

REQUEST FOR PROPOSALS
New York State Department of Agriculture and Markets

#SF00270: MIDWAY SERVICES FOR THE NEW YORK STATE FAIR

1. INTRODUCTION:

1.1 OVERVIEW:

This Request for Proposals (RFP) is issued by the New York State Department of Agriculture and Markets to invite qualified bidders to submit proposals to provide Midway Rides, Games and Concessions for the 2014-2024 Great New York State Fair. The Fairgrounds are located at 581 State Fair Boulevard, Syracuse (Town of Geddes, Onondaga County) New York. The property is owned and operated by the New York State Department of Agriculture and Markets (AGM).

1.2 RFP GOAL:

The purpose of the annual Great New York State Fair is to showcase all things New York, and promote the State's agricultural offerings in a family-friendly environment. The objective of this RFP is to retain one contractor to provide complete Midway Services, including but not limited to: rides, games, and concessions. In addition, these services must be provided in a manner that furthers the purpose of the State Fair. The contractor will be expected to maintain safe, aesthetically appealing rides and attractions. The Great New York State Fair operates for a twelve-day period each year and ends on Labor Day.

1.3 ELIGIBLE BIDDERS:

A mandatory tour of the Midway was held during the 2013 Great New York State Fair. This tour is a prerequisite to submit a bid response. Only those entities which sent representative(s) to participate in the mandatory tour are eligible to bid. Any proposals submitted by an entity that did not participate in the mandatory tour will be returned unopened.

1.4 TERM:

The contract resulting from this RFP will be for a ten (10) year term. The contract will begin on April 1, 2014 and end on March 31, 2024.

1.5 RFP TIMELINE:

Mandatory Tour of the Midway	August, 2013
RFP Posted	December 20, 2013
Non-Mandatory Bidder's Conference	January 6, 2014
Questions regarding this RFP must be submitted by 3:00 PM on:	January 17, 2014
A Question and Answer document will be posted to http://www.agriculture.ny.gov/RFPS.html no later than:	January 24, 2014
Bidder Response Due by 3:00 PM on:	February 7, 2014
Oral Presentation at the Department of Agriculture and Markets	March 5, 2014
Tentative Award Date	March 12, 2014

The Department intends to make one contract award from this RFP.

2. DESCRIPTION OF WORK TO BE PERFORMED:

2.1 PREMISES:

The New York State Fairgrounds, also known as the Empire Expo Center, is a 375 acre site that is home to the annual New York State Fair as well as many non-Fair events during the year. The main mission and function of the Fair is to hold a twelve day exposition identifying, promoting and showcasing the agricultural practices, history and tradition of the state. In addition to the agricultural competitions, the Fair also hosts a large midway, four music venues including a 17,000 seat paid ticket grandstand and a free music venue that can hold approximately 20,000. There are approximately 600 vendors including 175 food vendors.

The Midway historically consists of two areas. The area of predominantly adult rides is commonly referred to as the Main Midway. The area hosting children's rides is known as Kiddieland. The Main Midway contains a paved area of approximately 474,000 square feet. Kiddieland contains a mix of grass and partially paved areas of approximately 76,000 square feet.

2.2 SCOPE OF WORK:

The selected contractor shall furnish all rides, games, concessions and attractions required to perform the services described hereunder at the State Fairgrounds. Historical Information, Maps and Photographs depicting the Midway and the Fairgrounds are attached as Exhibits to this solicitation. During the term of the contract resulting from this RFP, the Department anticipates that extensive renovations and improvements will be made to the Fairgrounds in order to transform the Great New York State Fair into a premier attraction within the State. The contractor must be capable of performing its duties in an environment of periodic changes. Some changes may occur as frequently as annually. It is the long-term vision of the Department to make the Fairgrounds a state-of-the-art entertainment venue.

The contractor must provide a variety of entertainment (rides, games and attractions) and food that will appeal to visitors of all ages. The number of mechanical rides provided in the past has ranged from 55-70 rides in these categories: 1) quality kiddie rides and attractions (geared specifically for the young ones); 2) quality family rides and attractions (riders of all ages); 3) quality thrill rides and attractions (estimated ages 12 and up); and 4) "Super Spectacular" rides (classified as unique and very rare on the American carnival midway).

In addition, the contractor's employees must be pleasant, neat, clean and well-trained. The Midway must present a positive overall guest experience and provide a good value to consumers. The contractor must efficiently and safely move visitors between rides and attractions. Above all, the contractor must deliver all services in a safe environment.

The contractor must provide a reliable and accurate ticketing system. The Department's previous Contractor used an electronic ticketing system. Electronic ticketing is not required. All Midway operations, except concessions, shall be under a ticket basis at the sole cost of the contractor, whether using electronic means or paper tickets. Paper tickets must be sequentially numbered and dated with the appropriate year and include identifying marks of the Great New York State Fair. The contractor's ticketing system must allow for advance sales and the ability to purchase unlimited rides. The ticketing system must be capable of providing the Department with documentation and certification of all sales. The ticketing system must be reconcilable and comport with general accounting principles to ensure the accuracy of revenue due to the Department. The contractor must provide for advance sales at least ninety (90) days prior to the first day of the Fair. Any personnel required for ticketing functions will be the responsibility of the contractor.

The contractor shall also supply all electrical generating equipment that is needed to operate the Midway. All cables, hoses and wires must be underground or covered with approved safety covering(s). Additionally,

the contractor must have sufficient generating capacity to provide the State Fair with temporary emergency power, when needed.

The contractor shall also be responsible for maintaining the cleanliness of the Midway areas, including routine trash and recycling pick-up and transfer to designated enclosures and dumpsters, re-lining the trash and recycling containers and ensuring that the Midway grounds are kept in a sanitary state. This includes providing all trash and recycling containers for the Midway area (there must be an equal number of recycling containers as trash containers and they must be side by side). The containers must also be appropriately marked; trash containers must be marked "trash only" and the recycling containers must be marked "recycling". Although not a requirement, the Department desires that the contractor's receptacles be as aesthetically pleasing as possible.

The contractor shall provide at least nine (9) covered seating/rest areas that should include adequate bench and/or table seating for 50 people each. All tents, umbrellas, benches and tables provided are the responsibility of the selected proposer.

The contractor must comply with Part 45 of The Industrial Code of the New York State Department of Labor as it applies to Fairs operated by the State of New York. Amusement Devices, Viewing Stands and Tents will be subject to inspection(s) by a representative of the Department of Labor as described in Part 45 of The Industrial Code.

The Department desires a collaborative relationship with the contractor. For example, the contractor should propose a framework for communication to discuss operating hours, safety, price schedules, marketing and promotion plans, set-up and breakdown arrangements and other issues that will likely arise over a long-term contractual relationship.

2.3 AGM RESPONSIBILITIES:

A. TRASH COLLECTION

The Department shall provide dumpsters and routine collection of trash and recyclables from the grounds.

B. SECURITY

During the New York State Fair, the Department shall provide reasonable security in the general locality of the Midway areas at no cost to the contractor. The presence of Department security shall not relieve the contractor of any legal or contractual liabilities relative to its employees, operations or control of the Midway.

C. STORAGE, CAMPING AND FEES

During the New York State Fair, the Department will provide access to storage and camping at reasonable fees. Locations of camping and storage may change over the ten year term. In 2013, the fees were \$225 per unit for camping and \$150 per unit for storage.

Midway Camping Area: The main Midway camping area is located along the western edge of the Midway and is approximately 360 feet by 50 feet. The area is paved and has access to electric and water. In the past, this camping area has held approximately seventeen units. There is a secondary camping area located along the track fence line that is approximately 225 feet by 25 feet. The area is grass and stone and has access to electric and water. In the past, this camping area has held nine units.

Infield Camping Area: The main Infield camping area is located in the northwest corner of the Infield and is approximately 230 feet by 235 feet. The area is mainly grass. In the past, this area has held forty-five units. There is a secondary camping area that is approximately 155 feet by 95 feet and is partially located on a

concrete pad. This camping area has access to electricity and water. In the past, this camping area has held 17 units.

Infield Storage Area: There is a storage area located in the Infield that is approximately 110 feet by 110 feet. The area is mainly grass and stone. In the past, this area has held five storage units.

Black Lot Storage: The Black Lot storage area is made up of two parts that total approximately 33,000 square feet.

The Department will make every reasonable effort to accommodate the storage and camping needs of the Contractor, however, be advised that space is limited.

D. RIDE INSPECTION

In addition to the safety protocols employed by the contractor, the Department performs its own safety inspections. The Midway is inspected by a representative of the New York State Department of Labor. The Department also hires an independent inspector who is on-site for the duration of the Fair. The independent inspector conducts ride inspections daily and responds to all types of incident reports. The Department of Labor and the independent inspector have the authority to shut down a ride. The contractor must comply with the final determinations of the Department of Labor and/or the AGM independent inspector.

3. PROPOSAL FORMAT, CONTENTS AND SUBMISSION:

3.1 SUBMISSION TIMELINE:

All required materials must be received by the Department no later than 3:00 PM on February 7, 2014 in order to be considered.

Any questions concerning this RFP must be received by 3:00 PM on January 17, 2014. Questions must be submitted in writing. Email is preferred and should be directed to Judy Giovannetti at judy.giovannetti@agriculture.ny.gov. Please list RFP #SF00270 in the subject line. In the alternative, questions may be mailed to: NYS Department of Agriculture and Markets, Fiscal Management, 10B Airline Drive, Albany, NY 12235 Attn: Judy Giovannetti (RFP #SF00270).

A Question and Answer document will be posted to the Department website: <http://www.agriculture.ny.gov/RFPS.html> no later than January 24, 2014. No individual written responses will be provided.

Any revisions to this RFP will be posted on the Department's website, www.agriculture.ny.gov under "Funding Opportunities". All bidders are responsible for keeping informed of any revisions to this RFP.

3.2 SUBMISSION METHOD:

Facsimiles or emailed copies are not acceptable. Materials received after the due date/time shall be returned unopened to the sender. See section 3.7 Submission Documents for information on completing a bid response.

Address or Hand-Deliver a Bid Response Containing:

Technical Proposal: original plus four (4) paper copies and an electronic copy (in MS Word format) on CD or flash drive of the completed Technical Proposal must be mailed in a separate envelope labeled **RFP #SF00270 Technical Proposal – Do Not Open** and must include the following, as outlined below:

All Forms and Assurances located in the **Submission Documents** packet (which follows the Exhibits), original plus one (1) copy, including original signatures where necessary:

- Cover Sheet and Checklist for Bid Response and Minimum Qualifications (Original Signatures)
- Bidder Affirmations and Mandatory Contract Requirements Certification Form (Original Signatures)
- Non-Collusive Bidding Certification (Original Signatures)
- MacBride Nondiscrimination Certification Form (Original Signatures)
- Procurement Lobbying Law Forms (Original Signatures)
- Substitute Form W-9, if SFS Vendor ID needed (Original Signatures)

Cost Proposal: original plus three (3) paper copies and an electronic copy (in MS Word format) on CD or flash drive of the completed Bid Form cost proposal must be mailed in a separate envelope labeled **RFP #SF00270 COST PROPOSAL – DO NOT OPEN** and must include the following as outlined below:

- Bid Form and Subcontracting Form with additional pages, if required (Original Signatures)

To the following address:

New York State Department of Agriculture and Markets
Fiscal Management
10B Airline Drive
Albany, New York 12235

ATTN: Judy Giovannetti, RFP #SF00270

3.3 MINIMUM QUALIFICATIONS:

Each bidder shall:

1. Confirm attendance at the Mandatory Site Tour at the New York State Fairgrounds, August 2013.
2. Demonstrate that the bidder is currently operating as a provider of Midway Services and has done so for the last five (5) consecutive years, immediately preceding submission of its bid response.
3. Demonstrate that the bidder has operated a Midway consisting of at least 55 mechanical rides and at least 120 games, attractions and concessions at a Fair, Festival, Event or Venue extending over a minimum period of ten (10) consecutive days, which generated a minimum of \$2,000,000 in total Midway gross revenue*, and served at least 800,000 visitors. Examples of rides operated by the bidder must include multiple categories, e.g., super spectacular, spectacular, major adult and kiddie.

*Total Midway gross revenue means: 1) **all revenue** calculated before the deduction of any charge, expense or tax, collectively received directly or indirectly by the Fair, Festival, Event or Venue and the bidder from the sales of rides and shows (including advance and promotional sales); 2) **all revenue** received by the Fair, Festival, Event or Venue from the bidder, based upon the bidder's direct or indirect operation of concessions, whether calculated by a fixed rate per linear foot or by a percentage of concession revenue; and 3) **all revenue**, if any, attributable to sponsorship of the Midway.

3.4 MANDATORY CONTRACT REQUIREMENTS

1. The selected contractor must certify that no other obligation or engagement, contractual or otherwise, will conflict with or in any way impact its ability to provide the rides, games, attractions and concessions listed in its proposal during the Great New York State Fair.
2. The selected contractor must certify that it shall have full control of the Midway and assume total responsibility for all liability for accident, injury and/or death that may occur as a result of services provided. The contractor shall indemnify and hold harmless the State of New York, the Department, its officers and employees from all claims, demands, damages, expenses, liability or obligation for damages, loss or injury

to, or of, any person or property arising out of the acts of Contractor, its agents, servants, employees and those acting for or on its behalf. Such indemnity shall not be limited by reasons of any insurance coverage provided.

