

RESOLUTION NO. _____

September 9, 2024

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH
ASSEMBLAGE LANDSCAPE ARCHITECTURE DPC**

WHEREAS, New England Interstate Water Pollution Control Commission (NEIWPC), NYS Department of Environmental Conservation (NYSDEC), and the Hudson River Estuary Program (HREP) has announced a Community Waterfront Resiliency Design and Permitting program which would allow grant funding, up to \$200,000, to design a shoreline resiliency project in partnership with a Hudson River riverfront municipality; and

WHEREAS, Assemblage Landscape Architecture DPC (“Assemblage Landscape”) has prepared a proposal to develop and advance “shovel ready” shoreline design documents for bidding for city-owned properties along the Hudson River waterfront; and

WHEREAS, in 2022 the City of Hudson, in collaboration with Hudson Valley Collaborative engaged in community outreach and adopted a Hudson Climate Adaptive Design Phase II Final Preliminary Design Report (“CaD FPDR”) for the City of Hudson Riverfront Park; and

WHEREAS, Assemblage Landscape proposes to work with stakeholders to advance the City of Hudson’s Climate Adaptive Design Phase II plan to the next stage of implementation to include site investigations, sampling, and DEC/USACE permitting, along with preparation of design and engineering construction documents and specifications and bid documents; and

WHEREAS, the proposal work by Assemblage Landscape will result in a total fee of \$275,000 of which \$200,000 in grant funds has been awarded to Assemblage Landscape funding under the Community Waterfront Resiliency Design and Permitting Program; and

WHEREAS, Assemblage Landscape has been awarded grant funding under the Community Waterfront Resiliency Design and Permitting in the amount of \$200,000;

WHEREAS, the City desires to enter into an agreement with Assemblage Landscape to perform the desired improvements as set forth in the Agreement which is attached hereto and incorporated herein for the amount of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00) plus reimbursable expenses up to Five Thousand Dollars and 00/100 (\$5,000); and

NOW, THEREFORE, BE IT RESOLVED, that the Mayor is hereby authorized to execute the attached Agreement with Assemblage Landscape Architecture, D.P.C. in connection with the aforementioned waterfront resiliency project at Henry Hudson Riverfront Park for a total maximum dollar amount of Eight Thousand Dollars and 00/100 (\$80,000).

Introduced: _____

Seconded: _____

Approved: _____
Kamal Johnson, Mayor

Dated: _____

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN LANDSCAPE ARCHITECT AND CLIENT

This agreement (“Agreement”) is made as of August 19, 2024, between The City of Hudson a Municipality with a place of business located at 520 Warren Street, Hudson, NY (the “Client”) and Assemblage Landscape Architecture, D.P.C., a New York design professional corporation with a place of business located at 277 6th Avenue, 3F, Brooklyn, NY 11215 (“Landscape Architect”) for certain design services in connection with the waterfront resiliency project at Henry Hudson Riverfront Park, Hudson, New York (“Project”). The Client and Landscape Architect hereby agree to the following:

Article 1

Landscape Architectural Services

1.1 Scope of Services

The Landscape Architect shall perform the services set forth in Exhibit “A”, which is attached hereto and expressly incorporated by reference herein and made a part of this Agreement (“Basic Services”). The Client acknowledges that the Basic Services consist of the same scope of services being performed by the Landscape Architect for the New England Interstate Water Pollution Control Commission (“NEIWPCC”) under an agreement dated August 9, 2024 (the “Grantor Agreement”). Basic Services and Additional Services (as hereinafter defined) performed by the Landscape Architect shall be collectively referred to herein as “Services”.

1.2 Standard of Care

The Landscape Architect shall perform its Services consistent with the skill and care ordinarily provided by landscape architects practicing in the same or similar locality under the same or similar circumstances and shall perform its Services as expeditiously as is consistent with such skill and care and the orderly progress of the Project (“Standard of Care”). The Client acknowledges that the Landscape Architect’s Services will be rendered without any warranties, express or implied.

1.3 Subconsultants

The Landscape Architect shall retain the following subconsultant:

- LaBella Associates, DPC

1.4 Opinions of Probable Construction Costs

Any opinions of probable construction costs provided by the Landscape Architect are based on the Landscape Architect’s familiarity with the landscape construction industry as a landscape architect and not as a contractor or cost estimator and shall not be construed to provide a guarantee or warranty that the actual construction costs will be within the Project budget parameters at the time

construction bids are solicited or construction contracts negotiated. Unless expressly agreed in writing and signed by the parties, no fixed limit of construction costs are established as a condition of this Agreement by the furnishing of opinions of probable construction costs.

1.5 Construction Means and Methods

The presence of the Landscape Architect, its employees, or consultants at the Project site shall not be deemed an assumption by the Landscape Architect of any obligations, duties, or responsibilities for safety and under no circumstances shall the Landscape Architect have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with any construction work or for any regulatory health or safety requirements. For the sake of clarity, the Landscape Architect, its employees, and consultants have no authority to exercise any control over any construction contractor, its employees, or subcontractors in connection with their work or health and safety programs and procedures.

Article 2

Client's Responsibilities

2.1 Program

The Client's program ("Program") is set forth in Exhibit "A".

2.2 Information

2.2.1 The Client shall provide site surveys and legal information, including as applicable: written legal description of the site, rights-of-way, easements, encroachments, zoning, covenants, and deed or other restrictions, if any.

2.2.2 The Client shall provide for the Landscape Architect's right to enter from time to time, property owned by the Client or others so the Landscape Architect may perform the Landscape Architectural Services.

2.2.3 The Client shall be responsible for all legal, accounting, and insurance services the Client may require or deem necessary in the interest of the Project.

2.3 Reliance

The Landscape Architect shall be entitled to rely on the accuracy and completeness of the information, test results, of any work product provided by the Client and the Client's consultants. The Landscape Architect shall not be responsible for calculations, specifications, or designs based on erroneous, inaccurate, or incomplete information provided to the Landscape Architect by the Client or the Client's consultants, provided that the Landscape Architect has acted in accordance with the Standard of Care.

2.4 Client's Representative

The Client shall designate a representative with authority to act on the Client's behalf with regard to the Project. The Client designates Thomas DePietro as its representative for the Project and the Landscape Architect may rely upon decisions rendered by the representative.

2.5 Approvals

Client's decisions, approvals, reviews, and responses shall be communicated to the Landscape Architect in a timely manner so as not to delay the performance of the Landscape Architectural Services. Comments from the Client's representative shall be a consolidation of all comments of interested user groups or entities to provide clear direction to the Landscape Architect and to avoid delays.

2.6 Notice of Nonconformance

If the Client observes or becomes aware of any errors or omissions or inconsistencies in any documents provided by the Landscape Architect or any fault or defect in the Project, the Client shall promptly give written notice thereof to the Landscape Architect.

2.7 Project Permit and Review Fees

The Client shall pay all fees required to secure jurisdictional approvals for the Project. Payment of permit fees is a reimbursable expense subject to approval by the City of Hudson Common Council.

Article 3

Ownership of Documents

3.1 The Landscape Architect shall be deemed the author and owner of all deliverables provided to the Client, including but not limited to plans, drawings, designs, specifications, construction documents, displays, graphic art, photographs, and other images and devices in any medium, including electronic data or files, which are developed, created, or derived pursuant to this Agreement by the Landscape Architect (collectively, the "Design Materials").

3.2 Subject to payment by the Client of all amounts owed to the Landscape Architect, the Landscape Architect grants to the Client an irrevocable, non-exclusive license to reproduce the Design Materials solely for the construction of the Project and for information and reference with respect to the use of the Project or as otherwise required under New York State or federal law.

3.3 In the event this Agreement is terminated prior to the completion of the Project, the Landscape Architect shall have no liability to the Client or to anyone claiming through the Client for any claims, liabilities, or damages resulting from the use, misuse, or modification of the Design Materials without the Landscape Architect's approval. In the event the Client uses the Design Materials without retaining or involving the Landscape Architect in connection with such use, the Client releases the Landscape Architect and its consultant(s), as well as their respective principals and employees, from all claims and causes of action arising from such use. The Client, to the fullest extent permitted by law, further agrees to defend, indemnify and hold harmless the Landscape Architect and its consultants, as well as their respective principals and employees, from all claims, damages, costs and expenses, including reasonable attorney's fees, related to claims and causes of action asserted by any third person or entity to the extent such claims, damages, costs and expenses arise from the Client's use of the Design Materials during a period of time when the Landscape Architect was either not retained, or involved, in connection with such use. Any unauthorized use of the Design

Materials shall be at the Client's sole risk and without liability to the Landscape Architect or the Landscape Architect's consultants.

Article 4

Landscape Architect Compensation

4.1 The Client agrees to compensate the Landscape Architect for Basic Services in the amount of **Seventy-Five Thousand Dollars (\$75,000.00)** as further set forth in Exhibit "A" and Exhibit "B" (attached hereto and expressly incorporated by reference herein and made a part of this Agreement). Reimbursable expenses must be preapproved by the Client for payment.

