

# NEW YORK STATE BRIDGE AUTHORITY

## REQUEST FOR PROPOSALS

MAY 10, 2012

**Contract Number:** BA-2012-OA-008-IN

**Contract Title:** Public Officials/Employment Practices Liability Insurance

The New York State Bridge Authority is seeking proposals to provide Public Officials/Employment Practices Liability Insurance under contract BA-2012-OA-008-IN.

The individual Insurance Specifications, dated May 10, 2012, set forth the requirements of the insurance policy sought by this Request for Proposals (RFP), include specimen policy terms, are a part of this RFP, and should be closely studied by all potential proposers before the submission of any proposals.

### THE BRIDGE AUTHORITY

Information on the Authority, including its Annual Report, may be obtained from its website at [nysba.net](http://nysba.net).

### DESIGNATED CONTACT

State Finance Law restricts all offerors (proposers) from making contacts to other than designated Bridge Authority staff. For purposes of this contract the designated Bridge Authority contact is Brian Bushek, Treasurer, New York State Bridge Authority, P.O. Box 1010, Highland, NY 12528. Telephone - (845) 691-7245, Facsimile – (845) 691-3560, E-mail – [bbushek@nysba.ny.gov](mailto:bbushek@nysba.ny.gov). **(Fax and email for inquiries only; the response to RFP may not be submitted via email.)**

**No contact with any Authority personnel or Authority consultants other than the authorized contact person is allowed until such time as an award has been made.** Violation of this provision may be grounds for immediate disqualification.

### PROPOSERS/ASSIGNED COMPANIES

Proposers must be licensed to do business in the State of New York and have knowledge and expertise specific to the exposures and risks similar to those of the New York State Bridge Authority. Upon receipt of this RFP, for each contract, the proposer should list up to three insurance companies from which they wish to solicit coverages. These should be listed in order of preference, by parent company only. The use of subsidiary insurance companies may result in the selection being disallowed. The proposer who currently provides the Authority with this insurance will be given first preference for the incumbent insurance company. The Authority will determine which companies each proposer will have the sole right to access and broker of record letters will be provided, if requested. Proposers should indicate any special relationships, which could be helpful in obtaining coverages, they may have with their preferred companies. Following this process, any insurance companies not assigned may be approached by any proposer.

Proposers, who provide the Authority with a list of preferred insurance companies by 10:00 A.M. on May 25, 2012, will be advised by May 28, 2012 which companies have been assigned, and to which agency. There will be no further assignments after May 28, 2012. Proposers who do not submit such a list may only

solicit unassigned companies. Company assignments will be included in the NY State Contract Register as an addendum to this Request for Proposal.

## **PROPOSALS**

Currently, the Authority has a two year policy for this insurance. The Authority will accept either a one year or two year contract for insurance and will retain the right to renew, at its option, any one year awarded contract for three additional one year periods, or any two year awarded contract for an additional two years, if the broker subsequently offers renewal in a timely manner at substantially the same terms, conditions and rates – subject to modification for actual loss experience.

The successful proposer for this contract will have met all the criteria set forth in this RFP and the appropriate Insurance Specification. Proposals that offer less insurance than specified (including, but not limited to, what the Authority may determine are additional or materially different exclusions, reduced coverage, and more restrictive terms or conditions) may be deemed unresponsive. However, if no proposers are able to meet the criteria set for in the RFP and Specifications then the Authority will consider other proposals.

Proposals that exceed the specifications and/or offer more insurance than required will be considered, but credit for additional coverage may not be recognized in the course of evaluation. Features that enhance a policy beyond the specified insurance will have a negative impact on the evaluation of the proposal if they contribute to additional cost.

Proposals that offer insurance policies that fully meet the criteria set forth in the Specifications may offer alternatives, enhancements or improvements in coverage, as options. The Authority will consider such options, at its discretion, as supplements to the awarded contract after the determination to award has been made.

Alternative billing schemes may be offered as options, but such options may not be considered in the course of evaluations. Risk sharing, pooling, and multi-year joint risk ventures will not be considered consistent with the Insurance Specifications and will be deemed unresponsive.

Currently, the Authority public officials/employment practices liability insurance is a claims made policy. Proposers must provide the Authority with full continuity so that the proposed policy will cover claims that occurred, but have not been made, after the continuity date of the prior policy, which is August 1, 2004. If there is an additional cost for this it must be so indicated. As of the date of this RFP, there is no fact, circumstance, or situation which the Authority reasonable believes is likely to give rise to a claim.

The Authority will considers proposals both with and without terrorist coverage. The cost of this coverage will be weighed carefully with its benefit.

All information included in the responses to this RFP shall become property of the Authority. The Authority shall not, in any event, be liable for any pre-contractual expenses incurred by the Proposers in the preparation of their proposals. The Authority and its respective officials, agents, representatives and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. If any differences exist between the Insurance Specifications summary sheet and the policy specimen, the terms and conditions specified in the policy specimen will supersede the Insurance Specifications summary sheet. Further, the Authority does not warrant nor make any representations as to the quality,

content, accuracy or completeness of the information, text, graphics, links or other facet of this RFP once it has been downloaded or printed from this or any server, and hereby disclaims any liability for technical errors or difficulties of any nature that may arise in connection with a website on which this RFP is posted, or in connection with any other electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.

All proposals submitted to the Authority in response to this RFP may be disclosed in accordance with the standards specified in the Freedom of Information Law, Article 6 of the Public Officers Law of the State of New York ("FOIL"). A Proposer may provide in writing, at the time of its submission, a detailed description of the specific information contained in its submission, which it has determined is a trade secret and which, if disclosed, would cause substantial injury to such organization's competitive position, using **Form E**. This characterization shall not be determinative, and the Authority assumes no responsibility for any disclosure or use of data submitted.

The Authority reserves the right, for any or no reason and in its sole and absolute discretion, (1) to amend, in whole or part, withdraw or cancel this RFP, (2) waive irregularities in the proposals, (3) to meet with selected Proposers prior to the designation of a best qualified Proposer, (4) to accept or reject any proposals and any proposed exceptions, and (5) to accept or reject any or all proposals for any or no reason and with no penalty to the Authority.

## **INSURERS**

Only proposals offering insurance policies issued by insurers listed and rated A-/X or better in the latest edition of Best's Key rating guide will be considered responsive in regard to any and all of the available contracts.

## **EVALUATION OF PROPOSALS**

Responsive proposals will be evaluated with consideration for the following factors in order of priority:

1. Conformity with the request for Proposals, including the Insurance Specification, and the specimen policy terms;
2. Cost; and
3. Unsatisfactory past experience, if any, with the proposing parties.

By submission of its proposal, the Proposer authorizes the Authority to investigate the qualifications of the Proposer under consideration, including pending criminal or civil investigations, to require confirmation of information furnished by a Proposer, and to require additional evidence of qualifications to perform the work described in this RFP or information clarifying their submissions. The Authority reserves the right to reject any and all proposals submitted and/or to request additional information from all proposers.

Authority staff will promptly review each submission and evaluate all those deemed responsive. The Treasurer and Executive Director will recommend to the Authority Board the proposal they believe best meets the needs of the Authority on the basis of the criteria enumerated above. The Authority Board will make any and all final determinations and contract awards. The Authority Board reserves absolute discretion

to accept or reject any and all proposals and recommendations, and to award or reject any contract, and to waive any irregularity in the proposals.

Information concerning the availability of New York State subcontractors and suppliers is available from the New York State Department of Economic Development, which includes the directory of certified minority and women owned businesses.

**It is the policy of the New York State Bridge Authority to encourage the use of New York State subcontractors and suppliers, and to promote the participation of minority and women owned businesses where possible, in the procurement of goods and services.**

## **PROPOSAL CONTENT**

The Authority reserves the right to reject any proposal that is, in its judgment, unclear about any terms, obscure, or confusing.

Each proposal must contain all the information necessary to enable the Authority to evaluate it without further inquiry.

The following items are essential:

- A summary statement of the coverage offered explicitly reciting whether or not the proposed policy(s) conform to the Specifications and the details of any variation in form or content with the Specifications or the current policy;
- The names and addresses of all parties included in the proposal and their roles in providing the insurance (broker, agent, insurer, etc.);
- A.M. Best rating of all insurance companies participating in the proposal;
- Cost;
- Any additional information the proposer believes the Authority should have to assist it in evaluating the proposal; and
- Offerer disclosure and certification Forms A-1, A-2, A-3, B, C, D, & E.
- NYSBA EEO and NYSBA MWBE forms

## **COST**

For all contracts the cost will be a lump sum for all coverage identified in the Insurance Specifications and policy specimen or this RFP.

In each case, pricing should be calculated assuming a full lump sum payment upon receipt of invoice by the Authority within 30 days of the start of the coverage year.

## STATE FINANCE LAW § 139 LOBBYING LAW; ETHICS AND CONFLICTS

Pursuant to New York State Finance Law §139-j and §139-k, this RFP includes and imposes certain restrictions on communications between the Authority and a Proposer during the procurement process. A Proposer is restricted from making contacts from the earliest date of notice of intent to solicit a “request for proposal” through final award and approval of the Contract by the Authority (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified in Section 1 of this solicitation. Authority employees and Board Members are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Respondent pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Respondent is debarred from obtaining governmental Procurement Contracts as defined in State Finance Law Section §139-j. Further information about these requirements can be found on the NYS Office of General Services website at [www.ogs.state.ny.us](http://www.ogs.state.ny.us). The Respondent is required to include **Forms A-1, A-2 and A-3** with its proposal.

During the term of any contract resulting from this RFP, the Proposer shall not engage any person who is or has been at any time in the employ of the Authority or New York State to perform services under the contract, without the consent of the Authority. Further, during the term of any such contract, no person who is employed by the Proposer and who is disqualified from providing services under the Agreement pursuant to the New York State Public Officers Law or any other applicable laws, rules, regulations, guidelines or policies may share in any net revenues the Proposer derives from the Agreement. By submission of its proposal, the Proposer represents and certifies that it has not employed or retained any company or person, other than a bona fide employee working for the Proposer, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent on or resulting from the award or making of the contract. The Proposer is required to include **Form B** with its proposal.

## SUBMISSIONS

Offerers/Proposers, who wish to be assigned exclusive rights to insurance companies, must provide a list of preferred companies they desire to offer a proposal for. This list must be received by Brian Bushek, Treasurer of the New York State Bridge Authority, at the Bridge Authority’s main office, at the Mid-Hudson Bridge Plaza, P.O. Box 1010, Highland, New York 12528, no later than 10:00 A.M., May 25, 2012.

Proposals must be submitted in hard copy form, in duplicate, signed by an authorized officer of the proposer and received by Brian Bushek, Treasurer of the New York State Bridge Authority, at the Bridge Authority’s main office, at the Mid-Hudson Bridge Plaza, P.O. Box 1010, Highland, New York 12528, no later than 2:00 P.M., June 29, 2012.

Per the requirements of State Finance Law § 139 it is mandatory that each offerer (proposer) submits, together with the proposal, the following completed forms:

- 1) **Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139 Forms A-1, A-2, A-3**
- 2) **FORM B** Conflict of Interest Affidavit

- |           |                              |
|-----------|------------------------------|
| 3) FORM C | Certificate of Non-Collusion |
| 4) FORM D | Vendor Information Form      |
| 5) FORM E | FOIL Confidentiality Notice  |

## **PROCESS AND AWARD**

Authority staff will promptly review each submission and evaluate all those deemed responsive. The Treasurer and Executive Director will recommend to the Authority Board the proposal they believe best meets the needs of the Authority on the basis of the criteria enumerated above. The Authority Board will make any and all final determinations and contract awards. The Authority Board reserves absolute discretion to accept or reject any and all proposals and recommendations, and to award or reject any contract.

## **STANDARD CLAUSES**

Appendix "A" entitled "Standard Clauses for all New York State Bridge Authority Contracts" is annexed hereto and incorporated herein.

MWBE Requirements and Procedures. Appendix "B" entitled "Participation by Minority Group Members and Women with Respect to New York State Bridge Authority Contracts: Requirements and Procedures" is annexed hereto and incorporated herein.

## **ATTACHMENTS**

1. Insurance Specifications including Policy Specimen
2. 4-Year Loss Runs
3. 2011 Annual Report. The 2011 Annual Report is available online at [www.nysba.net](http://www.nysba.net)
4. FORM A-1 State Finance Law Section 139 Certification
5. FORM A-2 Offeror Certification of Compliance with State Finance Law §139-k(5)
6. FORM A-3 Offeror Disclosure of Prior Non-Responsibility Determinations
7. FORM B Conflict of Interest Affidavit
8. FORM C Certificate of Non-Collusion
9. FORM D Vendor Information Form
10. FORM E FOIL Confidentiality Notice
11. NYSBA EEO Form 100
12. NYSBA EEO Form 200
13. NYSBA MWBE Form 100
14. NYSBA MWBE Form 200
15. NYSBA MWBE Form 300

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

**NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A, the New York State Bridge Authority ("NYSBA") recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of NYSBA contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" (the "Disparity Study"). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that the NYSBA establish goals for maximum feasible participation of New York State Certified minority- and women-owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

**Business Participation Opportunities for MWBEs**

For purposes of this solicitation, the NYSBA hereby establishes an overall goal of 20% for MWBE participation, 8% for Minority-Owned Business Enterprises ("MBE") participation and 12% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that the NYSBA may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>. For guidance on how the NYSBA will determine a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

In accordance with Executive Law § 316-a and 5 NYCRR § 142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth above, such finding constitutes a breach of Contract and the NYSBA may withhold payment from the Contractor as liquidated damages.

By submitting a bid or proposal, a bidder on the Contract ("Bidder") agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a MWBE Utilization Plan on MWBE Form # 100 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the NYSBA.
- B. The NYSBA will review the submitted MWBE Utilization Plan and advise the Bidder of the NYSBA's acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the NYSBA, at PO Box 1010, Highland, New York 12528, phone number (845) 691-7245, facsimile (845) 691-3560, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the NYSBA to be inadequate, the NYSBA shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on MWBE Form # 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. The NYSBA may disqualify a Bidder as being non-responsive under the following circumstances:
  - a) If a Bidder fails to submit a MWBE Utilization Plan;
  - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - c) If a Bidder fails to submit a request for waiver; or
  - d) If the NYSBA determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to the NYSBA, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Monthly MWBE Participation Performance Report on Form # 300 to the NYSBA, at PO Box 1010, Highland, New York 12528, phone number (845) 691-7245, facsimile (845) 691-3560, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

## Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A to the Contract, *Standard Clauses for all New York State Bridge Authority Contracts*, including Clause 4, *Equal Employment Opportunities for Minorities and Women*, and Clause 18, *Omnibus Procurement Act of 1992*.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (EEO Form # 100) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the NYSBA a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

## EXHIBIT A

### STANDARD CLAUSES FOR ALL NEW YORK STATE BRIDGE AUTHORITY CONTRACTS

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

#### 1. NON-ASSIGNMENT

**CLAUSE.** This contract may not be assigned, and no part or portion may be subcontracted, by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the Authority and any attempts to assign the contract without the Authority's written consent are null and void.

#### 2. WORKERS'

**COMPENSATION BENEFITS.** This contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included.

#### 3. NON-DISCRIMINATION

**REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, genetic predisposition or carrier status, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction,

alteration or repair of any public building or public work, or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract, as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

#### 4. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with 312 of the Executive Law, if this contract is: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the Authority is committed to

expend, or does expend, funds in return for labor, services, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the Authority; or (b) a written agreement in excess of \$100,000 whereby the Authority is committed to expend, or does expend, funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon, or (c) a written agreement in excess of \$100,000 whereby the owner of a State-assisted housing project is committed to expend, or does expend, funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a.) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination, and rates of pay, or other forms of compensation.

(b.) At the request of the Authority, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status, and that agency, union, or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.

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

The Contractor shall include the provisions of (a), (b), and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated

to this Agreement; or (ii) employment outside New York State. The Authority shall consider compliance by the Contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The Authority shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the Authority shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

#### 5. WAGE AND HOURS

**PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the New York State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the New York State Labor Department in accordance with the Labor Law. Additionally, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with subdivision 3-a of this Section 220 of the Labor Law shall be a condition precedent to payment by the Authority of any sums due and owing to any person for work done upon the project.

#### 6. NON-COLLUSIVE BIDDING REQUIREMENT.

In accordance with Public Authorities Law Section 2878, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and

without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the Authority a non-collusive bidding certification on Contractor's behalf.

**7. INTERNATIONAL**

**BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Authority within five (5) business days of such conviction, determination or disposition of appeal.

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

**9. RECORD-KEEPING REQUIREMENT.** The Contractor shall

establish and maintain complete and accurate books, records, documents, accounts or other evidence directly pertinent to performance under this contract (the "Records") for a period of six (6) years following final payment or to the termination of this contract, whichever is later, and any extensions thereto. The Authority and Attorney General or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to such Records during the contract term, extensions thereof and said six (6) year period thereafter for the purposes of inspection, auditing and copying. "Termination of the contract", as used in this clause 9, shall mean the later of completion of the work of the contract or the end date of the term stated in the contract. The Authority shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform the Authority's Executive Director with a copy to its Records Access Officer, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Authority's right to discovery in any pending or future litigation.

**10. LIABILITY.** Contractor shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of Contractor, in connection with their services under this contract. Further, it is expressly understood that Contractor shall indemnify and save harmless the Authority and/or the State of New York, as their interests may appear, from claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance of the services of Contractor under this contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided.

**11. GOVERNING LAW.** This contract shall be governed by the laws of the

State of New York except where the Federal Supremacy clause requires otherwise.

**12. LATE PAYMENT.**

Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Public Authorities Law Section 2880 and 21 NYCRR Pt 207.

**13. NO ARBITRATION.**

Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**14. SERVICE OF PROCESS.**

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

**15. OBSERVANCE OF LAWS.**

The Contractor agrees to observe all Federal, State and local laws and regulations and to procure all necessary licenses and permits.

**16. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a.) Federal Employer Identification Number and/or Federal Social Security Number:

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must

include the payee's, i.e., the seller's or lessor's, identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both when the payee has both such numbers. Failure to include the number or numbers may delay payment. Where the payee does not have such number or numbers, the payee must give, on his or her invoice or New York State standard voucher, the reason or reasons why the payee does not have such number or numbers.

(b.) Privacy Notification:

(1.) The authority to request the above personal information from a seller of goods or services, or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses, and others who have been delinquent in filing tax returns or may have understated their tax liabilities, and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes, and for any other purpose authorized by law.

(2.) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. This information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.

**17. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.**

The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of New York State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical

hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the State.

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

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

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

NYS Department of Economic  
Development  
Division for Small Business  
30 South Street B 7th Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

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

NYS Department of Economic

Development  
Division of Minority and  
Women's Business  
Development  
30 South Pearl Street, 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the Authority;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide such documentation to the Authority upon request; and

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

**19. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the state of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**20. STATE FINANCE LAW SECTION 139.** The Contractor hereby certifies that all information provided to the Authority with respect to State Finance Law Section 139 is complete, true and accurate. The Authority reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law Section 139-k, was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

**21. ETHICS.** During the term of this Agreement, the Contractor shall not engage any person who is or has been at any time in the employ of the Authority or New York State to perform services under the Agreement, without the consent of the Authority. The Authority may request that the Contractor provide it with whatever information the Authority deems

appropriate about such person's engagement, work cooperatively with the Authority to solicit advice from the New York State Commission on Public Integrity or other body having jurisdiction, and if deemed appropriate by the Authority, instruct such person to seek the opinion of the New York State Commission on Public Integrity. The Contractor agrees that any such employee assigned to perform services under this Agreement shall be assigned in accordance with the provisions of the New York State Public Officers Law and any other laws, rules, regulations, guidelines or policies applicable to the service of current or former Authority or New York State employees. Further, during the term of the Agreement, no person who is employed by the Contractor and who is disqualified from providing services under the Agreement pursuant to the New York State Public Officers Law or any other applicable laws, rules, regulations, guidelines or policies may share in any net revenues the Contractor derives from the Agreement. The Authority shall have the right to cancel or terminate this Agreement at any time if any work performed under the Agreement is in conflict with the provisions of the New York State Public Officers Law, other laws applicable to the service of current or former Authority or New York State employees, and/or the rules, regulations, guidelines or policies promulgated or issued by the New York State Commission on Public Integrity.

**22. OSHA 10 HOUR CONSTRUCTION SAFETY AND HEALTH COURSE.** If this is a public work contract covered by Article 8 of the New York State Labor Law, it shall be required that on all public work projects of at least \$250,000.00, all laborers, workers and mechanics working on the site be certified as having successfully completed A MINIMUM OF 10 HOURS OF CONSTRUCTION AND HEALTH SAFETY TRAINING, as approved by the United States Department of Labor's Occupational Safety and Health Administration (OSHA). The Contractor, sub-contractor or other person doing or contracting to do the whole or part of the work contemplated by the contract, shall provide proof of certification for successfully completing

the course for each employee prior to performing any work on the project.

**23. COMPTROLLER'S**

**APPROVAL.** Unless otherwise provided by resolution of the Authority, to the extent required by Section 2879-a of the Public Authorities Law, if this contract exceeds \$1,000,000, or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the Authority agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$1,000,000, it shall not be valid, effective or binding upon the Authority until it has been approved by the State Comptroller and filed in his office.

**24. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit, the terms of this Exhibit shall control, except that to the extent required for the purpose of obtaining Federal Aid in connection with this contract, any contract provisions required for Federal Aid projects shall supersede any conflicting provisions.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the Authority determines that such action is in the best interest of the State.

**26. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law, Section 899-aa; State Technology Law Section 208).

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

**28. ENTIRE AGREEMENT.** This contract, together with this Exhibit, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties hereto.

## Appendix B

### **PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO NEW YORK STATE BRIDGE AUTHORITY CONTRACTS: REQUIREMENTS AND PROCEDURES**

#### **I. General Provisions**

- A. The New York State Bridge Authority (“NYSBA”) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all NYS Bridge Authority contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon; or (3) in excess of \$100,000 for professional services.
- B. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the NYSBA, to fully comply and cooperate with the NYSBA in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 and Executive Law § 313(7) shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

#### **II. Contract Goals**

- A. For purposes of this procurement, the NYSBA hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 8% for Minority-Owned Business Enterprises (“MBE”) participation and 12% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/mwbe.html>.