3. The selected contractor must certify that it will obtain and maintain the following policies from an insurance company authorized to do business in the State of New York:

a) Commercial General Liability Insurance with a limit of not less than \$10,000,000 each occurrence. Such insurance shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages, with no modification to the contractual liability coverage provided therein. Coverages shall include liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage. If such insurance contains an aggregate limit, it shall apply separately on a per location or per project basis.

b) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$5,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

Please see section **6.3.16 LIABILITY INSURANCE** for specific contract terms and conditions that will be included in any contract resulting from this RFP.

3.5 TECHNICAL PROPOSAL

See section 3.2 Submission Method for information on packaging the proposal. The proposal shall describe the bidder's approach to performing Midway Services and address all of the elements below.

A. Experience and Key Personnel (Maximum Score –5 points)

The qualifications and prior experience of the bidder are of great importance to AGM. Direct, prior experience in the provision of Midway operations is required. The bidder must describe its experience with Midway operations. Please include what distinguishes your company in the industry, and whether or not your company participates in any trade organizations. This experience must be relevant and must be for Midway operations comparable in scale and scope, to that of the New York State Fair. The proposal should also include the names of key personnel, partners or subcontractors. Resumes of key personnel should be included.

B. Safety (Maximum Score – 15 points)

The bidder must describe its safety policies and procedures. The proposal should include a safety plan that states the standard protocols for inspection, maintenance, employee training, reporting of mechanical failure, injury and remediation of safety concerns. The proposal must address the following:

1. The process for continuous inspection of rides, games, attractions and food concessions.
2. An outline of the training plan for ride operators and all food handlers.
3. The process for inspection of all rides including the frequency and recording of such inspections. Include who is responsible for inspections and how the individual is qualified to inspect.
4. The protocol followed to correct and report any identified safety concerns.
5. Identify and discuss typical safety issues as well as the corrective actions taken. Include safety records that list the number of venues, number of accidents and/or food-related sicknesses that resulted in death or injuries including those that required hospitalization.

6. List the five (5) most egregious safety breaches encountered at other venues and the actual remedial/corrective action taken to address the breach.

C. Assessment for Non-functioning Rides (Maximum Score – 5 points)

The proposal must describe the protocol for assessing ride safety and determining when/if to shut down a ride. This protocol should be separate and apart from an inspection and shut down determination made by a regulatory authority. While safety is the primary concern for the Fair, ensuring that the number and variety of rides is also important to the Fair. The proposal must contain an affirmative statement that the bidder, should it be awarded the contract, must agree that if a ride is not available for more than twenty-four (24) hours, a fee of \$500 per ride, per day will be assessed against the contract. No assessment will be taken in the event of shut downs due to severe weather. The Department will make the final determination whether or not such severe weather event was the cause of the shut down.

D. Midway Operations (Maximum Score – 20 points)

The proposal must include:

1. The proposed number and type of novelty, game and food concessions. Historical data is included in the exhibits to this RFP. The proposal should offer a range of novelties and games that appeal to the number and age ranges of attendees. Food concessions should also appeal to attendees as well as complement the existing concessions.
2. The proposal should indicate: A) the number of Midway rides to be offered for the twelve-day period of the New York State Fair; B) the category of the ride and the suitable age range of the prospective rider; and C) the recommended number of rides per category. Ride duration of mechanical rides should be at least three (3) minutes including loading and unloading.
3. The suggested price per category of ride and how this pricing will be adjusted annually.
4. A description of the signage used to identify the price of the ride, game or food item.
5. A description of how attendees will be efficiently served, regardless of the type of service purchased.
6. A description of how the Bidder intends to annually attract patrons by offering new rides and concessions. In addition, describe how the value and popularity of rides and concessions is assessed in order to determine if such rides and concessions should be continued in subsequent years.
7. A description of how food concessions will be selected in order to complement the existing food concessions located on the Fairgrounds.
8. An affirmative statement that the bidder, should it be awarded the contract, will commit to providing at least three (3) new rides per category each season, in order to ensure that the Fair offers new attractions through the life of the agreement.

E. Aesthetics (Maximum Score – 4 points)

The proposal must include a plan to improve the aesthetics of the Midway for the purpose of optimizing attendee satisfaction. This plan should outline the changes the bidder will make to improve the attendees' experience. Such plan should include but not be limited to: the location of rest stations, the beautification of trash receptacles and covered areas as well as the enhancement of signage.

F. Guest Relations (Maximum Score – 4 points)

The proposal must describe guest relations services. This should include but not be limited to the following:

1. A description of the process to manage guest relations including the staff assigned to this activity, the protocols for handling questions, comments and complaints, the location of the guest relations services and the plan for reporting concerns and complaints along with the corrective actions to be taken.
 2. The policy for which a refund will be made to an unsatisfied attendee.
 3. The protocols followed to ensure staff are neat, clean and responsive to guests' needs.
 4. Describe any employee conduct manuals, training policies, hiring practices (e.g., drug testing, background checks, and sex offender registry checks).
- G. Efficiency of Ticketing (Maximum Score – 10 points)
The Bidder must describe its process for the sale and reconciliation of tickets. Electronic ticketing is not a mandatory requirement. Nevertheless, the Department has used electronic ticketing for the Midway and has experienced improved results in efficient sales and accurate reconciliation of tickets. In the event the Bidder will not be using electronic tickets, the proposal must demonstrate how the Bidder's ticketing system will maintain the Department's current efficiency and accuracy. The proposal should address the elements of ticketing described in the scope of work, including but not limited to, advance sales, unlimited rides and promotional sales.
- H. Special Pricing Days (Maximum Score – 4 points)
The Bidder must agree to work with the Department to identify and provide special pricing days as an enticement to attend the Fair. The proposal must include suggestions on the type of special offerings that the Bidder has used in other venues. The proposal must also include an affirmative statement that the Bidder, if awarded a contract, will implement any final determinations of the Department.
- I. Layout (Maximum Score – 4 points)
The Proposal must include a draft diagram showing the proposed location and description of all rides, shows and concessions. Bidders are encouraged to include any additional information that could support or strengthen the State's understanding of how a Midway could potentially appear and function under the Bidder's operation.
- J. The Great New York State Fair Transformation (Maximum Score – 1 point)
The proposal must include an affirmative statement that the bidder, should it be awarded the contract, will work cooperatively with the Fair to implement any changes including comprehensive transformations in the future.
- K. References (Maximum Score- 3 points)
The bidder must submit at least five (5) references where they have provided the same or similar midway operations. The references must include the name, title, address and phone number of each reference as well as the venue where the service was provided. Note: Bidders are solely responsible for the availability of the submitted references.

3.6 COST PROPOSAL:

A ten-year contract will be awarded. The cost proposal must be submitted on the "Bid Form" included in the Submission Documents section. The cost proposal has three components. Each component is listed separately on the Bid Form. (1) The bidder must agree to a minimum annual payment to the Department of \$750,000. (2) The bidder must bid a fixed percentage of all revenue derived from the sales of ride tickets, which exceeds \$750,000 to be paid annually to the Department. (3) The bidder must bid a fixed dollar amount per linear foot of booth space for every game, attraction and concession. (The minimum bid per

linear foot is \$50). The bidder must include the total number of linear feet from its booth spaces where indicated on the Bid Form. See section 3.2 Submission Method for information on packaging the proposal.

3.7 SUBMISSION DOCUMENTS

Bidders must submit all submission documents by the bid response due date. The packet of submission documents is annexed to this solicitation and also available on the Department’s website. The submission must include paper documents plus electronic versions of the technical proposal, bid form cost proposal and required assurances and documentation.

Proposals should be prepared simply and economically, avoiding the use of elaborate promotional materials beyond what is required to provide a complete presentation. If supplemental materials are a necessary part of the proposal, the bidder should reference these materials in the technical proposal, identifying the document(s) and citing the appropriate section(s) and page(s) to be reviewed. Any proprietary material considered confidential by the bidder must be specifically so identified, and the basis for such confidentiality must be specifically set forth in the proposal. Be advised that the Department is subject to the Freedom of Information Act as codified in the New York State Public Officers Law.

4.0 EVALUATION CRITERIA AND METHOD OF AWARD:

4.1 CONSIDERATION:

For a bidder to be eligible for consideration, it must meet the Minimum Qualifications. To be awarded a contract, the bidder must certify that it meets the Mandatory Contract Requirements.

4.2 CRITERIA FOR EVALUATING BIDS

All complete proposals received by the deadline will be reviewed using the following criteria and ratings. Bidders must ensure that all components of this request for proposals have been addressed, the required number of copies has been provided, all forms and assurances have been completed, and the original signatures, in blue, are included as required.

A proposal will first be reviewed by AGM staff to ensure that the proposal is complete, and that all of the minimum qualifications have been met.

An evaluation committee will complete a review of the Technical Proposals for all complete proposals submitted. The committee will review each Technical Proposal to determine compliance with the requirements described in the RFP. The committee retains the right to determine whether any deviation from the requirements of this RFP is substantial in nature and may reject, in whole or in part, any and all proposals, waive minor irregularities, and conduct discussions with all responsible bidders.

All proposals received by eligible and qualified bidders will be evaluated. All eligible and qualified bidders will be expected to provide an oral presentation of its proposal to the Department and to answer clarification questions. Bidders shall not change the proposal during the oral presentation, but responses to requested clarifications are permitted. The presentation will **not** be scored by the evaluation committee. Oral presentations will be held at the Department's main office located in Albany, New York. Following the oral presentations, the evaluation committee will meet to discuss clarifications and any disparate scores. The evaluation committee will be permitted to review its scoring and to make corrections based upon clarifications, error discovered and/or a disparate score.

Technical Criteria (75%)

Technical Proposal	75 points
Oral Presentation	0 points

Financial Criteria (25%)

Annual Commitment of \$750,000	0 points
Percentage of Revenue (which exceeds \$750,000)	20 points
Price per Linear Foot of Frontage (minimum bid of \$50.00 per foot)	5 points
Maximum Score - 100 points	

4.3 CALCULATION OF HIGHEST REVENUE:

The financial portion represents 25 points of the overall score and will be awarded pursuant to a formula. This calculation will be computed by Fiscal Management independently of the technical scoring by the evaluation committee.

The submitted cost information will be awarded points, pursuant to a formula which awards 20 points to the bidder who offers the highest percentage of sales revenue, and 5 points to the bidder who offers the highest dollar value per linear foot of frontage. Sales revenue shall mean **all revenue** generated by the sales of rides and shows (including advance and promotional sales), before any deductions.

The remaining bids will be awarded points based on a calculation that computes the relative difference between each bid and the highest bid received for each criterion. The combined points for revenue and frontage will represent each bidder’s final cost score.

Examples of Cost Score Calculation:

BIDDER	PERCENTAGE OF GROSS MIDWAY	NUMBER OF COST POINTS (MAXIMUM 20 POINTS)	PRICE PER FOOT FRONTAGE (MINIMUM BID \$50 PER FOOT)	NUMBER OF COST POINTS (MAXIMUM 5 POINTS)	TOTAL COST SCORE
A	18%	20 (highest bid)	\$53.00	$(53/65) \times 5 = 4.1$	24.1
B	10%	$(10\%/18\%) \times 20 = 11.1$	\$65.00	5 (highest bid)	16.1
C	10%	$(10\%/18\%) \times 20 = 11.1$	\$61.00	$(61/65) \times 5 = 4.7$	15.8
D	12%	$(12\%/18\%) \times 20 = 13.3$	\$55.00	$(55/65) \times 5 = 4.2$	17.5

The Department reserves the right to request best and final offers. In the event the Department exercises this right, all eligible and qualified bidders will be asked to provide a best and final offer. Fiscal Management will recalculate the cost proposal score.

4.4 METHOD OF AWARD

The Department intends to make a single contract award to the eligible and qualified Bidder whose proposal results in the highest aggregate technical and cost score. The aggregate score of all the criteria listed will be calculated for each proposal received. The contract issued pursuant to this proposal will be awarded to the proposal whose aggregate technical and cost score is the highest among all the proposals rated. In the case of a tie score, the bidder among the tied group with the highest cost score will be ranked higher.

5.0 CONSIDERATIONS RELATED TO THIS INVITATION:

5.1 DEPARTMENT’S RESERVATION OF RIGHTS:

The Department reserves the right to:

- Reject any or all bids received with respect to this invitation;
- Withdraw the RFP at any time, at the Department's sole discretion or otherwise decline to award a contract from this invitation;
- Make an award in whole or in part;
- Require clarification from any bidder to assure a full understanding of the responsiveness to the requirements of the invitation;
- Disqualify any bidder whose conduct and/or bid response fails to conform to the requirements of the RFP;
- Use bid response information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the Department's request for clarifying information in the course of evaluation and/or selection under the RFP;
- Waive or modify minor irregularities in bids received;
- Request additional information from bidders as deemed necessary to more fully evaluate bids or to obtain omitted required forms. Bidders will have three (3) business days to respond to the request;
- Prior to the bid opening, amend this solicitation after its release, with appropriate written notice posted on the Department's website to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct bidders to submit bid response modifications addressing subsequent RFP amendments;
- Change any of the scheduled dates;
- Eliminate any minimum or mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- Waive any requirements that are not material;
- Conduct contract negotiations with the next responsible bidder, should the Department be unsuccessful in negotiating with the selected bidder; and
- Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 120 days from the bid opening.