4.2 Reimbursable Expenses are expenditures as made by the Landscape Architect, its employees, and consultants in the interest of the Project. Reimbursable Expenses include, but are not limited to, the following:

- 4.2.1 travel expenses for Client-requested meetings in connection with the Project; living expenses for Client-requested reasons for out-of-town travel;
- 4.2.2 costs of for Client-requested reproductions, faxes, postage and handling of documents, messenger and overnight delivery services;
- 4.2.3 costs of for Client-requested renderings, photographs, models, and mock-ups;
- 4.2.4 expense of professional liability insurance dedicated exclusively to the Project, or additional insurance coverage or limits requested by the Client in excess of that normally carried by the Landscape Architect and its consultants;
- 4.2.5 costs of printing and delivering additional bid packages;
- 4.2.6 services of Client-requested professional consultants which cannot be quantified at the time of contracting; and
- 4.2.7 other, similar Client-requested direct Project-related expenditures.

4.3 Additional Services

Additional Services are services beyond and/or in addition to Basic Services. The Landscape Architect's performance of Additional Services shall entitle the Landscape Architect to additional compensation either on an hourly basis at the rates set forth in Exhibit "C" or on the basis of a negotiated sum, which amounts shall be in addition to the Landscape Architect's compensation. Additional Services shall include, but not be limited to, revisions to drawings or other documents when made necessary because of Client-requested changes to prior directions or previously approved drawings or other documents, or because of Client changes to the Project Program or previous Project budget parameters. Exhibit "C" is attached hereto and expressly incorporated by reference herein and made a part of this Agreement. Additional Services shall require a change order to be preapproved by the City of Hudson Common Council prior to Landscape Architect to performing services or billing for same. Additional Services performed by Landscape Architect without client's written authorization shall not entitle Landscape Architect to payment for those services.

4.3 Payments

- 4.3.1 Payments to the Landscape Architect shall be made on a completed-task basis and shall include: (1) the full amount of the Basic Services completed in accordance with the payment schedule set forth in Exhibit “B”, (2) Additional Services performed and (3) Reimbursable Expenses incurred.
- 4.3.2 If the Client disputes, in good faith, all or any portion of any statement from the Landscape Architect for Landscape Architectural Services or Reimbursable Expenses, the Client shall notify the Landscape Architect in writing within seven (7) days of receipt of the disputed statement, describing the nature of the dispute and including a reasonably detailed explanation of the reason for the dispute.
- 4.3.3 Payments are due and payable 30 days from the date of the Landscape Architect’s invoice. Invoiced amounts unpaid 45 days after the invoice date shall be deemed overdue and shall accrue 1.5% simple interest per month. Pursuant to section 7.2, herein, at the Landscape Architect’s option, overdue payments may be grounds for suspension of services or termination of this Agreement.

4.4 Extended Services

The timeline set forth in Exhibit “A” must be met for the Landscape Architect to receive grant money from NEIWPCC under the Grantor Agreement. If through no fault of the Landscape Architect or NEIWPCC, any of the timelines and milestones set forth in Exhibit “A” are extended or delayed, the Landscape Architect shall be entitled to Additional Services under this Agreement which shall be subject to approval by the City of Hudson Common Council.

Article 5

Insurance, Indemnification, Consequential Damages, Limitation of liability

5.1 Insurance

The Landscape Architect shall secure and maintain the following insurance coverages and limits during the course of the Project and shall name the City of Hudson as an additional insured under its Commercial General Liability and Comprehensive Liability Policies:

<u>Coverage</u>	<u>Liability Limits</u>
Professional Liability	\$1,000,000 per claim/annual aggregate
Commercial General Liability	\$2,000,000 per occurrence
Comprehensive Automobile Liability	\$1,000,000 per accident
Workers Compensation	statutory limits

5.2 Indemnification

5.2.1 To the fullest extent permitted by law, Client and Landscape Architect each agree to indemnify and hold harmless the other, and their respective officers and employees, from and against liability for losses, damages, and expenses, including reasonable attorneys' fees as are awarded according to applicable law, resulting from a third party claim to the extent such losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event losses, damages, or expenses are caused by the joint or concurrent negligence of Client and Landscape Architect, they shall be borne by each party in proportion to its negligence.

5.2.2 The Client and Landscape Architect's obligation to indemnify and hold the Client and the Client's officers and employees harmless does not include a duty to defend. The Landscape Architect's duty to indemnify the Client under Section 5.2.1 shall be limited to the amount of fees paid to the Landscape Architect.

5.3.3 Since it would be unfair for the Landscape Architect to be exposed to liability for its failure to perform a service that the Client has either refused to authorize or has instructed the Landscape Architect not to perform, the Client hereby waives all claims against the Landscape Architect and agrees to defend, indemnify and hold the Landscape Architect harmless from claims or liability for injury or loss allegedly arising from the Landscape Architect's failure to perform a service that the Client has either refused to authorize or has instructed the Landscape Architect not to perform.

5.3 Consequential Damages

To the fullest extent permitted by law, the Landscape Architect and the Client waive consequential damages for claims, disputes, or other matters in question which arise out of or are related to this Agreement, including but not limited to loss of use and lost profit.

5.4 Limitation of Liability

To the fullest extent permitted by law, the total aggregate liability of the Landscape Architect and its consultants, and their respective principals, shareholders, owners and employees, for any claims, disputes, or other matters in question which arise out of or relate to this Agreement shall be limited to the available limits of the Landscape Architect's responding insurance policy(ies) at the time of final claim disposition.

5.5 Waiver of Subrogation

To the extent damages are covered and paid by property insurance, the Client and the Landscape Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. The Client and the Landscape Architect, respectively, shall require of their contractors, consultants, agents and employees similar waivers in favor of the other parties enumerated herein.

5.6 Hazardous Materials Waiver

The Landscape Architect and the Landscape Architect's consultants shall have no responsibility for the presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated

biphenyl (PCB) or other toxic substances.

5.7 No Personal Recourse

To the fullest extent permitted by law, no officer, director, shareholder, member, partner, principal, or employee or other representative of either party shall have personal liability under any provision of this Agreement or for any matter in connection with the Services provided for the Project.

Article 6 Dispute Resolution

6.1 If a dispute arises out of or relates to this Agreement, the parties shall endeavor to resolve their differences first through direct discussions between the parties or their representatives who shall have authority to settle the dispute. If the dispute has not been settled within 14 days of the initial discussions, the parties shall submit the dispute to mediation in accordance with section 6.2.

6.2 If the dispute is not settled pursuant to section 6.1, before recourse to any other dispute resolution procedure, the parties shall endeavor to settle the dispute by mediation under the current Construction Industry Mediation Rules of the American Arbitration Association. The location of the mediation shall be in Columbia County, New York unless the parties agree otherwise. A request for mediation may be filed with the American Arbitration Association or any other mediation service acceptable to both parties. The parties agree to conclude the mediation within 60 days of filing the request. Unless otherwise agreed, the cost of mediation shall be shared equally by the parties.

6.3 For any claim subject to, but not resolved by, mediation pursuant to Section 6.2, the method of binding dispute resolution shall be as follows: Litigation.

6.4 Nothing in these provisions shall limit rights or remedies not expressly waived under applicable lien laws.

Article 7 Suspension/Termination

7.1 This Agreement may be terminated by either party on seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, provided the defaulting party has not cured or in good faith diligently commenced to cure the breach during the 7-day notice period.

7.2 The Client's failure to make payments to the Landscape Architect in accordance with the provisions of this Agreement shall be deemed a substantial failure to perform and a cause for termination; however, in this circumstance the Landscape Architect, at its option, may elect to suspend

its services on seven (7) days' written notice to the Client. The Landscape Architect shall have no liability to the Client for any delays caused by a suspension under this provision.

7.3 If the Client suspends the Landscape Architect's services for any reason, the Landscape Architect shall be compensated for all Services performed to that date, and the Landscape Architect shall have no liability to the Client for any delays caused by the Client's decision to suspend the Services.

7.4 When suspended Services are resumed, the Landscape Architect's fee for the Services remaining to be performed shall be equitably adjusted.

7.5 A suspension of Services by either party for more than thirty (30) days may, at the Landscape Architect's option, be deemed grounds for termination of the Agreement.

Article 8

Other Terms and Conditions

8.1 Confidentiality

The Landscape Architect shall have the right to include photographic or artistic representations of the design of the Project among the Landscape Architect's professional and promotional materials. The Landscape Architect shall be given reasonable access to the completed Project to make such representations. However, the Landscape Architect's materials shall not include the Client's confidential or proprietary information if the Client has previously advised the Landscape Architect in writing of the specific information considered by the Client to be confidential or proprietary. The Client shall provide professional credit for the Landscape Architect in the Client's promotional materials for the Project. This section 8.1 shall survive the termination of this Agreement.

