

**Request for Proposals
for the Restoration of the Bronx River
through Elimination of Invasive Species
and Reestablishment of Riparian Buffers**

Issued by: Bronx River Alliance, Incorporated
1 Bronx River Parkway
Bronx, New York 10462

Date issued: November 7, 2022

Proposal Submission Deadline: December 5, 2022 at midnight

Maximum Award Amount: \$45,000

*This RFP was prepared with funding provided by
the New York State Environmental Facilities Corporation
and the Environmental Protection Agency – Region 2*



**Department of
Environmental
Conservation**



**Environmental
Facilities Corporation**

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I. Project Description with Site Conditions

A. Intent, Purpose and Background

Pursuant to a grant agreement under the Green Innovation Grant Program (the "GIGP"), Project No. C2-9261-01-00 with the New York State Environmental Facilities Corporation (the "EFC") dated January 31, 2022 (the "Grant Agreement"), the Bronx River Alliance ("Bronx River Alliance") has been awarded a grant (the "Grant") to increase habitat for native plants and wildlife and improve the water quality of the Bronx River through the elimination of invasive species and reestablishment of riparian buffers (the "Project").

The Project is defined by the feasibility study prepared by the Bronx River Alliance entitled "The Northern Bronx Native Riparian Restoration Project" dated March 23, 2021, which was approved by the New York State Department of Environmental Conservation (NYSDEC) on March 30, 2021 and made eligible by the EFC on April 8, 2021. (See Exhibit A (*Project Description and Schedule*) to Attachment A). The Project is part of the 2010 Bronx River Watershed Plan to develop an integrated framework aimed at meeting broad watershed goals. (See Attachment B for the complete Bronx River Watershed Plan).

The current Project will prevent issues related to ponding of runoff from the adjacent roadway and paths within Bronx Park near the Rosewood Playground, an area that becomes flooded during periods of heavy rain and can create health issues due to mosquitoes breeding in the standing water. A map of the Project site (the "Site") is included in Attachment C.

The Bronx River Alliance hereby issues a Request for Proposals ("RFP") to procure a contractor (the "Contractor") to provide engineering consulting services and oversee and certify construction under the supervision of a person or firm licensed to practice professional engineering in the State of New York.

B. Schedule for Completion

The Project must be completed by January 31, 2025, unless an extension in writing is approved by the EFC. **Failure to timely complete the Project may result in the Bronx River Alliance's forfeiture of undisbursed grant proceeds.**

II. Project Components

A. Description

This RFP seeks proposals for engineering consulting and construction services on a runoff retention garden to be built in Bronx Park, across from Rosewood Avenue, between the Bronx River Parkway and Bronx Park East in the Bronx, New York. A work plan for the Project (the "Work Plan") is included in Attachment D.

A 0.5 acre runoff retention garden will be designed and constructed using (i) a French drain to divert water away from pathways where runoff currently ponds and irrigate the native plant garden, and (ii) 24-inch deep vertical mulching within various areas within the garden to mitigate soil compaction and help drain the high volume of water being diverted into the garden. Native vegetation will be planted to support native wildlife habitat, particularly native pollinating insects and migrating bird populations. In addition to improved drainage and support for native wildlife, the new garden will prevent mosquito breeding habitat from occurring in close proximity to the Rosewood Playground and will extend educational learning locations along the full extent of the river corridor.

B. Roles of the Bronx River Alliance and the Contractor

The Bronx River Alliance and the Contractor will work together to ensure the best possible outcome of the Project with a limited budget of no more than \$45,000.

The Bronx River Alliance's Conservation Manager, Michael Mendez, will supervise the execution of the project, while the Alliance conservation team will carry out construction of the green infrastructure feature at Rosewood Playground based on the consultant's plans.

C. Performance Measures

The success of deliverables identified in application and subsequent contract (the "Contract") will be dependent on the EFC's approval. The selected Contractor and the Contract must comply with all applicable terms and conditions of the Grant Agreement, which is the Bronx River Alliance's agreement with the EFC, a copy of which is attached as Attachment A.