5.2 NOTIFICATION OF AWARD:

The Department will notify the selected bidder verbally, followed by a written confirmation. Unsuccessful bidders will be notified in writing by the Department within ten business days after the award.

5.3 DEBRIEFING PROCEDURES:

Pursuant to section 163(9)(c) of the State Finance Law, an unsuccessful bidder has the right to a debriefing. An unsuccessful bidder must request a debriefing within five (5) business days of receiving a notice of non-

award from the Department. Bidders may request a debriefing letter on the selection process regarding this RFP by submitting a written request to the Fiscal Management Contact: Judy Giovannetti at:

NYS Department of Agriculture and Markets
Fiscal Management
10B Airline Drive
Albany, NY 12235
Or via email: judy.giovannetti@agriculture.ny.gov.

The Fiscal Contact person will make arrangements with program staff to provide a written summary of the proposal's strengths and weaknesses, as well as recommendations for improvement. Within ten (10) business days of receipt of the request, the program staff will issue a written debriefing letter to the bidder.

5.4 BID PROTEST PROCEDURES:

Bidders who receive a notice of non-award may protest the award decision subject to the following:

1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by AGM.
2. The protest must be filed within ten (10) business days of receipt of a debriefing letter, or ten (10) business days of receipt of the notice of non-award, whichever is later. The protest letter must be filed with: NYS Department of Agriculture and Markets, Fiscal Management, Contracts Unit, 10B Airline Drive, Albany, NY 12235. Please include the title and number of the AGM solicitation in any correspondence.
3. Fiscal Management will convene a review team that will include at least one staff member from each of the Department's Counsel's Office, Fiscal and the Program Division. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within seven (7) business days of receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and, and Fiscal Management will advise OSC that a protest was filed.
4. Fiscal Management in consultation with Counsel's Office may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts.

An unsuccessful bidder may also protest the award by filing a protest, in writing, with the Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany, New York 12236.

5.5 NEW YORK LAW:

The provisions of New York law shall apply to the contract and to all claims, actions and other proceedings arising out of the contract.

5.6 REQUIRED APPROVALS:

Any contract award resulting from this solicitation is subject to the availability of funding and the authorization of the New York State Division of the Budget. Contract awards in excess of Ten Thousand Dollars (\$10,000) are also subject to the approval of the Office of the Attorney General of the State of New York and the Office of the State Comptroller of the State of New York.

5.7 VENDOR RESPONSIBILITY AND NYS VENDOR ID:

All bidders must fully and accurately complete the Vendor Responsibility Questionnaire, (hereinafter the "Questionnaire"). All bidders acknowledge that the Department's execution of the Contract will be

contingent upon the Department’s determination that the bidder is responsible, and that the Department will be relying upon the bidders’ responses to the Questionnaire in making that determination. If it is found by the Department that a bidder’s responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Department may terminate the contract by providing ten (10) days written notification to the contractor. In no case shall such termination of the contract by the Department be deemed a breach thereof, nor shall the Department be liable for any damages for lost profits or otherwise, which may be sustained by the contractor as a result of such termination.

NOTE: Bidders are encouraged to file the Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <https://portal.osc.state.ny.us/wps/portal>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller’s Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Department or the Office of the State Comptroller’s Help Desk for a copy of the paper form.

5.8 PROCUREMENT LOBBYING LAW:

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Department of Agriculture and Markets and an offeror/bidder during the procurement process. (See Attachment 8 -- “Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence”.) An offeror/bidder is restricted from making contacts from the earliest notice of intent to solicit bids/bids through final award and approval of the Procurement Contract by the Department, and, if applicable, Office of the State Comptroller (“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 Section 139-j(3)(a). Designated staff, as of the date hereof, are identified in this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the offeror/bidder 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 four year period, the offeror/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in the Department’s Guidelines, which are attached, and on the Office of General Services Website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

The Department has designated the following staff members to receive contacts pertaining to this Solicitation:

PROGRAM	FISCAL
<p style="text-align: center;">Denise Jordan Division of the State Fair Telephone: (315) 487-7711 ext. 1204 Fax: (315) 487-9260 E-mail: denise.jordan@agriculture.ny.gov</p>	<p style="text-align: center;">Judy Giovannetti Division of Fiscal Management Telephone: (518) 457-6172 Fax: (518) 485-7750 E-mail: judy.giovannetti@agriculture.ny.gov</p>

6.0 REQUIRED ASSURANCES:

6.1 APPENDIX A:

Appendix A- Standard Clauses for all New York State Contracts WILL BE INCLUDED in the contract that results from this solicitation. Bidders who are unable to complete or abide by these assurances should not respond to this request.

The documents listed below are included in the **Submission Documents** section, which follows. All documents requiring signature must be signed by an authorized representative of the Bidding entity. Please review the terms and conditions. Certain documents will become part of the resulting contract that will be executed between the successful bidder and the New York State Department of Agriculture and Markets.

Appendix A – Standard Clauses for New York State Contracts, contains the following three (3) certifications:

Non-Collusive Bidding Certification (Signature Required - the form is included in the **Submission Documents as Attachment 3**)

MacBride Certification (Signature Required - the form is included in the **Submission Documents as Attachment 4**)

Offerer Disclosure of Prior Non-Responsibility Determinations (Signature Required - the form is included in the **Submission Documents as Attachment 5, pages 6-7**)

6.2 BIDDER AFFIRMATIONS AND MANDATORY CONTRACT REQUIREMENTS CERTIFICATION FORM:

This document is in the **Submission Documents as Attachment 2**. It must be completed and returned with the Bid Response.

6.3 CONTRACT TERMS:

The contract resulting from this RFP will contain the following terms.

6.3.1 ORDER OF PRECEDENCE

The Order of Precedence for this **Agreement** is as follows:

- Appendix A
- Contract Cover Page
- Appendix D (General Conditions)
- Appendix C (Scope of Work/ RFP Proposal)
- Appendix B (Budget/Cost Proposal)

6.3.2 RECORDS MAINTENANCE, EXAMINATION AND RETENTION

The Contractor shall maintain the records required under this paragraph as set forth in Appendix A to this Agreement.

6.3.3 PAYMENT TERMS

All payments must be made with a cashier's check or money order (or cash, in person). One-half of the \$750,000 annual commitment shall be due fifteen (15) days prior to the start date of the New York State Fair (Payment of \$375,000). The remaining \$375,000 shall be due annually on the twelfth day of the Fair. The percentage portion (sales in excess of the annual commitment) shall be payable to the Department no later than ten (10) days following the close of the Fair. Payment of the frontage portion (linear feet of booth space) shall be made in two (2) installments. The first installment shall be payable on the sixth day of the Fair. Final payment will be due on the twelfth day of the Fair. A penalty of 10% may be imposed on any late payments.

6.3.4 COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

The **Contractor** is responsible for complying with all local, state and federal laws applicable to work performed under this Agreement.

6.3.5 SUBCONTRACTS

Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel. For vendors using subcontractors, a Vendor Responsibility Questionnaire and a Department vendor responsibility review are required for a subcontractor where:

- the subcontractor is known at the time of the contract award;
- the subcontractor is not an entity that is exempt from reporting by OSC; and
- the subcontract will equal or exceed \$100,000 over the life of the contract;

For additional information about Vendor Responsibility, see sections 5.7 and 6.3.9 of this RFP. If the vendor proposes to change subcontractors during the contract period, AGM must be notified prior to the change. AGM reserves the right to reject any replacement subcontractors proposed by the vendor and reserves the right to approve all changes in subcontractors. The Subcontracting Form located in the Submission Documents must be updated annually and submitted to AGM.

6.3.6 INDEMNIFICATION

The **Contractor** agrees to indemnify and hold harmless the State of New York and the **Department** from all liability incurred by the **Department** for bodily injury (including death) and real and personal property damage resulting from the negligent acts, errors or omissions of the **Contractor**, its officers, agents or employees in the provision of services under this Agreement, provided that the **Department** timely notifies the **Contractor** of any such claim and afford the **Contractor** an opportunity to defend such claim and cooperate fully with the **Contractor** in the defense of any claims.

6.3.7 CONTRACTOR NOT DEPARTMENT EMPLOYEE OR AGENT

Neither the **Contractor**, its agents, employees, suppliers nor its subcontractors shall be in any way deemed to be employees or agents of the **Department** or of the State of New York in performing the work under this Agreement.

6.3.8 DEVIATION FROM WORK

The **Contractor** shall perform the work under this Agreement as outlined in the scope of work annexed as Appendix C. Any substantial deviation from the plan of work shall require the prior written approval of the **Department**.

6.3.9 RESPONSIBILITY REQUIREMENTS

- A. The **Department** is required to undertake an affirmative review of the responsibility of any vendor to which it proposes to make a contract award. Such review shall be designed to provide reasonable assurances that the proposed contractor is responsible. In undertaking such review, the **Department** must comply with the following standards:
 - a. In all cases, the **Department** must consider any information that has come to its attention from the proposed contractor or any other source that would raise issues concerning the proposed contractor's responsibility.
 - b. In the case of any contract valued at \$100,000 or more, the **Department** must affirmatively require disclosure by the proposed contractor of all information that the **Department** reasonably deems relevant to a determination of responsibility by completing a Vendor Responsibility Questionnaire.

- B. The **Contractor** shall at all times during the **Agreement** term remain responsible. The **Contractor** agrees, if requested by Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- C. The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this **Agreement**, at any time, when he or she discovers information that calls into question the responsibility of the **Contractor**. In the event of such suspension, the **Contractor** will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the **Contractor** must comply with the terms of the suspension order. **Agreement** activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the **Agreement**.
- D. Upon written notice to the **Contractor**, and a reasonable opportunity to be heard with appropriate Commissioner officials or staff, the **Agreement** may be terminated by Commissioner or his or her designee at the **Contractor's** expense where the **Contractor** is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

6.3.10 TERMINATION

The **Department** may terminate this Agreement for convenience upon giving thirty (30) days written notice to the other party. Upon receipt of such notice from the **Department**, the **Contractor** shall immediately cease work and prepare a statement of costs, expenses and non-cancelable commitments incurred as of the date of such termination.

The **Department** may terminate this Agreement for failure on the part of the **Contractor** to perform in a manner consistent with the terms of this Agreement. The **Contractor's** failure to perform in accordance with the terms of this Agreement due to circumstances reasonably beyond the **Contractor's** control should not constitute cause for termination pursuant to this provision. In the event of such failure to perform, the **Department** may, at its option, either grant the **Contractor** a specified period in which to correct its performance, or terminate this Agreement in accordance with this paragraph.

6.3.11 TERMINATION PURSUANT TO NEW YORK STATE FINANCE LAW SECTION 139-K

The **Department** reserves the right to terminate this Agreement 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 **Department** may exercise its termination right by providing written notification to the **Contractor**.

6.3.12 MODIFICATION

This Agreement may not be modified unless such modification is made in writing and executed by the **Department** and the **Contractor**. If required by State Finance Law, modifications may also be subject to the review and approval of the Office of the Attorney General and the Office of the State Comptroller of the State of New York.

6.3.13 NECESSARY SIGNATURES

If the financial limit under this Agreement exceeds Ten Thousand Dollars (\$10,000) this Agreement shall not be binding and effective upon the **Department** unless and until approved by the Office of the Attorney General of the State of New York and the Office of the State Comptroller of the State of New York.

6.3.14 WORKERS' COMPENSATION AND NYS DISABILITY INSURANCES

Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption may result in the termination of the Agreement.

A. Proof of Compliance with Workers' Compensation Coverage Requirements: An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

- a. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
- b. Obtain such coverage from an insurance carrier; or
- c. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the **Department**:

1. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is not required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable IFB/RFP and Group #s on the form.)
2. Certificate of Workers' Compensation Insurance:
 - a. Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Department of Agriculture and Markets, or
 - b. Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Department of Agriculture and Markets.
 - c. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
 - d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

B. Proof of Compliance with Disability Benefits Coverage Requirements: In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall:

- a. Be legally exempt from obtaining disability benefits coverage; or
- b. Obtain such coverage from an insurance carrier; or
- c. Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the **Department**:

1. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable IFB/RFP and Group #s on the form.)
2. Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Department of Agriculture and Markets; or
3. Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: New York State Department of Agriculture and Markets, Division of the New York State Fair, 581 State Fair Boulevard, Syracuse, NY 13209 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

6.3.15 IRAN DIVESTMENT ACT

By assuming the responsibility for performance of this **Agreement**, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS web site at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should the Department receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Department shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The Department reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

6.3.16 LIABILITY INSURANCE

The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies).

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with the Department of Agricultural and Markets (AGM), Certificates of Insurance (hereinafter referred to as "Certificates"), evidencing compliance with all requirements contained in this contract. Such Certificates shall be of a form and substance acceptable to AGM.

