expense, defend the Authority Indemnitees, the State Indemnitees, or the Collective Indemnitees in any action or proceeding involving any Claims that may be brought against the Authority Indemnitees, the State Indemnitees, or the Collective Indemnitees. 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 Contractor: (a) prompt written notice of any action, claim, or suit for which Contractor is required to defend and indemnify the Authority; (b) the opportunity to take over, settle, or defend such action, claim, or suit at Contractor’s sole expense; and (c) assistance in the defense of any such action, claim, or suit at the expense of Contractor. Notwithstanding the foregoing, if Contractor defends the Authority Indemnitees, the State Indemnitees or the Collective Indemnitees, the Authority and the State each reserve their respective right to join and/or participate in such action at their own expense.
- (3) The Authority may retain and set-off from any amount due to Contractor such monies as may be necessary to satisfy any Claim recovered against the Authority Indemnitees or the Collective Indemnitees. Neither the Contractor’s obligations nor the Authority’s rights under this Section 5.1 shall be deemed waived by the Authority’s failure to retain the whole or part of any monies due Contractor, or by the failure to resolve any such Claims, prior to the release of such monies. Further, neither Contractor’s obligations under this Section 5.1 nor the rights of the Authority Indemnitees or the State Indemnitees shall be limited or discharged by the enumeration in this Agreement, or procurement, of any insurance in any amount.
- (4) Contractor’s indemnification and defense obligations under this Section 5.1 shall include any and all Claims that may arise from any products and services provided, or to be

provided, under this Agreement by Contractor's agents, employees, and subcontractors, and by any other party furnishing products and services under this Agreement.

### **C. Survival**

The provisions of this Section 5.1 shall survive the expiration or termination of this Agreement.

### **Section 5.2 – Ethics**

Contractor and its subcontractors may hire former State agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the Authority may neither appear nor practice before the Authority, nor receive compensation for services rendered on a matter before the Authority, for a period of two years following their separation from Authority service. In addition, former Authority and former State employees are subject to a "lifetime bar" from appearing before the Authority or receiving compensation for services regarding any transaction in which they were directly concerned and in which they personally participated or which was under their active consideration during their tenure with the Authority or any State agency.

During the term of this Agreement, Contractor shall not, and shall require its subcontractors to 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 the Commission on Ethics and Lobbying in Government or its predecessors ("COELIG Regulations"); 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 COELIG Regulations, collectively, the "Ethics Provisions"). Contractor certifies that all of its employees and those of its subcontractors who are former employees of the Authority or New York State and who are assigned to perform services under or in fulfillment of this Agreement shall be assigned in accordance with all Ethics Provisions. Further, during the term of this Agreement, no person who is employed by Contractor or its subcontractors and who is disqualified from providing services under this Agreement pursuant to any Ethics Provisions may share in any net revenues derived from this Agreement by Contractor or its subcontractors derives from this Agreement.

Contractor shall identify and provide the Authority with notice of those employees of Contractor or its subcontractors who are former employees of the Authority or New York State and who will be assigned to perform services under this Agreement. The Authority may, request that Contractor provide it with whatever information the Authority deems appropriate about each such person's engagement, work cooperatively with the Authority to solicit advice from the Commission on Ethics and Lobbying in Government, and, if deemed appropriate by the Authority, instruct any such person to seek the opinion of the Commission on Ethics and Lobbying in Government. The Authority shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed hereunder would be in conflict with any of the Ethics Provisions. The Authority shall have the right to cancel or terminate this Agreement at any time if any work performed under or in fulfillment of this Agreement is in conflict with any Ethics Provisions.

### **Section 5.3 – Confidentiality and Non-Disclosure**

- A. "Confidential Information" means any information not generally known to the public, or that the Authority claims is confidential, whether oral, written, or electronic, that the Authority discloses, directly or indirectly, through any means of communication, to Contractor. Confidential Information includes, 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; financial statements; information system IP addresses, passwords, security controls, architectures and

designs; and such other data, information and images that the Authority deems confidential.