## Appendix B

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

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

### **III. Equal Employment Opportunity (EEO)**

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, the contracting agency shall waive the applicability of these requirements to the extent of such conflict.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  2. The Contractor shall submit an EEO policy statement to the NYSBA within seventy two (72) hours after the date of the notice by the NYSBA to award the Contract to the Contractor.
  3. The Contractor’s EEO policy statement shall include the following language:
    - (a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, 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.

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- (b) The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- (c) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- (d) The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- (e) The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 3 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

### **C. NYSBA EEO – Form 100 – Staffing Plan**

Prior to the award of this Contract, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it within a reasonable time, but no later than the time of award of the contract.

### **D. NYSBA EEO – Form 200 - Workforce Employment Monthly Utilization Report**

1. Once a contract has been awarded and during the term of the Contract, Contractor is responsible for updating and providing notice to the NYSBA of any changes to the previously submitted Staffing Plan. This information is to be submitted on a monthly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

## Appendix B

3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of an individual's age, race, creed (religion), color, sex, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

### **IV. NYSBA MWBE – Form 100 - Utilization Plan**

- A. As required by Executive Law § 313(5), the Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Appendix. The Contract shall attempt, in good faith, to utilize the enterprises identified within the Utilization Plan at least to the extent indicated.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the NYSBA shall be entitled to any remedy provided in the Contract, including but not limited to, a finding of Contractor non-responsiveness.
- D. The Contractor's good faith efforts shall be determined pursuant to Executive Law § 313(7).

### **V. Waivers pursuant to Executive Law § 313(6) - Request for Waiver - MWBE- Form 200**

- A. For Waiver Requests Contractor should use MWBE - Form 200 - Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals and setting forth the reasons for such Contractor's inability to meet any or all of the participation requirements. If the documentation

## Appendix B

included with the waiver request is complete, the NYSBA shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

- C. The NYSBA shall review the waiver application in accordance with the criteria set forth in Executive Law § 313(6) and (7).
- D. If, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports, the NYSBA determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the NYSBA may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

### **VI. Monthly MWBE Participation Performance Report, MWBE - Form 300**

Contractor is required to submit a Monthly MWBE Contractor Compliance Report (Form MWBE-300) to the NYSBA by the 10th day following the last day of each month over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

### **VII. Liquidated Damages - MWBE Participation**

- A. In accordance with Executive Law § 316-a and 5 NYCRR § 142.13, where the NYSBA determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the NYSBA liquidated damages.
- B. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the NYSBA, Contractor shall pay such liquidated damages to the NYSBA within sixty (60) days after they are assessed by the NYSBA unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the NYSBA.

# NEW YORK STATE BRIDGE AUTHORITY

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

### M/WBE AND EEO POLICY STATEMENT

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

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

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

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

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

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of an individual's age, race, creed (religion), color, national origin, sexual orientation, military status, sex, disability,

**NEW YORK STATE BRIDGE AUTHORITY**

predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

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

By \_\_\_\_\_

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

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

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

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

**M/WBE Contract Goals**

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

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

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

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

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

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

**NEW YORK STATE BRIDGE AUTHORITY  
MID-HUDSON BRIDGE PLAZA  
HIGHLAND, NEW YORK 12528  
May 10, 2012  
INSURANCE SPECIFICATIONS**

**Contract Number: BA2012-OA-008-IN**  
**Contract Title: Public Officials/Employment Practices Liability Insurance**

The facilities that comprise the New York State Bridge Authority and their locations are as follows:

- A. Rip Van Winkle Bridge**  
Catskill, NY 12414  
(Greene County)
- B. Kingston-Rhinecliff Bridge**  
Kingston, NY 12401  
(Ulster County)
- C. Mid-Hudson Bridge (including Headquarters Buildings)**  
Highland, NY 12528  
(Ulster County)
- D. Newburgh-Beacon Bridge**  
Beacon, NY 12508  
(Dutchess County)
- E. Bear Mountain Bridge**  
Fort Montgomery, NY 10922  
(Rockland County)
- F. Walkway Over the Hudson**  
Highland, NY 12528  
(Ulster County)

**COVERAGE:**

There is a \$3,000,000 limit for each claim and aggregate for wrongful acts of all Board Members and Employees of the Authority. There are 7 members, 133 permanent employees and 53 temporary employees at this time.

## **Public Officials and Employees Liability Insurance**

**Retention:** \$25,000. Please see policy specimen for other details.

**Policy Period:** One or two years beginning August 1, 2012.

**Please refer to copy of expiring policy for further detail.**

### **Submission of Proposals:**

Proposals must be provided in duplicate, signed by an authorized officer of the proposer and received by Brian Bushek, Treasurer, at the New York State Bridge Authority's Headquarters Office, Mid-Hudson Bridge Plaza, Highland, New York 12528, (mailing address – P.O. Box 1010, Highland, New York 12528) no later than 2:00 P.M., Friday, June 29, 2012.

Any inquiries concerning this contract should be directed to Brian Bushek at the above address or at (845) 691-7245, fax (845) 691-3560.

Note that in the event of any discrepancy between this summary of Insurance Specifications and the Policy Specimen, adherence to the terms and conditions of the Policy Specimen will be required for evaluation of proposals.

**DIRECTORS AND OFFICERS LIABILITY POLICY  
DECLARATIONS**



Corporate Office  
945 E. Paces Ferry Rd  
Suite 1800  
Atlanta, GA 30326

COMPANY SYMBOL <u>L</u>	POLICY PREFIX & NUMBER <u>HP637325</u>	RENEWAL OF <u>LHP629925</u>
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•THIS IS A CLAIMS MADE POLICY. PLEASE READ IT CAREFULLY. •

THIS POLICY IS ISSUED BY: LANDMARK AMERICAN INSURANCE COMPANY (hereinafter referred to as the Insurer)

ITEM 1. INSURED'S NAME AND MAILING ADDRESS

PRODUCER'S NAME AND ADDRESS

NEW YORK STATE BRIDGE AUTHORITY  
P.O. BOX 1010  
MID-HUDSON BRIDGE TOLL PLAZA  
HIGHLAND, NY 12528

IN CONSIDERATION OF THE PAYMENT OF THE PREMIUM, IN RELIANCE UPON THE STATEMENTS HEREIN OR ATTACHED HERETO, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, THE INSURER AGREES TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

ITEM 2. POLICY PERIOD:

FROM 08/01/2010 TO 08/01/2012 12:01 AM Standard Time at the Insured's address as stated herein

ITEM 3. LIMIT OF LIABILITY:

\$ 3,000,000 Aggregate Limit of Liability each policy period

ITEM 4. RETENTION:

\$ See RSG 202032 Insuring Agreement A  
\$ See RSG 202032 Insuring Agreement B  
\$ See RSG 202032 Insuring Agreement C  
\$ See RSG 202032 Employment Practices Claim

ITEM 5. PREMIUM:

\$ 31,448.00

ITEM 6. POLICY FORM AND ENDORSEMENTS MADE A PART OF THIS POLICY AT THE TIME OF ISSUE:

SEE RSG 200007 0204 - SUPPLEMENTAL DECLARATIONS - SCHEDULE OF ENDORSEMENTS; RSG 211003 0609 - DIRECTORS AND OFFICERS LIABILITY POLICY - NOT FOR PROFIT ORGANIZATION - 2009

THESE DECLARATIONS TOGETHER WITH THE COMPLETED, SIGNED AND DATED APPLICATION, POLICY FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned: \_\_\_\_\_

06/24/2010  
DATE

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

RSG 200006 0204

A member of Allghany Insurance Holdings LLC



This is to certify that Excess Line Association of New York received and reviewed the attached insurance document in accordance with Article 21 of the New York State Insurance Law 09/08/2010

THE INSURER(S) NAMED HEREIN IS (ARE) NOT LICENSED BY THE STATE OF NEW YORK, NOT SUBJECT TO ITS SUPERVISION, AND IN THE EVENT OF THE INSOLVENCY OF THE INSURER(S), NOT PROTECTED BY THE NEW YORK STATE SECURITY FUNDS. THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS OF THE INSURANCE DEPARTMENT PERTAINING TO POLICY FORMS.

**DIRECTORS AND OFFICERS LIABILITY POLICY  
SUPPLEMENTAL DECLARATIONS**



POLICY NUMBER:   LHP637325  

**SCHEDULE OF ENDORSEMENTS**

TITLE	FORM NUMBER
Disclosure Pursuant to Terrorism Risk Insurance Act	RSG 204123 0108
Amended Settlement Clause	RSG 204091 0204
Cap on Losses From Certified Acts of Terrorism	RSG 204081 0108
Coverage Extension - Public Officials	RSG 214038 0204
Exclusion - Prior and or Pending Litigation Backdated	RSG 206071 0204
Full Severability	RSG 214044 0204
New York - Amendatory	RSG 212005 0706
New York - Retention Amounts	RSG 202032 0404
New York Changes - Cancellation and Nonrenewal	RSG 203047 0404
New York Changes - Discovery Period	RSG 212004 0104
Separate Limit - Employment Practices Claim	RSG 204107 0204
Service Of Suit	RSG 204108 0407
Side a Non-Rescindable Coverage	RSG 204136 0606
Two Year Aggregate Reinstatement (Prepaid)	RSG 204135 1205



*This Endorsement Changes The Policy. Please Read It Carefully.*

## AMENDED SETTLEMENT CLAUSE

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This endorsement modifies insurance provided under the following:

**DIRECTORS AND OFFICERS LIABILITY POLICY - NOT FOR PROFIT ORGANIZATION  
DIRECTORS AND OFFICERS LIABILITY POLICY - PRIVATE COMPANY**

SECTION V. – CONDITIONS, A. Duty to Defend is deleted and replaced by the following:

**A. Duty to Defend**

It shall be the right and the duty of the **Insurer** to defend any **Claim** against the **Insured** for which coverage applies under this policy. No **Insured** may incur any **Defense Expenses**, admit liability for or settle any **Claim** or negotiate any settlement without the **Insurer's** prior written consent; such consent not to be unreasonably withheld. Any **Defense Expenses** incurred or settlements made without the prior written consent of the **Insurer** will not be covered under this policy. The **Insurer** shall have the right to investigate and conduct negotiations and, with the consent of the **Insured**, to enter into a settlement of any **Claim** that the **Insurer** deems appropriate. If the **Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the **Insurer's** recommendations, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed:

1. The amount for which the **Insurer** could have settled such **Claim** plus **Defense Expenses** incurred as of the date such settlement was proposed in writing by the **Insurer** ("Settlement Opportunity Amount"); plus
2. Fifty percent (50%) of covered **Loss** in excess of such Settlement Opportunity Amount subject to the policy's Limit of Liability.

In no event shall the **Insurer** be liable under this policy for more than the Limit of Liability shown in Item 3. of the Declarations Page.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM**

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This endorsement modifies insurance provided under the following:

**DIRECTORS AND OFFICERS LIABILITY POLICY – NOT FOR PROFIT ORGANIZATIONS  
DIRECTORS AND OFFICERS LIABILITY POLICY - PUBLIC COMPANY  
DIRECTORS AND OFFICERS LIABILITY POLICY - PRIVATE COMPANY  
EXCESS DIRECTORS AND OFFICERS LIABILITY POLICY  
EXCESS LIABILITY POLICY**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and the **Insurer** has met our insurer deductible under the Terrorism Risk Insurance Act, the **Insurer** shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**Certified Act of Terrorism** means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a **Certified Act of Terrorism** include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

All other terms and conditions of this policy remain unchanged.

**Policy No.:** LHP637325      **Effective:** 08/01/2010

*This Endorsement Changes The Policy. Please Read It Carefully.*

## COVERAGE EXTENSION - PUBLIC OFFICIALS

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This endorsement modifies insurance provided under the following:

### DIRECTORS AND OFFICERS LIABILITY POLICY – NOT FOR PROFIT ORGANIZATION

This policy is amended as follows:

- A. SECTION III. – DEFINITIONS, H., I. and O. are deleted and replaced by the following:
- H. **Insured Organization** means the municipality, governmental body, department or unit which is named in Item 1. of the Declarations Page.
  - I. **Insured Person** means:
    - 1. All persons who were, now are or shall be lawfully elected or appointed officials or **Employees** while acting solely in his or her capacity as such or on behalf of the **Insured Organization**;
    - 2. Commissions, boards, or other units, and members and **Employees** thereof, operated by and under the jurisdiction of such **Insured Organization** and within an apportionment of the total operating budget submitted to the **Insurer**;
    - 3. Volunteers acting solely in his or her capacity as such or on behalf of, at the request of and under the direction of, the **Insured Organization**; and
    - 4. Officials and **Employees** of the **Insured Organization** appointed at the request of the **Insured Organization** to serve with an outside tax exempt entity.
  - O. **Wrongful Act** means:
    - 1. With respect to an **Insured Person**, any **Employment Practices Wrongful Act** or any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty while acting solely in his or her capacity as such and on behalf of the **Insured Organization**; or
    - 2. With respect to the **Insured Organization**, any **Employment Practices Wrongful Act** or any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by or on behalf of the **Insured Organization**.
- B. SECTION III. – DEFINITIONS, L. **Personal Injury Wrongful Act** shall be deleted in its entirety.
- C. SECTION IV. – EXCLUSIONS, 7. a. and b. are deleted and replaced by the following:
- 7. Brought by or on behalf of one **Insured** against another **Insured**, however, with respect to any allegations of an **Employment Practices Claim**, this EXCLUSION shall only apply to cross-claims or counter-claims brought by one **Insured** against another **Insured**;
- D. SECTION IV. – EXCLUSIONS, 9. is deleted and replaced by the following:
- 9. Alleging, arising out of, based upon or attributable to, in whole or in part, the performance or rendering of or failure to perform professional services to anyone other than the **Insured Organization** by any member of the medical profession, or by any lawyer, architect, engineer or accountant;
- E. SECTION IV. – EXCLUSIONS shall be amended by adding the following:
- 12. Alleging, arising out of, based upon or attributable to inverse condemnation, temporary or permanent taking, adverse possession or dedication by adverse use;
  - 13. Alleging, arising out of, based upon or attributable to strikes, riots or civil commotion;

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14. Alleging, arising out of, based upon or attributable to the operation of or activities of any schools, airports, transit authorities, hospitals, clinics, nursing homes or other health care operations, utilities, housing authorities, jails or detention facilities, law enforcement agencies or fire fighting authorities unless such entity is the **Insured** named in Item 1. of the Declarations Page or by an endorsement attached. Regardless of the named **Insured**, this EXCLUSION shall apply to any **Claim** alleging **Employment Practices Wrongful Acts** that arise out of the **Insured Organization's** operation of or activities in conjunction with any jails or detention facilities, law enforcement agencies or fire fighting authorities, unless such coverage is specifically added by an endorsement attached;
  15. Alleging, arising out of, based upon or attributable to the issuance of bonds or the improper collection of taxes;
  16. Alleging, arising out of, based upon or attributable to any construction, architectural or engineering contracts and/or agreements or the liability of others assumed by any **Insured** under the terms of any such contract or agreement unless such liability would have attached to any **Insured** in the absence of the contract or agreement; or
  17. For any actual or alleged libel, slander or defamation in any form; provided this EXCLUSION shall not apply to allegations of libel, slander, or defamation in any form made solely in connection with an **Employment Practices Claim**.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

**EXCLUSION – PRIOR AND/OR PENDING LITIGATION BACKDATED**

This endorsement modifies insurance provided under the following:

**DIRECTORS AND OFFICERS LIABILITY POLICY - NOT FOR PROFIT ORGANIZATION  
DIRECTORS AND OFFICERS LIABILITY POLICY - PRIVATE COMPANY  
DIRECTORS AND OFFICERS LIABILITY POLICY - PUBLIC COMPANY**

SECTION IV. - EXCLUSIONS, 10. is deleted and replaced with the following:

10. Alleging, arising out of, based upon or attributable to, in whole or in part, any litigation involving any **Insured** that was commenced or initiated prior to, or pending as of August 01, 2004, or arising out of or based upon, in whole or in part, any facts or circumstances underlying or alleged in any such prior or pending litigation.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **FULL SEVERABILITY**

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This endorsement modifies insurance provided under the following:

### **DIRECTORS AND OFFICERS LIABILITY POLICY – NOT FOR PROFIT ORGANIZATION**

SECTION V. – CONDITIONS, J. Representations is deleted and replaced by the following:

#### **J. Representations**

The **Insured** represents that the information, particulars, documents, representations and statements contained in the **Application** are complete, true and accurate; are deemed incorporated into and constituting part of this policy; are material to the acceptance of the risk assumed by the **Insurer** under this policy. This policy is issued in reliance upon the truth of such representations. No knowledge or information possessed by any **Insured** will be imputed to any other **Insured**. If any of the information, particulars, documents, representations and statements contained in the **Application** are untrue, this policy will be void with respect to any **Insured** who knew of such untruth.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## NEW YORK - AMENDATORY

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This endorsement modifies insurance provided under the following:

### DIRECTORS AND OFFICERS LIABILITY POLICY - NOT FOR PROFIT ORGANIZATION

1. SECTION I. – INSURING AGREEMENTS, A., B. and C. are deleted and replaced by the following:
  - A. With the **Insured Person** that if a **Claim** for a **Wrongful Act** is first made against any **Insured Person** during the **Policy Period**, or any subsequent renewal of this policy or during any applicable extension period and reported in accordance with SECTION V. – CONDITIONS, C. Notice of Claim or Circumstance of this policy, the **Insurer** will pay on behalf of such **Insured Person** all **Loss** such **Insured Person** is legally obligated to pay, except and to the extent that the **Insured Organization** is required or permitted to indemnify such **Insured Persons**.
  - B. With the **Insured Organization** that if a **Claim** for a **Wrongful Act** is first made against any **Insured Person** during the **Policy Period**, or any subsequent renewal of this policy or during any applicable extension period and reported in accordance with SECTION V. – CONDITIONS, C. Notice of Claim or Circumstance of this policy, the **Insurer** will pay on behalf of the **Insured Organization** all **Loss** for which the **Insured Organization** is required or permitted to indemnify the **Insured Person**.
  - C. With the **Insured Organization** that if a **Claim** for a **Wrongful Act** is first made against the **Insured Organization** during the **Policy Period**, or any subsequent renewal of this policy or during any applicable extension period and reported in accordance with SECTION V. – CONDITIONS, C. Notice of Claim or Circumstance of this policy, the **Insurer** will pay on behalf of the **Insured Organization** all **Loss** the **Insured Organization** is legally obligated to pay.
2. SECTION III. DEFINITIONS, B. **Claim** is deleted and replaced by the following:
  - B. **Claim**, either in the singular or the plural, means:
    1. A written demand for monetary relief;
    2. A civil, criminal, administrative, regulatory or arbitration proceeding for monetary relief which is commenced by:
      - a. Service of a complaint or similar pleading;
      - b. Return of an indictment (in the case of a criminal proceeding); or
      - c. Receipt of a notice of charges;
    3. An administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission (“EEOC”) or similar state, local or foreign agency, which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the **Insured**.
3. SECTION V – CONDITIONS, C. Notice of Claim or Circumstance is deleted and replaced by the following:
  - C. **Notice of Claim or Circumstance**
    1. If, during the **Policy Period** or Discovery Period (if applicable), any **Claim** is first made, it shall be a condition precedent to the **Insurer’s** obligation to pay, that the **Insured** give written notice of such **Claim** to the **Insurer** (via certified mail at the address shown on the Declarations Page), as soon as practicable after such **Claim** is first made, but in no event shall such notice be given later than thirty (30) days after either the expiration date or any earlier cancellation date of this policy.

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2. If, during the **Policy Period** or Discovery Period (if applicable), any **Insured** first becomes aware of any facts or circumstances which may reasonably be expected to give rise to a **Claim** against any **Insured** and, as soon as practicable thereafter, but before the expiration date or any earlier cancellation date of this policy, gives to the **Insurer** written notice (via certified mail at the address shown on the Declarations Page), of such facts or circumstances along with the full particulars described below, then any **Claim** subsequently made against any **Insured** arising out of such facts or circumstances will be deemed first made during the **Policy Period**. The written notice shall include, at a minimum:
    - a. The names or identity of the potential claimants and a detailed description of the specific alleged **Wrongful Act**; and
    - b. The circumstances by which the **Insured** first became aware of the specific alleged **Wrongful Act**.
  3. Notice given by or on behalf of the **Insured Persons**, or written notice by or on behalf of the injured party or any other claimant, to any licensed agent of the **Insurer** in the state of New York, with particulars sufficient to identify the **Insured**, shall be deemed notice to the **Insurer**. Failure to give any notice within the time prescribed herein shall not invalidate any **Claim** made by the **Insured** or by any other claimant if it shall be shown not to have been reasonably possible to give such notice within the prescribed time period and notice was given as soon as was reasonably possible.
  4. SECTION V – CONDITIONS, K. No Action Against Insurer is deleted and replaced by the following:

**K. No Action Against Insurer**

No action may be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all of the terms and conditions of this policy and until the amount of any **Insured's** obligation to pay **Loss** has been finally determined either by judgment against such **Insured** after adjudicatory proceedings, or written agreement of the **Insured**, the claimant and the **Insurer**.

No **Insured** has any right under this policy to join the **Insurer** as a party to any **Claim** against an **Insured** to determine the liability of such **Insured**, nor shall the **Insurer** be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**. Bankruptcy or insolvency of an **Insured Person** or of an **Insured Person's** estate shall not relieve the **Insurer** of any of its obligations hereunder.

5. SECTION V. – CONDITIONS is amended by adding the following:

**T. Coinsurance**

To the extent that this policy could result in indemnifying the **Insured Persons** in instances in which they may not otherwise be indemnified by the **Insured Organization** under the provisions of Section 721-726 of the Business Corporation Law of the State of New York, the first \$1 million Limit of Liability afforded by this policy (specified in Item 3. of the Declarations Page), shall only apply to 99.9% of a **Loss** and the remaining .1% shall be uninsured and borne by such **Insured Persons**. Where the Limit of Liability exceeds \$1 million, the **Insurer** shall be liable to pay 100% of any **Loss** in excess of \$1 million.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **NEW YORK – RETENTION AMOUNTS**

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This endorsement modifies insurance provided under the following:

**DIRECTORS AND OFFICERS LIABILITY POLICY - NOT FOR PROFIT ORGANIZATION  
DIRECTORS AND OFFICERS LIABILITY POLICY - PRIVATE COMPANY  
DIRECTORS AND OFFICERS LIABILITY POLICY - PUBLIC COMPANY**

ITEM 4. RETENTION of the Declarations Page is deleted and replaced by the following:

**ITEM 4. RETENTION:**

	Each <b>Insured Person</b> , each <b>Claim</b> under Insuring Agreement A; not to exceed
\$ <u>100.00</u>	\$ <u>1,000.00</u> in the aggregate, each <b>Claim</b> under Insuring Agreement A
\$ <u>25,000.00</u>	Insuring Agreement B
\$ <u>25,000.00</u>	Insuring Agreement C
\$ <u>25,000.00</u>	Employment Practices Claim

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **NEW YORK CHANGES – CANCELLATION AND NONRENEWAL**

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This endorsement modifies insurance provided under the following:

**DIRECTORS AND OFFICERS LIABILITY POLICY - NOT FOR PROFIT ORGANIZATION  
DIRECTORS AND OFFICERS LIABILITY POLICY - PRIVATE COMPANY  
DIRECTORS AND OFFICERS LIABILITY POLICY - PUBLIC COMPANY**

SECTION V. – CONDITIONS, G. Cancellation; Renewal Provision is amended to include the following:

**1. Cancellation**

The **Insured Organization** may cancel this policy at any time by written notice or by surrender of this policy to the **Insurer** at the address shown on the Declarations Page.