8.1.1 If the Landscape Architect or Client receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 8.1.2. This Section 8.1.1 shall survive the termination of this Agreement.

8.1.2 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute or where such disclosure is otherwise required under New York State's Freedom of Information Law. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project.

8.2 Force Majeure

Either party, as applicable, shall be relieved of its obligations hereunder, except for payment obligations, in the event and to the extent that performance hereunder is delayed or prevented by any cause beyond its control and not caused by the party claiming relief hereunder, including, without

limitation, acts of God, public enemies, war, insurrection, acts or orders of governmental authorities, fire, flood, explosion, or the recovery from such cause (“Force Majeure”). The parties agree to make all reasonable efforts to mitigate the delays and damages of Force Majeure.

8.3 Notices

Notices required pursuant to this Agreement shall be sufficient if delivered personally or by registered or certified mail, return receipt requested, at the addresses indicated on the first page of this Agreement.

8.4 Assignment

Neither party shall assign their interest in this Agreement without the express written consent of the other, except as to the assignment of proceeds.

8.5 Third Party Relationships

Nothing in this Agreement shall create a contractual relationship with, an obligation to, or a cause of action in favor of, any third party against either the Client or the Landscape Architect.

8.6 Severability

If any term or provision of this Agreement shall be found to be invalid or unenforceable, the remaining provisions shall, to the fullest extent permitted by law, remain in full force and effect.

8.7 Captions

Captions of articles, sections, paragraphs, or subparagraphs of this Agreement are for convenience and reference only.

8.8 Governing Law

This Agreement has been signed in the State of New York and shall be governed by the law in effect in the State of New York, without regard to its conflict of laws and principles.

8.9 Complete Agreement

This Agreement represents the entire understanding between the Client and the Landscape Architect and supersedes all prior negotiations, representations, or agreements, whether written or oral with respect to its subject matter. The person(s) signing this Agreement on behalf of the parties hereby individually warrant that they have full legal power to execute this Agreement on behalf of the respective parties and to bind and obligate the parties with respect to all provisions contained herein. This Agreement only may be amended in writing signed by both the Client and the Landscape Architect.

8.10 Grantor Agreement

The Grantor Agreement is attached hereto as Exhibit “D” for reference purposes only. To the extent that any of the terms and conditions of the Grantor Agreement supersede, nullify and/or amend the rights of the Client under this Agreement, and/or would cause the Landscape Architect to be in breach of the Grantor Agreement, the impacted terms and provisions of this Agreement shall be modified accordingly to avoid the Landscape Architect being in breach of the Grantor Agreement and the remaining provisions, terms and conditions of this Agreement shall, to the fullest extent permitted by law, remain in full force and effect.

List of Exhibits

- “A” Scope of Services and Schedule of Services
- “B” Payment Schedule
- “C” Landscape Architect’s Hourly Compensation Rates Schedule
- “D” Grantor Agreement

Assemblage Landscape Architecture, DPC Client

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

EXHIBIT A – SCOPE OF SERVICES

See Exhibit A attachment

EXHIBIT B – PAYMENT SCHEDULE

Task A	QAPP Preparation and Follow-Up	\$ 2,733.00
Task B	Review Existing Information	\$ 1,413.00
Task C	Project Kick-off Meeting	\$ 2,209.00
Task D	Additional Site Assessment and Sampling	\$ 20,156.00
Task E-1	Draft Engineering and Implementation Plan	\$ 25,663.00
Task E-2	Permit Materials Emailed to Project Partners	\$ 2,851.00
Task F	Final Review Meeting	\$ 1,249.00
Task G	Preparation of Environmental Permit Applications	\$ 1,568.00
Task H	Final Engineering Documents and Implementation Plan	\$ 14,951.00
Task I-1	Quarterly Report 1	\$ 251.00
Task I-2	Quarterly Report 2	\$ 251.00
Task I-3	Quarterly Report 3	\$ 251.00
Task I-4	Quarterly Report 4	\$ 251.00
Task I-5	Quarterly Report 5	\$ 251.00
Task J	Final Report	\$ 952.00
TOTAL FEE		\$ 75,000
TOTAL ESTIMATED REIMBURSABLES		\$ 5,000