- B. Confidential Information does not include information which, at the time of the Authority's disclosure to Contractor: (1) is already in the public domain or becomes publicly known through no act of Contractor; or (2) is already known by Contractor free of any confidentiality obligations.

If Contractor wants to disclose Confidential Information, it shall notify the Authority and specify the Confidential Information it wants to disclose. Contractor may only disclose such Confidential Information if the Authority approves such disclosure in writing, subject to such other terms and conditions as the Authority may require. Such approval, if given, shall only apply to the particular request and the specific Confidential Information for which it is given.

If Contractor is required to disclose or make available, directly or indirectly, Confidential Information pursuant to statute, court or administrative order, subpoena, contractual obligation, or otherwise by law, Contractor shall: (1) notify the Authority that it has received such legal demand as soon as practicable, but in all events prior to any disclosure; (2) permit the Authority to take the steps it deems necessary and appropriate to protect the Confidential Information from disclosure; (3) cooperate to the fullest extent possible under the law with the Authority's efforts to protect the Confidential Information from disclosure; and (4) disclose only such Confidential Information, and only such portions thereof, as is required to satisfy the legal demand, and limit any such disclosure of Confidential Information to the fullest extent permissible under the law.

- C. Contractor may use Confidential Information solely for the purposes of providing services to the Authority pursuant to this Agreement. Contractor may make copies of Confidential Information but only to the extent necessary for the disclosures and uses permitted by this Agreement. Contractor will make commercially reasonable efforts to ensure that any copy of Confidential Information that is made is marked to show that it is or contains Confidential Information. Contractor may share Confidential Information with third parties: (i) that are required for Contractor's provision of services to the Authority pursuant to this Agreement (e.g., consultants and subcontractors); and (ii) that agree in writing to be bound by the confidentiality provisions of this Agreement; however, Contractor may share only that Confidential Information that is necessary to the third party's contribution to Contractor's provision of services to the Authority pursuant to this Agreement and Contractor must first obtain the Authority's prior written consent.

The Authority's disclosure of Confidential Information to Contractor shall not convey to Contractor any right, title, or interest in or to such Confidential Information, and this Agreement does not transfer ownership of Confidential Information or grant a license thereto. The Authority shall retain all right, title, and interest in and to all such Confidential Information at all times.

- D. Contractor shall hold Confidential Information confidential to the maximum extent permitted by law. Contractor shall safeguard Confidential Information with at least the same level of care and security that Contractor uses to maintain and protect from disclosure its own confidential information, using all reasonable and necessary security measures, devices, and procedures that Contractor uses to maintain its own confidential information, but in all events with not less than reasonable care.

Contractor shall take reasonable steps to prevent unauthorized access to, use of, or disclosure of Confidential Information, including without limitation, by protecting its passwords and other log-in information. Contractor shall notify the Authority immediately of any known or suspected misuse or misappropriation of Confidential Information and shall use its best efforts to stop said misuse or misappropriation.

- E. Upon written request of the Authority, or upon expiration or termination of this Agreement,

Contractor shall return all Confidential Information to the Authority or certify in writing that it has been destroyed and no copies exist.

- F. Contractor agrees that breach of this Section 5.3 would cause the Authority irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the Authority will be entitled to injunctive relief against such breach or threatened breach, without proving actual damages or posting a bond or other security.
- G. Without limiting the foregoing, the obligations and assurances involving Confidential Information pursuant to this Agreement shall survive termination or expiration of this Agreement.

#### **Section 5.4 – New York State Finance Law §§ 139-j and 139-k Certification**

By execution of this Agreement, Contractor certifies that all information Contractor has provided to the Authority with respect to New York State Finance Law §§ 139-j and 139-k is complete, true, and accurate. If the Authority finds that the certification made by Contractor in accordance with New York State Finance Law §§ 139-j and 139-k was intentionally false or intentionally incomplete, the Authority may terminate this Agreement for default immediately without an opportunity to cure.