This policy may only be cancelled by or on behalf of the **Insurer** in the event the **Insured Organization** fails to pay any premium when due. In the event of non-payment of premium by the **Insured Organization**, the **Insurer** may cancel this policy upon fifteen (15) days written notice. The **Insurer** will mail notice to the **Insured Organization's** address as shown in Item 1. of the Declarations Page and to their authorized agent or broker. The mailing of such notice as aforesaid shall be sufficient proof of notice.

If the **Insured Organization** cancels this policy, the **Insurer** will retain the customary short rate proportion of the premium hereon.

The **Insurer** shall not be required to renew this policy upon its expiration. The offer by the **Insurer** of renewal terms, conditions, Limit of Liability and/or premiums varying from those of the expiring policy shall not constitute refusal to renew.

**2. Nonrenewal**

If the **Insurer** decides not to renew this policy, the **Insurer** will send notice as provided in paragraph 4. below along with the reason for nonrenewal.

**3. Conditional Renewal**

If the **Insurer** conditionally renews this policy subject to a:

- a. Change of limits;
- b. Change in type of coverage;
- c. Reduction of coverage;
- d. Increased retention;
- e. Addition of exclusion; or
- f. Increased premiums in excess of ten percent (10%), exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;

the **Insurer** will send notice as provided in paragraph 4. below.

**4. Notices of Nonrenewal and Conditional Renewal**

- a. If the **Insurer** decides not to renew this policy or to conditionally renew this policy as provided in paragraphs 2. and 3. above, the **Insurer** will mail or deliver written notice to the **Insured Organization** shown in the Declarations Page at least sixty (60) days but not more than one hundred twenty (120) days before:

- (1) The expiration date; or

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(2) The anniversary date if this is a continuous policy.

- b. Notice will be mailed or delivered to the **Insured Organization** at the address shown in the policy and to the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.
- c. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase for conditional renewal and description of any other changes.
- d. If the **Insurer** violates any of the provisions of paragraphs 4. a., b. or c. above by sending the **Insured Organization** an incomplete or late conditional renewal notice or a late nonrenewal notice:
  - (1) Coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until sixty (60) days after such notice is mailed or delivered, unless the **Insured Organization**, during this sixty (60) day period, has replaced the coverage or elects to cancel; and
  - (2) On or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another **Policy Period**, at the lower of the current rate or the prior period's rate, unless the **Insured Organization**, during this additional **Policy Period**, has replaced the coverage or elects to cancel.
- e. The **Insurer** will not send the **Insured Organization** notice of nonrenewal or conditional renewal if the **Insured Organization**, their authorized agent or broker or another Insurer of the **Insured Organization** mails or delivers notice that the policy has been replaced or is no longer desired.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

**NEW YORK CHANGES – DISCOVERY PERIOD**

This endorsement modifies insurance provided under the following:

**DIRECTORS AND OFFICERS LIABILITY POLICY – NOT FOR PROFIT ORGANIZATION**

SECTION V. – CONDITIONS, H. Discovery Period is deleted and replaced by the following:

**H. Discovery Period**

**1. Definitions**

Wherever used in this endorsement, the following words have special meaning:

**a. Termination of coverage means:**

- (1) Cancellation or nonrenewal of this policy; or
- (2) Decrease in the Limit of Liability, reduction of coverage, increased deductible or self-insured retention, new exclusion, or any other change in coverage less favorable to the **Insured**.

**b. Public Entity** means a Public Entity as defined in section 107(a)(51) of the New York Insurance Law.

**c. Discovery Period** means both the Automatic Discovery Period and the Optional Discovery Period described in this endorsement.

**2. Discovery Clause**

Upon **Termination of Coverage** afforded by this policy, and only to the extent coverage is terminated, the **Insured Organization** shall have the right to an Automatic Discovery Period or an Optional Discovery Period as follows:

**a. Automatic Discovery Period**

There shall be a period of sixty (60) days (ninety (90) days if the **Insured Organization** is a **Public Entity**) following the effective date of such **Termination of Coverage** (herein referred to as the Automatic Discovery Period) in which to give written notice to the **Insurer** of **Claims** first made against the **Insured** during said sixty (60) or ninety (90) day period for any **Wrongful Act** occurring prior to such **Termination of Coverage** and otherwise covered by this policy. The Automatic Discovery Period shall be void ab initio, if the Optional Discovery Period becomes effective.

**b. Optional Discovery Period**

The **Insured Organization** shall have the right, upon payment of the required additional premium, less any return premium owed because of **Termination of Coverage**, plus any premium for the **Policy Period** which is owed and not yet paid, such premium received by the **Insurer** from the **Insured Organization** as payment for the **Discovery Period** coverage shall first be applied to such premium owed for this policy and any additional premium owed will be due immediately, to a period of three (3) years following the effective date of **Termination of Coverage** (herein referred to as the Optional Discovery Period) in which to give written notice to the **Insurer** of **Claims** first made against the **Insured** during said three (3) year period for any **Wrongful Act** occurring prior to such **Termination of Coverage** and otherwise covered by this policy.

The right to an Optional Discovery Period shall terminate, however, unless written notice of such election together with payment of the required additional premium due, less any return premium owed because of cancellation of this policy, plus any premium for the **Policy Period** which is owed and not yet paid, is received by the **Insurer** not later than the later of: (1) sixty (60) days after the effective date of **Termination of Coverage**; or (2) thirty (30) days after the **Insurer** has mailed or delivered to the **Insured Organization** a written advice of the amount of the required additional premium, if the **Insurer** is obligated to give such written advice.

The required additional premium shall be two hundred percent (200%) of the full annual premium.

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Full annual premium means the premium level in effect immediately prior to the end of the **Policy Period**.

Not later than thirty (30) days after the effective date of **Termination of Coverage**, the **Insurer** shall mail or deliver to the **Insured Organization** a written advice of the amount of the Automatic Discovery Period coverage and the availability of and the amount of the required additional premium and the importance of purchasing the Optional Discovery Period; however, if this policy is cancelled by the **Insurer** due to non-payment of premium or fraud on the part of the **Insured Organization** or the **Insured Persons**, the **Insurer** shall not be required to provide such a premium quotation unless requested by the **Insured Organization**.

If coverage is terminated by the **Insurer** because of non-payment of premium or fraud, and at the effective date of such **Termination of Coverage** the **Insurer** has provided this insurance to the **Insured Organization** and the **Insured Persons** on a claims-made basis without interruption for less than one (1) year, there shall be no right to elect and purchase an Optional Discovery Period. For purposes of this paragraph, **Discovery Period** shall not be considered as time when the **Insurer** was providing this coverage.

An **Insured** shall have the right to purchase the Optional Discovery Period to the extent of **Termination of Coverage** as respects only him or herself, if: (1) the **Insured Organization** has been placed in liquidation or bankruptcy or permanently ceases operation; and (2) the **Insured Organization** or its designated trustee does not purchase the Optional Discovery Period; and (3) within one hundred twenty (120) days of the **Termination of Coverage** the **Insurer** has received from such **Insured** a written request for such Optional Discovery Period coverage. If such **Insured** has not paid the required additional premium when due, then such Optional Discovery Period shall be void ab initio.

The required additional premium for the Optional Discovery Period shall be fully earned by the **Insurer** at the inception of the Optional Discovery Period.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **SEPARATE LIMIT - EMPLOYMENT PRACTICES CLAIM**

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This endorsement modifies insurance provided under the following:

**DIRECTORS AND OFFICERS LIABILITY POLICY - NOT FOR PROFIT ORGANIZATION  
DIRECTORS AND OFFICERS LIABILITY POLICY - PRIVATE COMPANY  
DIRECTORS AND OFFICERS LIABILITY POLICY - PUBLIC COMPANY**

The maximum aggregate Limit of Liability with respect to coverage granted for **Employment Practices Claims** shall be **\$3,000,000**. The Limit of Liability for **Employment Practices Claims** shall be in addition to the Limit of Liability set forth in Item 3. of the Declarations Page.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## SERVICE OF SUIT

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This endorsement modifies insurance provided under the following:

**DIRECTORS AND OFFICERS LIABILITY POLICY - NOT FOR PROFIT ORGANIZATION**  
**DIRECTORS AND OFFICERS LIABILITY POLICY - PRIVATE COMPANY**  
**DIRECTORS AND OFFICERS LIABILITY POLICY - PUBLIC COMPANY**

In the event of the failure of the **Insurer** to pay any amount claimed to be due hereunder, the **Insurer**, at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the **Insurer's** rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court or seek a transfer of a case to another Court as permitted by the laws of the United States or of any state in the United States, moreover, this endorsement is not an agreement that the law of a particular jurisdiction applies to any dispute under the policy.

Service of process in such suit may be made upon the highest one in authority bearing the title "Commissioner", "Director" or "Superintendent" of Insurance of the state or commonwealth wherein the **Insured Organization** named in Item 1. of the Declarations Page of this policy is located, and that in any suit instituted against it based upon this contract the **Insurer** will abide by the final decision of such court or any appellate court in the event of an appeal. The one in authority bearing the title "Commissioner", "Director" or "Superintendent" of Insurance of the state or commonwealth wherein the **Insured Organization** named in Item 1. of the Declarations Page of this policy is located, is hereby authorized and directed to accept service of process on behalf of the **Insurer** in any such suit and/or upon the **Insured's** request to give a written undertaking to the **Insured** that they will enter a general appearance upon the **Insurer's** behalf in the event such a suit shall be instituted.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

**SIDE A NON-RESCINDABLE COVERAGE**

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This endorsement modifies insurance provided under the following:

**DIRECTORS AND OFFICERS LIABILITY POLICY - NOT FOR PROFIT ORGANIZATION  
DIRECTORS AND OFFICERS LIABILITY POLICY - PRIVATE COMPANY  
DIRECTORS AND OFFICERS LIABILITY POLICY - PUBLIC COMPANY**

Notwithstanding anything contained in this policy to the contrary, the coverage provided under SECTION I., INSURING AGREEMENT A. shall be non-rescindable by the Insurer.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **TWO (2) YEAR AGGREGATE REINSTATEMENT (PREPAID)**

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This endorsement modifies insurance provided under the following:

**DIRECTORS AND OFFICERS LIABILITY POLICY – NOT FOR PROFIT ORGANIZATION  
DIRECTORS AND OFFICERS LIABILITY POLICY – PRIVATE COMPANY**

A. ITEM 2. POLICY PERIOD, of the Declarations Page is deleted in its entirety and replaced by the following:

YEAR ONE	From: <u>08/01/2010</u>	To: <u>08/01/2011</u>
YEAR TWO	From: <u>08/01/2011</u>	To: <u>08/01/2012</u>

(All dates are calculated from 12:01 AM Standard Time at the Insured's address as stated in Item 1. of the Declarations Page)

B. ITEM 3. LIMIT OF LIABILITY, of the Declarations Page is deleted in its entirety and replaced by the following:

YEAR ONE	<u>\$ 3,000,000</u>	aggregate for Insuring Agreements A., B. and C., combined
YEAR TWO	<u>\$ 3,000,000</u>	aggregate for Insuring Agreements A., B. and C., combined

A new Limit of Liability shall be available for each **Policy Period** set forth above. However, all **Claims** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events, or the same or related series of facts, circumstances, situations, transactions or events shall be deemed to be a single **Claim** and thus subject to a single Limit of Liability regardless of the **Policy Period** in which the **Claims** occurred.

C. ITEM 5. PREMIUM, of the Declarations Page is deleted in its entirety and replaced by the following:

PRE-PAYMENT \$ 31,448

D. SECTION V. - CONDITIONS, G. Cancellation; Renewal Provision is deleted in its entirety and replaced by the following:

This policy shall not be cancelled by the **Insurer**, except for reason of failure of the **Insured** to pay a premium when due, in which case 10 days notice will be given by the **Insurer**. This policy shall not be cancelled by the **Insured** and all premium shall become fully earned and non-refundable at the policy inception date.

The **Insurer** shall not be required to renew this policy upon its expiration.

All other terms and conditions of this policy remain unchanged.

**Policy No.:** LHP637325      **Effective:** 08/01/2010

## NEW YORK REGULATION 107 STATEMENT

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The **Insured** hereby acknowledges that he/she/it is aware that the Limit(s) of Liability contained in this policy shall be reduced, and may be completely exhausted, by the cost of legal defense and, in such event, the **Insurer** shall not be liable for the costs of legal defense or for the amount of any judgment or settlement to the extent that such exceeds the Limit(s) of Liability of this policy.

Insured: New York State Bridge Authority

By:

(Signed on behalf of all Directors and Officers by  
either the President or Chairman of the Board)

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

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

## NEW YORK REGULATION 121 DISCLOSURE SUPPLEMENT

The words "Us" and "We" as used in this Supplement means the Company issuing this policy. "You" or "Your" means the Insured named on the Declarations Page of this policy.

### 1. Claims-Made Relationship

"Claims-made Relationship" means the period of time between the effective date of the first claims-made policy between Us and You and the cancellation and nonrenewal of the last consecutive claims-made policy between Us and You, where there has been no gap in coverage and does not include any period covered by Discovery Period coverage.

During the first several years of this "claims-made relationship", claims-made rates are comparatively lower than rates for occurrence policies. However, You can expect substantial annual premium increases; independent of overall rate level increases, until the "claims made relationship" reaches maturity.

### 2. Prior Act(s) Exclusion

Coverage under this policy may apply for acts, errors or omissions which occurred prior to the effective date of this policy if a Claim for Damages resulting therefrom is first reported during the Policy Period or during any applicable Discovery Period; provided, however, that, on or before such date You did not know or could not have reasonably foreseen that such Wrongful Act could lead to a Claim. If this policy contains a Prior Act(s) Exclusion, THERE IS NO COVERAGE FOR CLAIMS FIRST REPORTED TO US ARISING OUT OF ACTS, ERRORS OR OMISSIONS THAT OCCURRED PRIOR TO THE INCEPTION DATE OF THIS POLICY.

### 3. Claims-Made Policy

Under a Claims-Made policy, coverage is provided for liability ONLY IF THE CLAIM FOR DAMAGES IS FIRST MADE AGAINST THE INSURED AND REPORTED TO US IN WRITING DURING THE POLICY PERIOD, ANY SUBSEQUENT RENEWAL AND ANY APPLICABLE DISCOVERY PERIOD. All coverage ceases upon termination of this policy, except for the Automatic Discovery Period, and if You purchase an Optional Discovery Period.

### 4. Discovery Period Coverage

The Discovery Period will increase the time in which a Claim may be eligible for this policy's coverage. This time period helps to prevent the occurrence of a Claim not being covered because of the cancellation or nonrenewal of this policy or other termination of the coverage provided by this policy. It provides a period of time after termination of coverage during which Claims first made against You and reported to Us in writing, for acts, error, or missions that occurred before the termination of coverage and otherwise covered under this policy, (subject to the terms conditions and exclusions of this policy), will be covered. An Automatic Discovery Period goes into effect immediately upon termination of coverage, at no additional premium charge to You. This Automatic Discovery Period lasts only sixty (60) days if You are not a "public entity," or ninety (90) days if You are a "public entity." "Public entity" is defined under Section 107(a)(5 l) of the New York Insurance Laws.

During the time the Automatic Discovery Period is in effect, You will have the option of purchasing an Optional Discovery Period. The length of time under the Optional Discovery Period is one (1) year if You are a for profit organization and three (3) years if You are a not for profit organization. The Optional Discovery Periods are available to You for an additional premium charge. The Optional Discovery Periods are not available, however, if coverage is terminated by Us because of non-payment of premium or fraud by You, or if, at the time coverage terminates, a "claims-made relationship" has been in effect for less than one year.

At the end of the Discovery Period, You may have a gap in Your insurance coverage unless You have obtained the appropriate coverage to fill the gap. UPON TERMINATION OF COVERAGE, IT IS VERY IMPORTANT THAT YOU CONSULT WITH YOUR INSURANCE AGENT OR BROKER OR OTHER PROFESSIONAL INSURANCE ADVISOR.

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**Premium Charge for the Optional Discovery Period**

The length of the Optional Discovery Period offered in this policy and the premium charge for it is as follows (please see the policy and relevant endorsements for complete details):

If You are a "for profit organization," You may purchase an Optional Discovery Period of one (1) year for an additional premium charge of one hundred percent (100%) of the expiring policy Premium.

If You are a "not for profit organization," You may purchase an Optional Discovery Period of three (3) years for an additional premium charge of two hundred percent (200%) of the expiring policy Premium.

**THIS SUPPLEMENTAL DISCLOSURE GENERALLY DISCUSSES CERTAIN IMPORTANT FEATURES OF THE POLICY. PLEASE READ THE ENTIRE POLICY CAREFULLY AND DISCUSS IT WITH YOUR INSURANCE AGENT OR BROKER OR OTHER PROFESSIONAL INSURANCE ADVISOR. THE PROVISIONS OF THE POLICY AND THE ENDORSEMENTS ATTACHED THERETO ARE CONTROLLING.**

***IMPORTANT NOTICE***

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**NEW YORK SURPLUS LINES DISCLOSURE NOTICE**

**THE INSURER NAMED HEREIN IS NOT LICENSED BY THE STATE OF NEW YORK, NOT SUBJECT TO ITS SUPERVISION, AND IN THE EVENT OF THE INSOLVENCY OF THE INSURER, NOT PROTECTED BY THE NEW YORK STATE SECURITY FUNDS. THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS OF THE INSURANCE DEPARTMENT PERTAINING TO POLICY FORMS.**



Landmark American Insurance Company

Corporate Office  
945 East Paces Ferry Rd.  
Atlanta, GA 30326-1160

## DIRECTORS AND OFFICERS LIABILITY POLICY NOT FOR PROFIT ORGANIZATION

**NOTICE:** THIS IS A CLAIMS MADE AND REPORTED POLICY THAT APPLIES ONLY TO THOSE **CLAIMS** FIRST MADE AGAINST THE **INSURED** DURING THE **POLICY PERIOD** THAT ARE REPORTED TO THE **INSURER** DURING THE **POLICY PERIOD**, OR WITHIN SIXTY (60) DAYS THEREAFTER. THE LIMIT OF LIABILITY AVAILABLE TO PAY **LOSS** SHALL BE REDUCED OR TOTALLY EXHAUSTED BY PAYMENT OF **DEFENSE EXPENSES**.

PLEASE READ YOUR POLICY CAREFULLY

### CLAIM NOTICE

Mail notices to: **RSUI Group, Inc.**  
**945 East Paces Ferry Rd.**  
**Suite 1800**  
**Atlanta, GA 30326-1160**

Fax notices to: **(404) 260-3997**  
**Attn: Claims Department**

E-mail notices to: [reportclaims@rsui.com](mailto:reportclaims@rsui.com)

A member of Alleghany Insurance Holdings LLC

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NOT FOR PROFIT ORGANIZATION  
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Words and phrases that appear in **bold** text have special meaning. Refer to SECTION III. - DEFINITIONS.

In consideration of the payment of premium and in reliance upon all statements made to the **Insurer** in the **Application**, and subject to the terms, conditions, definitions, exclusions and limitations hereinafter provided, the **Insurer** agrees:

#### SECTION I. - INSURING AGREEMENTS

- A. With the **Insured Person** that if a **Claim** for a **Wrongful Act** is first made against any **Insured Person** during the **Policy Period** and reported in accordance with SECTION V. – CONDITIONS, C. Notice of Claim or Circumstance of this policy, the **Insurer** will pay on behalf of such **Insured Person** all **Loss** such **Insured Person** is legally obligated to pay, except and to the extent that the **Insured Organization** is required or permitted to indemnify such **Insured Persons**.
- B. With the **Insured Organization** that if a **Claim** for a **Wrongful Act** is first made against any **Insured Person** during the **Policy Period** and reported in accordance with SECTION V. – CONDITIONS, C. Notice of Claim or Circumstance of this policy, the **Insurer** will pay on behalf of the **Insured Organization** all **Loss** for which the **Insured Organization** is required or permitted to indemnify the **Insured Person**.
- C. With the **Insured Organization** that if a **Claim** for a **Wrongful Act** is first made against the **Insured Organization** during the **Policy Period** and reported in accordance with SECTION V. – CONDITIONS, C. Notice of Claim or Circumstance of this policy, the **Insurer** will pay on behalf of the **Insured Organization** all **Loss** the **Insured Organization** is legally obligated to pay.

#### SECTION II. - COVERAGE EXTENSIONS

##### A. Marital Estate

This policy shall cover **Loss** arising from any **Claim** made against the lawful spouse or any legally recognized domestic partner of an **Insured Person** for **Claims** arising solely out of his or her status as the spouse or domestic partner of an **Insured Person** (where such status is derived by reason of statutory law or common law) where such **Insured Person** is entitled to coverage under this policy. Such coverage shall extend to any **Claim** in which a recovery is sought from marital community property, property jointly held by the **Insured Person** and the spouse or domestic partner, or property transferred from the **Insured Person** to the spouse or domestic partner.

Provided, however, that this COVERAGE EXTENSION shall not extend coverage to any **Claim** for, arising from, based upon or attributable to any actual or alleged **Wrongful Act** of the spouse or domestic partner.

##### B. Outside Board Extension

This policy shall cover **Loss** arising from an **Insured Person** having served, at the direction of and with the consent of the **Insured Organization**, as Director, Officer, or Trustee for any eleemosynary corporation or other not for profit organization where such **Insured Person** is entitled to indemnification by the **Insured Organization**.