The Contract must contain provisions specifying (i) that the work performed by the Contractor must be in accordance with the terms of the Grant Agreement, (ii) that nothing contained in the Contract shall impair the rights of the State under the Grant Agreement, (iii) that nothing contained in the Contract, nor under the Grant Agreement, shall be deemed to create any contractual relationship between the Contractor and the State, and (iv) the Contractor shall at all times comply with all applicable federal, State and local laws, statutes, regulations, ordinances, rules, and Executive Orders.

III. Budget

This RFP has a maximum budget of \$45,000, subject to the EFC's approval, for a term ending January 31, 2025. Budgets shall be considered as not-to-exceed amounts.

The Contractor will be required to submit all financial claims for services or work rendered and required supporting documentation and reports to the EFC, as set forth in Article III (*Agreement to Provide Financial Assistance*) of the Grant Agreement.

IV. Minority and Women Business Enterprise (MWBE) utilization goals

The Contractor acknowledges that contracts for the Project that are paid for with funds provided pursuant to the Grant Agreement, such as the Contract, are subject to the requirements of New York State Executive Law 15-A (“Article 15-A”) and 5NYCRR Parts 142-144 (the “MWBE Regulations”) and are considered “State Contracts” for such purposes.

For purposes of the Contract, the EFC establishes goals for New York State-certified MWBE participation based on the current availability of qualified MBEs and WBEs, as described in Section III.A (*Contract Goals*) in Exhibit G (*Required Contract Language for Project Contracts and Subcontracts Funded by the Program*) to Attachment A.

The Bronx River Alliance actively solicits proposals for contracts and subcontracts from qualified state-certified MWBEs, which can be identified using the New York State Directory of Certified Firms (see the Directory of Certified Firms available at <https://ny.newnycontracts.com/>) and retains records of the procurement process and the results thereof and of actions that its subcontractors have taken toward meeting MWBE contract participation goals. No later than the execution of the Contract, the Bronx River Alliance will require that the Contractor execute the documents set forth in Section VI.F (*Ability to Satisfy MWBE Requirements*), as applicable.

V. Evaluation criteria

The Bronx River Alliance will award the contract to the Contractor deemed, in its sole discretion, to be the most qualified and whose engagement is in the best interest of the Bronx River Alliance. Proposals will be evaluated and scored on the basis of the following criteria:

A. Experience and Qualifications of the Contractor (maximum 50 points)

Consideration will be given to Contractors demonstrating strong capabilities, experience and reputation in undertakings similar to those described in this RFP. Proposal responses should demonstrate the following:

- i. experience with previous construction of runoff retention systems, particularly in an urban and green context, may include feasibility analysis and cost estimates;
- ii. cost-effectiveness of the proposal;
- iii. qualifications and relevant experience with respect to the tasks to be performed;
- iv. expertise in design, engineering, and horticulture as these fields relate to green infrastructure;
- v. successful project track record, including reputation among previous clients, success rate for staying within allotted time and budget for task and project;

- vi. applicability of proposed alternatives or enhancements to information requested; and
- vii. EEO compliance and ability to satisfy MWBE requirements.

Please provide documentation / references for experiences and qualifications, preferably connected to projects within the greater New York City region and for projects of comparable size and nature. Incomplete proposals that do not address all of the requested components will not be accepted for review and consideration

B. Quality of Proposal and Proposal Completion (maximum 50 points)

Proposal responses will be evaluated understanding the proposed scope of work, clarity/accuracy of the information requested, and proposal presentation and completeness. The ability of the Contractor team to clearly articulate their understanding of the needs of the Project and their capacity to address those needs will also be a factor in the selection process.

VI. Proposal Format and Components

In order to assist the Bronx River Alliance with the evaluation of proposals that are received, each proposal shall use the format described below. All materials submitted in response to this RFP may be subject to the terms of New York state laws relative to freedom of information.

A. Cover letter

Outline the Contractor's interest in the project with a description of the current workload, to demonstrate capability to undertake the work as required, as well as a Contractor's profile including size of firm and length of time in business.

B. Project Schedule and Details

Please provide a detailed proposed project schedule and budget depicting the estimated completion time for each Project task, including any review and preparation required. In addition, please provide a description of the Contractor's proposed approach and the scope of services for each task.