The insurance certificate must:

1. Identify the Contractor by legal business name, sole proprietor name and address and, if applicable, the legal status, i.e., corporation, limited liability company, partnership, limited partnership or unincorporated association.

2. Show insurance coverage in the minimum amounts of:
 - a) Commercial General Liability Insurance with a limit of not less than \$10,000,000 each occurrence. Such insurance shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages, with no modification to the contractual liability coverage provided therein. Coverages shall include liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage. If such insurance contains an aggregate limit, it shall apply separately on a per location or per project basis.
 - b) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$5,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
3. Be accompanied by additional insured endorsement (Acord 101) naming the New York State Department of Agriculture and Markets as an additional insured.
4. Policy coverage must be effective April 1, 2014 and remain in effect for the term of the Agreement.
5. Certificate Holder: New York State Fair, a Division of the New York State Department of Agriculture and Markets; 581 State Fair Blvd., Syracuse, NY 13209

The Contractor must immediately inform the Department of any insurance cancellation or material change in coverage. Certificates of Insurance (or exemptions) shall be provided to the Department within ten (10) days from the date on which the Contractor executes the Agreement.

Certificate acceptance and/or approval by AGM does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers authorized to do business in the State of New York and acceptable to AGM; shall be primary and non-contributing to any insurance or self insurance maintained by AGM; shall be endorsed to provide written notice be given to AGM, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to (New York State Fair, a Division of the New York State Department of Agriculture and Markets; 581 State Fair Blvd., Syracuse, NY 13209) and shall name The People of the State of New York, the Department of Agriculture and Markets, its officers, agents, and employees as additional insureds there under **(General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85 or its equivalent)**. The additional insured requirement does not apply to Workers Compensation or Disability.

The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by Agricultural and Markets. Such approval shall not be unreasonably withheld. The Contractor shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be

replaced no later than the renewal date of the policy with an insurer acceptable to OGS and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply to Agricultural and Markets updated replacement Certificates of Insurance, and amendatory endorsements.

Contractor acknowledges that failure to obtain any or all required insurance on behalf of Agricultural and Markets constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to Agricultural and Markets.

6.3.17 SALES TAX

Contractors making taxable sales of goods or services shall provide the Department with a valid Certificate of Authority to collect sales tax in New York State.

6.3.18 FORCE MAJEURE

Neither party shall be liable to the other for failure to perform any part of this Agreement when such failure is due to fire, flood, strikes or similar labor disturbances, industrial disturbances, war, riot, insurrection, or other causes beyond the control of either party.

6.3.19 NEW YORK LAW

The parties to the Agreement agree that the laws of the State New York shall apply to the contract and to all claims, actions and other proceedings arising out of the Agreement. Both parties agree that this agreement is performable in Onondaga County.

6.3.20 NOTICE

All notices given to the New York State Fair, a division of the Department, may be served only by mailing same by certified mail to Concessions Department, New York State Fair, 581 State Fair Blvd., Syracuse, New York 13209. Notice to Licensee shall be given to Licensee at the address stated on the face page of this agreement.

6.3.21 DIESEL EMISSION REDUCTION ACT

Pursuant to §19-0323 of the N.Y. Environmental Conservation Law ("the Law") it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2012. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty

vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and 6 NYCRR Parts 248 and 249.

6.3.22 CERTIFICATIONS

1. Licensee certifies that it has met the disclosure requirements of State Finance Law §139-k and that all information provided to the Department of Agriculture and Markets with respect to State Finance Law §139-k is complete, true and accurate.
2. Licensee certifies that it has not knowingly and willfully violated the prohibitions against impermissible contacts found in State Finance Law §139-j.
3. Licensee certifies that no governmental entity has made a finding of non-responsibility regarding the Licensee in the previous four years.
4. Licensee certifies that no governmental entity or other governmental agency has terminated or withheld a procurement contract with the Licensee due to the intentional provision of false or incomplete information.
5. Licensee affirms that it understands and agrees to comply with the procedures of the STATE relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6)(b).
6. Licensee certifies that it is in compliance with NYS Public Officers Law, including, but not limited to §73(4)(a).

Exhibits to RFP #SF00270

Midway Services for the New York State Fair

Midway Revenue 2010-2013

2013 Ride List

2013 Ride Layout Drawing

New York State Fair Midway Revenue Years 2010-2013

Midway Rides & Games Revenue (Including Advance Sale)

Year	Ride Gross Receipts	To Midway Operator	To NYS Fair
2013	\$2,193,426	\$1,219,885	\$973,541
2012	\$2,306,864	\$1,233,701	\$1,073,163
2011	\$2,400,693	\$1,326,388	\$1,074,305
2010	\$2,453,784	\$1,364,850	\$1,088,934

Midway Frontage Revenue Paid

	Linear Footage	Rental Rate/Foot	Total Paid
2013	3,044	\$55	\$167,420
2012	3,006	\$55	\$165,330
2011	3,225	\$55	\$177,375
2010	3,054	\$55	\$167,970

Grand Total Net Revenue to NYS Fair (Rides & Games plus Frontage)

2013	\$1,140,961
2012	\$1,238,493
2011	\$1,251,680
2010	\$1,256,904

NYS Fair Attendance Figures

2013	851,157
2012	845,595
2011	917,464
2010	999,845

New York State Fair

August 22 – Sept. 2, 2013

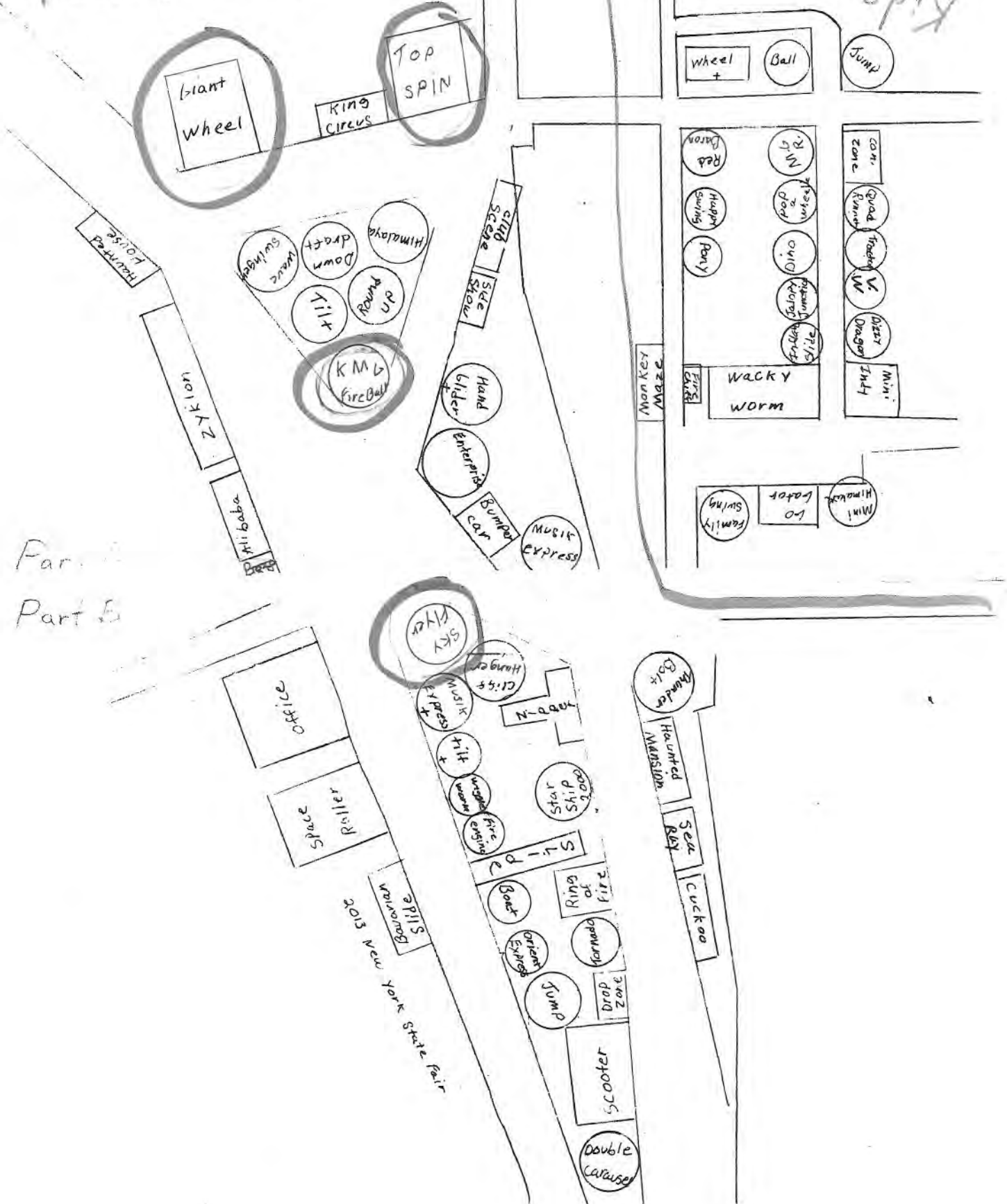
Ride List

Cliffhanger
Club Scene
Construction Zone
Cuckoo Haus
Dinosaur
Double Carousel
Family Swinger
Fireball (Ring of Fire)
Fireball 2000
Fire Chief
Fire Engine
Giant Wheel
Go Gator
Happy Swing
Haunted Mansion
Himalaya
Jalopy Junction
Mini Himalaya
Mini Indy
Monkey Maze
Musik Express
Pony Cart
Pop-A-Wheelie
Quad Runner
Red Baron
Scooter
Sky Flyer
Starship 2000
Super Slide
Thunderbolt
Tilt-A-Whirl
Top Spin
Tractor
Volkswagon
Wacky Worm Coaster
Wave Swinger
Wind Jammer Inflate Slide
Zipper
Zyklon Roller Coaster
Ali Baba
Bumper Cars
Century Wheel
Cliffhanger
Dizzy Dragon

Exhibit 1

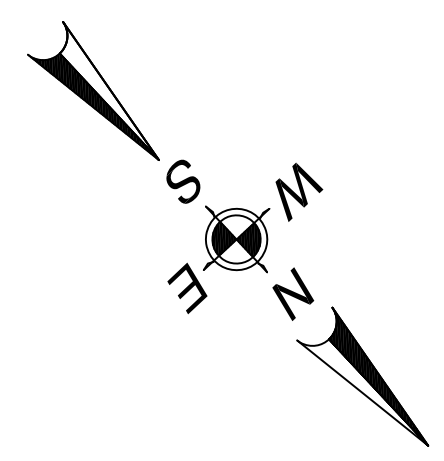
Drop Zone
Giant Slide
King's Circus
Merry Go Round
Musik Express
Orbiter
Orient Express
Round Up
Sea Ray
Tilt-A-Whirl
Tornado
Wiggle Wurm
Haunted House
Bavarian Slide
Space Roller
Downdraft
Two Quad Jumps
One Water Roller