This COVERAGE EXTENSION shall be excess of any indemnification and/or insurance that may be permitted or provided by such eleemosynary corporation or organization, regardless of payment made by or on behalf of such eleemosynary corporation or organization, including but not limited to any other Director and Officer Liability Insurance or similar insurance provided for, to, or by any such eleemosynary corporation or organization.

##### C. Estates and Legal Representatives

This policy shall cover **Loss** arising from any **Claim** made against the estates, heirs, legal representatives or assigns of an **Insured Person** who is deceased, or against the legal representatives or assigns of an **Insured Person** who is incompetent, insolvent or bankrupt, for the **Wrongful Act** of such **Insured Person**.

#### SECTION III. - DEFINITIONS

- A. **Application** means the application attached to and forming part of this policy, or any prior policy, including any materials submitted or requested in connection with such application, all of which are deemed a part of this policy.
- B. **Claim**, either in the singular or the plural, means:
  - 1. A written demand for monetary or non-monetary relief;

2. A civil, criminal, administrative, regulatory or arbitration proceeding for monetary or non-monetary relief which is commenced by:
  - a. Receipt or service of a complaint or similar pleading;
  - b. Return of an indictment (in the case of a criminal proceeding); or
  - c. Receipt of a notice of charges;
3. An administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission ("EEOC") or equivalent state, local or foreign agency, which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the **Insured**.

The DEFINITION of **Claim** shall include an **Employment Practices Claim**; provided, the DEFINITION of **Claim** shall not include any internal or external labor or grievance proceeding which is pursuant to a collective bargaining agreement.

- C. **Defense Expenses** means reasonable and necessary legal fees and expenses incurred, with the **Insurer's** consent, by any **Insured** in defense of a **Claim**, including any appeal therefrom. **Defense Expenses** however, shall not include:
1. Remuneration, overhead or benefit expenses associated with any **Insured Person**; or
  2. Any obligation to apply for or furnish any appellate or similar bond.
- D. **Employee** means any past, present or future employee of the **Insured Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal, and temporary employee or volunteers of the **Insured Organization**. An individual who is leased or contracted to the **Insured Organization** shall also be an **Employee**, but only if the **Insured Organization** provides indemnification to such leased or contracted individual in the same manner as is provided to the **Insured Organization's** employees.
- E. **Employment Practices Claim** means any **Claim** alleging an **Employment Practices Wrongful Act**.
- F. **Employment Practices Wrongful Act** means any actual or alleged:
1. Wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied employment contract;
  2. Employment related harassment (including but not limited to sexual harassment);
  3. Employment related discrimination (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
  4. Employment-related retaliation;
  5. Employment-related misrepresentation to an **Employee** or applicant for employment with the **Insured Organization**;
  6. Employment-related libel, slander, humiliation, defamation and/or invasion of privacy;
  7. Wrongful failure to employ or promote;
  8. Wrongful deprivation of career opportunity, wrongful demotion or negligent **Employee** evaluation, including the giving of defamatory statements in connection with an **Employee** reference;
  9. Employment related wrongful discipline;
  10. Failure to grant tenure or practice privileges;
  11. Failure to provide or enforce adequate or consistent organization policies or procedures relating to employment performance;
  12. Violations of the following federal laws (as amended) including all regulations promulgated thereunder:
    - a. Family and Medical Leave Act of 1993;
    - b. Americans with Disabilities Act of 1992 (ADA);
    - c. Civil Rights Act of 1991;

- d. Age Discrimination in Employment Act of 1967 (ADEA), including the Older Workers Benefit Protection Act of 1990; or
- e. Title VII of the Civil Rights Law of 1964 (as amended) and 42 U.S.C. Section 1983, as well as the Pregnancy Discrimination Act of 1978;

13. Violation of an **Insured Person's** civil rights relating to any of the above; or

14. Negligent hiring, retention, training or supervision, infliction of emotional distress, or violation of an individual's civil rights, when alleged in conjunction with any of the foregoing items 1. through 13.,

whether such **Employment Practices Wrongful Act** as described in 1-14 above is committed directly, indirectly, intentionally or unintentionally, but only if the **Employment Practices Wrongful Act** actually or allegedly pertains to acts committed by an **Insured** and are alleged against an **Insured** by an **Insured Person** or applicant for employment with the **Insured Organization**.

G. **Insured** means any **Insured Organization** and/or any **Insured Person**.

H. **Insured Organization** means:

- 1. The organization named in Item 1. of the Declarations Page and any **Subsidiary** existing prior to or at the inception date of this policy; or
- 2. Subject to SECTION V. - CONDITIONS, I. Merger, Consolidation or Acquisition of this policy, **Insured Organization** shall mean any **Subsidiary** created or acquired after the inception date of this policy; or
- 3. In the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the resulting debtor-in-possession (or equivalent status outside the United States), if any.

I. **Insured Person** means any past, present or future director, officer, trustee, **Employee**, or any committee member of a duly constituted committee of the **Insured Organization**.

J. **Insurer** means the Company providing this insurance as shown on the Declarations Page.

K. **Loss** means damages (including back pay and front pay), settlements, judgments (including pre- and post-judgment interest on a covered judgment) and **Defense Expenses**. **Loss** (other than **Defense Expenses**) shall not include:

- 1. Any amount for which the **Insureds** are not financially liable or for which there is not legal recourse to the **Insureds**;
- 2. Amounts owed under any employment contract, partnership, stock or other ownership agreement, or any other type of contract;
- 3. Disability, social security, workers compensation, medical insurance, retirement or pension benefit payments, or settlement amounts representing employment related benefit payments;
- 4. The cost of creating or reinstating employment;
- 5. Any amounts owed to any **Employee** as wages or compensation previously incurred or vested without regard to any **Claim**;
- 6. Civil or criminal fines or penalties;
- 7. Taxes, whether owed to or by any **Insured**;
- 8. Amounts, including **Defense Expenses**, arising out of, based upon or attributable to actual or alleged liability or costs incurred by any **Insured** to modify any building or property in order to make such building or property more accessible or accommodating to any disabled person, or any actual or alleged liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar relating to an **Employment Practices Claim**;
- 9. Matters that may be uninsurable under the law pursuant to which this policy shall be construed.

The DEFINITION of **Loss** shall include punitive or exemplary damages and the multiplied portion of any multiplied damage award, if and where insurable. For purposes of determining whether punitive or exemplary damages, or the multiplied portion of any multiplied damage award arising from any **Claim** shall be insurable by law, the **Insurer** agrees to abide by the law of whichever jurisdiction is applicable to such **Claim** and is most favorable to the **Insured** in that regard.

L. **Personal Injury Wrongful Act** shall mean any actual or alleged:

- 1. False arrest, wrongful detention or imprisonment, or malicious prosecution;

2. Libel, slander, defamation of character or invasion of privacy;
3. Wrongful entry, eviction or other invasion of the right of occupancy;
4. Infringement of copyright or trademark or other unauthorized use of title; or
5. Plagiarism or misappropriation of ideas.

However, **Personal Injury Wrongful Act** shall not include:

- a. Publication or utterance concerning any organization or business enterprise or its products or services made by or at the direction of an **Insured** with knowledge of the falsity thereof; or
- b. The printing of periodicals, advertising matter, or any or all jobs taken by any **Insured** to be printed for a third party when the periodical, advertising matter or other printing is not a regular part of the **Insured's** own activities.

**M. Policy Period** means the period beginning at the inception date and ending at the expiration date stated in Item 2. of the Declarations Page or to any earlier policy cancellation or termination date.

**N. Subsidiary** means any entity of which the **Insured Organization**, either directly or indirectly, or through one or more of its **Subsidiaries**:

1. Owns more than fifty percent (50%) of the voting interest; or
2. Has the right to elect or appoint more than fifty percent (50%) of the voting directors or trustees.

A **Subsidiary** ceases to be a **Subsidiary** when the **Insured Organization** no longer owns more than fifty percent (50%) of the voting interest, or no longer has the right to elect or appoint more than fifty percent (50%) of the voting directors, or trustees, either directly or indirectly, or through one or more of its **Subsidiaries**.

**O. Wrongful Act** means any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty, or any **Employment Practices Wrongful Act** or **Personal Injury Wrongful Act**, by:

1. An **Insured Person** while acting in his or her capacity as such and on behalf of the **Insured Organization** or any matter claimed against them solely by reason of their status as an **Insured Person**; or
2. The **Insured Organization**.

#### SECTION IV. - EXCLUSIONS

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

1. Based upon, arising out of or attributable to the gaining by any **Insured** of any profit or advantage to which such **Insured** was not legally entitled; provided, this EXCLUSION shall not apply unless a judgment or other final adjudication adverse to such **Insured** establishes that the **Insured** gained such profit or advantage;
2. Based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any criminal or deliberate fraudulent act; provided, this EXCLUSION shall not apply unless a judgment or other final adjudication adverse to any **Insured** in the **Claim** shall establish that such **Insured** committed such criminal or fraudulent act;

The **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person** for the purpose of determining the applicability of EXCLUSIONS 1. and 2. above;

3. For actual or alleged bodily injury, sickness, disease or death of any person, mental anguish or emotional distress; damage to or destruction of any tangible property, including loss of use thereof, whether or not such property is physically injured; provided, this EXCLUSION shall not apply to allegations of mental anguish or emotional distress made solely in connection with an **Employment Practices Claim**;
4. For violation of any of the responsibilities, obligations or duties imposed by: The Fair Labor Standards Act (except the Equal Pay Act) or any state or local statutory or common law, regulation or ordinance that governs payment or administration of wages, hours worked, or employee entitlements; the Employee Retirement Income Security Act of 1974; the National Labor Relations Act; the Worker Adjustment and Retraining Notification Act; the Consolidated Omnibus Budget Reconciliation Act; the Occupational Safety and Health Act; any rules or regulations of any of the foregoing promulgated thereunder and amendments thereto; or any similar provisions of any federal, state or local statutory or common law that govern the same subject matter governed by the laws referenced in this section even if particular laws have some additional or different; provided, this EXCLUSION shall not apply to **Loss** arising from a **Claim** for employment related retaliation;

5. Alleging, arising out of, based upon or attributable to any obligation pursuant to any workers' compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, this EXCLUSION shall not apply to **Loss** arising from a **Claim** for employment related retaliation;

6. For the actual, alleged or threatened discharge, dispersal, release or escape of pollutants or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, including but not limited to **Claims** alleging damage to the **Insured Organization**;

Pollutant includes (but is not limited to) any solid, liquid, gaseous or thermal irritant or contaminant, whether live or inanimate, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes (but is not limited to) materials to be recycled, reconditioned or reclaimed;

7. Brought by or on behalf of any **Insured**, except:

a. A derivative action brought by or made on behalf of, or in the name or right of, the **Insured Organization**, if such action is brought and maintained independently of, and without assistance, participation or intervention of any **Insured**;

b. An **Employment Practices Claim** brought by an **Insured Person**;

c. Any **Claim** brought by the examiner, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such **Insured Organization**, in or after any bankruptcy proceeding by or against an **Insured Organization**;

d. Any **Claim** brought by any past director, officer, trustee, manager or equivalent executives of the **Insured Organization** who have not served as a director, officer, trustee, manager or equivalent executive for at least five (5) years prior to the date such **Claim** is first made, and if the **Claim** is brought and maintained totally independent of and without the solicitation, assistance, active participation or intervention of the **Insured Organization** or any **Insured Person** not described in this paragraph 7.d.; or

e. Any instigation of or involvement in any **Claim**, or solicitation, assistance, active participation or intervention by any **Insured** whistleblower under Section 806 of the Sarbanes-Oxley Act of 2002 or any rule or regulation promulgated thereunder, or under any similar whistleblower statute, rule or regulation under any other federal or state law.

8. Alleging, arising out of, based upon or attributable to, directly or indirectly, the same or essentially the same facts underlying or alleged in any matter which, prior to the inception date of this policy, has been the subject of notice to any insurer of a **Claim**, or a potential or threatened **Claim**, or an occurrence or circumstance that might give rise to a **Claim** under any policy of which this insurance is a renewal or replacement or which it may succeed in time;

9. Alleging, arising out of, based upon or attributable to, in whole or in part, the performance or rendering of or failure to perform professional services, where such services are undertaken for others for a fee;

10. Alleging, arising out of, based upon or attributable to, in whole or in part, any litigation involving any **Insured** that was commenced or initiated prior to, or was pending at the inception date of this policy, or arising out of or based upon, in whole or in part, any facts or circumstances underlying or alleged in any such prior or pending litigation;

11. Alleging, arising out of, based upon or attributable to, in whole or in part, any liability under or pursuant to any contract or agreement, whether oral, written, express or implied, including the liability of others assumed by an **Insured**, unless such **Insured** would have been liable in the absence of such contract or agreement; provided, this EXCLUSION shall not apply to **Defense Expenses** in connection with an **Employment Practices Claim**;

## SECTION V. - CONDITIONS

### A. Duty to Defend

It shall be the right and duty of the **Insurer** to defend any **Claim** against the **Insured** for which coverage applies under this policy, and the **Insurer** shall have the right to appoint counsel of its choosing. No **Insured** may incur any **Defense Expenses**, admit liability for or settle any **Claim** or negotiate any settlement without the **Insurer's** prior written consent; such consent not to be unreasonably withheld. Any **Defense Expenses** incurred or settlements made without the prior written consent of the **Insurer** will not be covered under this policy. The **Insurer** shall have the right to appoint counsel, investigate and conduct negotiations and, with the consent of the **Insured**, to enter into the settlement of any **Claim** that the **Insurer** deems appropriate. If the

**Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the **Insurer's** recommendations;

1. The **Insured** will thereafter be solely responsible for negotiating and defending such **Claim** at their own expense; and
2. Subject to the **Insurer's** aggregate Limit of Liability stated in Item 3. of the Declarations Page, the **Insurer's** liability with respect of any such **Claim** will not exceed the amount for which such **Claim** could have been settled by the **Insurer**, including **Defense Expenses** incurred up to and until the time that the **Insured** refuses to consent to settlement.

**B. Limit of Liability; Retention; Payment of Loss**

1. The Limit of Liability stated in Item 3. of the Declarations Page is the maximum aggregate limit that the **Insurer** will pay for all **Loss** under all INSURING AGREEMENTS combined, arising out of any and all **Claims** first made against the **Insured** during the **Policy Period** and the Discovery Period (if purchased) and reported in accordance with the terms and conditions of this policy.

The **Insurer** will have no obligation to pay **Loss** or to defend or continue to defend any **Claim** after the aggregate Limit of Liability, stated in Item 3. of the Declarations Page, has been exhausted by payment of **Loss**. **Defense Expenses** shall be part of and not in addition to the Limit of Liability and payment of **Defense Expenses** by the **Insurer** will reduce the Limit of Liability.

2. As a condition precedent to coverage under this policy, the **Insured** shall pay with respect to each **Claim** the applicable Retention amount, as identified in Item 4. of the Declarations Page. The Retention amount shall be reduced solely by covered **Loss** and shall be applied to all **Loss**, including **Defense Expenses**, and the **Insurer** shall only be liable for the amount of **Loss** that is excess of the stated Retention amount.
3. All **Claims** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events, or the same or related series of facts, circumstances, situations, transactions or events, shall be deemed to be a single **Claim** for all purposes under this policy, shall be subject to the Retention stated in Item 4. of the Declarations Page, and shall be deemed first made when the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**.
4. In the event that a **Claim** implicates more than one of the Retention amounts stated in Item 4. of the Declarations Page, then the largest of the applicable Retention amounts shall be applied, but in no event shall more than one Retention amount be applied to a **Claim**.
5. The Retention amount applicable to SECTION I. - INSURING AGREEMENT A. of this policy, as stated in Item 4. of the Declarations Page, shall not be applicable under any circumstances where indemnification by the **Insured Organization** is permitted or required, regardless of whether the **Insured Organization** has agreed to indemnify an **Insured Person**, provided it shall apply when indemnification cannot be made by the **Insured Organization** by reason of the **Insured Organization's** financial insolvency.
6. The **Insurer's** duty to defend the **Insured** and pay **Defense Expenses** ends upon exhaustion of the Limit of Liability, which includes paying or tendering the Limit of Liability into court.
7. Except for payment of **Defense Expenses**, the **Insurer** shall pay for **Loss** only upon final disposition of any **Claim**.

**C. Notice of Claim or Circumstance**

1. If, during the **Policy Period** or Discovery Period (if applicable), any **Claim** is first made, it shall be a condition precedent to the **Insurer's** obligation to pay, that the **Insured** give written notice of such **Claim** to the **Insurer** as soon as practicable after such **Claim** is first made, but in no event shall such notice be given later than sixty (60) days after either the expiration date or any earlier cancellation date of this policy.
2. If, during the **Policy Period** or Discovery Period (if applicable), any **Insured** first becomes aware of any facts or circumstances which may reasonably be expected to give rise to a **Claim** against any **Insured** and, as soon as practicable thereafter, but before the expiration date or any earlier cancellation date of this policy, gives to the **Insurer** written notice, of such facts or circumstances along with the full particulars described below, then any **Claim** subsequently made against any **Insured** arising out of such facts or circumstances will be deemed first made during the **Policy Period**. The written notice shall include, at a minimum:

- a. The names or identity of the potential claimants and a detailed description of the specific alleged **Wrongful Act**; and
- b. The circumstances by which the **Insured** first became aware of the specific alleged **Wrongful Act**.

#### **D. Cooperation**

In the event of a **Claim** or notice of circumstances under SECTION V. - CONDITIONS, C. Notice of Claim or Circumstance of this policy, the **Insured** will provide the **Insurer** with all information, assistance and cooperation that the **Insurer** reasonably requests, and will take no action, without the **Insurer's** prior written consent, that might prejudice the **Insured's** or the **Insurer's** position, potential or actual rights, or defense under this policy.

#### **E. Other Insurance and Indemnification**

Insurance provided by this policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this policy. This policy shall be specifically excess over any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**.

#### **F. Allocation**

If both **Loss** covered under this policy and loss not covered under this policy are jointly incurred either because a **Claim** includes both covered and non-covered matters or covered and non-covered causes of action or because a **Claim** is made against both an **Insured** and any other parties not insured by this policy, then the **Insured** and the **Insurer** shall use their best efforts to fairly and reasonably allocate payment under this policy between covered **Loss** and non-covered loss based on the relative legal exposures of the parties with respect to covered and non-covered matters or covered and non-covered causes of action.

If the **Insurer** and the **Insured** agree on an allocation of **Defense Expenses**, based on covered and non-covered matters or persons, the **Insurer** shall advance **Defense Expenses** allocated to covered **Loss**. If there is no agreement on an allocation of **Defense Expenses**, the **Insurer** shall advance **Defense Expenses** that the **Insurer** believes to be covered under this policy until a different allocation is negotiated, arbitrated, or judicially determined.

Any negotiated, arbitrated or judicially determined allocation of **Defense Expenses** on account of a **Claim** shall be applied retroactively to all **Defense Expenses** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any advancement or allocation of **Defense Expenses** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other loss on account of such **Claim**.

#### **G. Cancellation; Renewal Provision**

The **Insured Organization** may cancel this policy at any time by written notice or by surrender of this policy to the **Insurer** at the address shown on the Declarations Page.

This policy may only be cancelled by or on behalf of the **Insurer** in the event the **Insured Organization** fails to pay any premium when due. In the event of non-payment of premium by the **Insured Organization**, the **Insurer** may cancel this policy upon ten (10) days written notice. The **Insurer** will mail notice to the **Insured Organization's** address as shown in Item 1. of the Declarations Page. The mailing of such notice as aforesaid shall be sufficient proof of notice.

If the **Insured Organization** cancels this policy, the **Insurer** will retain the customary short rate proportion of the premium hereon.

The **Insurer** shall not be required to renew this policy upon its expiration. The offer by the **Insurer** of renewal terms, conditions, Limit of Liability and/or premiums varying from those of the expiring policy shall not constitute a refusal to renew.

If the **Insurer** decides not to renew this policy, the **Insurer** will mail or deliver to the **Insured Organization** written notice of non-renewal, stating the reasons for non-renewal, at least sixty (60) days prior to the expiration date of this policy.

Any notice of non-renewal will be mailed or delivered to the **Insured Organization's** last mailing address known to the **Insurer**. If notice is mailed, proof of mailing will be sufficient proof of notice.

## H. Discovery Period

If the **Insurer** shall refuse to renew this policy or the **Insured Organization** shall cancel or refuse to renew this policy, the **Insured Organization** shall have the right, upon payment of seventy five percent (75%) of the Full Annual Premium, to a period of three hundred and sixty five (365) days following the effective date of such cancellation or nonrenewal (herein referred to as the "Discovery Period") in which to give written notice to the **Insurer** of any **Claim** first made against the **Insured** during said three hundred and sixty five (365) day period for any **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by this policy. As used herein, "Full Annual Premium" means the premium stated in Item 5. of the Declarations Page and any additional premium(s) charged during the **Policy Period**. The rights contained in this clause shall terminate unless written notice of such election together with the additional premium due is received by the **Insurer** at the address shown on the Declarations Page within thirty (30) days of the effective date of cancellation or nonrenewal.

The Discovery Period is not cancelable and the additional premium charged shall be fully earned at the inception of the Discovery Period.

The Limit of Liability available under the Discovery Period is part of and not in addition to the Limit of Liability stated in Item 3. of the Declarations Page.

The rights contained in this clause shall not apply in the event of cancellation resulting from non-payment of premium.

## I. Merger, Consolidation or Acquisition

1. If, after this policy's inception date, the **Insured Organization** creates or acquires a **Subsidiary** whose assets do not exceed twenty five percent (25%) of the total consolidated assets of the **Insured Organization**, not including the assets of the created or acquired **Subsidiary**, such **Subsidiary** shall be deemed to qualify as an **Insured Organization**, but solely for a **Wrongful Act** that takes place on or after the effective date of such creation or acquisition.
2. If, after this policy's inception date, the **Insured Organization** creates or acquires a **Subsidiary** whose assets exceed twenty five percent (25%) of the total consolidated assets of the **Insured Organization**, not including the assets of the created or acquired **Subsidiary**, such **Subsidiary** shall be deemed to qualify as an **Insured Organization**, but solely for a **Wrongful Act** that takes place within the first ninety (90) days after the date of such creation or acquisition. After this ninety (90) day period, the created or acquired **Subsidiary** shall no longer be deemed an **Insured Organization**, unless:
  - a. Written notice of the **Subsidiary's** creation or acquisition has been provided to the **Insurer** by the **Insured Organization**, as soon as practicable, and in no event later than ninety (90) days after the date of the creation or acquisition;
  - b. The **Insured Organization** has provided the **Insurer** with any additional information the **Insurer** may request;
  - c. The **Insured Organization** has agreed to the terms, conditions, exclusions and additional premium charge as may be required by the **Insurer**; and
  - d. The **Insurer**, at its sole discretion, has agreed in writing to extend the coverage of this policy to the created or acquired **Subsidiary**.
3. If during the **Policy Period**:
  - a. The **Insured Organization** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
  - b. Any person or entity or group of persons or entities acting in concert shall acquire an amount of more than fifty percent (50%) of the voting power for the election of directors of the **Insured Organization**;  
(either of the above events in 3. a. or b. are hereunder referred to as the "Transaction" ),

then this policy shall continue in full force and effect for any **Wrongful Act** occurring prior to the effective time of the Transaction, but there shall be no coverage afforded by any provision of this policy for any actual or alleged **Wrongful Act** occurring after the effective time of the Transaction. This policy may not be cancelled after the effective time of the Transaction and the premium for this policy shall be deemed fully earned as of such time.