#### **Section 5.5 – New York State Finance Law § 139-l**

By execution of this Agreement, Contractor and each person signing on behalf of Contractor certifies, as to its own organization and its contractors and subcontractors, under penalty of perjury, that Contractor and its contractors and subcontractors have each implemented a written policy addressing sexual harassment prevention in the workplace and provide annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the State Labor Law.

#### **Section 5.6 – Iran Divestment Act- Section 2879-c of the Public Authorities Law**

- a. As used in this Section 5.7, “person” has the meaning set forth in paragraph (e) of subdivision 1 of Section 165-a of the State Finance Law.
- b. As used in this Section 5.7 “Contract” means this Agreement.
- c. Contractor hereby provides the following certification:

By signing this Contract, 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 State Finance Law.

#### **Section 5.7 – New York State Human Rights Law, Article 15 of the Executive Law**

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

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

Generally, the Human Rights Law applies to:

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

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

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

### **Section 5.8 – Conflicts of Interest**

- A. Contractor has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that Contractor performance of the services does not and will not create a conflict of interest with, nor position Contractor to breach any other contract currently in force with the Authority or the State of New York, that Contractor will not act in any manner that is detrimental to any Authority or State of New York project for which Contractor is rendering services.
- B. Contractor hereby reaffirms the attestations made in its proposal, if applicable, and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement. Contractor hereby agrees it shall have a continuing affirmative duty and obligation to notify the Authority immediately of any actual or potential conflicts of interest.
- C. In conjunction with any subcontract under this Agreement, Contractor shall obtain and deliver to the Authority, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Authority a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.
- D. The Authority and Contractor recognize that conflicts may occur in the future because Contractor may have existing, or establish new, relationships. Contractor shall have an ongoing obligation to monitor potential conflicts of interest and to notify the Authority promptly of any relationships in the future that it may create a real or potential conflict of interest. The Authority will review the nature of any relationships and reserves the right to terminate this Agreement for any reason, or for cause, if, in the judgment of the Authority, a real or potential conflict of interest cannot be cured.

## **ARTICLE VI -**



# **Minority and Women-Owned Business Enterprise (“MWBE”) and Service-Disabled Veteran-Owned Businesses (“SDVOB”) Participation Opportunities and Non-Discrimination**

## **Section 6.1 – Compliance Requirements and Procedures**

It is the policy of the Authority to comply with the provisions of Article 15-A of the New York State Executive Law, which requires that every contract over \$25,000 will afford equality of economic opportunities for minority group members and women, the facilitation of participation by Minority and Women-Owned Business Enterprises (“MWBEs”). The Authority shall establish separate goals for participation of MWBEs on all Authority contracts where applicable.

Article 3 of the New York State Veterans’ Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Business Enterprises (“SDVOBs”); thereby further integrating such businesses into New York State’s economy. The Authority recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of Authority contracts.

The Authority is committed to providing equal training and employment opportunities to minorities and women to participate in the Authority’s contracting and procurement processes, and ensuring nondiscrimination in accordance with Appendix A-Standard Clauses for New York State Thruway Authority Contracts including Clause 4 – Non-Discrimination Requirements, Clause 11 - Equal Employment Opportunities for Minorities and Women, Executive Order 177, Training Special Provisions and/or all applicable, federal, State, laws, rules, regulations and Executive Orders.

Contractor agrees to comply with all Compliance Requirements and Procedures, as defined by the terms and conditions of Appendix A – Standard Clauses for New York State Thruway Authority Contracts including Clause 4 – Non-Discrimination Requirements and Clause 11 - Equal Employment Opportunities for Minorities and Women, the terms and conditions of Article VI of this Agreement, Executive Order 177, Training Special Provisions and/or all applicable, federal, State, laws, rules, regulations and Executive Orders.