EXHIBIT C – LANDSCAPE ARCHITECT’S HOURLY COMPENSATION RATES SCHEDULE

Principal	\$220/Hour
Project Manager	\$180/Hour
Landscape Designer	\$125/Hour

EXHIBIT D – GRANTOR AGREEMENT

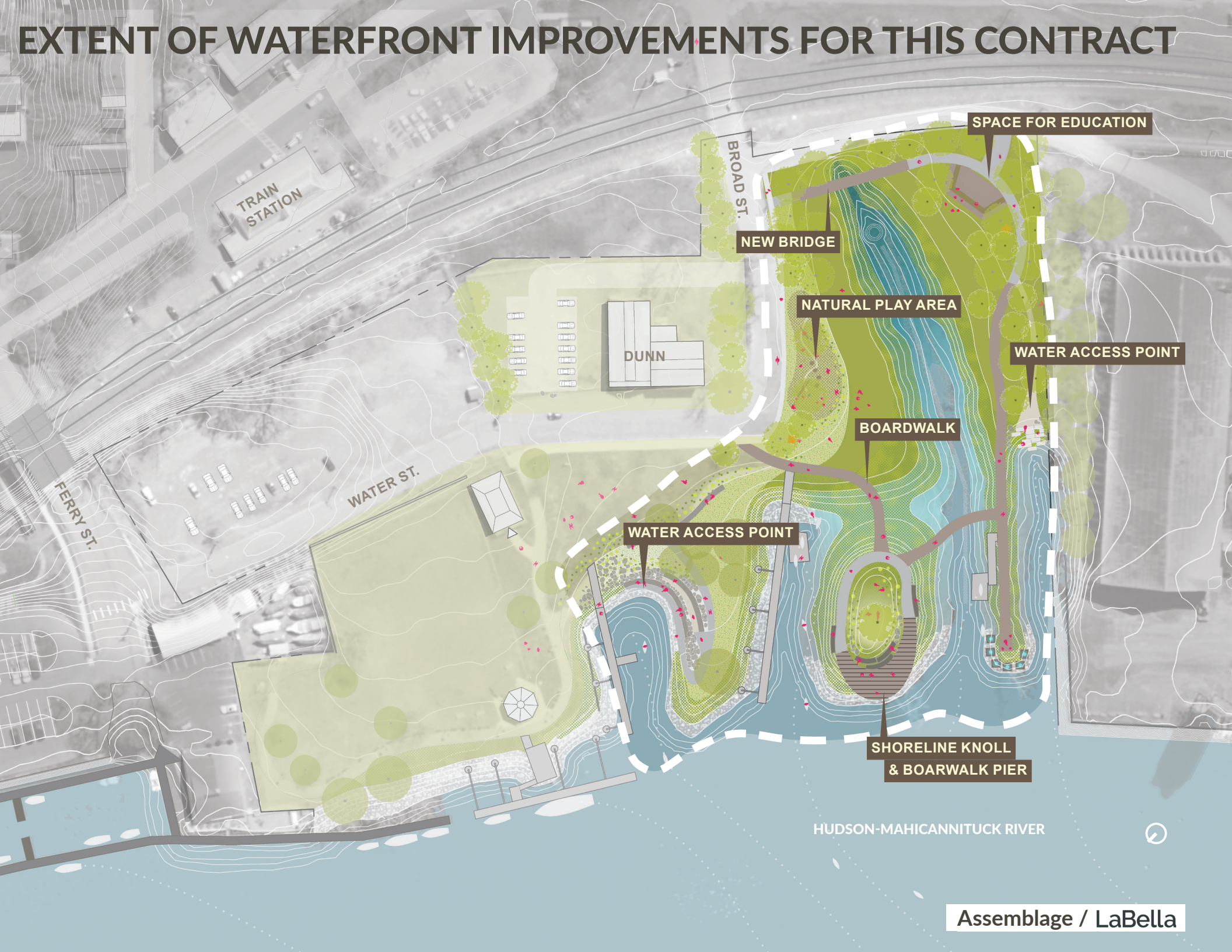
See Exhibit D attachment

EXHIBIT A

Assemblage Landscape Architecture / LaBella Associates - Hudson Climate-Adaptive Waterfront Park Design				Project Duration:16 months	Anticipated Start Date: 9/1/2024			
Detailed Scope		8/8/2024			Completion Date: 12/31/2025			
TASK ID	TASK	OBJECTIVE	DETAILED DESCRIPTION	TIMELINE	DELIVERABLE OR OUTPUT	TOTAL FEE	Breakdown	
							NEIWPC	MATCH (HUDSON)
A	QAPP preparation and follow up	Describe quality assurance procedures that will maintain project performance	Our team will submit a QAPP for approval as soon as possible. To determine the extent of sampling required, we will do an extensive site walk and rapid assessment making non-invasive observations. These findings and observations will help define the knowledge gaps and identify any further environmental monitoring or sampling work to be written into the QAPP. The QAPP will include a description of the existing data to be reviewed and the process used for determining what is to be reviewed.	Month 1	Create plan (allow 30 days for development and 60 days for approval)	\$ 10,020.00	\$ 7,287.27	\$ 2,732.73
				Month 3	Approved and signed QAPP delivered by email to designated project staff and managers.			
B	Review Existing Information	Understand existing inventories, data, and reports that will have an impact on the project.	The team will review all available existing data and information for the site. This may include any land or utility surveys, current or past city plans and records, environmental plans and reports, and any available historical documentation. We will complete a summary of the review process and outcomes for delivery to DEC/HREP.	Month 1	1-3 page pdf report emailed to project partners and incorporated into final products.	\$ 5,180.00	\$ 3,767.27	\$ 1,412.73
C	Coordinate Project Kick-Off Meeting	Clarify team roles and responsibilities, establish communication protocols, and review work plan, needs and schedule.	We will conduct and coordinate a project kick-off meeting. At this meeting we will review the following: 1. Review existing preliminary designs for the site. 2. Identify information needs to complete the project. 3. Review field work and deliverable schedule. 4. Coordinate any site work and access needs with the municipality. 5. Identify regulatory issues and process for addressing them. 6. Site visit (if feasible) -The design team will also conduct a comprehensive site visit to analyze existing conditions to gain physical, cultural, and ecological understandings of the site. 7. Identify CaD and Sustainable Shorelines concepts that will be incorporated into the final shoreline design.	Month 3	One (1) Meeting at or near project site, attended by municipal representatives, and NYSDEC / HREP	\$ 8,100.00	\$ 5,890.91	\$ 2,209.09
					Meeting Summary emailed to attendees and project partners			
D	Perform Additional Site Assessment and Sampling Needed to Complete the Project	Establish detailed baseline conditions			Additional Sampling Report emailed to project partners and incorporated into final products.	\$ 73,906.00	\$ 53,749.82	\$ 20,156.18
				Month 4	Topographic Surveying	One (1) Site Visit - 2 days		
				Month 1 - Month 2	Environmental Assessment / Phase 1 - allow 5 weeks	One (1) Site Visit		
				Month 4 - Month 5	Environmental Assessment / Soil and Sediment Testing	One (1) Site Visit		
				Month 4 - Month 5	Environmental Phase 2 [if required] Hazardous and Contaminated Material Screening Assessment	One (1) Site Visit - 2 days		
E	Develop and Deliver Draft Engineering and Implementation Plan	Develop the draft materials for review by NEIWPC, HREP, and Hudson	The preliminary design will be based on the work-to-date and finalized based on the investigation findings. Biweekly team meetings 1. Draft Design Documents & Specifications 2. Draft Specifications for Site Management Plan compliance 3. Draft Bid Documents 4. Draft Cost Estimate 5. Implementation Plan describing timeline, work sequence, staging and construction planning		E-1 Draft Engineering and Implementation Plan including draft sheet drawings emailed to project partners.	\$ 94,097.70	\$ 68,434.69	\$ 25,663.01
				Month 1 - Month 8				
				Month 3 - Month 8				
				Month 4 - Month 8				
				Month 3 - Month 8				
				Month 8				
				Month 8	1. Prepare Joint Permit Application Form & Pre-App Meeting	\$ 10,455.30	\$ 7,603.85	\$ 2,851.45
				Month 8	2. Prepare Environmental Permitting Materials			
F	Coordinate Final Review Meeting	Review the work to date and establish consensus on the path forward.	Our team will deliver a presentation and review of draft materials to NEIWPC, HREP, and Hudson	Month 9	Meeting summary emailed to attendees and project partners.	\$ 4,580.00	\$ 3,330.91	\$ 1,249.09
G	Prepare Applications for ALL Environmental Permits	Submit applications for regulatory approval	Our team will prepare and submit the following applications to include:		Completed Joint Application and supporting materials delivered in an appropriate manner to project partners.	\$ 5,750.00	\$ 4,181.82	\$ 1,568.18

			Wetlands	Month 12 - Month 14				
			Floodplain	Month 12 - Month 14				
			Other permits as needed	Month 12 - Month 14				
H	Final Engineering Documents and Implementation Plan	Prepare final documents	We will conduct, prepare and submit the following:	Month 9 - Month 14	4 printed sets of all final materials will be delivered to the City of Hudson. Digital copies(.pdf) of all materials will also be sent to the municipality and NEIWPC project manager (Daniel Miller). Deliverables will include all necessary materials for the partnering municipality to solicit construction bids, acquire regulatory approval and begin construction.	\$ 54,822.00	\$ 39,870.55	\$ 14,951.45
			Biweekly team meetings					
			Final Design & Specifications					
			Final Specifications for Site Management Plan compliance					
			Final Bid Documents					
			Final Cost Estimate					
I	Quarterly Reports	Prepare and submit reports		Oct 10 2024	I-1 Create/ submit report 1	\$ 920.00	\$ 669.09	\$ 250.91
			We will prepare and submit quarterly reports by email on the calendar quarter for DEC/HREP, to document and update on the task status.	Jan 10 2025	I-2 Create / submit report 2	\$ 920.00	\$ 669.09	\$ 250.91
				Apr 10 2025	I-3 Create / submit report 3	\$ 920.00	\$ 669.09	\$ 250.91
				Jul 10 2025	I-4 Create / submit report 4	\$ 920.00	\$ 669.09	\$ 250.91
				Oct 10 2025	I-5 Create / submit report 5	\$ 920.00	\$ 669.09	\$ 250.91
J	Final Report	Prepsre and submit a final report	All material will be prepared into a comprehensive report documenting the project outputs and results.	Month 15 - Month 16	Create / submit final report by email, including executive summary	\$ 3,489.00	\$ 2,537.45	\$ 951.55
					Total	\$ 275,000.00	\$ 200,000.00	\$ 75,000.00

EXTENT OF WATERFRONT IMPROVEMENTS FOR THIS CONTRACT



TRAIN STATION

BROAD ST.

SPACE FOR EDUCATION

NEW BRIDGE

NATURAL PLAY AREA

DUNN

WATER ACCESS POINT

BOARDWALK

FERRY ST.

WATER ST.

WATER ACCESS POINT

SHORELINE KNOLL
& BOARWALK PIER

HUDSON-MAHICANNITUCK RIVER

EXHIBIT D

AGREEMENT
between
NEW ENGLAND INTERSTATE WATER POLLUTION CONTROL COMMISSION
and
ASSEMBLAGE LANDSCAPE ARCHITECTURE, DPC

This Agreement is made and entered into by and between the New England Interstate Water Pollution Control Commission (“NEIWPC”), represented by NEIWPC’s Executive Director as the Contracting Officer, and having its usual place of business at Wannalancit Mills, 650 Suffolk Street, Suite 410, Lowell, MA 01854 (Tel: 978-323-7929; Fax: 978-323-7919), and Assemblage Landscape Architecture, DPC (“Contractor”), having its principal office at 277 6th Ave 3F, Brooklyn, NY 11215; (Tel: (347) 244-4888; Email: wendy@assemblagelandscape.com); Technical Contact: Wendy Andringa.

WHEREAS, the HREP Habitats and Ecosystems (the “Project”) has been approved by the New York State Department of Environmental Conservation (NYS DEC), in partnership with NEIWPC and,

WHEREAS, the accomplishment of the following described work and services is authorized by an agreement between NEIWPC and the NYS DEC, and

WHEREAS, it is in the best interest of NEIWPC to obtain the assistance of Contractor in connection with said work and services, and

WHEREAS, Contractor represents that it is qualified to perform said work and services and possesses the ability to perform successfully under the terms and conditions of this agreement,

NOW THEREFORE, the parties mutually agree as follows:

ARTICLE I. SERVICES BY AND RESPONSIBILITIES OF CONTRACTOR

A. Work Products

- (1) **Work.** Contractor is responsible for conducting all the work for the project. The work and services to be performed are more fully described in the Scope of Work, reporting schedule, and budget dated **8/8/2024**, attached hereto and made a part hereof (hereafter, the “Work”).

The Work shall meet and comply with all standards heretofore or hereafter promulgated by the NYS DEC or such other State agency or agencies, as shall have jurisdiction over the Project. Contractor assumes full responsibility for having familiarized himself or herself with the nature and extent of the Contract Documents (as hereafter defined), work, locality, and local conditions that may in any manner affect the Work to be done.

Contractor will provide competent, suitably qualified personnel to survey and lay out and perform the Work as required by this agreement and the Scope of Work attached hereto (the “Contract Documents”). Contractor will furnish all materials, equipment, labor, transportation, machinery, tools, appliances, fuel, power, light, heat, telephone, water, and sanitary facilities and all other facilities and incidentals necessary for the completion of the

Work. All materials to be supplied or used by Contractor in connection with the Work will be new, except as otherwise provided in the Contract Documents. If required by NEIWPC, Contractor will furnish satisfactory evidence as to the kind and quality of materials.