The **Insured Organization** shall give the **Insurer** written notice of the Transaction as soon as practicable, but not later than thirty (30) days after the effective date of the Transaction.

**J. Representations**

The **Insured** represents that as of the inception date of this policy, the information, particulars, documents, representations and statements contained in, attached or referred to in the **Application** are: complete, true and correct; are the basis of this policy; are deemed incorporated into and constituting part of this policy; and are material to the acceptance of the risk assumed by the **Insurer**. This policy is issued in reliance upon the truthfulness and completeness of such information, particulars, documents, representations and statements. Except for knowledge or information possessed by, or facts or circumstances pertaining to the person or persons who signed the **Application**, no statement or representation in the **Application** or knowledge or information possessed by an **Insured Person** will be imputed to any other **Insured Person** for the purpose of determining the existence or availability of coverage under this policy.

**K. No Action Against Insurer**

No action may be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all of the terms and conditions of this policy and until the amount of any **Insured's** obligation to pay **Loss** has been finally determined either by judgment against such **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and the **Insurer**.

No **Insured** has any right under this policy to join the **Insurer** as a party to any **Claim** against an **Insured** to determine the liability of such **Insured**, nor shall the **Insurer** be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**.

**L. Subrogation**

In the event the **Insurer** makes any payment under this Policy, the **Insurer** shall be subrogated to all of the rights of recovery of the **Insured**, who shall execute all papers and take all necessary actions to secure such rights, including the execution of any documents necessary to enable the **Insurer** to effectively bring suit in the name of an **Insured**.

**M. Authorization and Notices**

The **Insured Persons** agree that the **Insured Organization** acts on their behalf with respect to giving and receiving all notices and return of premium from the **Insurer**.

**N. Changes**

Notice to any agent or knowledge possessed by any agent or representations by persons acting on behalf of the **Insurer** do not effect a waiver or change in any part of this policy or estop the **Insurer** from asserting any right under the terms, conditions and limitations of this policy. The terms, conditions and limitations of this policy can only be waived or changed by written endorsement.

**O. Assignment**

Assignment of interest under this policy does not bind the **Insurer** without its prior written consent.

**P. Acceptance**

The **Insureds** agree that this policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the **Insurer** relating to this insurance policy.

**Q. Headings**

The description in the headings and sub-headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.

**R. Governing Law Clause**

This policy shall, to the extent permitted by applicable law, be construed in accordance with the laws of the state or jurisdiction of incorporation or organization of the **Insured Organization** or, in the case of matters pertaining to a **Subsidiary**, the laws of the state or jurisdiction of incorporation or organization thereof.

**S. Territory**

This policy shall apply to **Claims** made against any **Insured** anywhere in the world.

**T. Priority of Payments**

With respect to the payment of the policy proceeds, it is agreed that covered **Loss** due under this policy shall be paid by the **Insurer** in the following order of priority:

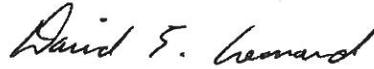
1. First pay such **Loss** for which coverage is provided under INSURING AGREEMENT A. of this policy;
2. With respect to any remaining amount of the Limit of Liability still available after payment of such **Loss**, pay **Loss** for which coverage is provided under INSURING AGREEMENT B. of this policy; and
3. With respect to any remaining amount of the Limit of Liability still available after payment of such **Loss**, pay **Loss** for which coverage is provided under INSURING AGREEMENT C. of this policy.

The **Insured Organization** or its representatives and the **Insurer** shall use their best efforts to agree upon the priority of payment of all **Loss** under this policy. If no agreement is reached regarding the priority of payments, then the **Insurer** and **Insured Organization** will submit the issue of such priority, and only that issue, to binding arbitration.

**In Witness Whereof**, the **Insurer** has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned on the Declarations Page by a duly authorized agent of the **Insurer**.



Secretary



President

THIS EXCLUSION CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NUCLEAR ENERGY LIABILITY EXCLUSION**

**1. Nuclear Exclusion**

It is agreed that this policy does not apply:

- a. Under any Liability coverage, to injury, disease, death or destruction:
  - (1) With respect to which an **Insured** under this policy is also an **Insured** under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an **Insured** under any such policy but for its termination upon exhaustion of its Limit of Liability; or
  - (2) Resulting from the **hazardous properties of nuclear material** and with respect to which:
    - (a) Any person or organization is required to maintain financial protection pursuant to the atomic Energy Act of 1954, or any law amendatory thereof; or
    - (b) The **Insured** is or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, with any person or organization.
- b. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of a **nuclear facility** by any person or organization.
- c. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of **nuclear material**, if:
  - (1) The **nuclear material**:
    - (a) Is at any **nuclear facility** owned by, or operated by or on behalf of an **Insured**; or
    - (b) Has been discharged or dispersed there from;
  - (2) The **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **Insured**; or
  - (3) The injury, sickness, disease, death or destruction arises out of the furnishing by an **Insured** or services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion applies only to injury to or destruction of property at such **nuclear facility**.
- d. As used in this Exclusion:
  - (1) **Hazardous properties** include radioactive, toxic or explosive properties;
  - (2) **Nuclear material** means **source material**, special material or **byproduct material**;
  - (3) **Source material**, special **nuclear material** and **byproduct material** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
  - (4) **Spent Fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**;
  - (5) **Waste** means any **waste** material:
    - (a) Containing **byproduct material**; and
    - (b) Resulting from the operation by any person or organization of any **nuclear facility** included within the definition of **nuclear facility** under paragraph (a) or (b) thereof;
  - (6) **Nuclear Facility** means:
    - (a) Any **nuclear reactor**;
    - (b) Any equipment or device designed or used for:
      - i. Separating the isotopes of uranium or plutonium;
      - ii. Processing or utilizing **spent fuel**; or

iii. Handling, processing or packaging waste;

- (c) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

- e. **Nuclear reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or destruction of property, the word *injury* or *destruction* includes all forms of radioactive contamination of property.

**DIRECTORS AND OFFICERS LIABILITY-NOT FOR PROFIT  
ORGANIZATION RENEWAL APPLICATION**



RSUI Indemnity Company

Landmark American Insurance Company

NOTICE: THIS IS A CLAIMS MADE AND REPORTED POLICY THAT APPLIES ONLY TO THOSE CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE INSURER DURING THE POLICY PERIOD, OR THE DISCOVERY PERIOD, IF APPLICABLE. THE LIMIT OF LIABILITY AVAILABLE TO PAY LOSS SHALL BE REDUCED OR TOTALLY EXHAUSTED BY PAYMENT OF DEFENSE EXPENSES.

**I. GENERAL INFORMATION SECTION**

1. (a) Name of Organization:

New York State Bridge Authority

(b) Organization Address:

P.O. Box 1010 - Mid Hudson Bridge Toll Plaza - Highland NY 12528

2. Date Organized: 1932

3. Purpose of Organization: Maintain and operate toll bridges over the Hudson River

4. (a) Have there been any changes in the Organization operations within the last twelve (12) months or is the Organization currently contemplating any merger or acquisition? Yes  No

(If "Yes", please give details) \_\_\_\_\_

(b) Has the Organization acquired or created any Subsidiaries within the last twelve (12) months? Yes  No

(If "Yes", please give details) \_\_\_\_\_

**II. EMPLOYMENT PRACTICES LIABILITY SECTION**

1. (a) Number of Employees:

	<u>Union</u>	<u>Non-Union</u>
Full time:	<u>149</u>	<u>14</u>
Part time:	<u>55</u>	<u>6</u>
Total:	<u>204</u>	<u>20</u>

(b) Total number of Volunteers: 0

2. List total number of Employees in the following states:

CA \_\_\_\_\_ NJ \_\_\_\_\_ NY 204 MA \_\_\_\_\_ TX \_\_\_\_\_

3. How many Employees or Officers have been terminated within the last twelve (12) months?

Number of Employees: 1 Number of Officers: 0

4. Turnover percentage of Employees within the last twelve (12) months? 3%

5. Does the Organization anticipate making any reductions in the work force within the next twelve (12) months? Yes  No

(If "Yes", please give details) \_\_\_\_\_

6. Did the Organization make any changes to its Employee manual or handbook, or employment application within the last twelve (12) months? Yes  No

(If "Yes", please give details) \_\_\_\_\_

The undersigned authorized Officer of the Organization, on behalf of the Directors and Officers and the Organization, declares that to the best of his/her knowledge and belief the statements set forth herein are true. The undersigned agrees that this renewal application is a supplement to the application completed for the issuance of the first policy, and that application together with this renewal application and information, particulars, documents, representations and written statements furnished pursuant hereto shall be the basis of the contract should a policy be issued and such applications will be attached and become part of the policy. The Insurer is hereby authorized to make any investigation and inquiry it deems necessary in connection with this application.

**NOTE:** This application must be signed by the Chairman of the Board, President or Executive Director and dated within thirty (30) days of the effective date of coverage.

The undersigned authorized Officer agrees that if the information supplied on this application changes between the date of this application and the effective date of the insurance, he/she (undersigned) will immediately notify the Insurer of such changes, and the Insurer may withdraw or modify any outstanding quotations and/or authorization or agreement to bind the insurance.

Signature Joseph Ruggieri Title Executive Director  
(Chairman of the Board, President or Executive Director)

Date 5/28/10 Organization New York State Bridge Authority

One copy of each of the following documents is attached and made part of the policy:

- (a) COMPLETE COPY OF LATEST ANNUAL REPORT. IF AUDITED FINANCIALS, PLEASE INCLUDE AUDITORS NOTES.
- (b) COMPLETE COPY OF BY LAWS
- (c) CURRENT LIST OF DIRECTORS AND OFFICERS
- (d) EEO-1 REPORT (IF REQUIRED BY FEDERAL LAW)

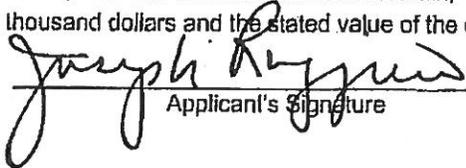
Submitted By \_\_\_\_\_ Date \_\_\_\_\_  
(Producer)

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**SIGNATURE REQUIRED**

**NEW YORK FRAUD STATEMENT**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

  
Applicant's Signature

5/20/10  
Date

No Signature Required

**ARKANSAS, LOUISIANA, RHODE ISLAND, WASHINGTON AND WEST VIRGINIA FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

**COLORADO FRAUD STATEMENT**

It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policy holder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

**DISTRICT OF COLUMBIA FRAUD STATEMENT**

**WARNING:** It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment, fines and denial of insurance benefits.

**FLORIDA FRAUD STATEMENT**

Any person who knowingly and with intent to injure, defraud or deceive any insurer, files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

**KENTUCKY FRAUD STATEMENT**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

**MAINE FRAUD STATEMENT**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or denial of insurance benefits.

**MINNESOTA FRAUD STATEMENT**

A person who submits an application or files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

**NEW JERSEY FRAUD STATEMENT**

Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

**NEW MEXICO FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

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#### OHIO FRAUD STATEMENT

Any person who, with the intent to defraud or knowing that he or she is facilitating a fraud against an insurer, submits an application or files a claim containing false or deceptive statement is guilty of insurance fraud.

#### OKLAHOMA FRAUD STATEMENT

**WARNING:** Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy, containing any false, incomplete or misleading information, is guilty of a felony.

#### OREGON FRAUD STATEMENT

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents materially false information in an application for insurance may be guilty of a crime and may be subject to fines and confinement in prison.

#### PENNSYLVANIA FRAUD STATEMENT

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

#### TENNESSEE AND VIRGINIA FRAUD STATEMENT

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.



# Loss Run for LHP637325

Insured Name: **New York State Bridge Authority** Policy No: **LHP637325 0** Term: **8/1/2010 - 8/1/2012** Underwriter: **Gardner, Stephanie**  
 Policy Limit: **\$3,000,000** Claim Prof: **N/a**

*No claims exist for this policy year.*

Insured Name: **New York State Bridge Authority** Policy No: **LHP629925 0** Term: **8/1/2008 - 8/1/2010** Underwriter: **Gardner, Stephanie**  
 Policy Limit: **\$3,000,000** Claim Prof: **N/a**

*No claims exist for this policy year.*

Insured Name: **New York State Bridge Authority** Policy No: **LHP621788 0** Term: **8/1/2006 - 8/1/2008** Underwriter: **Gardner, Stephanie**  
 Policy Limit: **\$3,000,000** Claim Prof: **N/a**

*No claims exist for this policy year.*

Insured Name: **New York State Bridge Authority** Policy No: **LHP616383 0** Term: **8/1/2004 - 8/1/2006** Underwriter: **Gardner, Stephanie**  
 Policy Limit: **\$3,000,000** Claim Prof: **N/a**

*No claims exist for this policy year.*

Total Gross Incurred		Paid
Indemnity		\$0.00
Expense		\$0.00
<b>Total</b>		<b>\$0.00</b>

**NEW YORK STATE BRIDGE AUTHORITY**  
**Management's Discussion and Analysis,**  
**Financial Statements and**  
**Supplementary Information**  
**December 31, 2011 and 2010**  
**(With Independent Auditors' Report Thereon)**

NEW YORK STATE BRIDGE AUTHORITY

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\* \* \* \* \*

**TOSKI & CO., P.C.**  
**CERTIFIED PUBLIC ACCOUNTANTS**

300 ESSJAY ROAD, STE 115  
WILLIAMSVILLE, NY 14221  
(716) 834-0700

14 CORPORATE WOODS BLVD.  
ALBANY, NY 12211  
(518) 935-1069

**INDEPENDENT AUDITORS' REPORT**

To the Governing Board  
New York State Bridge Authority:

We have audited the accompanying basic financial statements of the New York State Bridge Authority (the Authority) as of and for the years ended December 31, 2011 and 2010, as listed in the table of contents. These financial statements are the responsibility of the Authority's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the New York State Bridge Authority as of December 31, 2011 and 2010, and the changes in its net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with Government Auditing Standards, we have also issued our report dated March 1, 2012 on our consideration of the Authority's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, grants and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards and should be considered in assessing the results of our audit.

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and bridge system assessments on pages 3 through 7 and 25 and 26 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of the financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Toski & Co., CPAs, P.C.

Williamsville, New York  
March 1, 2012

NEW YORK STATE BRIDGE AUTHORITY  
Management's Discussion and Analysis  
December 31, 2011

The management's discussion and analysis serves to introduce the other elements of the financial section of this annual report. Included are the basic financial statements, notes to the financial statements and other supplementary financial information. The objective of this analysis is to enhance the understandability and usefulness of the external financial reports. As in previous years, the New York State Bridge Authority (the Authority) is providing a comparative analysis of certain financial information.

### **FINANCIAL HIGHLIGHTS**

Toll revenue in 2011 totaled \$37.2 million, \$0.4 million below the previous year and \$0.2 million above 2009. Other income was \$2.9 million, an increase of \$2.4 million over prior year due to a Federal grant, changes to overweight fees, advertising on Authority's facilities and leasing fiber optic cables across bridges.

Total operating expenses of \$42.7 million increased by \$3.7 million. This 9.4% increase was the result of increased rehabilitation, reconstruction and bridge repairs of \$2.4 million and depreciation of \$1.8 million.

Net assets at December 31, 2011 were \$93.4 million, which was \$4.2 million below the prior year.

### **BASIC FINANCIAL STATEMENTS**

The Authority's financial statements are prepared in accordance with generally accepted accounting principles as prescribed by the Government Accounting Standards Board. These statements are designed to afford an overview of the Authority's finances and consist of the balance sheets, statements of revenue, expenses and changes in net assets and the statements of cash flows.

The notes to the financial statements include additional information necessary to provide a further understanding of the basic financial statements.

Other supplemental financial information serves to give the reader additional knowledge with regard to the condition of the bridge system and capital improvement expenditures.

### **FINANCIAL STATEMENT ANALYSIS**

#### **Balance Sheets**

The balance sheets present information on the Authority's assets and liabilities, reporting net assets at year-end. Increases or decreases in net assets may indicate whether or not an entity's financial position is improving. A condensed summary of the Authority's balance sheets is shown on the following pages.

**NEW YORK STATE BRIDGE AUTHORITY**  
**Management's Discussion and Analysis, Continued**

	December 31	
	2011 (In 000's)	2010 (In 000's)
<b>Assets</b>		
Current assets	\$ 33,366	42,373
Noncurrent assets:		
Capital assets	120,731	122,409
Other noncurrent assets	583	207
Total assets	\$ 154,680	164,989
<b>Liabilities</b>		
Current liabilities	9,003	10,800
Noncurrent liabilities:		
General revenue bonds	32,410	41,715
Other noncurrent liabilities	19,884	14,888
Total liabilities	61,297	67,403
<b>Net assets</b>		
Invested in capital assets	120,731	122,409
Restricted	20,525	30,475
Unrestricted	(47,873)	(55,298)
Total net assets	93,383	97,586
Total liabilities and net assets	\$ 154,680	164,989

**Statements of Revenue, Expenses and Changes in Net Assets**

The statements of revenue, expenses and changes in net assets show the effect of income and expenses on the Authority's net assets for the year. These statements are prepared on an accrual basis, meaning revenues are recognized in the period in which they are earned and expenses are recognized in the period in which they occur. The Authority's statements for 2011 and 2010 are summarized as follows:

	December 31	
	2011 (In 000's)	2010 (In 000's)
<b>Operating revenue:</b>		
Toll revenues	\$ 37,242	37,669
Other income	2,882	511
Total operating revenue	40,124	38,180
<b>Operating expenses:</b>		
Salaries	10,128	10,718
Employee benefits	6,985	7,471
Commercial insurance	1,535	1,402
Rehabilitation, reconstruction and bridge repairs	15,304	12,950
Electronic toll costs	3,224	3,165
Other	5,546	3,337
Total operating expenses	42,722	39,043
Operating loss	(2,598)	(863)

NEW YORK STATE BRIDGE AUTHORITY  
Management's Discussion and Analysis, Continued

	December 31	
	2011 (In 000's)	2010 (In 000's)
Nonoperating revenue (expenses):		
Interest income	\$ 377	414
Interest expense and other	<u>(1,982)</u>	<u>30,500</u>
Total nonoperating revenue (expenses)	<u>(1,605)</u>	<u>30,914</u>
Increase (decrease) in net assets	(4,203)	30,051
Net assets at beginning of year	<u>97,586</u>	<u>67,535</u>
Net assets at end of year	\$ <u>93,383</u>	<u>97,586</u>

Toll receipts, accounting for the majority of operating revenue, totaled \$37.2 million, a decrease of \$0.4 million. As the economy continued to struggle with the rise in fuel prices during the middle of 2011, the traffic volumes and revenue declined in both passenger and commercial categories. Passenger car volumes declined by 1.3% and revenue by 1.4%. Commercial volumes declined by 0.8% and revenue by 1.8%. Although volumes for passenger were down more than commercial, the higher tolled commercial traffic contributed equally to passenger cars to the \$0.4 million reduction in revenue.

The cost of operations increased \$3.7 million for the year as depreciation increased by \$1.8 million and rehabilitation, reconstruction and bridge repairs increased by \$2.4 million due mainly to the Walkway Over The Hudson. Salaries and employee benefits decreased \$0.6 million and \$0.5 million, respectively. This was due primarily to 20 employees utilizing the 2010 retirement incentive with the majority of the positions not being replaced. Professional services increased by \$0.3 million attributed to the rotation of bridge inspections.

Non-operating revenue is from interest income on investments. Interest income was slightly lower, \$0.04 million, than 2010 as interest rates on government obligations in which the Authority invests continued at historically low levels.

Interest paid on the Authority's outstanding bonds, which totaled approximately \$2.0 million this year, accounted for substantially all of the non-operating expenses. The Authority refinanced its General Revenue Bonds, Series 2002 (the "Series 2002 Bonds") in December 2011 and will make the last payment on its General Revenue Bonds, Series 1997 and Series 2002 bonds on January 1, 2012.

NEW YORK STATE BRIDGE AUTHORITY  
Management's Discussion and Analysis, Continued

**Statements of Cash Flows**

The statements of cash flows present information on the major sources and uses of cash during the year, showing net cash provided or used in operating, capital financing and investing activities.

Net cash of \$0.1 million provided by operating activities was down \$3.1 million. This reflected \$4.4 million in higher payments to suppliers and contractors and \$0.7 million in higher payments for wages and employee benefits. The increase in other receipts of \$2.4 million reduced the outflow.

Principal and interest payments on Authority bonds increased as a result of the refinancing in 2011 and the final payment on the 1997 series bonds. Cash flows from investing activities resulted in net cash of \$12.8 million, which includes interest earned on investments and net cash resulting from the purchase and sale of investments.

The supplemental disclosure of non-cash activity is the result of the refinancing of the Authority's Series 2002 bonds. The Authority issued its General Revenue Refunding Bonds, Series 2011 (the "Series 2011 Bonds") in an amount of \$32.4 million to refund \$35.5 million of the outstanding Series 2002 bonds, resulting in a \$3.3 million net present value savings. The final maturity of the Series 2011 bonds was not extended and remains January 1, 2017.

**AUTHORITY BUDGET**

The Authority's 2011 budget projected collections of \$38.0 million, a \$0.4 million increase over 2010. Budget revenue was \$0.8 million above the actual. Reductions as compared to prior year in both passenger and commercial traffic drove the collection decrease. Overall traffic decreased from 2010 by 692,000 vehicles generating \$0.4 million in reduced revenue. Commercial traffic decreased from 2010 by 30,000 vehicles generating a \$0.2 million decrease. The Authority budgeted Federal grants of \$2.6 million which was \$0.1 million above actual. The progress of the construction of The Port Authority of New York and New Jersey, the entity administering the Federal grant, project has extended into 2012. The remaining grant funds are expected upon completion of the related projects. Additionally, interest rates on Authority investments continued at historically low levels, interest income of \$0.4 million was materially consistent with the budget.