### General Provisions

- a. Contractor and/or all subcontractors, shall comply with the applicable laws, rules, regulations and provisions governed by the Agreement, in addition to any nondiscrimination or diversity practices and provisions of the Agreement at no additional cost to Authority.
- b. These provisions and requirements shall be included in all subcontracts entered into by Contractor so that these requirements and provisions shall be binding upon all subcontractors performing work under or in fulfillment of this Agreement.
- c. Contractor represents and warrants that, as a condition for award, Contractor will submit a Utilization Plan via the NYS Contract System (NYSCS) if required by Authority, within 10 business days of the notice of tentative contract award which lists all proposed firms Contractor intends to utilize on this contract to achieve the MWBE/SDVOB Contract Goals as established in the contract documents. The Authority approval of the Utilization Plan only approves a firm for the purpose of the MWBE/SDVOB Utilization Plan.

## **Section 6.2 - Participation Opportunities For New York State Certified Minority/Women/Service-Disabled Veteran-Owned Business Enterprises**

In accordance with Article 15-A of the New York State Executive Law and Article 3 of the Veterans' Services Law, the Authority is committed to providing meaningful participation in public procurement by certified Minority and Women-Owned Business Enterprises ("MWBEs") and certified Service-Disabled Veteran-Owned Business Enterprises ("SDVOBs"), thereby further integrating such businesses into New York State's economy.

The Authority recognizes the need to promote participation and inclusion of Minority and/or Women-Owned Business Enterprises and Service-Disabled Veteran-Owned Business Enterprises and to ensure that certified MWBEs and SDVOBs have opportunities for maximum feasible participation in the performance of Authority contracts.

For this Agreement, the following goal(s), expressed as a percentage of the total Agreement amount, have been established:

**Minority/Women-Owned Business Enterprise – MWBEs**

Minority/Women-Owned Business (MWBE) Overall Goal	30%
Minority Business Enterprise (MBE) Participation	0%
Women's Business Enterprise (WBE) Participation Goal	0%

**Service-Disabled Veteran-Owned Business Enterprise (SDVOB)**

Service-Disabled Veteran-Owned Business	0%
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Your attention is directed to the attached Exhibit 2 - New York State Certified Minority/Women/Service-Disabled Veteran-Owned Business Enterprises Goal Requirements and Procedures for Participation

The directory of New York State Certified MWBEs at: <https://ny.newnycontracts.com>.

The directory of New York State Certified SDVOBs at: <https://ogs.ny.gov/veterans/>

Contractor is encouraged to contact the Authority's Compliance Unit at (518) 471-4464.

**Section 6.3 – Equal Employment Opportunity and Non-Discrimination**

The provisions in this Agreement pertaining to equal employment opportunities for minority group members and women and related 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") and other applicable federal, state, and local laws, rules and regulations, and Executive Orders.

In the performance of this Agreement, Contractor shall demonstrate compliance with the Work Force Diversity Requirements and Procedures Regarding Equal Employment Opportunities for Minority Group Members and Women, pursuant to 5 NYCRR § 143, New York State Executive Order No. 162, New York State Executive Order 177, and all other applicable federal, state and local laws, rules and regulations, and Executive Orders.

Contractor will be required to submit its written policies and procedures concerning harassment and discrimination to the Authority's Compliance Unit prior to commencement of work under this Agreement.

During the performance of this Agreement, Contractor agrees to comply with the Equal Employment Opportunity (EEO) requirements specified in this Section 6.3.

“Minority” includes:

- (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- (ii) Hispanic (a person of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast, Asia, the Indian Subcontinent, or the Pacific Islands); and
- (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification. Identification may be made by any suitable authority in the community such as an educational institution, religious organization, or a state agency).

a. Non-Discrimination Clause

Contractor will ensure equal employment opportunity by not discriminating against any applicant for employment because of race, color, religion, sex, national origin, age, disability, or marital status, regarding, (among other things) the following: upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

b. Availability of Contractor’s Records

Contractor will furnish all information and reports as may be required by the Authority or by laws, rules, regulations and executive orders incorporated herein by the Authority and will permit access by the Authority’s Compliance Unit to its books, records and accounts for purposes of monitoring and investigating compliance with these requirements.