- (2) **Written Submissions.** Contractor is also responsible for preparing and submitting the following reports and other documentation:

(a) Brief (1-2 page) quarterly written or electronic reports shall be submitted by the 10th day after the end of each calendar quarter (i.e. April 10 for January-March, July 10 for April-June, October 10 for July-September, and January 10 for October-December) to the oversight project officer designated in Article II hereof. Electronic submissions are encouraged. The quarterly reports shall describe work progress to date; completed outputs; problems encountered and anticipated, including but not limited to the means of responding to those problems; a statement of activity anticipated during the next reporting period; and a comparison of the percentage of the Project completed to the project schedule. Payment of contractual invoices is contingent upon NEIWPC's timely receipt and approval of quarterly reports.

In addition, Contractor must submit NYS DEC's "Work Force Employment Utilization Report (Form C)" on a quarterly basis. This report is due by the 6th day after the end of each calendar quarter.

(b) **Vendor Responsibility Questionnaire.** If at any time during performance under this Agreement the total compensation to Contractor (or its subcontractor) exceeds or is expected to exceed \$100,000, or as otherwise requested by NYS DEC, Contractor shall be required to certify and submit a Vendor Responsibility Questionnaire.

(c) A draft final report is due no later than **11/30/2025** to the Oversight Project Officer(s) listed in Article II.A. Upon submittal of the draft final report, all tasks described in the Scope of Work must be complete. NEIWPC's staff will coordinate review of the draft final report and will communicate any deficiencies in the tasks required under the Scope of Work, Quality Assurance Project Plan, or other Contract Documents and any required revisions to Contractor. NEIWPC's payment of Contractor's final invoice is contingent on NEIWPC's receipt of the approved final report and determination that no additional or corrective work is required. Contractor must obtain approval of their final report by the agreement end date indicated in Article III.C. Extension beyond this date can only be granted by a formal amendment to this agreement signed by both NEIWPC and Contractor as described in Article III.D.

Contractor hereby acknowledges its consent for NEIWPC and any funding source identified in this Agreement to post its final reports on their respective websites. In the event that Contractor intends to claim that its final report contains material that is protected from disclosure by statutory or regulatory provisions, Contractor shall notify NEIWPC and the funding source identified in this Agreement and clearly mark all such potentially protected materials as "PROTECTED," providing an accurate and complete citation to the statutory or regulatory source for such protection.

Final reports must be delivered in Adobe PDF format. Any data files assembled as part of this project must be delivered in a standard digital database format. Acceptable formats include formats readable by MicroSoft Excel and/or MicroSoft Access and/or ESRI ArcView.

(d) Contractor agrees that it shall not release any work products, including but not limited to draft and/or final quarterly or final reports, data, maps, and charts, to any party other than NEIWPC or make such products available to the public without obtaining NEIWPC's prior written consent.

(e) Contractor agrees to use recycled paper for all non-electronic reports which are prepared as a part of this Agreement and delivered to NEIWPC, NYS DEC, or the person(s) with oversight responsibility named in Article II. All deliverables in PDF format must comply with NYS DEC's WCAG 2.0 AA accessibility Standards as outlined at <https://www.dec.ny.gov/about/590.html> "Information for Vendors to DEC."

(f) All products, communications, and publications associated with this project and/or developed under this agreement, including agendas, press releases, web pages, spreadsheets, etc. must include NYS DEC and NEIWPC logos and contain the following statement: "This document was prepared for the Hudson River Estuary Program, New York State Department of Environmental Conservation, with support from the New York State Environmental Protection Fund, in cooperation with NEIWPC. The viewpoints expressed here do not necessarily represent those of NEIWPC or NYS DEC, nor does mention of trade names, commercial products, or causes constitute endorsement or recommendation for use." The provisions of this Clause shall survive the expiration or earlier termination of this Agreement.

(g) If Contractor and/or any subcontractor(s) are engaging in "environmental information operations," Contractor and/or any subcontractor(s) are responsible for preparing a Quality Assurance Project Plan (QAPP) in accordance with the most current National requirement documents at <https://www.epa.gov/quality/agency-wide-quality-program-documents> and Regional requirement documents at <https://www.epa.gov/quality/region-1-quality-systems-documents>. The QAPP is to be reviewed and approved by NEIWPC and other organizations (such as U.S. EPA or state environmental agencies), as necessary. QAPPs are required in support of all "environmental information operations" in accordance with NEIWPC's Quality Management Plan and U.S. EPA's Environmental Information Quality Policy and Standards. The term "environmental information operations" refers to activities involving the collection, generation, compilations, analysis, evaluation, and use of environmental information. Contractor must submit the QAPP for NEIWPC review following the most current procedure, as detailed in NEIWPC's "Review and Approval Process for NEIWPC Quality Assurance Project Plans" standard operating procedure, available at <https://neiwpc.org/our-programs/assessment-and-research/quality-management>. NEIWPC, as the lead organization, will submit the QAPP to any other pertinent organizations for their approval as necessary. The QAPP must be fully-approved by all governing organizations (NEIWPC, U.S. EPA, state agencies, etc.) before any data collection and/or generation activities begin. No contractual invoices will be paid for any environmental information operations begun prior to NEIWPC's receipt of a fully-approved QAPP.

- (h) Contractor agrees that any such water quality work products including but not limited to water quality data or environmental information; measured, generated, or developed under this Agreement cannot be released, published, cited, or shared in draft or final form without the prior written authorization of the Department's Division of Water.
- (i) Contractor agrees to notify NEIWPCC and NYS DEC Hudson River Estuary Program 30 days in advance of any press events, public kick-off meetings, ribbon cuttings, tours, or debut events associated with this project. Notification should be provided to the individual(s) listed in Article II by phone, email, or mail.
- (3) NEIWPCC's or NYS DEC's review and/or approval of work products, reports, and incidental work or materials furnished hereunder shall not in any way relieve Contractor of responsibility for the technical adequacy of his/her Work. Neither NEIWPCC's nor NYS DEC's review, approval, acceptance, or payment for any of the services shall be construed as a waiver of any rights under this contract, including but not limited to the right to reject "defective" work (as hereinafter defined) or material or work or material not in conformance with the requirements of the Contract Documents or the approved QAPP (when applicable).
- (4) Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in Contractor's work products, reports, and other services. The Contract Price (hereafter defined) constitutes the total compensation payable to contractor for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by Contractor shall be at his or her expense without change in the Contract Price.
- (5) **Additional Work or Revisions to the Work.** Without invalidating the agreement, NEIWPCC may, at any time or from time to time, order additions, deletions, or revisions in the Work; NEIWPCC in writing will authorize these modifications. If Contractor is requested by NEIWPCC to perform work not included within the scope of the Work described in the Contract Documents and if Contractor believes that the performance of such additional work involves him/her in additional expense or entitles him/her to an extension of the contract time, Contractor may make a claim for such additional expense or extension of the contract time as provided in Article V. Contractor shall not undertake any additional work which he/she contends entitles him/her to additional payment or time without prior written authorization by NEIWPCC as provided for in Article V. Additional work performed by Contractor without written authorization will not entitle him/her to an increase in the Contract Price or an extension of the contract time. Upon receipt of such written authorization, contractor will proceed with the work involved.
- (6) **Inspections.** Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the Work furnished under this contract conform to contract requirements. Complete records of all inspection work performed by Contractor shall be maintained and made available to NEIWPCC during contract performance and for as long afterwards as the contract requires, consistent with the requirements of the applicable QAPP. NEIWPCC has the right to inspect and test the Work, to the extent practicable, at all places and times, without prior notice to Contractor, and in any event

before acceptance. NEIWPC shall perform inspections and tests in a manner that will not unduly delay the Work. NEIWPC assumes no contractual obligation to perform any inspection and test for the benefit of the Contract. The right to review, whether exercised or not, does not relieve Contractor of the obligations under this contract.

If, as a result of any such inspection, any of the Work does not conform to contract requirements, NEIWPC may require Contractor to perform the Work again in conformity with contract requirements, at no increase in Contract Price. When the defects in the Work cannot be corrected by reperformance, NEIWPC may (1) require Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the Contract Price to reflect the reduced value of the Work performed. If Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, NEIWPC may (1) by contract or otherwise, perform the Work and reduce the Contract Price by an amount that is equitable under the circumstances and (2) terminate the contract for default as set forth in Article VII.