Special Rides

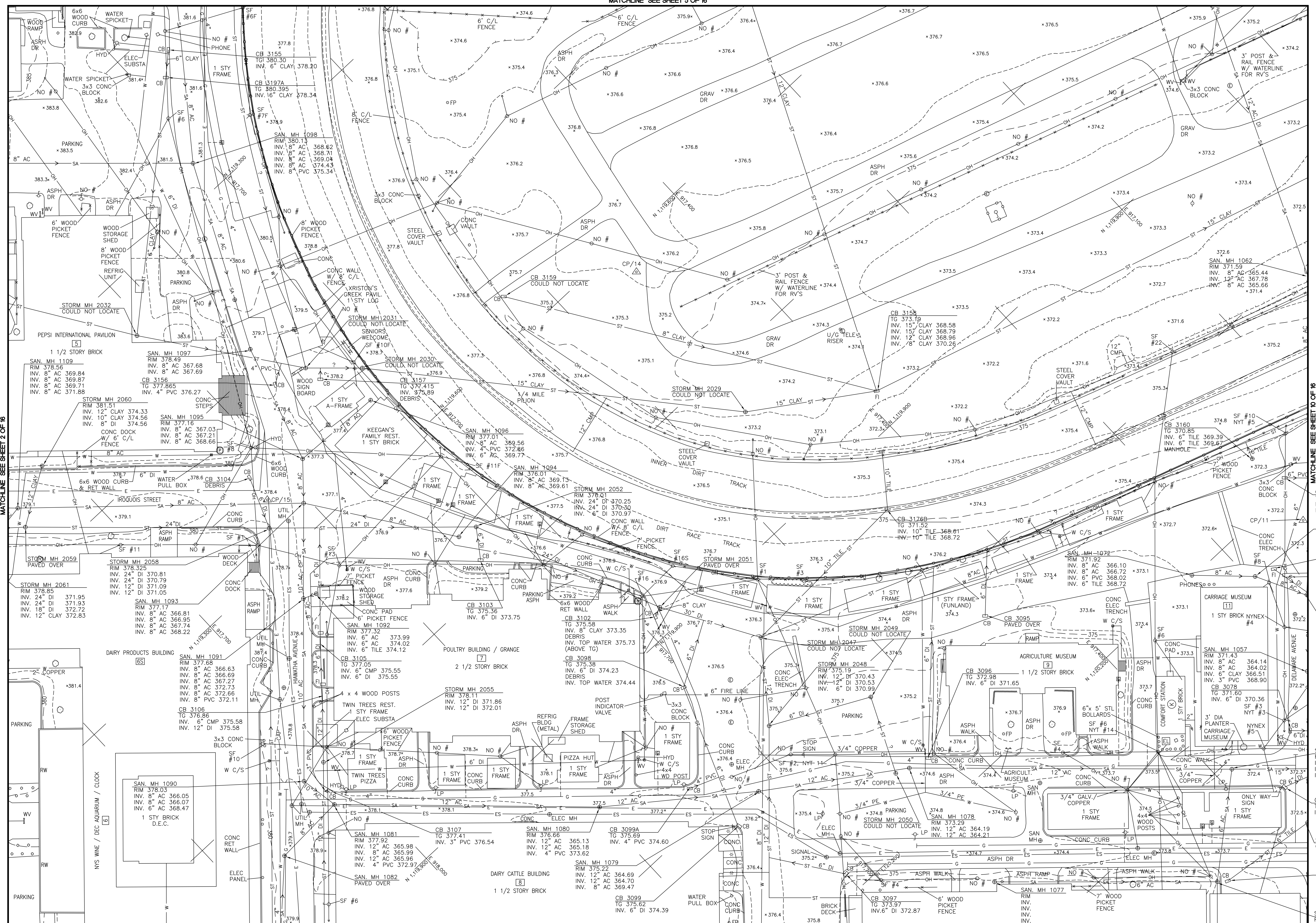


Far Part E

Midway Drawings



MATCHLINE SEE SHEET 5 OF 16



MATCHLINE SEE SHEET 2 OF 16

MATCHLINE SEE SHEET 10 OF 16

MATCHLINE SEE SHEET 7 OF 16

NOTES

- BOUNDARY DATA
BOUNDARY DATA WAS DUPLICATED FROM MAPPING LABELED "RYAN SURVEY" - SYRACUSE, N.Y. - SCALE: 1" = 30' - PROJECT NO. 80037 APPROXIMATELY COMPLETED IN 1978.
- UTILITY DATA
UTILITY DATA IS INPUTED FROM FIELD OBSERVATION AND RECORD PLANS.

LEGEND

SA →	EXISTING SANITARY SEWER W/ FLOW DIRECTION	---	EXISTING 1 FOOT CONTOUR
ST →	EXISTING STORM SEWER W/ FLOW DIRECTION	---	EXISTING 5 FOOT CONTOUR
W	EXISTING WATERMAIN	△	SURVEY CONTROL POINT (REFER TO DRAWING NO. SW-1 FOR VALUES)
G	EXISTING GASMAIN	+	BENCH-MARK (REFER TO DRAWING NO. SW-1 FOR VALUES)
E	EXISTING ELECTRIC		
ES	EXISTING ELECTRIC SIGNAL		
OH	EXISTING OVERHEAD LINE		

DESIGN AND CONSTRUCTION
STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES

NO ALTERATION PERMITTED HEREON
EXCEPT AS PROVIDED UNDER SECTION
2000 SUBSECTION 2 OF THE NEW
YORK STATE EDUCATION LAW

DATE	
REVISIONS	
NO.	

PROJECT NUMBER: 26-2-5025
SHEET NO.: 6 OF 16
DRAWING NO.: 6

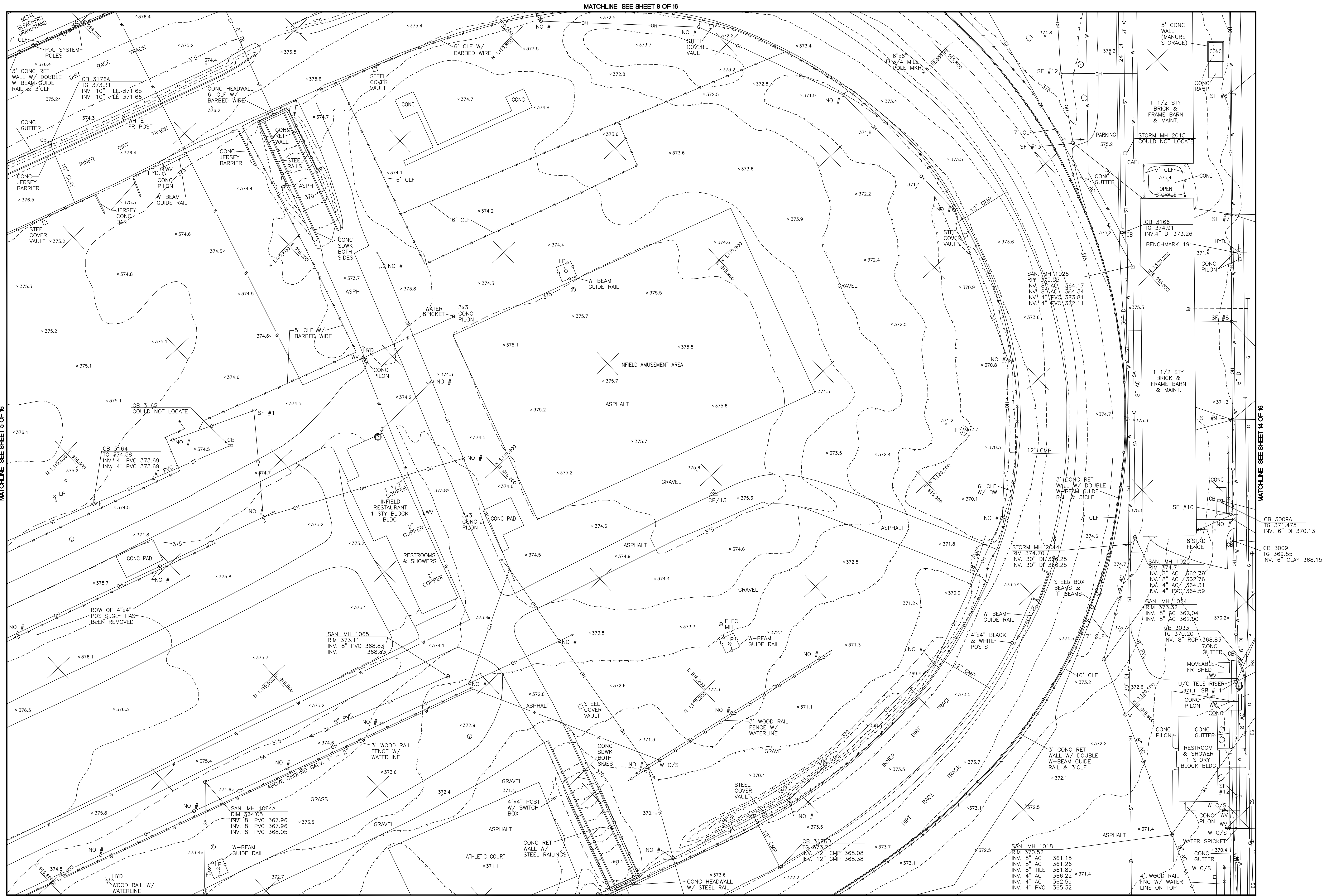
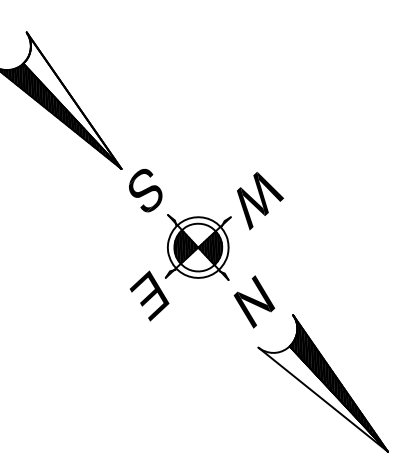
NEW YORK STATE FAIRGROUNDS
SYRACUSE, NEW YORK, ONONDAGA COUNTY

EXISTING PLANNETRICS
DECEMBER 3, 1996

PROJECT NO. 26-2-5025
SHEET NO. 6 OF 16
DRAWING NO. 6

DATE: SEP 1, 1997

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MATCHLINE SEE SHEET 8 OF 16

MATCHLINE SEE SHEET 10 OF 16

MATCHLINE SEE SHEET 5 OF 16

MATCHLINE SEE SHEET 14 OF 16

- NOTES**
- BOUNDARY DATA
BOUNDARY DATA WAS DUPLICATED FROM MAPPING LABELED "RYAN SURVEY - SYRACUSE, N.Y. - SCALE: 1" = 30' - PROJECT NO. 80037" APPROXIMATELY COMPLETED IN 1978.
 - UTILITY DATA
UTILITY DATA IS INPUTED FROM FIELD OBSERVATION AND RECORD PLANS.

- LEGEND**
- SA → EXISTING SANITARY SEWER W/ FLOW DIRECTION
 - ST → EXISTING STORM SEWER W/ FLOW DIRECTION
 - W → EXISTING WATERMAIN
 - G → EXISTING GASMAIN
 - E → EXISTING ELECTRIC
 - ES → EXISTING ELECTRIC SIGNAL
 - OH → EXISTING OVERHEAD LINE
 - - - 375 - - - EXISTING 1 FOOT CONTOUR
 - - - 375 - - - EXISTING 5 FOOT CONTOUR
 - △ SURVEY CONTROL POINT (REFER TO DRAWING NO. 89Y-1 FOR VALUES)
 - BENCHMARK (REFER TO DRAWING NO. 89Y-1 FOR VALUES)

DESIGN and CONSTRUCTION
STATE OF NEW YORK
DISTRICT ENGINEER
OFFICE OF GENERAL SERVICES

NO ALTERATION PERMITTED HEREON
EXCEPT AS PROVIDED UNDER SECTION
2200 SUBDIVISION 2 OF THE NEW YORK
STATE EDUCATION LAW

NO.	REVISIONS	DATE

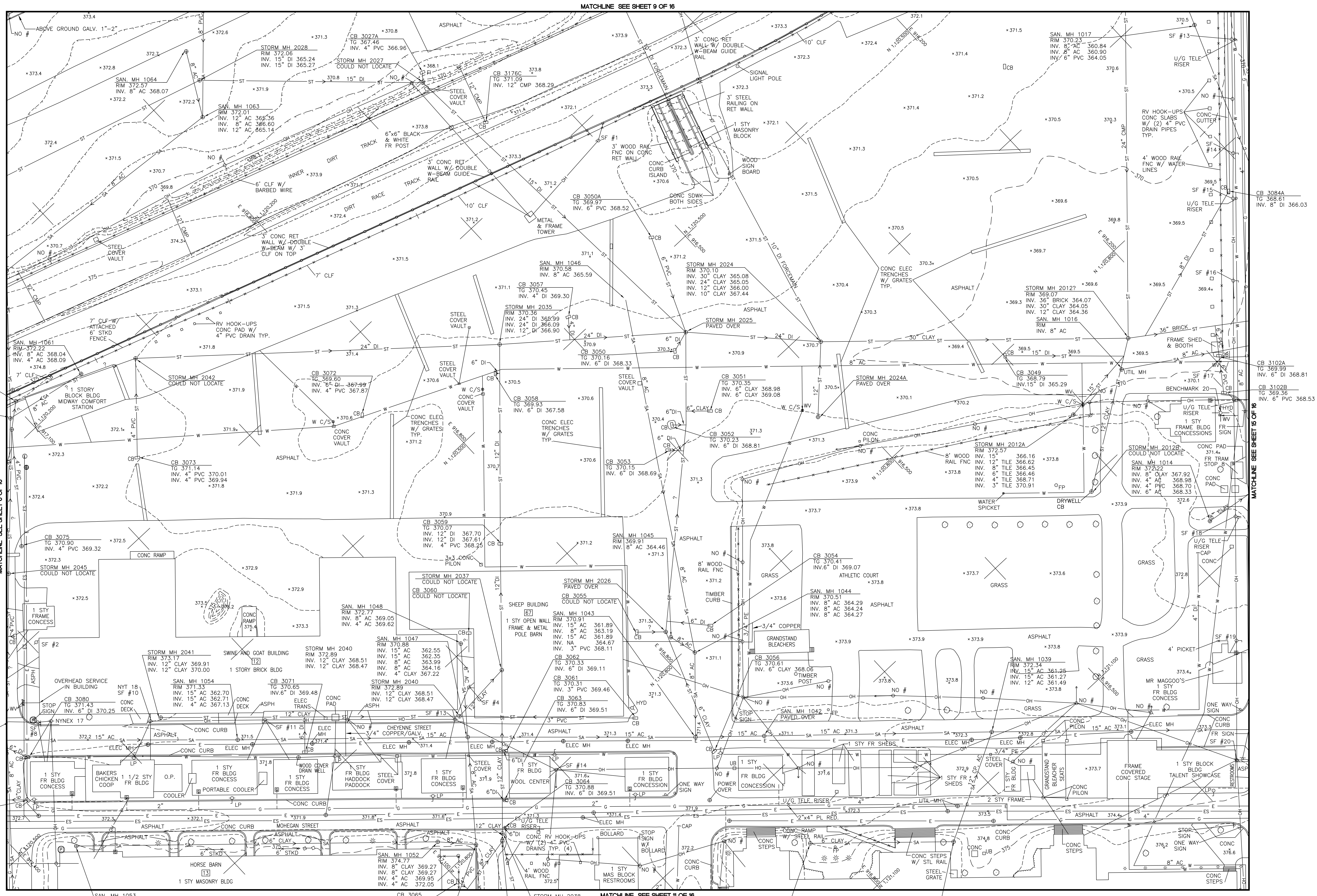
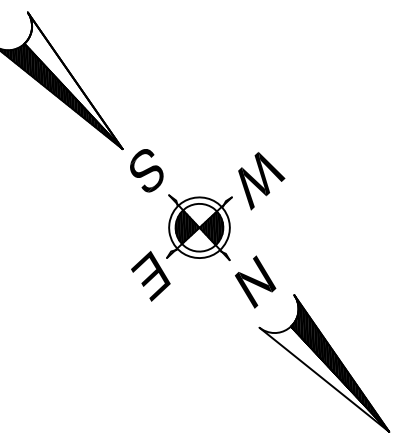
PROJECT NUMBER: 26-2-5025
SHEET NO.: 9 OF 16
DRAWING NO.: 9