2011 operating expenses of \$42.7 million came in lower than the Authority's operating and capital improvement plan budget by \$5 million due to deferring some capital program projects and retirements from the 2010 retirement incentive that were not anticipated. The day-to-day operating budget, which was forecasted at \$26.8 million, came in at \$27.4 million. This included the \$1.6 million in depreciation for the Walkway Over The Hudson that was not budgeted. Operating reductions compared to budget were primarily the result of the 2010 retirement incentive for the employees who elected to take the incentive after the 2011 budget was finalized.

NEW YORK STATE BRIDGE AUTHORITY  
Management's Discussion and Analysis, Continued

The Authority's five year capital plan budgeted \$18.9 million in 2011 whereas actual costs totaled \$15.3 million. The difference resulted from a combination of factors. Approximately \$3.2 million of work was deferred to 2012 or later. Note that the original capital plan excluded costs for the Federal grant project that were funded from the grant. The Federal grant funding \$2.5 million is reflected in other income.

**TOTAL CAPITAL ASSETS AND LONG-TERM DEBT**

As of December 31, 2011, the Authority's investment in capital assets was \$120.7 million. Capital assets include bridges, roads, buildings and equipment. In order to fund the commitment to its program of rehabilitation and improvement of the bridge facilities, in March 2002, the Authority issued \$50 million General Revenue Bonds having a final maturity on January 1, 2017. In December 2011, the Authority refunded these bonds and issued its \$32.4 million Series 2011 bonds with a final maturity on January 1, 2017. All Authority revenue is pledged to repay these bonds and the outstanding Series 1997 bonds. As of December 31, 2011, \$38.6 million of debt remained outstanding and funds were in reserve to retire \$6.2 million in bonds on January 1, 2012.

In 2011, Standard & Poor's affirmed the Authority's AA- rating and stable outlook on its outstanding bonds. Moody's Investors Service in 2011 downgraded the Authority's Aa2 bond rating to Aa3.

**MODIFIED APPROACH FOR INFRASTRUCTURE ASSETS**

The Authority has adopted the modified approach in reporting its infrastructure assets. An alternative to depreciating its bridge facilities, this approach requires the Authority to maintain its infrastructure at a certain measurable standard and report the associated cost as preservation (rehabilitation, reconstruction and bridge repair) expenses.

The condition of the Authority's bridge faculties is determined through annual inspections performed in accordance with New York State Department of Transportation (NYSDOT) requirements and Federal Highway Administration guidelines. The yearly inspections by the Authority's consulting engineers, Modjeski & Masters, Inc., measures the ability of each facility to function structurally utilizing a NYSDOT condition rating ranging between 1 and 7. The Authority's policy is to keep the overall condition rating of each bridge at a 5, meaning the facility shows minor deterioration but is functioning as originally designed.

**ADDITIONAL INFORMATION**

This report is compiled for the use of the Authority's bondholders, the investment community and members of the public interested in the Authority's affairs. Questions with regard to this financial report or requests for additional information may be addressed to the Treasurer, New York State Bridge Authority, P.O. Box 1010, Highland, NY 12528.

NEW YORK STATE BRIDGE AUTHORITY  
Balance Sheets  
December 31, 2011 and 2010

<u>Assets</u>	<u>2011</u>	<u>2010</u>
Current assets:		
Cash and equivalents	\$ 11,243,793	8,837,391
Investments	18,633,058	31,057,268
Accounts receivable	1,729,921	1,730,188
Prepaid expenses	1,625,195	707,272
Bond issuance costs	134,310	41,347
Total current assets	<u>33,366,277</u>	<u>42,373,466</u>
Noncurrent assets:		
Bond issuance costs	583,411	206,733
Capital assets, net	36,372,403	38,050,583
Bridge system	84,358,269	84,358,269
Total noncurrent assets	<u>121,314,083</u>	<u>122,615,585</u>
Total assets	<u>\$ 154,680,360</u>	<u>164,989,051</u>
<u>Liabilities and Net Assets</u>		
Current liabilities:		
Accounts payable and accrued expenses	1,572,097	1,576,974
Accrued wages, payroll taxes and fringe benefits	362,363	1,470,271
Contracts payable	603,359	632,771
Accrued interest on bonds	149,025	1,144,023
Bond premium	136,025	76,011
General revenue bonds, current portion	6,180,000	5,900,000
Total current liabilities	<u>9,002,869</u>	<u>10,800,050</u>
Noncurrent liabilities:		
Accrued fringe benefits	16,810,699	14,508,045
Bond premium	3,074,123	380,057
General revenue bonds	32,410,000	41,715,000
Total noncurrent liabilities	<u>52,294,822</u>	<u>56,603,102</u>
Net assets:		
Invested in capital assets	120,730,672	122,408,852
Restricted for:		
Debt service	7,552,154	8,165,101
Insurance	8,908,911	8,607,056
Maintenance reserve	4,064,414	13,702,925
Unrestricted (deficiency)	<u>(47,873,482)</u>	<u>(55,298,035)</u>
Total net assets	<u>93,382,669</u>	<u>97,585,899</u>
Commitments and contingencies (note 13)		
Total liabilities and net assets	<u>\$ 154,680,360</u>	<u>164,989,051</u>

See accompanying notes to financial statements.

NEW YORK STATE BRIDGE AUTHORITY  
Statements of Revenue, Expenses and Changes in Net Assets  
Years ended December 31, 2011 and 2010

	<u>2011</u>	<u>2010</u>
Operating revenue:		
Toll revenue	\$ 37,241,713	37,668,652
Other income	<u>2,881,895</u>	<u>511,128</u>
Total operating revenue	<u>40,123,608</u>	<u>38,179,780</u>
Operating expenses:		
Salaries	10,127,816	10,718,175
Employee benefits	6,984,566	7,471,135
Utilities	682,404	677,298
Insurance	1,534,904	1,401,805
Professional services	818,790	530,199
Supplies and materials	197,794	221,922
Equipment expense	353,601	193,109
Maintenance and repairs	566,944	548,099
Rehabilitation, reconstruction and bridge repairs	15,303,580	12,949,595
Electronic toll costs	3,223,906	3,164,671
Depreciation	2,416,480	612,990
Other	<u>511,117</u>	<u>553,635</u>
Total operating expenses	<u>42,721,902</u>	<u>39,042,633</u>
Operating loss	<u>(2,598,294)</u>	<u>(862,853)</u>
Nonoperating revenue (expenses):		
Interest income	376,888	413,798
Capital addition for Walkway Over The Hudson pedestrian bridge	-	32,758,706
Amortization of bond issuance costs	(41,347)	(41,347)
Interest and other expenses	<u>(1,940,477)</u>	<u>(2,217,534)</u>
Total nonoperating revenue (expenses)	<u>(1,604,936)</u>	<u>30,913,623</u>
Increase (decrease) in net assets	(4,203,230)	30,050,770
Net assets at beginning of year	<u>97,585,899</u>	<u>67,535,129</u>
Net assets at end of year	<u>\$ 93,382,669</u>	<u>97,585,899</u>

See accompanying notes to financial statements.

NEW YORK STATE BRIDGE AUTHORITY  
 Statements of Cash Flows  
 Years ended December 31, 2011 and 2010

	<u>2011</u>	<u>2010</u>
Cash flows from operating activities:		
Toll revenue	\$ 37,241,980	37,637,271
Payments to suppliers	(7,891,715)	(6,470,475)
Payments to contractors	(16,253,537)	(13,286,995)
Payments for wages and employee benefits	(15,917,636)	(15,169,370)
Other receipts	<u>2,881,895</u>	<u>511,128</u>
Net cash provided by operating activities	<u>60,987</u>	<u>3,221,559</u>
Cash flows from capital financing activities:		
Purchases of capital assets, net	(738,300)	(483,706)
Principal paid on bonds payable	(5,988,176)	(5,640,000)
Interest paid on bonds payable	(3,011,486)	(2,424,921)
Bond issuance costs paid	<u>(717,721)</u>	<u>-</u>
Net cash used in capital financing activities	<u>(10,455,683)</u>	<u>(8,548,627)</u>
Cash flows from investing activities:		
Proceeds from sale of investments, net	12,424,210	4,583,573
Interest on investments	<u>376,888</u>	<u>413,798</u>
Net cash provided by investing activities	<u>12,801,098</u>	<u>4,997,371</u>
Net increase (decrease) in cash and equivalents	2,406,402	(329,697)
Cash and equivalents at beginning of year	<u>8,837,391</u>	<u>9,167,088</u>
Cash and equivalents at end of year	<u>\$ 11,243,793</u>	<u>8,837,391</u>
Reconciliation of operating loss to net cash provided by operating activities:		
Operating loss	(2,598,294)	(862,853)
Adjustments to reconcile operating loss to net cash provided by operating activities:		
Depreciation expense	2,416,480	612,990
Changes in:		
Accounts receivable	267	(31,381)
Prepaid expenses	(917,923)	(156,265)
Accounts payable and accrued expenses	(4,877)	235,320
Accrued wages, payroll taxes and fringe benefits	1,194,746	3,019,940
Contracts payable	<u>(29,412)</u>	<u>403,808</u>
Net cash provided by operating activities	<u>\$ 60,987</u>	<u>3,221,559</u>

See accompanying notes to financial statements.

## NEW YORK STATE BRIDGE AUTHORITY

### Notes to Financial Statements

December 31, 2011 and 2010

#### (1) Organization

The New York State Bridge Authority (Authority) is a Public Benefit Corporation created in 1932 and existing pursuant to Title 2, of Article 3 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York (the Act). The Act provides that the Authority shall continue its corporate existence and operate and maintain its bridge facilities so long as it shall have bonds or other obligations outstanding and until its existence shall be terminated by law. The Authority, which currently operates and maintains the Rip Van Winkle, Kingston-Rhinecliff, Mid-Hudson, Newburgh-Beacon, and Bear Mountain bridges crossing over the Hudson River, consists of a seven member Board appointed by the Governor with the advice and consent of the Senate. Since the Authority has no component units or potential component units, the accompanying financial statements include only the accounts of the Authority. The Authority's financial statements are included in the New York State Comprehensive Annual Financial Report.

#### (2) Significant Accounting Policies

##### (a) Basis of Presentation, Measurement Focus and Basis of Accounting

The accompanying financial statements have been prepared on the accrual basis of accounting in conformity with accounting principles generally accepted in the United States of America. The Authority's reports are based on all applicable Governmental Accounting Standards Board (GASB) pronouncements as well as applicable Financial Accounting Standards Board (FASB) Statements and Interpretations, issued on or before November 30, 1989, unless those pronouncements conflict with or contradict GASB pronouncements.

The operations of the Authority are reported under the business-type activities model and, as such, are accounted for on a flow of economic resources measurement focus and the accrual basis of accounting. Within this measurement focus, all assets and liabilities associated with operations are included on the balance sheets with revenues recorded when earned and expenses recorded at the time the liabilities are incurred. The business-type activities model requires the Authority to include a balance sheet, a statement of revenue, expenses and changes in net assets and a statement of cash flows. The statements require the classification of net assets into three components - invested in capital assets, net of related debt; restricted; and unrestricted. These classifications are defined as follows:

Invested in Capital Assets - This component of net assets consists of capital assets, net of accumulated depreciation, reduced (as applicable) by the outstanding balances of any bonds, mortgages, notes, or other borrowings that are attributable to the acquisition, construction, or improvement of those assets.

NEW YORK STATE BRIDGE AUTHORITY  
Notes to Financial Statements, Continued

(2) Significant Accounting Policies, Continued

(a) Basis of Presentation, Measurement Focus and Basis of Accounting, Continued

Restricted Net Assets - This component of net assets consists of constraints placed on net asset use through external restrictions imposed by creditors (such as through debt covenants), contributors, or laws or regulations of other governments or restrictions imposed by law through constitutional provisions or enabling legislation.

Unrestricted Net Assets - This component of net assets consists of net assets that do not meet the definition of "restricted" or "invested in capital assets".

For internal accounting and reporting, the accounts of the Authority are maintained in conformity with fund accounting. Fund accounting facilitates the observance of statutory limitations and restrictions on the use of resources.

The following funds were established by the Authority in compliance with Article V, Section 5.02 of the General Revenue Bond Resolution ("Series 1997 Resolution") adopted December 19, 1996. These funds are grouped by fund type in accordance with generally accepted accounting principles for governmental entities. All monies are to be transferred to such funds in accordance with terms outlined below, and held in depository by the designated Trustee, with the exception of the operating fund.

(1) General Fund

(a) Revenue Fund

Established to receive daily tolls and make payments to the designated funds in accordance with the terms outlined below.

(b) Operating Fund

Established to make payments from amounts received from the revenue fund, as may be required for the reasonable and necessary operating expenditures of the Authority. Amounts to be maintained in the operating fund are limited to the amounts not more than sufficient to provide for reasonable and necessary operating expenditures for the remainder of the current month and ensuing two months.

(c) General Fund

Established to hold monies not required by other Authority designated funds, for any other lawful corporate purpose of the Authority.

(2) Debt Service Funds

(a) Debt Service Fund

Established to make principal and interest payments to the Trustee or paying agent required by the Series 1997 Resolution, from amounts received from the revenue fund.

NEW YORK STATE BRIDGE AUTHORITY  
Notes to Financial Statements, Continued

(2) Significant Accounting Policies, Continued

(a) Basis of Presentation, Measurement Focus and Basis of Accounting, Continued

(2) Debt Service Funds, Continued

(b) Debt Service Reserve Fund

Established to receive payments from the revenue fund to the extent necessary to make the amount in such fund, as of the date of the calculation, equal to the maximum amount of principal and interest due to be paid on bonds then outstanding in the then current or any future fiscal year to which the calculation relates, excluding interest to be paid from monies held in the debt service fund.

(c) Subordinated Indebtedness Fund

Established to issue evidences of indebtedness payable out of, and which may be secured by a pledge of, such amounts in the subordinated indebtedness fund or general fund as may from time to time be available for the purpose of payment thereof.

(d) Rebate Fund

Established to hold monies for rebates of certain investment earnings.

(3) Capital Projects Fund

(a) Construction Fund

Established to hold monies paid into it from the sale of bonds to pay for costs of "The Project" or any "Additional Projects" as defined in the Series 1997 Resolution. Any remaining money upon completion or abandonment of such projects shall be transferred to other funds in accordance with the terms of the Series 1997 Resolution.

(b) Maintenance Reserve Fund

Established to make payments from amounts received from the revenue fund, for the cost of construction of additions, improvements or betterments to, or reconstruction of Authority bridge facilities, renewals or replacements of Authority facilities and for the purchase of major or extraordinary vehicles and equipment necessary to operate and/or maintain the Authority bridge facilities.

(c) Insurance Fund

Established to receive payments from the revenue fund to the extent that, together with multi-risk insurance, it shall provide for the adequate protection against the physical loss or damage of a bridge facility. Additionally, the Authority may pay into a separate account in this fund, amounts sufficient to provide coverage, in addition to, or instead of, such commercial insurance policies required by the Series 1997 Resolution.

NEW YORK STATE BRIDGE AUTHORITY

Notes to Financial Statements, Continued

(2) Significant Accounting Policies, Continued

(b) Cash Deposits and Investments

The Authority is limited under its investment guidelines to the investment of funds in obligations of the United States of America (United States Government Securities), the State of New York or certificates of deposit. All cash and funds invested in certificates of deposit in any fiduciary bank or trust company must be secured at all times by United States Government Securities or obligations of the State of New York, with a market value, combined with any FDIC coverage, at least equal to the amount of such deposits. Monies held by the trustee may also be secured by obligations guaranteed by the United States of America. Investments, consisting principally of U.S. Treasury obligations and certificates of deposit with a remaining maturity of one year or less at the time of purchase, are stated at cost plus accrued interest.

(c) Capital Assets

Capital assets include buildings and furniture and equipment. Capital assets purchased or acquired with an original cost of \$5,000 or more are reported at historical cost or estimated historical cost. Additions, improvements and other capital outlays that significantly extend the useful life of an asset are capitalized. Other costs incurred for repairs and maintenance are expensed as incurred. Depreciation on all assets is provided on the straight line basis over the following estimated useful lives:

Buildings	30 years
Furniture and equipment	3 - 10 years

(d) Bridge System

The bridge system consists of five bridges (6 spans) spanning the Hudson River together with the related toll plazas and approaches. The bridge system is reported at historical cost. The Authority uses the modified approach to account for the bridge system. Under the modified approach expenditures for additions and improvements to eligible infrastructure assets, which increase capacity or efficiency of the assets rather than preserve their lives, are capitalized. All other expenditures, including preservation costs, are expensed in the period incurred and the bridge system is not depreciated. The Authority performs condition assessments on the bridge system, makes annual estimates of the outlay necessary to maintain and preserve the assets at predetermined condition levels and documents that the assets are being maintained at the predetermined condition level.

(e) Real Property

Real property utilized by the Authority is held in the name of the State of New York. The Authority has, however, the right to possess and, with the approval of the Commissioner of Transportation, to sell, lease, exchange, or otherwise dispose of any property or rights therein, not necessary for its corporate purpose.

## NEW YORK STATE BRIDGE AUTHORITY

### Notes to Financial Statements, Continued

#### (2) Significant Accounting Policies, Continued

##### (f) Compensated Absences

In conformity with pronouncements of the Government Accounting Standards Board, the Authority accrues vacation and other benefits as earned by its employees.

##### (g) Subsequent Events

The Authority has evaluated events after December 31, 2011, and through March 1, 2012, which is the date the financial statements were available to be issued, and determined that any events or transactions occurring during this period that would require recognition or disclosure are properly addressed in these financial statements.

##### (h) Operating Revenue

Operating revenues consist principally of toll revenue.

##### (i) Nonoperating Revenue

Nonoperating revenues consist principally of interest income.

##### (j) Operations

Provisions of the Series 1997 Resolution require that revenue in excess of expenses for operation and maintenance of the bridge system be used first for the payment of interest and principal on outstanding bonds, then for debt service reserve, subordinated indebtedness (if any), insurance, maintenance reserve, construction and finally general fund requirements. It also requires that expenses for operation and maintenance of the bridge system shall not include any provisions for depreciation of the bridge facilities or equipment, or any principal payment on bonds outstanding or any other debt obligation of the Authority.

The Authority's right to operate and collect tolls for the use of the Newburgh-Beacon Bridge is governed in part by an agreement dated December 15, 1988, between the Authority, the State of New York and the United States Department of Transportation. Consistent with the terms of Section 120(c)(2) of Public Law 100-17 and Section 402 of Title II of Public Law 101-45, the Agreement permits the use of revenues collected at that bridge only for construction and reconstruction, debt service, proper operation and maintenance of the bridges, approach roads and support facilities subject to the jurisdiction of the Authority.

#### (3) Cash and Equivalents

The carrying amount of the Authority's deposits with financial institutions at December 31, 2011 amounted to \$11,243,793 and the bank balance was \$12,200,512. The bank balance is collateralized as follows:

Amount issued by FDIC	\$ 500,000
Collateral held by a third party in the Authority's name	4,273,527
Collateral held by trustee	<u>8,824,805</u>
	\$ <u>13,598,332</u>

NEW YORK STATE BRIDGE AUTHORITY

Notes to Financial Statements, Continued

(4) Investments

The cost and market value of investments (United States Government Securities) held by the Authority as of December 31, 2011 and 2010 are summarized as follows:

<u>Restricted</u>	<u>2011</u>		<u>2010</u>	
	<u>Cost</u>	<u>Market</u>	<u>Cost</u>	<u>Market</u>
Debt Service Fund -				
U.S. Treasury Notes	\$ 682,467	667,000	-	-
Debt Service Reserve Fund -				
U.S. Treasury Notes	7,362,963	7,354,181	8,114,728	8,125,324
Insurance Fund -				
U.S. Treasury Notes	8,654,083	9,389,421	8,607,056	8,848,515
Maintenance Reserve Fund -				
U.S. Treasury Notes	1,933,545	1,923,342	4,589,228	4,598,133
U.S. Treasury Bills	-	-	<u>9,746,256</u>	<u>9,746,015</u>
Total maintenance	<u>1,933,545</u>	<u>1,923,342</u>	<u>14,335,484</u>	<u>14,344,148</u>
Total	<u>\$ 18,633,058</u>	<u>19,333,944</u>	<u>31,057,268</u>	<u>31,317,987</u>

All Authority investment securities are classified as securities acquired by a financial institution for a governmental entity held by the financial institution's trust department in the entity's name. At December 31, 2011, the Authority's investments and maturities were as follows:

<u>Investment Type</u>	<u>Fair Value</u>	Less than <u>one year</u>	<u>1 to 5 years</u>
U.S. Treasury Notes	\$ <u>19,333,944</u>	<u>6,169,286</u>	<u>13,164,658</u>

NEW YORK STATE BRIDGE AUTHORITY

Notes to Financial Statements, Continued

(5) Funds Held For Restricted Purposes

At December 31, 2011 and 2010, funds held for restricted purposes by fund category consisted of the following:

	2011			
	Cash and Equivalents	United States Governmental Securities	Related Liabilities	Total
Debt Service Funds:				
Debt service fund	\$ 5,835,514	682,467	(6,329,025)	188,956
Debt service reserve fund	<u>235</u>	<u>7,362,963</u>	<u>-</u>	<u>7,363,198</u>
Fund total	<u>5,835,749</u>	<u>8,045,430</u>	<u>(6,329,025)</u>	<u>7,552,154</u>
Capital Projects Funds:				
Insurance fund	254,828	8,654,083	-	8,908,911
Maintenance reserve fund	<u>2,734,228</u>	<u>1,933,545</u>	<u>(603,359)</u>	<u>4,064,414</u>
Fund total	<u>2,989,056</u>	<u>10,587,628</u>	<u>(603,359)</u>	<u>12,973,325</u>
Combined total	<u>\$ 8,824,805</u>	<u>18,633,058</u>	<u>(6,932,384)</u>	<u>20,525,479</u>
	2010			
	Cash and Equivalents	United States Governmental Securities	Related Liabilities	Total
Debt Service Funds:				
Debt service fund	\$ 7,058,820	-	(7,044,023)	14,797
Debt service reserve fund	<u>35,576</u>	<u>8,114,728</u>	<u>-</u>	<u>8,150,304</u>
Fund total	<u>7,094,396</u>	<u>8,114,728</u>	<u>(7,044,023)</u>	<u>8,165,101</u>
Capital Projects Funds:				
Insurance fund	-	8,607,056	-	8,607,056
Maintenance reserve fund	<u>212</u>	<u>14,335,484</u>	<u>(632,771)</u>	<u>13,702,925</u>
Fund total	<u>212</u>	<u>22,942,540</u>	<u>(632,771)</u>	<u>22,309,981</u>
Combined total	<u>\$ 7,094,608</u>	<u>31,057,268</u>	<u>(7,676,794)</u>	<u>30,475,082</u>

Cash in the debt service fund at December 31, 2011 and 2010 was on deposit with the paying agent to meet bond and interest payments due on January 1, 2012 and January 1, 2011, respectively.