- (7) **Contractor's Warranty.** Contractor warrants and guarantees to NEIWPC that all materials will be new unless otherwise specified and that all Work will be of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents.
- (8) **Rejecting Defective Work.** NEIWPC will have authority to disapprove or reject work that is "defective" (which term is hereinafter used to describe Work that does not conform to the requirements of the Contract Documents or applicable QAPP). Prompt notice of all defects shall be given to Contractor. All defective work may be rejected, corrected, or accepted as provided herein. If required by NEIWPC, Contractor will promptly, without cost to NEIWPC and as specified by NEIWPC, correct or replace any defective Work. If Contractor does not correct or replace such defective Work within a reasonable time, all as specified in a written notice from NEIWPC, then NEIWPC may have the deficiency corrected or replaced. Contractor shall pay all direct or indirect costs of such correction or replacement, including compensation for additional professional services. If, instead of requiring correction or replacement of defective work, NEIWPC prefers to accept such work, it may do so. In such case, if acceptance occurs prior to approval of the Final Payment, there shall be an appropriate reduction in the Contract Price; or, if the acceptance occurs after approval of the Final Payment, Contractor shall pay an appropriate amount to NEIWPC.
- (9) **Neglected Work by Contractor.** If Contractor should fail to complete the Work in accordance with the Contract Documents, NEIWPC, after ten (10) days' written notice to Contractor may, without prejudice to any other remedy it may have, correct such deficiencies and the cost for correcting such deficiencies (including compensation for additional professional services) shall be borne by Contractor. If the payments then or thereafter-due Contractor are not sufficient to cover such amount, Contractor will pay the difference to NEIWPC.

B. Responsibilities and Requirements

- (1) **Final Invoicing.** The final report (if any) must be approved for compliance with the Scope of Work and other Contract Documents before the Final Payment is issued. (The approval process may include peer review.) The final invoice for payment shall be labeled as “final invoice” by Contractor and shall be received by the Oversight Project Officer(s) designated in Article II within **thirty (30)** days after the end date of this contract. If additional time is needed for Project completion and the approval process, Contractor shall request, in writing, a no-cost extension contract amendment. The amendment request shall be sent as per Article II.
- (2) **Administrative Regulatory Compliance.** Contractor agrees that it will give all notices and comply with all applicable state laws and regulations, in effect on the date of execution of the assistance agreement for this Project, including NYS DEC’s “Standard Clauses for New York State Contracts,” “Standard Clauses for all New York State Department of Environmental Conservation Contracts,” and “Standard Clauses for Ethics in all NYS DEC Contracts.”
- (3) **Geographic Information Systems Data.** If any GIS data are produced under this project, Contractor agrees to adhere to the requirements of EPA’s National Geospatial Data Policy. Contractor will provide documentation for all produced data, including source information for each digital layer (i.e., scale and accuracy, map projection, coordinate system, etc.) and specific information about the layer itself (i.e., method used, geographic extent of data layer, file format, date of creation, staff contact, description and definition of data fields and their contents, related files, if any, and description of data quality and quality assurance methods used). GIS data produced under this project will be submitted to NEIWPC as a deliverable and are subject to Article VI of this contract.
- (4) **Access to and Retention of Records for Audit Purposes.** Contractor shall maintain books and records and supporting documentation (including but not limited to cancelled checks, paid bills, payrolls, time and attendance records), in accordance with generally accepted accounting principles and practices consistently applied. Contractor shall allow access by NEIWPC, the state grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, including any independent auditor retained by any of them, to any books, documents, papers, and records of Contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions without any direct charge. Retention of all such items is required for three years after NEIWPC makes final payment on the final invoice and all other pending matters are closed. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.
- (5) **Equal Employment Opportunity.**
 - (a) In connection with the execution of this contract and the completion of the Work, Contractor shall not discriminate against any employees or applicants for employment because of race, color, creed, national origin (including those for whom English is a second

language or who are legal immigrants), gender, sexual orientation, gender identification, marital status, physical and mental disability, ancestry, age, pregnancy, political or union affiliation, or veteran status and shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin (including those for whom English is a second language or who are legal immigrants), gender, sexual orientation, gender identification, marital status, physical and mental disability, ancestry, age, pregnancy, political or union affiliation, or veteran status.

Contractor and will undertake or continue existing EEO programs of Affirmative Action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce. Affirmative Action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff or termination and rates of pay or other forms of compensation.

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

(c) Contractor shall request each employer Department, 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 employer Department, 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 Contractor's obligations herein.

(d) Contractor will include the provisions of (a) through (d) of this section which provides for relevant provisions of the Human Rights Law, in every subcontract over \$25,000 in such a manner that the requirements of the section will be binding upon each subcontractor as to work in connection with this Agreement.

(6) **Affirmative Action**. Contractor agrees and is required to use the following affirmative steps to assure that disadvantaged business enterprises (DBEs), including small business enterprises, minority business enterprise (MBEs), women's business enterprises (WBEs), labor surplus area firms, and small businesses in rural areas (SBRAs), are used when possible. Contractor must make good faith efforts to ensure to the fullest extent possible that a fair share of state funds (based on fair share target percentage goals as established by the financial assistance award) are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, and historically black colleges and universities for supplies, construction, equipment, or services. Affirmative steps include:

(a) Placing qualified DBEs on solicitation lists;

(b) Assuring that DBEs are solicited whenever they are potential sources;

- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs;
- (d) Establishing delivery schedules, where the requirement permits, which encourage participation by DBEs;
- (e) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Contractor shall report and shall require any subcontractor to report to NEIWPC on any applicable invoices the following information: name, address and type (e.g. MBE or WBE) of businesses used and amount of funds to each DBE included in the period of services submitted for payment.

(8) **Insurance and Bond.**

(a) Contractor shall furnish to NEIWPC a certificate or certificates of insurance in a form satisfactory to NEIWPC showing compliance with this section. The certificate(s) shall provide that the policies shall not be changed or canceled or allowed to expire until the insurer or its agent has given at least thirty (30) days' prior written notice to NEIWPC. Contractor shall not begin performance until the delivery of the certificate(s) to NEIWPC.

(b) Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, both for the benefit of NEIWPC, the following kinds and amounts of insurance:

- (i) Workers' Compensation Insurance. The policy shall cover the obligations of Contractor in accordance with the Workers' Compensations Law and Disability Benefits Law covering all operations under the Contract, whether performed by it, or by any subcontractor.
- (ii) Liability and Property Damage Insurance. Unless otherwise specified, each policy shall have limits not less than: \$2,000,000 combined (Bodily Injury & Property Damage); \$3,000,000 aggregate, single limit per occurrence.

(c) Coverage for all damages arising during the policy period shall be furnished in the following types specified:

- (i) Contractors' Liability Insurance issued to and covering the liability (a) for damages imposed by law upon Contractor, and (b) including in such liability insurance policy the related provisions in the specifications with regard to indemnifying and holding NEIWPC harmless to the fullest extent permitted by law from any suits, actions, damages, and costs of every name and description, with respect to all work performed by Contractor and subcontractor under the Agreement.

- (ii) Contractual Liability Insurance issued to and covering the liability for damages imposed by law upon each Contractor with respect to all work performed by said Contractor under the Agreement.
 - (iii) Contractors' Protective Liability Insurance issued to and covering the liability for damages imposed by law upon Contractor with respect to all work under the Agreement performed for Contractor by subcontractors.
- (d) In the event Contractor elects to act as a self-insurer in lieu of procuring from an insurance company the insurance required by the terms of this Agreement, Contractor agrees that it will provide insurance coverage and protection for the benefit of the insured parties in amounts appropriate for the work being performed under this Agreement, similar to the terms set forth herein. Contractor will provide to the Commission a letter stating it is self-insured.

(9) **Conflict of Interest.**

Contractor will comply with NYS DEC's Conflict of Interest and Ethics requirement as described in "Standard Clauses for Ethics in all NYS DEC Contracts."

(a) Organizational Conflict of Interest. To the best of Contractor's knowledge and belief, Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that Contractor has disclosed all such relevant information to NEIWPC and NYS DEC.

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

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

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

agreements shall be effective for the life of this Agreement and for a period of five (5) years after completion of the Agreement.

(c) Remedies. NEIWPCC or NYS DEC may terminate this Agreement in whole or in part, if they deem such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If Contractor fails to make required disclosures or misrepresents relevant information to NEIWPCC or NYS DEC, NEIWPCC or NYS DEC may terminate this Agreement, or pursue such other remedies as may be permitted by the terms of Clause I of “Standards for Ethics for all NYS DEC Contracts” or other applicable provisions of this Agreement regarding termination.

(d) Contractor will be ineligible to make a proposal or bid on a contract for which Contractor has developed the statement of work or the solicitation package.

(e) Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by NYS DEC.

(f) Vendor Assurance of No Conflict of Interest or Detrimental Effect.

- (i) Contractor hereby affirms 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 shall have a duty to notify NEIWPCC and NYS DEC immediately of any actual or potential conflicts of interest.
- (ii) In Conjunction with any subcontract under this Agreement, Contractor shall obtain and deliver to NEIWPCC, 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 NEIWPCC 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.
- (iii) NEIWPCC and Contractor recognize that conflicts may occur in the future because Contractor may have existing or establish new relationships. NEIWPCC and NYS DEC will review the nature of any the relationships and reserve the right to terminate this contract for any reason, or for cause, if, in the judgment of NEIWPCC and NYS DEC, a real or potential conflict of interest cannot be cured.