DATE: SEPT., 1997
SCALE: 1" = 30'

LARSEN ENGINEERS
370 WEST 97TH AVENUE, SUITE 200, NEW YORK, NY 10025-2878
PHONE: 212-249-1000
FAX: 212-249-1001

NEW YORK STATE FAIRGROUNDS
SYRACUSE, NEW YORK, ONONDAGA COUNTY

EXISTING PLANIMETRICS
DECEMBER 3, 1996



MATCHLINE SEE SHEET 9 OF 16

MATCHLINE SEE SHEET 10 OF 16

MATCHLINE SEE SHEET 11 OF 16

NOTES

- BOUNDARY DATA
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"RYAN SURVEY - SYRACUSE, N.Y. - SCALE: 1" = 30' - PROJECT No. 80037"
APPROXIMATELY COMPLETED IN 1978.
- UTILITY DATA
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- - - - - EXISTING 1 FOOT CONTOUR
- - - - - EXISTING 5 FOOT CONTOUR
- + BENCHMARK (REFER TO DRAWING NO. SVY-1 FOR VALUES)

DESIGN and CONSTRUCTION

STATE OF NEW YORK
ELECTIVE SURVEYING
OFFICE OF GENERAL SERVICES

NO ALTERATION PERMITTED HEREON
EXCEPT AS PROVIDED UNDER SECTION
2209 SUBSECTION 2 OF THE NEW YORK
GENERAL ENGINEERING LAW

PROJECT NUMBER: 26-2-5025
SHEET NO.: 10 OF 16
DRAWING NO.: 10

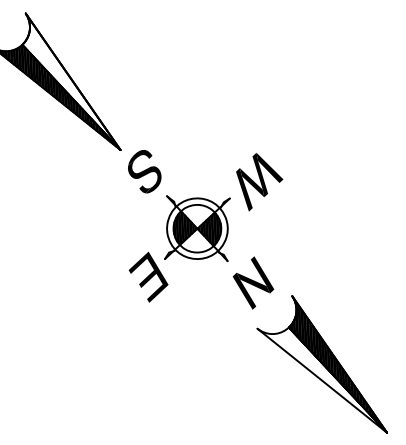
DATE: SEPT., 1997

SCALE: 1" = 30'

PROJECT MANAGER: LARSEN ENGINEERS

SYRACUSE, NEW YORK, ONONDAGA COUNTY

EXISTING PLANIMETRICS
DECEMBER 3, 1996



MATCHLINE SEE SHEET 14 OF 16



MATCHLINE SEE SHEET 16 OF 16

NOTES

- BOUNDARY DATA
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LEGEND

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- - - 375 - - - EXISTING 5 FOOT CONTOUR
- — — BOUNDARY LINE
- △ SURVEY CONTROL POINT (REFER TO DRAWING NO. 8VY-1 FOR VALUES)

DESIGN and CONSTRUCTION
STATE OF NEW YORK
ELECTIVE SURVEYOR
OFFICE OF GENERAL SERVICES

NO ALTERATION PERMITTED HEREON
EXCEPT AS PROVIDED UNDER SECTION
2200 SUBDIVISION 2 OF THE NEW YORK
STATE EDUCATION LAW

PREPARED FOR:	
BY DATE:	
REVISIONS:	
NO.:	
PROJECT MANAGER:	
DATE:	
SCALE:	

PROJECT OWNER:
D.D.D.
S.B.S./J.W.T.
CHECKED BY:
L.R.C.

LARSEN ENGINEERS
300 WEST 97TH STREET, SUITE 200
ROSELAND, NEW YORK 11423-3419
PHONE: 718-335-1100
FAX: 718-335-1101
E-MAIL: LARSEN@LARSENENR.COM

NEW YORK STATE FAIRGROUNDS
SYRACUSE, NEW YORK, ONONDAGA COUNTY

EXISTING PLANIMETRICS
DECEMBER 3, 1996

PROJECT NO.: 26-2-5025
SHEET NO.: 15 OF 16
DRAWING NO.: 15

Midway Overhead Photos



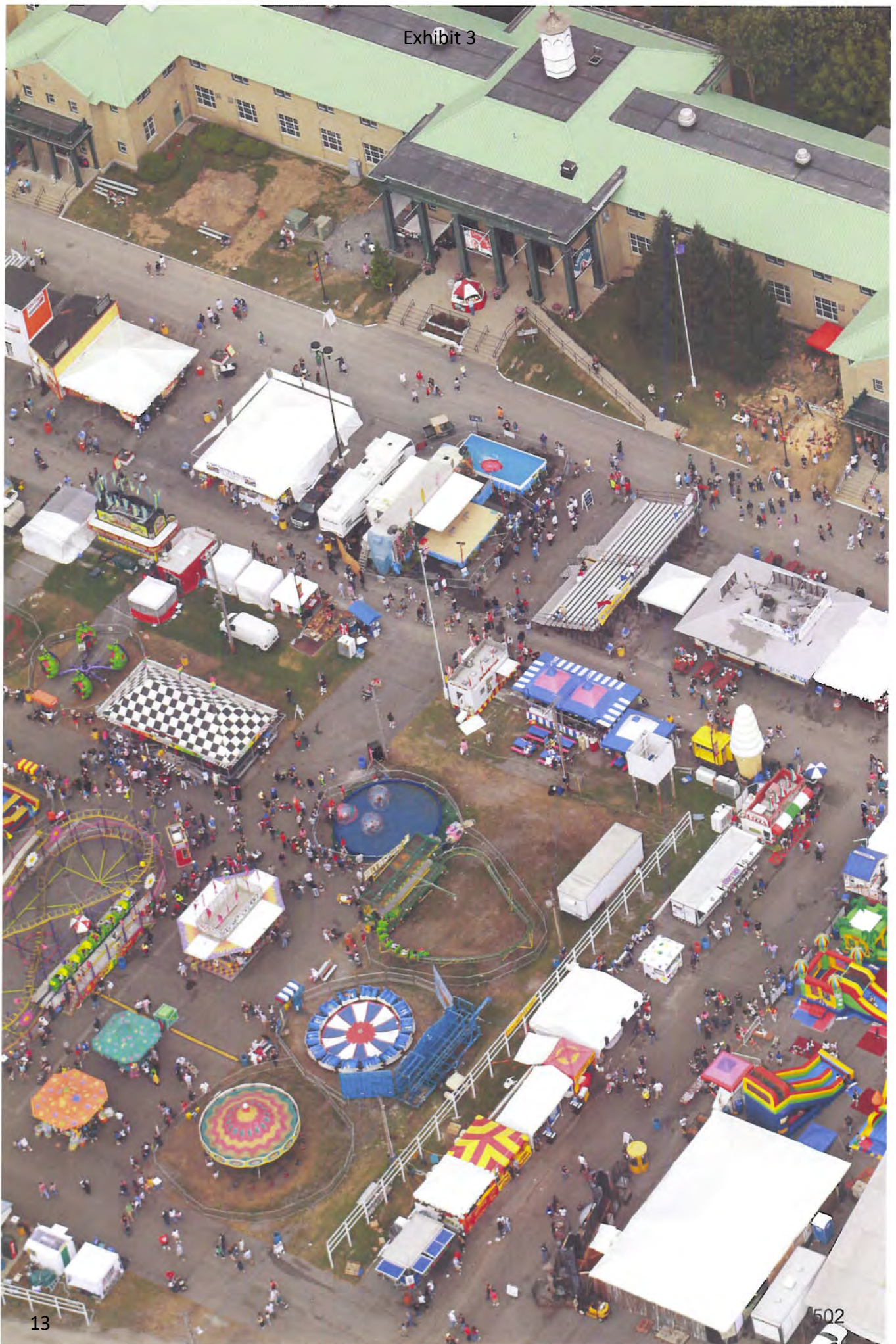


Exhibit 3





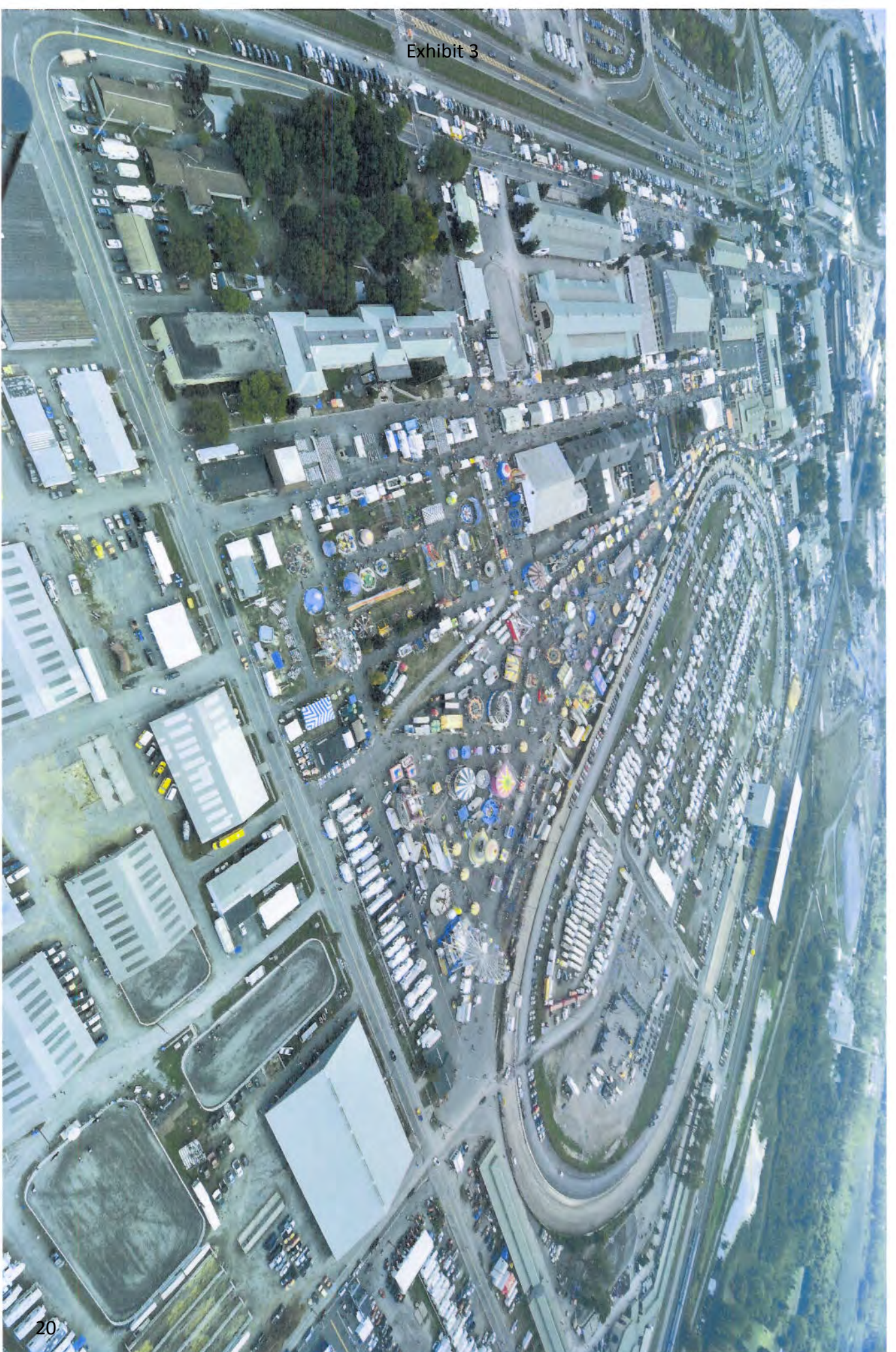




Exhibit 3







New York State Department of Agriculture and Markets

RFP #SF00270: MIDWAY SERVICES FOR THE NEW YORK STATE FAIR

SUBMISSION DOCUMENTS

CONTENTS

Checklist for Bid Response and Minimum Qualifications – Cover Sheet (Signature Required)