NEW YORK STATE BRIDGE AUTHORITY  
Notes to Financial Statements, Continued

(6) Capital Assets

Capital assets at December 31, 2011 and 2010 consist of the following:

	2011				Balance December 31, 2011
	Balance December 31, 2010	Additions	Disposals	Balance December 31, 2011	
Walkway Over The Hudson - pedestrian bridge	\$ 32,758,706	-	-	32,758,706	
Buildings	8,128,929	-	-	8,128,929	
Furniture and equipment	<u>6,081,272</u>	<u>738,300</u>	<u>(243,162)</u>	<u>6,576,410</u>	
	46,968,907	738,300	(243,162)	47,464,045	
Less accumulated depreciation	<u>(8,918,324)</u>	<u>(2,416,480)</u>	<u>243,162</u>	<u>(11,091,642)</u>	
	<u>\$ 38,050,583</u>	<u>(1,678,180)</u>	<u>-</u>	<u>36,372,403</u>	

	2010				Balance December 31, 2010
	Balance December 31, 2009	Contributed capital assets	Additions	Disposals	
Walkway Over The Hudson - pedestrian bridge	\$ -	32,758,706	-	-	32,758,706
Buildings	8,128,929	-	-	-	8,128,929
Furniture and equipment	<u>5,524,066</u>	<u>80,000</u>	<u>483,706</u>	<u>(6,500)</u>	<u>6,081,272</u>
	13,652,995	32,838,706	483,706	(6,500)	46,968,907
Less accumulated depreciation	<u>(8,231,834)</u>	<u>(80,000)</u>	<u>(612,990)</u>	<u>6,500</u>	<u>(8,918,324)</u>
	<u>\$ 5,421,161</u>	<u>32,758,706</u>	<u>(129,284)</u>	<u>-</u>	<u>38,050,583</u>

Depreciation expense for the years ended December 31, 2011 and 2010 amounted to \$2,416,480 and \$612,990, respectively.

In 2010, the pedestrian bridge known as the Walkway Over The Hudson was transferred to the Authority at a historical cost of \$32,758,706. Additionally, the Authority received fully depreciated equipment of \$80,000.

NEW YORK STATE BRIDGE AUTHORITY  
Notes to Financial Statements, Continued

(7) Bridge System

The bridge system consists of five bridges (six spans) spanning the Hudson River together with the related toll plazas and approaches. The bridge system is recorded at cost and consisted of the following at December 31, 2011 and 2010:

<u>Bridge Facility</u>	<u>Opened</u>	<u>2011</u>	<u>2010</u>
Rip Van Winkle Bridge	1935	\$ 2,299,147	2,299,147
Kingston-Rhinecliff Bridge	1957	20,536,609	20,536,609
Mid-Hudson Bridge	1930	12,957,846	12,957,846
Newburgh-Beacon Bridge	1963 and 1980	44,223,796	44,223,796
Bear Mountain Bridge	1924	<u>4,340,871</u>	<u>4,340,871</u>
		<u>\$ 84,358,269</u>	<u>84,358,269</u>

(8) Bond Indebtedness

On January 22, 1997, the Authority issued \$49,015,000 of General Revenue Bonds (Series 1997) in the open market in order to provide funds for (a) the costs of providing for the payment at or in advance of maturity (defeasement) of the Outstanding Series 1989 Bridge System Revenue Bonds (Series 1989) and the Series 1992 Bridge System Revenue Bonds (Series 1992) of the Authority, (b) to finance a portion of the costs of the 1997 Project, which consists of certain reconstruction and rehabilitation projects for the Authority's bridge system, (c) to fund the debt service reserve fund to the level required by the resolution and (d) to pay the costs of issuance of the Series 1997 Bonds.

On March 7, 2002, the Authority issued \$50,000,000 of General Revenue Bonds (Series 2002) in the open market in order to provide funds to finance a portion of the costs of the 2002 Project, which consisted of certain reconstruction and rehabilitation projects for the Authority's bridge system. The proceeds were used to (a) fund the debt service reserve fund to the level required by the bond resolution and (b) pay the costs of issuance of the Series 2002 Bonds.

On December 15, 2011, the Authority issued \$32,410,000 in General Revenue Bonds (Series 2011) with an average interest rate of 2.6% to advance refund \$35,535,000 of outstanding Series 2002 Bonds with an average interest rate of 3.4%. The net proceeds of \$36,472,358 were deposited in a trust with an agent to provide for future debt service payments on the bonds. As a result, the bonds are considered defeased and the liability for those bonds has been removed from the Authority's financial statements. The economic gain on the transaction (the difference between the present values of the debt service payments on the old and new debt) is approximately \$3.3 million.

NEW YORK STATE BRIDGE AUTHORITY  
Notes to Financial Statements, Continued

(8) Bond Indebtedness, Continued

The Authority recorded a net unamortized premium as a result of this defeasance as follows:

Premium received	\$ 3,036,824
Deferred gain on defeasement	<u>173,324</u>
Total unamortized premium	\$ <u>3,210,148</u>

Changes in indebtedness for the years ended December 31, 2011 and 2010 are summarized as follows:

	2011			Balances at December 31, 2011
	Balances at December 31, 2010	<u>Retirements</u>	<u>Refunding</u>	
	Series 1997	\$ 8,825,000	(4,305,000)	
Series 2002	38,790,000	(1,595,000)	(35,535,000)	1,660,000
Series 2011	-	-	<u>32,410,000</u>	<u>32,410,000</u>
	<u>\$ 47,615,000</u>	<u>(5,900,000)</u>	<u>(3,125,000)</u>	<u>38,590,000</u>

	2010			Balances at December 31, 2010
	Balances at December 31, 2009	<u>Retirements</u>		
	Series 1997	\$ 12,925,000	(4,100,000)	
Series 2002	<u>40,330,000</u>	<u>(1,540,000)</u>		<u>38,790,000</u>
	<u>\$ 53,255,000</u>	<u>(5,640,000)</u>		<u>47,615,000</u>

The bonds have serial maturities as of December 31, 2011 as follows:

	<u>Principal</u>	<u>Interest</u>
2012	\$ 6,180,000	149,025
2013	6,065,000	1,255,840
2014	6,245,000	1,081,100
2015	6,435,000	893,750
2016	6,690,000	636,350
2017	<u>6,975,000</u>	<u>348,750</u>
	<u>\$ 38,590,000</u>	<u>4,364,815</u>

The Series 2011 Bonds, which bear interest at rates ranging from 2% to 5%, the Series 2002 Bonds which bear interest at rates ranging from 3% to 5%, and the Series 1997 Bonds, which bear interest at rates ranging from 5% to 6%, are general obligations of the Authority and are payable from and secured by a pledge of all monies or revenues of the Authority, including tolls and other revenues derived from the operations of the Authority's bridge facilities.

NEW YORK STATE BRIDGE AUTHORITY  
Notes to Financial Statements, Continued

(8) Bond Indebtedness, Continued

The Series 2011 Bonds are subject to redemption prior to maturity, at the option of the Authority, as a whole or in part at the redemption price of par plus accrued interest to the redemption date.

The Series 1997 Bonds maturing on or after January 1, 2008 are subject to redemption prior to maturity, at the option of the Authority, at prices ranging from 100% to 102% of the principal amount plus accrued interest to the redemption date.

(9) Retirement Plan

(a) Plan Description

The New York State Employees' Retirement System (System) provides retirement benefits as well as death and disability benefits. Obligations of employers and employees to contribute and benefits to employees are governed by the New York State Retirement and Social Security Law (NYSRSSL). The System issues a publicly available financial report that includes financial statements and required supplementary information. The report may be obtained in writing to the New York State and Local Retirement System, 110 State Street, Albany, New York 12244.

(b) Funding Policies

The System is noncontributory except for employees with less than 10 years of service who contribute 3% of their salary. Under the authority of the NYSRSSL, the Comptroller shall certify annually the rates, expressed as proportions of payroll of members, which shall be used in computing the contributions required to be made by employers.

The rates billed by the Comptroller during the year ended December 31, 2011 ranged from 12.7% to 19.7% and during the year ended December 31, 2010 ranged from 9.1% to 15.3%.

The Authority is required to contribute at an actuarially determined rate. The required contribution for the years ended December 31, 2011, 2010 and 2009 amounted to \$2,234,373, \$1,182,092 and \$678,263, respectively.

The Authority's contributions made to the System were equal to 100% of the contributions required for each year.

(c) Early Retirement Incentive

Chapter 105 of the Laws 2010 established a two-part retirement incentive program for certain public employees participating in the System. The Authority adopted the program and allowed all employees the option to retire early. Twenty employees of the Authority elected early retirement under this program, with a cost of \$982,086.

NEW YORK STATE BRIDGE AUTHORITY  
Notes to Financial Statements, Continued

(10) Postemployment Benefits

The Authority implemented the accounting and disclosure requirements of GASB Statement No. 45, "Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions" (OPEB) effective for its fiscal year beginning January 1, 2007. The Authority previously recorded a liability for retiree health benefits for only those who had retired, and not for active employees, as required by Statement No. 45.

Plan Description - The Authority provides continuation of medical coverage to employees that retire at age 55 with five years of service if hired before April 1, 1975 or ten years of service if hired after April 1, 1975. For employees with a date of retirement before April 1, 1983 and at least five years of service, the Authority contributes 100% of costs for employees and 75% for an employee's spouse. For employees with a date of retirement after April 1, 1983 and at least ten years of service, the Authority contributes 90% for employees and 75% for an employee's spouse.

The Authority provides certain health care benefits for retired employees. Substantially all of the Authority's employees may become eligible for these benefits if they reach the normal retirement age, of the respective tier of the New York State Employees' Retirement System, while working for the Authority. The Authority, on an annual basis, accrues the cost which represents the present value of these benefits to be paid over the estimated lives of the retirees. The increase in the OPEB liability for the years ended December 31, 2011 and 2010 amounted to \$2,222,523 and \$2,110,359, respectively. At December 31, 2011 and 2010, the OPEB liability included in noncurrent accrued fringe benefits was \$16,144,683 and \$13,922,160, respectively. The amount charged to expense was \$3,134,555 and \$3,023,015 for the years ended December 31, 2011 and 2010.

The number of participants as of January 1, 2011 was as follows:

Active employees	124
Retired employees	<u>99</u>
Total	<u>223</u>

Funding Policy - The Authority currently pays for post-retirement health care benefits on a pay-as-you-go basis. These financial statements assume that pay-as-you-go funding will continue.

<u>Benefit Obligations and Normal Cost</u>	<u>2011</u>	<u>2010</u>
Actuarial accrued liability (AAL):		
Retired employees	\$ 18,405,799	17,342,514
Active employees	<u>26,201,695</u>	<u>25,894,669</u>
Total	\$ <u>44,607,494</u>	<u>43,237,183</u>
Underfunded actuarial accrued liability (UAAL)	\$ <u>44,607,494</u>	<u>43,237,183</u>
Normal cost	\$ <u>1,158,374</u>	<u>1,061,891</u>

NEW YORK STATE BRIDGE AUTHORITY  
Notes to Financial Statements, Continued

(10) Postemployment Benefits, Continued

	<u>2011</u>	<u>2010</u>
<u>Level Dollar Amortization</u>		
Calculation of ARC under projected Unit Credit Method:		
Amortization of UAAL over 30 years with interest to end of year	\$ 1,982,606	1,909,759
Normal costs with interest to end of year	<u>1,261,208</u>	<u>1,162,504</u>
Annual required contribution (ARC)	\$ <u>3,243,814</u>	<u>3,072,263</u>
<u>Annual OPEB Cost Contribution</u>		
Contribution made by Authority	912,032	912,656
Contribution as a percentage of required contribution	28.1%	29.7%
<u>Annual OPEB Cost and Net OPEB Obligation</u>		
Annual required contribution	3,243,814	3,072,263
Interest on net OPEB obligation	533,219	472,472
Adjustment to annual required contribution	<u>(642,478)</u>	<u>(521,720)</u>
Annual OPEB cost (expense)	3,134,555	3,023,015
Contribution made on a pay-as-you-go basis	<u>(912,032)</u>	<u>(912,656)</u>
Increase in net OPEB obligation	2,222,523	2,110,359
Net OPEB obligation at beginning of year	<u>13,922,160</u>	<u>11,811,801</u>
Net OPEB obligation at end of year	\$ <u>16,144,683</u>	<u>13,922,160</u>
Actuarial methods and assumptions:		
Funding interest rate	3.83%	4%
2011 medical trend rate	10%	8%/10%
Ultimate trend rate	5%	5%/5%
Year ultimate trend rate reached	2018	2018
Annual payroll growth rate	2.5%	2.5%
Actuarial cost method	Attained Age	Attained Age
The remaining amortization period at year-end	25 years	26 years

(11) Administrative Services Assessment

Through the Public Authorities Law Section 2975, the State of New York (the State) established a cost recovery of central governmental services to various public authorities. This statute directs the New York State Division of the Budget to determine the amount to be assessed to each public authority. The State Treasurer imposes and collects the assessments which are deposited into the State's general fund. The administrative services assessment for the Authority for the years ended December 31, 2011 and 2010 amounted to \$255,402 and \$234,119, respectively.

NEW YORK STATE BRIDGE AUTHORITY

Notes to Financial Statements, Continued

(12) Risk Management

The Authority purchases commercial insurance policies in varying amounts for general liability, vehicle liability, damage to fixed assets, and public officials and employee liability coverage. The Authority also pays unemployment claims to the State of New York as incurred. There are no claims relating to the bridge facilities, however, the Authority has funded a reserve of \$8,908,911 at December 31, 2011 in the capital projects fund to meet its deductible should a claim arise.

(13) Commitments and Contingencies

Commitments and contingencies at December 31, 2011 consist of the following:

(a) Bridge Construction

At December 31, 2011, the Authority had contractual commitments outstanding of approximately \$1,616,000 for bridge rehabilitation and repairs on several of its bridge facilities.

(b) Contingencies

The Authority is a defendant in lawsuits. While the outcome of these lawsuits or other proceedings against the Authority cannot be predicted with certainty, the Authority does not expect that these matters will have a material adverse effect on its financial position.

(14) Noncash Investing and Financing Activities

Noncash transactions excluded from the accompanying statements of cash flows for the years ended December 2011 and 2010 are as follows:

	<u>2011</u>	<u>2010</u>
Issuance of 2011 Series Bonds, including premium of \$3,036,824, for advance refunding of 2002 Series Bonds (with a principal balance of \$35,535,000).	\$ <u>35,446,824</u>	<u>-</u>
Contribution of Walkway Over the Hudson pedestrian bridge.	\$ <u>-</u>	<u>32,758,706</u>

NEW YORK STATE BRIDGE AUTHORITY  
 Required Supplementary Information -  
 Bridge System Assessments  
 December 31, 2011

	Number of Bridges					
	2011		2010		2009	
<u>Condition Rating*</u>	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>
New	-	-	-	-	-	-
Minor Deterioration	9	100%	9	100%	9	100%
Serious Deterioration	-	-	-	-	-	-
Totally Deteriorated	-	-	-	-	-	-
Total	<u>9</u>	<u>100%</u>	<u>9</u>	<u>100%</u>	<u>9</u>	<u>100%</u>

\*The condition of the Authority's bridge system is determined using annual inspection procedures. The inspections are conducted in accordance with New York State Department of Transportation (NYSDOT) requirements and Federal Highway Administration Guidelines. The NYSDOT bridge condition rating, which is an assessment of the ability to function structurally, is determined during biennial inspections using a numerical condition scale ranging from 1.0 (totally deteriorated) to 7.0 (new condition). The complete NYSDOT numerical rating scale is as follows:

- 1 - Totally deteriorated, or in failed condition.
- 2 - Used to shade between ratings 1 and 3.
- 3 - Serious deterioration, or not functioning as originally designed.
- 4 - Used to shade between 3 and 5.
- 5 - Minor deterioration, but functioning as originally designed.
- 6 - Used to shade between 5 and 7.
- 7 - New condition, no deterioration.

The number of bridges included in the annual inspection process includes the six spans crossing the Hudson River and three overpasses.

It is the Authority's policy to keep the overall condition number of each bridge at a condition rating of at least 5.0. Presently, all bridges are inspected annually with three bridges receiving the more thorough biennial inspections and three receiving maintenance inspections.

NEW YORK STATE BRIDGE AUTHORITY  
 Required Supplemental Information -  
 Bridge System Assessments, Continued

Estimated-to-Actual Capital Improvement Expenditures in (\$000's):

	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>
Estimated	\$ 18,934	13,758	11,703	16,360	15,480
Actual	15,304	12,950	7,846	7,910	14,022

Significant variations between the estimated, or budgeted, and actual costs of capital improvements are noted in each year.

In 2007, the \$2.0 million Mid-Hudson Bridge maintenance building replacement including municipal water and sewer installation was separated into two projects. The water and sewer installation was completed for \$.8 million and the maintenance building replacement was scheduled for 2008.

In 2008, \$3.5 million budgeted for bridge painting at Rip Van Winkle was expended late in 2007. At the Newburgh-Beacon Bridge, the scope of a deck overlay and joint modification project was reduced by \$1.2 million and \$750,000 for replacement of variable message signs carried over into 2009. Also, four other projects came in \$1.1 million under budget and \$1.3 million of work was deferred to 2009 or later.

In 2009, several projects totaling \$2.3 million were deferred to 2010 or later. In addition, equipment purchases were \$0.7 under budget and \$0.6 million of the Mid-Hudson Bridge main cable inspection costs carried over to 2010.

In 2010, several projects totaling \$1.0 million were deferred to 2011 or later. Estimated capital improvements were initially projected as net of federal grants to fund projects. The Authority reported federal funds receivable totaling \$0.3 million for 2010 as other income while the cost was reported as capital improvement expenditures.

In 2011, several projects totaling \$3.2 million were deferred to 2012 or later. Estimated capital improvements were initially projected as net of federal grants to fund projects. The Authority reported federal funds receivable totaling \$0.6 million for 2011 as other income while the cost was reported as capital improvement expenditures.

**TOSKI & CO., P.C.**  
**CERTIFIED PUBLIC ACCOUNTANTS**

300 ESSJAY ROAD, STE 115  
WILLIAMSVILLE, NY 14221  
(716) 634-0700

14 CORPORATE WOODS BLVD.  
ALBANY, NY 12211  
(518) 935-1069

**INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL  
REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF  
FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH  
GOVERNMENT AUDITING STANDARDS**

To the Governing Board  
New York State Bridge Authority:

We have audited the financial statements of the New York State Bridge Authority (the Authority) as of and for the year ended December 31, 2011, and have issued our report thereon dated March 1, 2012. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the Authority's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control over financial reporting.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Authority's financial statements will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Authority's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.

This report is intended solely for the information and use of the Authority's Governing Board, management and appropriate officials of the State of New York, and is not intended to be and should not be used by anyone other than these specified parties.

Toski & Co., CPAs, P.C.

Williamsville, New York  
March 1, 2012

# TOSKI & CO., P.C.

CERTIFIED PUBLIC ACCOUNTANTS

300 ESSJAY ROAD, STE 115  
WILLIAMSVILLE, NY 14221  
(716) 634-0700

14 CORPORATE WOODS BLVD.  
ALBANY, NY 12211  
(518) 935-1069

## INDEPENDENT AUDITORS' REPORT ON INVESTMENT COMPLIANCE

To the Governing Board  
New York State Bridge Authority:

We have examined the New York State Bridge Authority's (the Authority) compliance with Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York during the year ended December 31, 2011. Management is responsible for the Authority's compliance with those requirements. Our responsibility is to express an opinion on the Authority's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in Government Auditing Standards, issued by the Comptroller General of the United States and, accordingly, included examining, on a test basis, evidence supporting the Authority's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on the Authority's compliance with specified requirements.

In our opinion, the Authority complied, in all material respects, with the aforementioned requirements during the year ended December 31, 2011.

In accordance with Government Auditing Standards, we are required to report findings of deficiencies in internal control, violations of provisions of contracts or grant agreements, and abuse that are material to the Authority's compliance with Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York and any fraud and illegal acts that are more than inconsequential that come to our attention during our examination. We are also required to obtain the views of management on those matters. We performed our examination to express an opinion on whether the Authority complied with the aforementioned requirements and not for the purpose of expressing an opinion on the internal control over compliance with those requirements or other matters; accordingly, we express no such opinion. The results of our tests disclosed no matters that are required to be reported under Government Auditing Standards.

This report is intended solely for the information and use of the Authority's Governing Board, management and the appropriate officials of the State of New York, and is not intended to be and should not be used by anyone other than those specified parties.

Toski & Co., CPAs, P.C.

Williamsville, New York  
March 1, 2012

**FORM A-1**  
**PROPOSER'S AFFIRMATION OF UNDERSTANDING OF SECTION**  
**139 PROCEDURES**

Offeror affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

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

Name: \_\_\_\_\_

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

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**FORM A-2**  
**Offeror Certification of Compliance**  
**with State Finance Law §139-k (5)**

**Offeror Certification:**

*I certify that all information provided to the Authority with respect to State Finance Law §139-k is complete, true and accurate.*

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

Name: \_\_\_\_\_

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

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

Offeror certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_

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

**FORM B  
CONFLICT OF INTEREST AFFIDAVIT**

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_) SS.:

\_\_\_\_\_, being duly sworn, deposes and says: He is an officer of \_\_\_\_\_, which is about to render services to the Authority as a contractor/consultant or in any other professional capacity (the "Firm") and agrees that the Firm has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its services to be rendered to the Authority.

That it is further agreed in the rendering of services to the Authority, no person having any such interest shall knowingly be employed by the undersigned or the Firm.