- (iv) In performing this contract, Contractor realizes that its employees may have access to data, either provided by NYS DEC or NEIWPC, or first generated during contract performance, of a sensitive nature which should not be released without prior NYS DEC approval. If this situation occurs, Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this Agreement, including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to NYS DEC, the Department of Health or the New York State Department of Law, any information or data provided by NYS DEC or first generated by Contractor under this Agreement, any site-specific cost information, or any enforcement strategy without first obtaining written permission of NYS DEC. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, Contractor must provide immediate advance notification to NYS DEC so that they can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the Agreement and for a period of 5 years after completion of the contract.
- (v) NYS DEC may terminate this contract in whole or in part, if it deems such termination necessary to avoid a conflict of interest, or an unauthorized disclosure of information. If Contractor fails to make required disclosures or misrepresents relevant information to NYS DEC, they may terminate the Agreement, or pursue such other remedies as may be allowed by law or other applicable provisions of this Agreement regarding termination.
- (vi) Contractor will be ineligible to make a proposal or bid on a contract for which Contractor has developed the statement of work or the solicitation package.

(10) Ethics Requirements.

- (a) Contractor and its subcontractors (if any) shall not engage any person who is, or has been at any time, in the employ of the State of New York to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the “Ethics Requirements.”)
- (b) Contractor certifies that all of its employees and those of its subcontractors (if any) who are former employees of the State of New York and who are assigned to perform services under this Agreement shall be assigned in accordance with all Ethics Requirements. For the duration 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 Requirements may share in any net revenues of Contractor or its subcontractors derived from this Agreement. Contractor shall identify

and provide the State of New York with notice of those employees of Contractor and its subcontractors who are former employees of the State of New York that will be assigned to perform services under this Agreement, and make sure that such employees comply with all applicable laws and prohibitions.

(c) The State of New York may request that Contractor provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State 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 Requirements. The State shall have the right to terminate this Agreement at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

(d) Subcontracting.

- (i) Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of NEIWPC and NYS DEC. Approval shall not be unreasonably withheld upon receipt of the written request to subcontract.
 - (ii) Contractor may arrange for a portion(s) of its responsibilities under this Agreement to be subcontracted to qualified, responsible subcontractors, subject to prior approval of NEIWPC and NYS DEC. If Contractor decides to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this Agreement must be fully explained by Contractor to NEIWPC and NYS DEC. As part of this explanation, the subcontractor must submit to the Department a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by Contractor prior to execution of this Agreement.
 - (iii) Third Party Beneficiary. All subcontracts between Contractor and any subcontractors shall expressly name the State of New York, through NYS DEC, as the sole intended third party beneficiary of such subcontract. NYS DEC 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 NEIWPC or NYS DEC or the State of New York a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against NYS DEC.
4. NEIWPC and NYS DEC reserve the right, at any time during the term of the Agreement, to verify that the written subcontract between Contractor and any subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this Agreement. Contractor shall give NEIWPC and NYS DEC 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 Contractor's duties under the Agreement. Any subcontract shall not relieve Contractor in any way of any responsibility, duty and/or obligation of this Agreement.

- (11) **NEIWPCC Covid-19 Policy.** Contractor agrees to comply with the following NEIWPCC Covid-19 Policy:

OFFICE VISITORS: NEIWPCC is committed to providing a working environment that keeps all staff and visitors as safe as possible and promotes the well-being of our community. NEIWPCC encourages attendees to take CDC recommendations and their individual circumstances into account when deciding about preventative actions. It is recommended that all individuals who enter NEIWPCC offices during business hours be fully vaccinated, however this is no longer a requirement. Visitors should NOT enter the NEIWPCC office if they display any symptoms of COVID-19. Anyone who has tested positive for COVID-19 within the last ten (10) days must test negative prior to visiting the office.

CONFERENCE, MEETING, AND TRAINING ATTENDEES: NEIWPCC is committed to providing an event environment that keeps all participants as safe as possible and promotes the well-being of our community. It is recommended that all individuals who participate at NEIWPCC events be fully vaccinated, however this is no longer a requirement to attend. NEIWPCC encourages attendees to take CDC recommendations and their individual circumstances into account when deciding about preventative actions. By voluntarily choosing to attend NEIWPCC events, participants assume all risks associated with exposure to COVID-19. Attendees should NOT participate at NEIWPCC events if they display any symptoms of COVID-19. Anyone who has tested positive for COVID-19 within ten (10) days of the event must test negative prior to attending.

ARTICLE II. OVERSIGHT

- A. Technical and administrative oversight of all work performed under this contract shall be provided by the following individual(s). Contractor shall receive direction from and shall submit all reports, data or other deliverables for work performed and any notice required under this contract to:

Emily Bialowas, Environmental Analyst
NEIWPCC
650 Suffolk Street, Suite 410
Lowell, MA 01854
Tel: (978) 349-2052
Fax: (978) 323-7919
Email: ebialowas@neiwpc.org

Daniel Miller
NEIWPCC
c/o NYSDEC Region 3, P.O. Box 315, 256 Norrie Point Way
Staatsburg, NY 12580
Tel: (845) 889-4745
Email: daniel.miller@dec.ny.gov

- B. The final invoice for payment shall be received by NEIWPCC within **thirty (30)** days after the end date of this contract. All invoices and questions regarding invoice payment should be directed to Emily Bialowas. If additional time is needed for project completion and the approval process, the Lowell Oversight Project Officer shall process Contractor's request for a no-cost extension contract amendment.

ARTICLE III. DURATION OF THE CONTRACT

- A. Contractor will start the Work on the date on which the agreement is executed and delivered, or on such other date, if any, as may be specified in the Contract Documents. No work shall be done prior to the date on which the Work is to start, and no work shall be commenced until Contractor has delivered to NEIWPC all Certificates of Insurance required by Article I.B.(8).
- B. The contract period shall commence to run on the date when the Work is to start as provided in Paragraph A of this Article.
- C. Contractor shall complete all work and services required under this contract by **12/31/2025**.
- D. The contract time may only be changed by a written modification to the contract signed by NEIWPC, which change will not be unreasonably withheld; provided, however, that in no event may the contract time extend beyond any deadline imposed by the NYS DEC or other funding agency. Any claim for an extension in the contract time, shall be in writing delivered to NEIWPC within thirty (30) days of the occurrence of the event giving rise to the claim. The contract time will be extended in an amount equal to time lost due to delays beyond the control of contractor if he/she makes a claim for such extension(s). Such delays shall include, but not be restricted to fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of god; provided, however, that the determination of the existence of any such event shall be made at NEIWPC's reasonable discretion.

ARTICLE IV. COMPENSATION TO CONTRACTOR

- A. NEIWPC's obligation under this contract is for a total amount not to exceed **\$200,000 Dollars** within the contract period for the Work Product of Contractor (the "Contract Price"). Payment is contingent upon NEIWPC's receipt of state funding.
- B. Payments for work performed shall be made from approved original invoices, pending receipt of one W-9 Form and an insurance certificate in accordance with Article I.B.(8). The amounts invoiced must be consistent with the Task Budget shown below, with completion of the tasks consistent with the description in the Scope of Work. Tasks must be completed before payment is sought. Partial payment on individual tasks will not be processed. Invoices are to be submitted by Contractor to the Oversight Project Officer(s) designated in Article II, for approval prior to forwarding to NEIWPC for payment according to the payment schedule. Invoices must include (1) the name and address of Contractor, (ii) the invoice date, (iii) the contract identification number, if any, (iv) the time period of work invoiced, (v) a description of the Work performed, (vi) shipping and payment terms, (vii) the address where payment is to be sent, (viii) the person to be notified in the event of a defective invoice, and shall (1) provide itemized documentation of costs related to work performed, (2) be accompanied by a brief written progress report, and (3) be supported by such data as NEIWPC may reasonably require.