c. Enforcement

In order to determine whether Contractor has complied with the requirements, the Authority may proceed by order to show cause, compliance conference, hearing or any other lawful procedure upon due notice in writing to Contractor. In the event the Authority finds that the Contractor has failed to comply with these requirements, this contract may be canceled, terminated, or suspended in whole or in part and/or Liquidated Damages may be imposed in accordance with the procedures authorized in Section 312 of Executive Law 15-A, provisions of the Agreement, relevant laws and rules and regulations as deemed appropriate by the Authority, at no cost or liability to the Authority.

In accordance with New York State Executive Order No. 177 entitled “Prohibiting State Contracts with Entities that Support Discrimination”, Contractor may be declared ineligible for further New York State government contracts and such other sanctions may be imposed and remedies invoked as deemed appropriate by the Authority or as otherwise provided by law, rules and regulations, and executive orders.

d. Contractor’s Responsibility Regarding Collective Bargaining Agreements

Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the obligations of Contractor under these requirements, any statute, rules and executive orders.

e. Applicability to Subcontracts

Pursuant to Section 312 of New York State Executive Law, Contractor will physically include and incorporate this Section 6.3 into every subcontract or purchase order unless exempted by rules, regulations, or orders of the Director, pursuant to the Executive Order 8, and such requirements shall be binding upon each subcontractor, service provider, or vendor. Contractor will take such action with respect to any subcontract or purchase order as the Authority may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation by a subcontractor or vendor as a result of any provision or direction issued pursuant to these requirements or by the Authority, Contractor may request the Authority to enter into such litigation or dispute to protect the interests of the Authority.

f. Equal Employment Opportunity Officer

Contractor will designate and make known to the Compliance Unit the employee or agent of Contractor who will have the responsibility for and must be capable of effectively administering and promoting an active program of equal employment opportunity. Such individual(s) shall be provided adequate authority and responsibility to do so.

g. Complaints of Alleged Discrimination/Sexual Harassment

Contractor will promptly investigate all complaints of alleged discrimination/sexual harassment made to Contractor in connection with its obligations under this Agreement, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination/sexual harassment may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, Contractor will inform every complainant of all of his or her avenues of appeal, including the New York State Division of Human Rights and Equal Employment Opportunity Commission.

Contractor shall inform the Compliance Unit (within 24 hours) in writing of any formal or informal, complaint, incident or any issue of discrimination/sexual harassment. Results of the investigation shall be submitted to the Compliance Unit within ten (10) days of the complaint unless an extension is provided by the Compliance Unit.

h. Required Records

Pursuant to New York State Executive Order 162, Contractor shall submit, to the Authority, a Quarterly Workforce Utilization /Gross Wages Report for Contractor and all of its subcontractors performing services under or in fulfillment of this Agreement.

The (Quarterly) EO 162 Workforce Utilization/Gross Wages Report and instructions concerning such are located on the Authority's website at: <http://www.thruway.ny.gov/business/purchasing/index.html> or online via the NYS Contract System "Workforce Audit".

Contractor shall submit Workforce Utilization/Gross Wages Reports on a quarterly basis to: [WorkforceUtilizationReportProcurement@newnybridge.com](mailto:WorkforceUtilizationReportProcurement@newnybridge.com) or online via the NYS Contract System "Workforce Audit".

Questions regarding compliance with Workforce Utilization/Gross Wages Reporting should be directed to the Authority's Compliance Unit at 518-471-5830.

i. Nondiscrimination

Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, gender identity or gender expression, 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.

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

## **ARTICLE VII – MISCELLANEOUS**

### **Section 7.1 – Ownership of Documents, Materials, and Work Product**

In accordance with Appendix B (Inventions Policy), all materials, documents, deliverables, and work product prepared by Contractor or its subcontractors pursuant to this Agreement, including any underlying intellectual property, shall be the property of the Authority. Such materials may include, but are not limited to, all drawings, plans, designs, specifications, computations, sketches, computer software or files, test data, survey results, reports, analyses, renderings, models, photographs, images, and other written materials. Contractor shall not publish or disseminate such materials to third parties without obtaining the Authority's prior written approval.