Checklist for Bid Response and Minimum Qualifications (Complete Bidder Section)

Attachment 1: Bid Form and Subcontracting Form (Signature Required)

Attachment 2: Bidder Affirmations and Mandatory Requirements Certification Form (Signature Required)

Attachment 3: Non-Collusive Bidding Certification Form (Signature Required)

Attachment 4: MacBride Nondiscrimination Certification Form (Signature Required)

Attachment 5: Procurement Lobbying Law Forms (Return pages 4-7 – Signature Required)

Substitute W-9 Form to obtain SFS Vendor ID (Return if ID needed -Signature Required)

Appendix A – Required Clauses for all NYS Contracts (will be part of any contract)

New York State Department of Agriculture and Markets

RFP #SF00270: MIDWAY SERVICES FOR THE NEW YORK STATE FAIR
CHECKLIST FOR BID RESPONSE AND MINIMUM QUALIFICATIONS

Cover Sheet

Vendor Name:		
Vendor SFS ID#	(Note: If you do not have an SFS # complete and submit the Substitute W-9 Form)	
Bidder Information—Please Complete This Section Please complete the following. Responses must be legible. By signing, you indicate your express authority to sign on behalf of yourself, or your company or other entity and full knowledge and acceptance of the terms and conditions of the bid. You also affirm that you understand and agree to comply with the procedures of the Department relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).		
<u>Legal Name of Company Bidding</u>	<u>Address:</u>	
<u>Employer's Federal Tax ID Number</u>		
<u>Vendor Responsibility</u> Check one of the following:		
<input type="checkbox"/> I certify that my organization has filed its Vendor Responsibility Questionnaire online via the New York State VendRep System and that the current questionnaire was certified within the past six months.		
<input type="checkbox"/> I am including a completed paper copy of the Vendor Responsibility Questionnaire with the bid proposal.		
<input type="checkbox"/> My entity is exempt based on the OSC listing.		
<input type="checkbox"/> My proposal is less than \$100,000, therefore a questionnaire is not required.		
<input type="checkbox"/> Other, explanation:		
NOTE: Bidders are encouraged to file the Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep System online at https://portal.osc.state.ny.us/wps/portal .		
Bidder's Signature	<i>Date</i>	<i>E-mail</i>
	<i>Phone</i>	<i>Fax</i>
Print Name as Signed and Title		

COMPLETE AND RETURN WITH BID RESPONSE

Checklist and Minimum Qualifications

To be completed by Bidder	BID RESPONSE ITEM	FOR AGR USE ONLY Minimum Qualifications
<input type="checkbox"/>	Cover Sheet to Checklist and Minimum Qualifications	<i>Not a qualification</i>
<input type="checkbox"/>	Attachment 1 – Bid Form Cost Proposal and Subcontracting Form	<input type="checkbox"/>
<input type="checkbox"/>	Attachment 2 – Bidder Affirmations and Mandatory Requirements Certification Form	<input type="checkbox"/>
<input type="checkbox"/>	Attachment 3 – Non-Collusive Bidding Certification	<input type="checkbox"/>
<input type="checkbox"/>	Attachment 4 – MacBride Nondiscrimination Certification	<input type="checkbox"/>
<input type="checkbox"/>	Attachment 5 – Procurement Lobby Law Forms, Pages 4-7	<input type="checkbox"/>
<input type="checkbox"/>	Attachment 6 – Substitute W-9 Form to obtain SFS ID (if needed)	<i>Not a qualification</i>
<input type="checkbox"/>	Bidder attended the Mandatory Site Tour of the Midway – August 2013 (paragraph 1 Minimum Qualifications)	<input type="checkbox"/>
<input type="checkbox"/>	Bidder demonstrated current service provider during last five years (paragraph 2 Minimum Qualifications)	<input type="checkbox"/>
<input type="checkbox"/>	Bidder demonstrated operations of scope, length and receivables of \$2,000,000 for same/similar services (paragraph 3 Minimum Qualifications)	<input type="checkbox"/>
<input type="checkbox"/>	Bidder submitted five (5) verifiable references (paragraph 4 Minimum Qualifications)	<input type="checkbox"/>
	The following forms are not required until notification of selection is made, however bidders are <u>strongly encouraged</u> to submit the following forms with the bid response.	
Website:	<i>Sales and Compensating Use Tax Documentation ST-220 CA:</i> http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf <i>ST-220 TD:</i> http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf	
<input type="checkbox"/>	ST-220 CA, Sales and Compensating Use Tax Certification	<input type="checkbox"/>
Website:	<i>Worker's Compensation Documentation</i> http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp	
<input type="checkbox"/>	Form C-105.2 – Certificate of Workers' Compensation Insurance issued by private insurance carriers, or Form U-26.3 issued by the State Insurance Fund; OR	<input type="checkbox"/>
<input type="checkbox"/>	Form SI-12 – Certificate of Workers' Compensation Self-Insurance; or Form GSI-105.2 Certificate of Participation in Workers' Compensation Group Self-Insurance; OR	<input type="checkbox"/>
<input type="checkbox"/>	CE-200 Certificate of Attestation for New York Entities with No Employees and certain out of State Entities, that New York State Worker's Compensation and/or Disability Benefits Insurance is not required OR	<input type="checkbox"/>
Website:	<i>Disability Benefits Coverage</i> http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp	
<input type="checkbox"/>	Form DB-120.1 - Certificate of Disability Benefits Insurance; OR	<input type="checkbox"/>
<input type="checkbox"/>	Form DB-155 - Certificate of Disability Benefits Self-Insurance; OR	<input type="checkbox"/>
<input type="checkbox"/>	CE-200 – Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.	<input type="checkbox"/>

COMPLETE AND RETURN WITH BID RESPONSE

New York State Department of Agriculture and Markets

RFP #SF00270: MIDWAY SERVICES FOR THE NEW YORK STATE FAIR

ATTACHMENT 1 - BID FORM/COST PROPOSAL

All bids must be submitted on this sheet.

Part I. Annual Commitment

A fee of \$750,000.00 will be payable to the Department on an annual basis for the ten year term of the contract (multi-year amount of \$7,500,000.00).

\$ 750,000.00 per year ()
INITIAL HERE

Part II. Revenue in Excess of \$750,000 per year (%)

Enter a percentage of sales revenue from rides to be paid to the Department for gross sales made over \$750,000. Sales revenue shall mean **all revenue** generated by the sales of rides and shows (including advance and promotional sales), before any deductions.

Example: Contractor sells \$900,000 worth of Midway rides. (\$900,000 - \$750,000= \$150,000)
Contractor owes a percentage of \$150,000 to the Department.

Percentage amount of gross sales of rides over \$750,000 _____ %

**Part III. Fee per linear foot of Frontage (Booth/Concession Space)
(Minimum Bid \$50 per foot)**

Bid for Frontage \$ _____ per linear foot

Size of Bidder's Frontage as described in its Technical Proposal _____ linear feet

Company

Name

Date

Signature

Address

Phone

COMPLETE AND RETURN WITH BID RESPONSE

ATTACHMENT 1 - BID FORM
SUBCONTRACTING FORM (YEAR ONE ONLY)
(WHOLE DOLLAR FIGURES ONLY)

Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel. For vendors using subcontractors, a Vendor Responsibility Questionnaire and a Department vendor responsibility review are required for a subcontractor where: 1) the subcontractor is known at the time of the contract award; 2) the subcontractor is not an entity that is exempt from reporting by OSC; and 3) the subcontract will equal or exceed \$100,000 over the life of the contract.

YEAR ONE (4/1/2014-3/31/2015)

Bidder Name: _____

Name of Subcontractor and Contact Information	Type of Attraction	Work Description & Estimated Hours/Days	Projected Cost

Please add additional pages, if required.

If the vendor proposes to change subcontractors during the contract period, AGM must be notified prior to the change. AGM reserves the right to reject any replacement subcontractors proposed by the vendor and reserves the right to approve all changes in subcontractors. This Form must be updated annually and submitted to AGM.

ATTACHMENT 2 – BIDDER AFFIRMATIONS AND MANDATORY REQUIREMENTS CERTIFICATION

By signing below, the undersigned affirms it can provide and/or meet all of the requirements listed below:

Bidder Affirmations

1. RFP Section 3.5 C: Bidder affirms that if awarded the contract, it shall agree to be assessed a fee of \$500 per ride, per day in the event a ride is not available for more than twenty-four (24) hours. No assessments will be taken in the event of severe weather related shut downs.
2. RFP Section 3.5 D(8): Bidder affirms that if awarded the contract, it shall agree to provide at least three (3) new rides per category each year.
3. RFP Section 3.5 H: Bidder affirms that if awarded the contract, it shall agree to implement the special pricing days finalized by the Department.
4. RFP Section 3.5 J: Bidder affirms that if awarded the contract, it shall agree to work cooperatively with the Department to implement any annual changes including comprehensive transformation.

Bid Responses that do not include the signed Bidder Affirmations will be deemed non-responsive and removed from further consideration.

Bidder Signature

Date

Printed Name

Title

Company Name

Company Address

By signing below, the undersigned agrees that if awarded a contract, it can provide and/or meet all of the requirements listed below:

Mandatory Contract Requirements

1. Bidder certifies that if selected for an award, no other obligation or engagement, contractual or otherwise, will conflict with or in any way impact its ability to provide the rides, games, attractions and concessions listed in its proposal during the Great New York State Fair.
2. Bidder certifies that if selected for an award, it shall have full control of the Midway and assume total responsibility for all liability for accident, injury and/or death that may occur as a result of services provided. Bidder further certifies that if selected, it shall indemnify and hold harmless the State of New York, the Department, its officers and employees from all claims, demands, damages, expenses, liability or obligation for damages, loss or injury to, or of, any person or property arising out of the acts of Bidder, its agents, servants, employees, subcontractors and those acting for or on its behalf. Such indemnity shall not be limited by reasons of any insurance coverage provided.
3. Bidder certifies that if selected for an award, it will obtain and maintain the following policies from an insurance company authorized to do business in the State of New York:

COMPLETE AND RETURN WITH BID RESPONSE

a) Commercial General Liability Insurance with a limit of not less than \$10,000,000 each occurrence. Such insurance shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages, with no modification to the contractual liability coverage provided therein. Coverages shall include liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage. If such insurance contains an aggregate limit, it shall apply separately on a per location or per project basis.

b) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$5,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

Bid Responses that do not include the signed Mandatory Requirements Certification or fail to comply with all Mandatory Requirements will be deemed non-responsive and removed from further consideration.

Bidder Signature

Date

Printed Name

Title

Company Name

Company Address

COMPLETE AND RETURN WITH BID RESPONSE



State of New York
Department of Agriculture and
Markets
10B Airline Drive
Albany, NY 12235

**Non-Collusive Bidding Certification Required
by State Finance Law §139-D**

ATTACHMENT 3

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW**

BY SUBMISSION OF THIS BID, ANY BIDDER AND EACH PERSON SIGNING ON BEHALF OF ANY BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID, 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 bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], AND [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER(S) 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.]



State of New York
Department of Agriculture and
Markets
10B Airline Drive
Albany, NY 12235

**Non-Collusive Bidding Certification Required
by State Finance Law §139-D**

Signature _____

Name (Typed) _____

Company Position _____

Company Name _____

Date Signed _____

Sworn to before me this

_____ day of _____, 20____

Notary Public

Signature _____

Name (Typed) _____

Company Position _____

Company Name _____

Date Signed _____

Sworn to before me this

_____ day of _____, 20____

Notary Public



State of New York
 Department of Agriculture and
 Markets
 10B Airline Drive
 Albany, NY 12235

MacBride Nondiscrimination Certification

ATTACHMENT 4
COMPLETE AND RETURN WITH BID RESPONSE

**"NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:
 MacBRIDE FAIR EMPLOYMENT PRINCIPLES"**

In accordance with Chapter 807 of the laws of 1992 the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either:

(Answer Yes or No to one or both of the following, as applicable)

1. Has business operations in Northern Ireland:

_____ Yes _____ No

If yes:

2. Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such principles.

_____ Yes _____ No

Company Name:
Printed Name and Title of Authorized Representative:
Signature:
Date:
Proposal:
Commodity:



State of New York
Department of Agriculture and
Markets
10B Airline Drive
Albany, NY 12235

**Summary of the Department's Policy on
State Finance Law §139-j and §139-k**

ATTACHMENT 5 – PROCUREMENT LOBBYING LAW FORMS

Summary of Department's Policy Regarding State Finance Law Sections 139-j and 139-k

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Department of Agriculture and Markets (A&M) and an Offeror/bidder during the procurement process. An Offeror/bidder is restricted from making contacts from the earliest notice of intent to solicit bids/proposals through final award and approval of the Procurement Contract by the A&M, and, if applicable, Office of the State Comptroller ("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 Section 139-j(3)(a). Designated staff, as of the date hereof, is/are identified in this solicitation. A&M employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offeror/bidder 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 four year- period, the Offeror/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in the Department's Guidelines, which are attached, and on the Office of General Services Website at

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.



Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005 (collectively referred to as the “Lobbying Law”), makes major changes to the Legislative Law and State Finance Law relative to lobbying on government procurements. More specifically, the Lobbying Law creates two new sections in the State Finance Law: Section 139-j addresses the disclosure on “contacts” during the procurement process; and Section 139-k addresses the disclosure of contacts and the responsibility of Offerors¹ during the procurement process. The Lobbying Law applies to all procurements initiated on or after January 1, 2006. In this regard, a procurement means a contract or agreement involving an annual expenditure in excess of \$15,000 for a commodity, service, technology, public work, or construction; purchase, sale or lease of real property; or revenue contract.

In conformity with the Lobbying Law, during a procurement’s restricted period² the only Department employee(s) that the Offeror may “Contact” is/are the Department designated contact person(s) for that procurement. In this regard, “Contact” means any oral, written or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence a procurement. Exceptions to this rule include:

- submission of a written proposal in response to an RFP, IFB or any other solicitation method;
- submission of written questions as part of an RFP, IFB or other solicitation method where all written questions and written responses will be provided to all Offerors;
- participation in a pre-proposal or pre-bid conference scheduled as part of an RFP, IFB or other solicitation process;
- written complaints by an Offeror that the Department designated contact for a procurement fails to respond in a timely manner;
- negotiations with the Department following tentative award;
- contacts between designated Department staff and Offeror to request the review of a contract award; and
- communications with the Department regarding an appeal, protest or other review of a procurement, participation in an administrative or judicial proceeding regarding a procurement and complaints regarding a procurement made to the Attorney General, Inspector General, District Attorney, or State Comptroller.

An Offeror shall not, under any circumstances, attempt to influence a Department procurement in a way that violates or attempts to violate: Public Officers Law Section 73(5), relating to gifts intended to influence; or Public Officers Law Section 74, relating to the code of ethics for employees of state agencies.

An Offeror who contacts the Department regarding a procurement during the restricted period must be prepared to provide the following information: name, address, telephone number, place of principal employment and occupation of the person or organization making the contact, and whether the person/organization making the contact is the Offeror

¹ An Offeror is an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts the Department about a procurement during the restricted period.

² The period of time commencing with the earliest written notice, advertisement or solicitation of a Request for Proposals “RFP”, Invitation for Bids “IFB”, solicitation of proposals or any other method for soliciting responses from Offerors intending to result in a procurement contract by the Department, and ending with the final contract award and approval by the Department, and OSC (if required).



State of New York
Department of Agriculture and
Markets
10B Airline Drive
Albany, NY 12235

**Guidelines Regarding Permissible Contacts
During a Procurement and the Prohibition of
Inappropriate Lobbying Influence**

PAGE 3

or is retained, employed or designated by or on behalf of the Offeror to appear before or contact the Department about the procurement. The Department's Report of Contact Form is attached as Form 1.

An Offeror that submits a proposal, bid or other response to a Department RFP, IFB or other solicitation method must:

- Affirm that it understands and agrees to comply with these guidelines regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence. (The Department's Affirmation of Understanding and Agreement is attached as Form 2.);
- Certify that all information provided to the Department with respect to the Lobbying Law is complete, true, and accurate. (The Department's Certification of Compliance is attached as Form 3.);
- Disclose whether any governmental entity has, within the prior four years, found the Offeror non-responsible due to a violation of the Lobbying Law or the intentional provision of false or incomplete information. (Included in the Vendor Responsibility Questionnaire.)

Further, all Department procurement contracts will contain a provision authorizing the Department to terminate the contract in the event such Certification of Compliance is found to be intentionally false or incomplete.

Any alleged violations of the Department's guidelines or the Lobbying Law regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence will be reported to the Department's Ethics Officer for investigation. If there is sufficient evidence to indicate the allegation may be true, the Department shall give the Offeror reasonable notice that an investigation is ongoing and an opportunity to be heard in response to the allegation. At the Department's discretion, the opportunity to be heard may be provided either by giving the Offeror the opportunity to meet with the Department staff conducting the investigation or by convening a hearing before an impartial hearing officer at the Department's Albany office. In either case, a written report including findings, conclusions, and a recommended decision will be forwarded to the Commissioner or his or her designee for review and a final determination. A determination that an Offeror has knowingly and willfully committed such a violation may result in a finding that the Offeror and its subsidiaries are non-responsible and therefore ineligible for award of the procurement contract. A second determination of non-responsibility for such a violation within four years of the first such determination may render the Offeror and its subsidiaries ineligible to submit a bid or proposal or be awarded a procurement contract for four (4) years from the date of the second determination. The Department will notify the New York State Office of General Services ("OGS") of any determinations of non-responsibility or debarments due to violations of the Lobbying Law.

If you require further guidance on the new Lobbying Law, you are encouraged to visit the Advisory Council on Procurement Lobbying website at

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html> where Frequently Asked Questions "FAQ's" adopted by the Council have been posted.



State of New York
Department of Agriculture and
Markets
10B Airline Drive
Albany, NY 12235

**Offeror's Certification of Compliance Pursuant
to State Finance Law §139-k(5)**

PAGE 4

COMPLETE AND RETURN WITH BID RESPONSE

Instructions:

New York State Finance Law (SFL) §139-k(5) require that every contract award subject to the provisions of SFL §§139-k or 139-j shall contain a certification by the Offeror that all information provided to Agriculture and Markets with respect to SFL §139-k is complete, true and accurate.

At the time an Offer or Bid is submitted to Agriculture and Markets, the Offeror/Bidder must provide the following certification that the information it has and will provide to Agriculture and Markets pursuant to SFL §139-k is complete, true and accurate including, but not limited to, disclosures of findings of non-responsibility made within the previous four years by any State governmental entity where such finding of non-responsibility was due to a violation of SFL §139-j or due to the intentional provision of false or incomplete information to a State governmental entity.

Offeror Certification

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

Name of
Offeror:

By:

(Signature)

Name:

Title:

Address:

Date:



State of New York
 Department of Agriculture and
 Markets
 10B Airline Drive
 Albany, NY 12235

**Offeror’s Affirmation of Understanding and
 Agreement Pursuant to State Finance Law
 §139-j(3) and §139-j(6)**

PAGE 5

COMPLETE AND RETURN WITH BID RESPONSE

Instructions:

Pursuant to State Finance Law §§139-j and 139-k, this solicitation imposes certain procurement lobbying limitations. Offerors are restricted from making contacts during the procurement’s “Restricted Period” (from the issuance of the solicitation document until the date of the contract’s final approval by the State Comptroller) to other than designated staff, unless the contact falls within certain statutory exceptions (“permissible contacts”). Agriculture and Markets’ employees are required to obtain certain information from Offerors and others whenever there is a contact about the procurement during the Restricted Period, and are required to make a determination of the Offeror’s responsibility that addresses the Offeror’s compliance with the statutes’ requirements. Findings of non-responsibility result in rejection of contract award, and if an Offeror is subject to two non-responsibility findings within four years the Offeror also will be determined ineligible to submit a proposal on or be awarded a contract for four years from the date of the second non-responsibility finding. Further information about these requirements can be found at:

<http://www.ogs.state.ny.us/aboutOGS/regulations/defaultAdvisoryCouncil.html>.

As a prerequisite for participating in this procurement, an Offeror must provide the following Affirmation of Understanding and Agreement to comply with these procurement lobbying restrictions in accordance with State Finance Law §§139-j and 139-k.

Offeror Affirmation and Agreement

The Offeror affirms that it understands the procurement lobbying requirements set forth in State Finance Law §§139-j and 139-k, and agrees to comply with the Agriculture and Markets’ procedures regarding permissible Contacts as required thereby.

Name of
 Offeror:

By:

(Signature)

Name:

Title:

Address:

Date:



State of New York
 Department of Agriculture and
 Markets
 10B Airline Drive
 Albany, NY 12235

**Offeror Disclosure of Prior
 Non-Responsibility Determinations**

PAGE 6

COMPLETE AND RETURN WITH BID RESPONSE

Offeror Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address:

Name and Title of Person Submitting this Form:

Contract Procurement Number:

Date:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):
- No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):
- No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)



State of New York
 Department of Agriculture and
 Markets
 10B Airline Drive
 Albany, NY 12235

**Offeror Disclosure of Prior
 Non-Responsibility Determinations**

PAGE 7

COMPLETE AND RETURN WITH BID RESPONSE

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)

Offerer 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: _____

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
SUBSTITUTE FORM W-9:
REQUEST FOR TAXPAYER IDENTIFICATION NUMBER & CERTIFICATION**

TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.

Part I: Payee/Vendor/Organization Information

AGENCY ID:

1. Legal Business Name:

2. If you use a DBA, please list below:

3. Entity Type (Check one only):

Sole Proprietor Partnership Limited Liability Co. Business Corporation Unincorporated Association/Business Federal Government

State Government Public Authority Local Government School District Fire District Other _____

Part II: Taxpayer Identification Number (TIN) & Taxpayer Identification Type

1. Enter your TIN here: *(DO NOT USE DASHES)*

--	--	--	--	--	--	--	--	--	--

2. Taxpayer Identification Type (check appropriate box):

Employer ID No. (EIN) Social Security No. (SSN) Individual Taxpayer ID No. (ITIN) N/A (Non-United States Business Entity)

Part III: Address

1. Physical Address:

2. Remittance Address:

Number, Street, and Apartment or Suite Number

Number, Street, and Apartment or Suite Number

City, State, and Nine Digit Zip Code or Country

City, State, and Nine Digit Zip Code or Country

Part IV: Certification of CEO or Properly Authorized Individual

Under penalties of perjury, I certify that I am the CEO or properly authorized individual and that the number shown on this form is my correct Taxpayer Identification Number (TIN).

Sign Here:

_____ Signature

_____ Date

_____ Print Name

_____ Phone Number

_____ Email Address

Part V: Contact Information - Individual Authorized to Represent the Payee/Vendor/Organization

Contact Person: _____ Title: _____
(Print Name)

Contact's Email Address: _____ Phone Number: (____) _____

Part VI: Survey of Future Payment Methods

Please indicate all methods of payment acceptable to your organization:

[] Electronic [] Check [] VISA

NYS Office of the State Comptroller
Instructions for Completing the Substitute W-9

New York State must obtain your correct Taxpayer Identification Number (TIN) to report income paid to you or your organization. NYS Office of the State Comptroller uses the Substitute Form W-9 to obtain certification of your TIN in order to ensure accuracy of information contained in its payee/vendor database and to avoid backup withholding³. We ask for the information on the Substitute Form W-9 to carry out the Internal Revenue laws of the United States. You are required to give us the information.

Any payee/vendor who wishes to do business with New York State must complete the Substitute Form W-9. Substitute Form W-9 is the only acceptable documentation. We will not accept IRS Form W-9.

Part I: Vendor Information

1. **Legal Business Name:** For individuals, enter the name of the person who will do business with NYS as it appears on the Social Security card or other required Federal tax documents. An organization should enter the name shown on its charter or other legal documents that created the organization. Do not abbreviate names.
2. **DBA (Doing Business As):** Enter your DBA name, if applicable.
3. **Entity Type:** Mark the Entity Type doing business with New York State.

Part II: Taxpayer Identification Number (TIN) and Taxpayer Identification Type

1. **Taxpayer Identification Number:** Enter your nine-digit Social Security Number, Individual Taxpayer Identification Number (ITIN)⁴ or Employer Identification Number.
2. **Taxpayer Identification Type:** Mark the type of identification number provided.

Part III: Address

1. **Physical Address:** List the location of where your business is physically located.
2. **Remittance Address:** List the location where payments should be delivered.

Part IV: Exemption from Backup Withholding and Certification

Generally, reportable payments made by New York State are subject to Backup Withholding. Exemption from Backup Withholding applies to government and non-United State Business Entities⁵. Please sign, date, provide the preparer's name, telephone and email address. Please sign, date and print the authorized individual's name, telephone and email address. The preparer should be employed by your organization.

Part V: Contact Information

Please provide the contact information for an individual who is authorized to make legal and financial decisions for your organization. An email address will facilitate communication and access to Vendor Self Service.

³ According to IRS Regulations, OSC must withhold 28% of all payments if a payee/vendor fails to provide OSC its certified TIN. The Substitute Form W-9 certifies a payee/vendor's TIN.

⁴ An ITIN is a nine-digit number used by the United States Internal Revenue Service for individuals not eligible to obtain a Social Security Number, but are required to file income taxes. To obtain an ITIN, submit a completed W-7 to the IRS. The IRS will notify you in writing within 4 to 6 weeks about your ITIN status. In order to do business with New York State, **you must submit IRS Form W-8** along with our Substitute Form W-9 showing your ITIN. IRS Form W-8 certifies your foreign status. To obtain IRS Forms W-7 and W-8, call 1-800-829-3676 or visit the IRS website at www.irs.gov.

⁵ In order to do business with New York State, **you must submit IRS Form W-8** along with our Substitute Form W-9. IRS Form W-8 certifies your foreign status and exempts you from United States information return reporting and backup withholding rules. To obtain IRS Form W-8, call 1-800-829-3676 or visit the IRS website at www.irs.gov.

APPENDIX A

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible

person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing

contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

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

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by

Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including

minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

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

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

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the

states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE

LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING.

To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

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

(Rev. December 2012)