Respondent's Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Authorized Official

Typed or Printed Name: \_\_\_\_\_

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

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

Sworn to before me this \_\_\_\_\_

day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
**NOTARY PUBLIC**

**FORM C**  
**Non-Collusive Proposer Certification**

**BY SUBMISSION OF THIS RFP, PROPOSER AND EACH PERSON SIGNING ON BEHALF OF PROPOSER CERTIFIES, AND IN THE CASE OF JOINT RFP, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:**

(1) The prices in this RFP have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this RFP have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and

(3) No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a RFP for the purpose of restricting competition.

**A RFP SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE PROPOSER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE PROPOSER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:**

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_ day of \_\_\_\_\_, 2010 as the act and deed of said corporation of partnership.

**IF PROPOSER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:  
NAMES OF PARTNERS OR PRINCIPALS/ LEGAL RESIDENCE**

_____	_____
Name	Legal Residence
_____	_____
Name	Legal Residence
_____	_____
Name	Legal Residence
_____	_____
Name	Legal Residence

**IF PROPOSER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:  
NAMES/ LEGAL RESIDENCE**

\_\_\_\_\_  
President

\_\_\_\_\_  
Legal Residence

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Legal Residence

\_\_\_\_\_  
Treasurer

\_\_\_\_\_  
Legal Residence

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

Chief Executive Officer:

Name of Proposer: \_\_\_\_\_

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Typed or Printed Name]

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

Chief Financial Officer:

Name of Proposer: \_\_\_\_\_

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Typed or Printed Name]

Sworn to before me this \_\_\_\_\_

day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
NOTARY PUBLIC

**FORM D**  
**BUSINESS INFORMATION**

This form must be submitted along with all other forms included in this RFP package. All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized.

1. Name of entity:
2. Permanent main office address:
3. Telephone number: Fax number:
4. Contact person regarding RFP:
5. Names of all officers and/or principals in the firm and their titles:

Name of Officer and/or Principals	Titles

6. If respondent is a closely held corporation, list stockholder's information below:

Name	Address	Office Held

7. Date organized (month, day, year):
8. If a corporation, where incorporated (city, state):
9. Number of years entity in business: Federal Tax I.D. No.:

10. Financial References: Give bank reference and names in which accounts are held.

Bank Reference	Bank Name	Bank Address

11. Has the entity or any of its Principals, Owners, Officers, Partners, Directors or Stockholders of the entity been the subject of a criminal investigation? Yes [ ] No [ ]

12. If the answer to the above question is "Yes", state the court in which the investigation is taking/took place, the approximate date the investigation commenced and, if applicable, concluded as well as the subject matter of the investigation and the identity of the person(s) or entity(ies) involved:

13. Has any indictment arisen out of the investigation? Yes [ ] No [ ]

14. If the answer to the above question is "Yes", state the person(s) or entity(ies) indicated and the status of any such indictment:

15. Has an entity, (i.e.) corporation, partnership, etc., in which a Principal, Owner, Officer, Partner, Director, or Stockholder has an ownership interest ever been the subject of a criminal investigation? Yes [ ] No [ ]

16. If the answer to the above question is "Yes", state the court in which the investigation is taking/took place, the approximate date the investigation commenced and, if applicable, concluded as well as the subject matter of the investigation and the identity of the person(s) or entity(ies) involved:

17. Has any indictment arisen out of the investigation? Yes [ ] No [ ]

18. If the answer to the above question is "Yes", state the person(s) or entity(ies) indicated and the status of any such indictment:

19. List names of any affiliated corporation of respondent, business affiliation with respondent and specify relationship:

Name of affiliated corporation	Business Affiliation	Specify Relationship

20. Identify all subcontractors proposed to be used to fulfill any part of the obligations anticipated by this proposal:

Name of subcontractor	Address	Type of work to be performed

21. Current licenses, permits and certifications are listed on **Form I** and **copies of same are attached to Form I.**
22. The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the Authority and/or his designee on behalf of the Authority in verification of the recitals comprising this Business Information Form.

\_\_\_\_\_  
(Name of Entity)

By: \_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Title)

State of New York     )  
County of               ) ss.

\_\_\_\_\_ being duly sworn, deposes and says that he/she is  
\_\_\_\_\_ of \_\_\_\_\_ and that the answers to  
the foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2010

\_\_\_\_\_  
Notary Public

## STATE OF NEW YORK VENDOR RESPONSIBILITY QUESTIONNAIRE

1. Vendor is: <input type="checkbox"/> PRIME CONTRACTOR <input type="checkbox"/> SUB-CONTRACTOR			
2. Vendor's Legal Business Name		3. Identification Numbers a) FEIN # _____ b) DUNS # _____	
4. Doing Business As (D/B/A)(if applicable) & County Filed		5. Website Address (if applicable)	
6. Address of Primary Place of Business/Executive Office		7. Phone No. (    )    -	8. Fax No. (    )    -
9. Address of Primary Place of Business/Executive Office in New York State (if different from above)		10. Phone No. (    )    -	11. Fax No. (    )    -
12. Primary Place of Business in New York State is: <input type="checkbox"/> Owned <input type="checkbox"/> Rented If rented, please provide landlord's name, address, and phone number below:		13. Authorized Contact for this Questionnaire Name _____ Title _____ Phone No. _____ Fax No. _____ E-mail Address _____	
14. Vendor's Business Entity is (check appropriate box and provide requested information):			
a) <input type="checkbox"/> Business Corporation	Date of Incorporation	State of Incorporation*	
b) <input type="checkbox"/> Sole Proprietor	Date Established		
c) <input type="checkbox"/> General Partnership	Date Established		
d) <input type="checkbox"/> Not-for-Profit Corporation	Date of Incorporation	State of Incorporation* _____	Charities Registration No. _____
e) <input type="checkbox"/> Limited Liability Company (LLC)	Date Established		
f) <input type="checkbox"/> Limited Liability Partnership	Date Established		
g) <input type="checkbox"/> Other - Specify:	Date Established	Jurisdiction Filed (if applicable)	
* If not incorporated in New York State, please provide a copy of authorization to do business in New York or a current certificate of good standing from your state of incorporation.			
15. Primary Business Activity (Please identify the primary business categories, products or services provided by your business.)			
16. Name of Workers' Compensation Insurance Carrier:			
17. List below <b>ALL</b> of the Vendor's Principal Owners and the three officers who direct the daily operations of the Vendor (attach additional sheets if necessary):			
a) Name	Title	b) Name	Title
c) Name	Title	d) Name	Title

## STATE OF NEW YORK VENDOR RESPONSIBILITY QUESTIONNAIRE

FOR QUESTIONS 18 - 29, A DETAILED EXPLANATION IS REQUIRED FOR EACH QUESTION ANSWERED WITH A "YES", AND MUST BE PROVIDED AS AN ATTACHMENT TO THE COMPLETED QUESTIONNAIRE. YOU MUST PROVIDE ADEQUATE DETAILS OR DOCUMENTS TO AID THE NEW YORK STATE THRUWAY AUTHORITY/CANAL CORPORATION (NYSTA/CC) IN MAKING A DETERMINATION OF VENDOR RESPONSIBILITY. PLEASE NUMBER EACH RESPONSE TO MATCH THE QUESTION NUMBER.

18. Is the vendor certified in New York State as a (please check):  Yes  No
- Minority Business Enterprise (MBE)
  - Women's Business Enterprise (WBE)
  - Disadvantaged Business Enterprise (DBE)
- Please provide a copy of any of the above certifications that apply.*

19. Does the vendor use, or has it used in the past ten (10) years, any other business name, FEIN, DUNS or D/B/A other than those listed in items 2-4 above?  Yes  No
- List all other business name(s), FEIN(s), DUNS(s) or any D/B/A names and the dates that these names or numbers were/are in use. Explain the relationship to the vendor.*

20. Are there any individuals now serving in a managerial or consulting capacity to the vendor, including principal owners and officers, who now serve or in the past three (3) years have served as:
- a) a full or part-time employee at the NYSTA/CC or a New York State agency, or as a consultant, in an individual capacity, to the NYSTA/CC or a New York State agency?  Yes  No
- List each individual's name, business title or consulting capacity, New York State agency name (if applicable) and employment position with applicable service dates.*
- b) If yes to item #20a, did this individual perform services related to the solicitation, negotiation, operation and/or administration of public contracts for the NYSTA/CC or a New York State agency?  Yes  No
- List each individual's name, business title or consulting capacity, New York State agency name (if applicable) and the consulting/advisory position with applicable service dates. List each contract name and assigned contract number.*

21. Within the past five (5) years, has the vendor, any individuals serving in a managerial or consulting capacity, principal owners, officers, major stockholder(s) (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), affiliate<sup>1</sup> or any person involved in the bidding, contracting, or leasing process:
- a) i. been suspended, debarred or terminated by a local, state or federal authority in connection with a contract or contracting process;  Yes  No
- ii. been disqualified for cause as a bidder on any permit, license, concession franchise or lease;
- iii. agreed to a voluntary exclusion from bidding/contracting;
- iv. had a bid rejected on a NYSTA/CC or a New York State agency contract for failure to comply with the MacBride Fair Employment Principles;
- v. had a low bid rejected on a local, state or federal contract for failure to meet statutory affirmative action or M/WBE requirements on a previously held contract;
- vi. had status as a Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise denied, de-certified, revoked or forfeited;
- vii. been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any local, state or federal government contract;
- viii. been denied an award of a local, state or federal government contract, had a contract suspended or had a contract terminated for non-responsibility; or
- ix. had a local, state or federal government contract suspended or terminated for cause prior to the completion of the term of the contract?
- b) been investigated, indicted, convicted, received a judgment against them or a grant of immunity for any business-related conduct constituting a crime under local, state or federal law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct?  Yes  No

**STATE OF NEW YORK  
VENDOR RESPONSIBILITY QUESTIONNAIRE**

- c) been issued a citation, notice, violation order, or are pending an administrative hearing, proceeding or determination for violations of:  Yes  No
- i. federal, state or local health laws, rules or regulations, including but not limited to Occupational Safety & Health Administration (OSHA) or New York State labor law;
  - ii. state or federal environmental laws;
  - iii. unemployment insurance or workers' compensation coverage or claim requirements;
  - iv. Employee Retirement Income Security Act (ERISA);
  - v. federal, state or local human rights laws;
  - vi. civil rights laws;
  - vii. federal or state security laws;
  - viii. federal Immigration and Naturalization Services (INS) and Alienage laws;
  - ix. state for federal anti-trust laws; or
  - x. charity or consumer laws
- d) been investigated by any federal, state or local government agency for a civil violation for any business related conduct?  Yes  No

*For yes answers to any of the above, detail the situation(s), the date(s), name(s), title(s) and address(es) of any individuals involved and, if applicable, and any corrective action(s) taken by the vendor.*

22. In the past five (5) years, has the vendor or its affiliates<sup>1</sup> had any claims, judgments (satisfied or unsatisfied), injunctions, liens, fines or penalties secured by any governmental agency including, but not limited to, judgements based on taxes owed or fines or penalties assessed by any federal, state or local government agency?  Yes  No

*Indicate if this is applicable to the submitting vendor or affiliate. State whether the situation(s) was a claim, judgment, injunction, lien or other with an explanation. Provide the name(s) and address(es) of the agency, the amount of the original obligation and outstanding balance. If any of these items are open or unsatisfied, indicate the status of each item as "open" or "unsatisfied".*

23. Has the vendor (for profit and not-for-profit corporations) or its affiliates<sup>1</sup>, in the past three (3) years, had any governmental audits that revealed material weaknesses in its system of internal controls, compliance with contractual agreements and/or laws and regulations or any material disallowances?  Yes  No

*Indicate if this is applicable to the submitting vendor or affiliate. Detail the type of material weakness found or the situation(s) that gave rise to the disallowance, any corrective action taken by the vendor and the name of the auditing agency.*

24. Is the vendor exempt from income taxes under the Internal Revenue Code?  Yes  No  
*Indicate the reason for the exemption and provide a copy of any supporting information.*

25. During the past three (3) years, has the vendor failed to:

- a) file returns or pay any applicable federal, state or city taxes?  Yes  No  
*Identify the taxing jurisdiction, type of tax, liability year(s), and tax liability amount the vendor failed to file/pay and the current status of the liability.*

- b) file returns or pay New York State unemployment insurance?  Yes  No  
*Indicate the years the vendor failed to file/pay the insurance and the current status of the liability.*

26. Have any bankruptcy proceedings been initiated by or against the vendor or its affiliates<sup>1</sup> within the past seven (7) years (whether or not closed) or is any bankruptcy proceeding pending by or against the vendor or its affiliates regardless of the date of filing?  Yes  No

*Indicate if this is applicable to the submitting vendor or affiliate. If it is an affiliate, include the affiliate's name and FEIN. Provide the court name, address and docket number. Indicate if the proceedings have been initiated, remain pending or have been closed. If closed, provide the date closed.*

27. Is the vendor currently insolvent, or does the vendor currently have reason to believe that an involuntary bankruptcy proceeding may be brought against it?  Yes  No

*Provide financial information to support the vendor's current position, for example, Current Ratio, Debt Ratio, Age of Accounts Payable, Cash Flow and any documents that will provide the NYSTA/CC with an understanding of the vendor's situation.*

28. Has the vendor been a contractor or subcontractor on any contract with any New York State agency and/or with the NYSTA/CC in the past five (5) years?  Yes  No

*List the agency name, address, and contract effective dates. Also provide state contract identification number, if known.*



**FORM E**  
**CONFIDENTIALITY NOTICE**

The data on page(s)

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of this proposal, identified by an asterisk (\*) or marked along the margin with a vertical line, contain technical or financial information which are considered to be proprietary information or trade secrets, the disclosure of which would cause substantial injury to the Proposer's competitive positions. The Proposer requests that such data be used only for the evaluation of the proposal, but understands that such data may otherwise be disclosed to the extent that the Authority determines is necessary or proper for compliance with any law, order or decree of any court or agency of competent jurisdiction, or necessary or proper in the Authority's view to show compliance with any law, order or decree of any court or agency of competent jurisdiction.

**Note:**

Proposer is urged to only designate as confidential those materials which, in its opinion, clearly represent proprietary information or trade secrets. Cost proposal information and all proposed forms shall not be considered confidential.

Proposer

---

Signature of Authorized Official

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Date

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**NEW YORK STATE BRIDGE AUTHORITY**  
**EQUAL EMPLOYMENT OPPORTUNITY - PROPOSED STAFFING PLAN**

Contractor's Name / Address:

Federal ID No.

Contract Number / Project Description:

EEO - Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification						Disabled (M) (F)	Veteran (M) (F)	
		Total Male (M)	Total Female (F)	White (M) (F)	Black (M) (F)	Hispanic (M) (F)	Asian (M) (F)	Native American (M) (F)				
Officials/Administrators												
Professionals												
Technicians												
Office Clerical												
Equipment Operators												
Ironworkers												
Laborers												
Painters												
Teamsters												
Totals												

PREPARED BY (Signature):

DATE:

NAME AND TITLE OF PREPARER (Print or Type):

TELEPHONE NO.:

EMAIL ADDRESS:



# REQUEST FOR M/WBE WAIVER

By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE participation requirements set forth under the contract.

### Contract Overview

Offeror/ Contractor Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_ Federal ID No. \_\_\_\_\_ SFS Vendor ID: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_ Solicitation/Contract No: \_\_\_\_\_

Type of Procurement: Competitive Bid  Other  Bid Response Due Date: \_\_\_\_\_ Est. or Actual Cost: \_\_\_\_\_

Waiver Request: Fill ALL boxes with an X or N/A and provide justification (attach additional pages if needed):

1.  MBE Waiver- A waiver of the MBE Goal for this procurement is requested.  Total  Partial
2.  WBE Waiver - A waiver of the WBE Goal for this procurement is requested.  Total  Partial
3.  Waiver- Pending ESD Certification - Check here if subcontractors or suppliers of Contractor are not certified M/WBE but an application for certification has been filled with Empire State Development). Subcontractor/Supplier Name: \_\_\_\_\_ Date of filing: \_\_\_\_\_ Reference submission instruction on page 2, item 1.
4.  Vendor does not subcontract construction/professional services.
5.  Vendor subcontracts some of this type of work but at lower % than bids/solicitation describes.
6.  Vendor has solicited NYS Certified M/WBE firms for purposes in complying with participation goals without success. Please see requirements: Reference submission instruction on page 2, items 2-10 \_\_\_\_\_
7.  Other: \_\_\_\_\_

Provide a summary of your justification for requesting a waiver:

By checking this box you verify that you went through the NYS ESD M/WBE Directory of Certified firms to view companies that you may be currently using or may use on this bid.

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 142, AND THE ABOVE REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.

Submit Originals to: NYSBA Engineering Dept.; Mid-Hudson Bridge Plaza; PO Box 1010, Highland, NY 12528



# MONTHLY WORK FORCE UTILIZATION REPORT

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

CONTRACTOR FIRM NAME: \_\_\_\_\_ ADDRESS: \_\_\_\_\_ LOCATION OF WORK: \_\_\_\_\_  
 FEDERAL ID / PAYEE ID No.: \_\_\_\_\_ CONTRACT NO.: \_\_\_\_\_  
 CIRCLE ONE: PRIME CONTRACTOR / SUBCONTRACTOR CONTRACT START DATE: \_\_\_\_\_ % COMPLETED: \_\_\_\_\_  
 CONTRACT AMOUNT: \_\_\_\_\_

JOB OR TRADE CATEGORY	TOTAL HOURS WORKED DURING REPORTING PERIOD												TOTAL NUMBER OF EMPLOYEES		TOTAL NUMBER OF MINORITY EMPLOYEES				
	TOTAL HOURS WORKED ALL EMPLOYEES			BLACK (NOT OF HISPANIC ORIGIN)		HISPANIC		ASIAN OR PACIFIC ISLANDERS		NATIVE AMERICAN OR ALASKAN NATIVE		MINORITY %		FEMALE %		M	F	M	F
	M	F		M	F	M	F	M	F	M	F	M	F	M	F				
**																			
P: PROFESSIONAL																			
O/C: OFFICE / CLERICAL																			
F: FOREMAN																			
J: JOURNEYMAN																			
A: APPRENTICE																			
LABORERS																			
EQUIPMENT OPERATORS																			
SURVEYORS																			
IRON WORKERS / LATHERS																			
CARPENTERS / PILE DRIVERS / MILLWRIGHTS																			
PAINTERS																			
TEAMSTERS																			
OTHERS Health & Safety Officer																			
<b>GRAND TOTAL:</b>																			

COMPANY OFFICIAL'S NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_ TELEPHONE No.: \_\_\_\_\_  
 COMPANY OFFICIAL'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_



**CONTRACTOR'S UTILIZATION FORM**  
New York State Bridge Authority

Contractor Name and Address	Project Number:	Contract Award Date:	
	Project Description Location	Contract Award Amount:	
		Est. Completion Date:	
Contractor's FID #:	Goals:  MBE _____%  WBE _____%	Check Appropriate Box:	
Contract Name & Phone Number:		_____ Supplier	
Date Submitted:		_____ Prime Contractor	
		_____ Subcontractor	
Subcontractor / Supplier Name / Address / Federal ID#	Sub / Supplier	MBE / WBE	\$ Value of Contract
Total Contract Bid Amount: Total subcontractors for commodities and services assigned to MBEs: Total subcontracts for commodities and services assigned to WBEs: Subcontracts for commodities and services unassigned:	NUMBER	AMOUNT	% of TOTAL
		\$	100 %
		\$	%
		\$	%
	\$		
Contractor's Statement: My firm proposes to use the MWBEs listed			
Prepared by:	Print Name of Contractor:	Date:	
(Signature of Contractor)		Reviewed By:	



# REQUEST FOR M/WBE WAIVER

MWBE Form 200 (3/12)

By submitting this form and the required information, the contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE participation requirements set forth under the contract.

### Contract Overview

Contractor Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_ Federal ID No. \_\_\_\_\_ SFS Vendor ID: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_ Solicitation/Contract No: \_\_\_\_\_

Type of Procurement: Competitive Bid  Other  Bid Response Due Date: \_\_\_\_\_ Est. or Actual Cost: \_\_\_\_\_

Waiver Request: Fill ALL boxes with an X or N/A and provide justification (attach additional pages if needed):

1.  MBE Waiver - A waiver of the MBE Goal for this procurement is requested.  Total  Partial
2.  WBE Waiver - A waiver of the WBE Goal for this procurement is requested.  Total  Partial
3.  Waiver- Pending ESD Certification - Check here if subcontractors or suppliers of Contractor are not certified M/WBE but an application for certification has been filled with Empire State Development). Subcontractor/Supplier Name: \_\_\_\_\_ Date of filing: \_\_\_\_\_ Reference submission instruction on page 2, item 1.
4.  Vendor does not subcontract construction/professional services.
5.  Vendor subcontracts some of this type of work but at lower % than bids/solicitation describes.
6.  Vendor has solicited NYS Certified M/WBE firms for purposes in complying with participation goals without success. Please see requirements: Reference submission instruction on page 2, items 2-10
7.  Other: \_\_\_\_\_

Provide a summary of your justification for requesting a waiver:

By checking this box you verify that you went through the NYS ESD M/WBE Directory of Certified firms to view companies that you may be currently using or may use on this bid.

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 142, AND THE ABOVE REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.

Submit Originals to: NYSBA ; Mid-Hudson Bridge Plaza; PO Box 1010, Highland, NY 12528



**M/WBE PARTICIPATION PERFORMANCE REPORT**  
New York State Bridge Authority

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

Period ending: \_\_\_\_\_

Contractor: \_\_\_\_\_

NYSBA Contract No.: \_\_\_\_\_

Project Description: \_\_\_\_\_

Contractor/Supplier Name/Address/Phone #	Check One Contr <input type="checkbox"/> Supp <input type="checkbox"/>	Check One MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Check One MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Written Agreement Exists Yes <input type="checkbox"/> No <input type="checkbox"/>	Description of Work	Participation Plan Goal Amount	%	Amount This Period	Amount Paid to Date	% Paid
	Contr <input type="checkbox"/> Supp <input type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>						
	Contr <input type="checkbox"/> Supp <input type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>						
	Contr <input type="checkbox"/> Supp <input type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>						
	Contr <input type="checkbox"/> Supp <input type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>						
Is a M/WBE Participation Goal Plan in effect for this contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>										
Goals: 10 % MBE 10 % WBE										
MBE Totals						\$0		\$0.00	\$0.00	
WBE Totals						\$0		\$0.00	\$0.00	
Total Contract Amount _____										
Total MBE Participation Plan Submitted \$0.00 10%										
Total WBE Participation Plan Submitted \$0.00 10%										
Comments: _____										