### **Section 7.2 – Public Announcements**

Contractor shall not make public announcements or public disclosures on social media, or issue news releases, or make any other public disclosures pertaining to this Agreement without the Authority's prior written consent. Contractor understands and accepts that generally the Authority will not grant permission for public announcements, social media posts, news releases or other public disclosures; and will limit the use of the Authority's name to references only.

### **Section 7.3 – Provision of Information and Data**

All available information and documentation relating to the performance of services described in Article I existing in the offices of the Contractor shall be made available to the Authority without expense to the Authority.

### **Section 7.4 – Environmental Review**

The Authority reserves the right to be "lead agency" for any compliance with the New York State Environmental Quality Review Act (SEQRA), and the appropriate federal agency shall serve as "lead agency" for the National Environmental Policy Act (NEPA), as may be required for this Agreement or any activity undertaken by Contractor pursuant to this Agreement.

### **Section 7.5 – No Damages for Delay**

Contractor expressly agrees that it shall not make any charges or claims for damages against the Authority for any delays or hindrances from any cause whatsoever during the progress of any portion of the services

specified in this Agreement and that the Authority shall not be liable for any damages resulting from delays or hindrances from any cause whatsoever.

### **Section 7.6 – 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 Contractor 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 Contractor is non-responsible or has failed to accurately disclose vendor responsibility information. If the Authority exercises its right to terminate on account of a breach of this Agreement, the Authority may complete the contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

In the event the Authority exercises its right to postpone, suspend, abandon, or terminate this Agreement, Contractor must within ten (10) days of such postponement, suspension, abandonment, or termination deliver to the Authority all records, documents, and data pertaining to services rendered under this Agreement.

In the event the Authority exercises its right to postpone, suspend, abandon, or terminate this Agreement for convenience, due to no fault of Contractor, 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 Contractor accordingly.

### **Section 7.7 – General Responsibility Obligations**

Contractor shall at all times during the term of the Agreement remain responsible. Contractor agrees if requested by the Executive Director of the Authority, or his or her designee, to present evidence of its/his/her continuing legal authority to do business in New York State and integrity, experience, ability, prior performance, and organizational and financial capacity.

### **Section 7.8 – Force Majeure**

The Contractor and the Authority shall each be excused from the performance of their respective obligations hereunder to the extent each party's failure to perform such obligations is the result of acts of God, riots, insurrections, war, fire, casualty, earthquake, or other events that are beyond the reasonable control of the party seeking to be excused and that are not the fault of such party, including, but not limited to, the failure to exercise reasonable diligence. Further: (i) the party seeking to excuse performance must make good faith and reasonable efforts to meet its obligations hereunder; and (ii) only those services affected by the Force Majeure event shall be excused and only during such time that the Force Majeure event prevents those services from being performed. Notwithstanding anything to the contrary contained herein, and, for clarity, the Authority shall not be obligated to pay the Contractor for a service affected by Force Majeure so long as the Contractor is unable to deliver the affected service. If the Authority has paid in advance for such service, the Contractor shall promptly refund the Authority the amount attributable to service. The occurrence of a pandemic shall not relieve Contractor from its obligations under the Agreement.

### **Section 7.9 – 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 affected, but shall remain binding and effective as against all parties hereto.