Amount	Task #	Task Description
\$ 7,287	A	Approved QAPP and follow up
\$ 3,767	B	Review Existing Information

\$ 5,891	C	Coordinate Project Kick-Off meeting
\$ 53,750	D	Perform Additional Site Assessment & Sampling Needed to Complete Project
\$ 68,435	E-1	Draft Engineering and Implementation Plan including draft sheet drawings emailed to project partners.
\$ 7,604	E-2	Permit materials emailed to project partners.
\$ 3,331	F	Coordinate Final Review Meeting
\$ 4,182	G	Prepare Applications for ALL environmental permits
\$ 39,871	H	Final Engineering Documents and Implementation Plan
\$ 669	I-1	Create/ submit report 1
\$ 669	I-2	Create / submit report 2
\$ 669	I-3	Create / submit report 3
\$ 669	I-4	Create / submit report 4
\$ 669	I-5	Create / submit report 5
\$ 2,537	J	Approved Final Report
\$200,000	TOTAL	

- C. The Contract Price constitutes the total compensation payable to Contractor for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by Contractor shall be at his or her expense without change in the Contract Price. Any costs incurred by Contractor in excess of the not-to-exceed agreement amount listed in Part A or Article V shall be at Contractor’s own risk. The Contract Price includes all applicable Federal, State, and local taxes and duties. The Contract Price may only be changed by written modification to this contract signed by NEIWPC. Any claim for an increase in the Contract Price shall be in writing delivered to NEIWPC within 30 days of the occurrence of the event giving rise to the claim. All claims for adjustments in the Contract Price shall be determined by NEIWPC in accordance with Article V.
- D. NEIWPC will pay invoices within forty-five (45) days of receipt of same and the corresponding quarterly or approved final report (as applicable) and approval by the Lowell Oversight Project Officer.
- E. NEIWPC may refuse to approve the whole or any part of any payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously approved, to such extent as may be necessary in NEIWPC’s opinion to protect NEIWPC from loss because:
- (1) the Work is defective;
 - (2) claims have been filed or there is reasonable evidence indicating the probable filing of such claims;
 - (3) the Contract Price has been reduced because of modifications;
 - (4) NEIWPC has been required to correct defective work or complete the Work;
 - (5) there has been unsatisfactory prosecution of the Work; or
 - (6) Contractor has released copies of any work products without NEIWPC consent.
- F. Upon satisfactory completion of the Work performed in accordance with all Contract Documents, including the approved QAPP where applicable, and NEIWPC’s approval of Contractor’s final

report, Contractor shall label the Final Payment request as “final invoice,” and, in so doing, shall deliver to NEIWPCCC a complete and legally effective release of all claims against NEIWPCCC. Final Payment under this contract shall not constitute a waiver of NEIWPCCC’s claims against Contractor under this contract.

- G. Any billings incurred for this Project from the agreement execution date through **12/31/2025** must be received by the Oversight Project Officer in NEIWPCCC’s office in Lowell, MA, as per Article II, no later than **1/15/2026**. Any billing invoices received after **1/15/2026** will not be processed and payment due will be lost. NEIWPCCC may extend these deadlines at the request of Contractor but only if NEIWPCCC has been able to obtain a similar extension of the time within which it must liquidate NEIWPCCC’s obligations under the funding award.

ARTICLE V. CHANGES TO THE CONTRACT

- A. NEIWPCCC may at any time, by mutually agreeable written amendments, make changes within the general scope of this contract in the services or work to be performed, including time of performance, changes in the Scope of Work, and/or budget. If such changes cause an increase or decrease in Contractor’s cost or time required to perform any services under this contract, Contractor must assert a claim for adjustment under this clause in writing delivered to NEIWPCCC within thirty (30) days from the date it receives NEIWPCCC’s notification of change; provided, that, if NEIWPCCC decides, in its sole and absolute discretion, the facts justify the action, NEIWPCCC may receive and act upon a claim submitted at any time before the Final Payment under this contract. If Contractor has shown to NEIWPCCC’s satisfaction that there is an increase or decrease in Contractor’s cost or time, NEIWPCCC shall make an equitable adjustment and modify this contract in writing.
- B. No services for which Contractor will charge an additional compensation shall be furnished without the written authorization of NEIWPCCC.

ARTICLE VI. TITLE TO PROPERTY and DATA; COPYRIGHTS and PATENTS

- A. This contract is supported with state funding awarded to NEIWPCCC. NEIWPCCC and the State government have an unrestricted right to use any data, information, and/or products generated using assistance funds or specified to be delivered to NYS DEC in NEIWPCCC’s assistance agreement.
- B. The awarding agency reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for state government purposes:
 - (1) The copyright or patent in any work developed under this contract which is supported by state funds; and
 - (2) Any rights of copyright or patent to which Contractor purchases ownership with funds from this contract.
- C. Rights to inventions developed in the course of or under this contract are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 USC Sections 200-212.

- D. NEIWPCCC reserves the right to copyright or patent any work, discovery, or invention which arises or is developed in the course of or under this contract. NEIWPCCC shall, as required, report such activity to the State awarding agency. Contractor agrees, at its sole cost and expense, to make application for such letters patent on any inventions as requested by NEIWPCCC or State awarding agency as either may deem necessary, desirable, or useful, and to sign and execute any and all papers incident to the filing, prosecution, and perfection of said applications and the letters patent issued thereon.
- E. Contractor shall promptly disclose to NEIWPCCC or the State awarding agency, in writing, any and all inventions, discoveries, and improvements conceived or made by Contractor, which arose or were developed under this contract.
- F. The termination of this contract will not relieve Contractor of the obligation to assign and execute any papers necessary to enable NEIWPCCC and/or State awarding agency to obtain for its own use, patent protection on said inventions. Contractor's obligations hereunder shall be binding upon his/her assigns, executors, administrators, and other legal representatives.

ARTICLE VII. TERMINATION OF CONTRACT

- A. NEIWPCCC may terminate this contract or any part for convenience by giving written notice to Contractor and specifying the effective date, such date to be at least fourteen (14) calendar days from the date of notice.
- B. Upon receipt of a termination notice, Contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise) and (2) deliver or otherwise make available to NEIWPCCC all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by Contractor in performing this contract whether completed or in process.
- C. In the event of termination for convenience, Contractor shall be paid for services rendered and expenses incurred up to the date of termination, presuming charges are reasonable and customary. In the event of termination for cause (due to Contractor's default), payment due to Contractor at the time of termination may be adjusted to cover any additional costs to NEIWPCCC because of Contractor's default.
- D. If Contractor (1) is adjudged a bankrupt or insolvent, (2) makes a general assignment for the benefit of creditors, (3) files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, (4) repeatedly fails to supply sufficient skilled workers or suitable materials, (5) repeatedly fails to make prompt payments to subcontractors or for labor, materials, or equipment, (6) disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction, (7) disregards the authority of NEIWPCCC, or (8) fails to (i) perform the Work within the time specified in this contract or any extension, (ii) make progress, so as to endanger performance of this contract, or (iii) perform any other provision of the Contract Documents, then such will constitute a default by Contractor and NEIWPCCC may, without prejudice to any other right or remedy and after giving Contractor the notice required by paragraph C above, terminate this agreement. In that event Contractor shall comply with paragraph B above and NEIWPCCC may finish the Work by whatever method it may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the

Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to Contractor. If such costs exceed such unpaid balance, Contractor will pay the difference to NEIWPC.

- E. NEIWPC's right to terminate this contract for default under paragraph D.(8)(ii) and (iii) above may be exercised if Contractor does not cure such failure within 10 days (or more if authorized in writing by the Lowell Oversight Project Officer designated in Article II) after receipt of the notice from the Lowell Oversight Project Officer designated in Article II specifying the failure.

ARTICLE VIII. REMEDIES

- A. The rights and remedies afforded to either party pursuant to any part or provision of this contract are in addition to any other rights and remedies afforded by any other parts or provisions of the Contract Documents, by law or otherwise.
- B. **Liquidated Damages.** Notwithstanding anything herein to the contrary, in the event Contractor releases any work product in breach of Article I.A.(2)(c) hereof, then NEIWPC shall retain the Final Payment as reasonable liquidated damages, except to the extent such disclosure is required by law, regulation, or legal process; the parties acknowledging that NEIWPC's damages for the unauthorized release of such information would be difficult to ascertain.

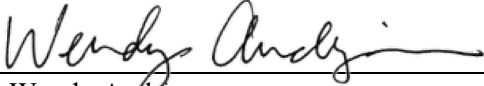
ARTICLE IX. MISCELLANEOUS

- A. **Waiver and Severability.** The failure or delay of either party to insist on performance of any provision of this contract, or to exercise any right or remedy available under this contract, shall not be construed as a waiver of that provision, right, or remedy in any later instance. Further, if any provision of this contract is or becomes void or unenforceable by operation of law, the remaining provisions shall be valid and enforceable.
- B. **Integration and Merger.** The Contract Documents constitute the entire agreement between the parties and supersedes all prior representations, agreements, understandings, and communications related to the subject matter of this contract. No amendment or modification of this contract shall be binding upon either party unless it is set forth in a written instrument signed by authorized representatives of the parties.
- C. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The parties hereto agree that the use of scanned or facsimile signatures for the execution of this Agreement shall be legal and binding and shall have the same full force and effect as if originally signed.
- D. **No Employment.** Contractor acknowledges and agrees that he/she is not an employee of NEIWPC but is an independent contractor.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of date last written below.

NEW ENGLAND INTERSTATE WATER
POLLUTION CONTROL COMMISSION

ASSEMBLAGE LANDSCAPE
ARCHITECTURE



Susan J. Sullivan
Executive Director

Date 08.09.2024

Wendy Aneringa
Principal

Date 8/9/2025