**Section 7.10 – Environmental Compliance [if applicable (Design/build) - check with Kara Phillips in Engineering AND Patty Desnoyers in Legal]**

An essential component of the Project is the comprehensive integration of environmental compliance into all design and construction activities by the Contractor. Except as otherwise detailed herein, the Contractor shall be responsible for preparing its design, carrying out its construction activities and undertaking other activities as needed to ensure compliance with all applicable federal and state laws and regulations, NYSTA, NYSDOT or applicable policies, guidelines and standards, which include:

- The terms and conditions of the National Environmental Policy Act (NEPA) and State Environmental Quality Review Act (SEQRA) environmental documentation including any subsequent reaffirmation(s) should any proposed work vary from the original NEPA and SEQRA determination.
- All environmental laws and regulations;
- All applicable environmental permits and approvals;
- All applicable procedures as set forth in the NYSDOT Environmental Manual

**Section 7.11 – Notices**

All notices permitted or required to be given hereunder, except for service of process as specified in Appendix A, shall be in writing and shall be transmitted using one of the following methods:

- Nationally Recognized overnight courier service (costs pre-paid)
- Certified United States mail, return receipt requested;
- Electronic mail (e-mail) transmission; or
- Personal delivery.

Authority:

Andrew Piotrowski, Director of Accounting & Disbursements  
New York State Thruway Authority  
200 Southern Boulevard  
Albany, New York 12209

Contractor:

BST & Co., CPA's LLP  
Johnathan B. Gibbs, CPA  
10 British American Blvd.  
Latham, New York 12110

Notices shall be deemed to be given to a party: (a) when delivered to the appropriate address, if sent by nationally recognized overnight courier service or if delivered by hand; (b) when received or rejected if sent by certified mail, return receipt requested; or (c) when transmitted, if sent by electronic mail with confirmation of transmission by the intended recipient.

## **Section 7.12 - Standard Contract Clauses, Appendices and Exhibits Incorporated by Reference**

Contractor agrees to comply with all of the terms and conditions set forth in Appendix A and in the other Appendices and Exhibits listed directly below, which are attached hereto and expressly made a part of this Agreement as fully as if set forth at length herein.

<b>Appendix A</b>	Standard Clauses For New York State Thruway Authority Contracts
<b>Appendix B</b>	Inventions Policy [if applicable]
<b>Appendix D</b>	Network Connection Requirements (TAP – 372)
<b>Appendix W</b>	Web Site Development [if applicable]
<b>Exhibit 1</b>	Authority Supplemental Insurance Certificate (TA-W51343)
<b>[Exhibit 2</b>	New York State Certified Minority/Women/Service Disabled Veteran-Owned Business Enterprises Goal Requirements And Procedures For Participation] [if applicable]
<b>Supplement 1</b>	Vendor Assurance of No Conflict of Interest or Detrimental Effect Form
<b>Supplement 2</b>	Business in Russia Certification

[If Services to Be Provided section attaches and references the Contractor's proposal, the following needs to be included here in the Agreement:]

If any conflict or discrepancy should arise in the terms, conditions, or technical documents of this Agreement or the interpretation thereof, the order of precedence for resolution shall be:

1. Appendix A
2. Agreement including all other Appendices
3. Attachment [insert letter] RFP
4. Attachment [insert letter] Contractor's Proposal



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

**NEW YORK STATE THRUWAY AUTHORITY [NAME]**

\_\_\_\_\_  
Joanne Mahoney  
Chair

\_\_\_\_\_  
Jonathan B. Gibbs, CPA

Federal ID# 14-1442607

\_\_\_\_\_  
Date

**NEW YORK STATE**

\_\_\_\_\_  
Approved as to Availability of Funds:

Approved as to Form:  
Letitia James  
Attorney General

\_\_\_\_\_  
Authority Chief Financial Officer

\_\_\_\_\_  
By

\_\_\_\_\_  
Approved as to Form:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authority General Counsel

\_\_\_\_\_  
Thomas P. DiNapoli  
State Comptroller

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

\_\_\_\_\_  
By

\_\_\_\_\_  
[insert title]

\_\_\_\_\_  
Date

**Contract C010740**

Authority Certification

In addition to the acceptance of this contract, I certify that all original signature pages will be attached to all other counterparts of this contract.

\_\_\_\_\_  
Robin Davis

(If the contract amount is less than \$50,000.00, the Attorney General and Comptroller approval will be omitted.)