C. Statement of Qualifications

Provide a brief description of the Contractor submitting the proposal, including full business name, legal status (corporate, partnership or sole proprietor), number and type of employees, specialties, and longevity. List similar projects and the specific personnel who worked on them and who are proposed to work on this project. Include each past project's name and client, year completed, dollar amount and telephone number of a contact person at the entity where the work was performed who has direct knowledge of the referenced project.

D. Project Team Members (Curriculum Vitae)

List any specialties and or strengths that make the Contractor and the personnel assigned to this Project uniquely suited to the task of performing the work as outlined in this RFP. Provide an organizational chart of the employees proposed to work on this Project, including Project Manager who would be assigned to this Project and who shall be the Bronx River Alliance’s main point of contact with the Contractor. Please include the amount of time firm Principals will spend on this Project. This shall include a list of each individual’s relevant project experience in regard to the tasks and responsibilities they will perform in this Project.

Sub-consultants, sub-contracting and/or joint ventures are permitted, but must still conform to the requirements herein. Any shared interests among the lead firm and proposed sub-consultants must be identified, e.g., parent-subsidiary relationships, joint ventures, formal affiliations.

E. Project Compliance

The Contractor must comply at all times with applicable federal, state and local laws and regulations applicable to it, including:

- i. Article 15-A and the MWBE Regulations;
- ii. Titles VI and VII of the Civil Rights Act of 1964 and the regulations thereunder;
- iii. Section S04 of the Rehabilitation Act of 1973;
- iv. the Age Discrimination Act of 1975; and
- v. Section 13 of the Federal Water Pollution Control Act.

Identify compliance policies and procedures to ensure that these and other applicable laws and regulations are satisfied.

F. Ability to Satisfy MWBE Requirements

Identify how the MWBE goals identified in Section IV of this RFP are proposed to be satisfied.

Identify grievance procedures enacted to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 5 or 7 is alleged.

The applicant shall submit drafts of:

- i. an MWBE Utilization Plan (prime contractors only);
- ii. an EEO policy statement; and
- iii. an acceptable EEO staffing plan.

No later than the execution of the Contract, the Bronx River Alliance will require that the Contractor

execute these drafts.

G. Special Project Conditions

Contractor acknowledges that the Bronx River Alliance must comply with any and all Special Project Conditions identified in Exhibit D (*Special Project Conditions*) to Attachment A, and that the EFC may not approve the Bronx River Alliance’s proposals in respect of these special Project Conditions.

H. Required Contract Language for Project Contracts and Subcontracts Funded by the GIGP

In addition, the Contract shall contain any other provisions which are required to be included in subcontracts pursuant to the terms of the Grant Agreement, a copy of which is attached as Exhibit G (*Required Contract Language for Project Contracts and Subcontracts Funded by the Program*) to Attachment A.

I. Contractor Insurance Requirements and Indemnification

Contractor agrees to procure and maintain insurance naming the EFC and the Bronx River Alliance as additional insured/loss payee parties and to show evidence of Contractor’s public liability and property damage insurance, Contractor’s contingent liability insurance, “all-risk” insurance and worker’s compensation for the Project as described in Attachment E (*Insurance Requirements*). Copies of the applicable insurance policies shall be made available to the EFC and the Bronx River Alliance for review upon request.

Contractor agrees to indemnify the Bronx River Alliance as described in Attachment F (*Indemnification Requirements*).

VII. Timelines and Due Dates

A. RFP Timelines

RFP Release: November 7, 2022

Proposal Deadline: December 5, 2022

Proposals not received by midnight on December 5, 2022 will not be considered.

Evaluation Window: December 6 – December 12, 2022

Selection Deadline: December 16, 2022

Deadline to notify bidders who were not selected: December 21, 2022

Anticipated Project Start: January 15, 2023

All proposals must be submitted to:

Julia Hitz, Grant Manager

development@bronxriver.org

Each bid must be submitted as one PDF document.

The EFC may, in its discretion, order the Bronx River Alliance to suspend performance for a reasonable period of time. The Bronx River Alliance reserves the right to amend the timeline and bid requirements at its discretion.

VIII. Miscellaneous

A. Rights Reserved

The Bronx River Alliance reserves the following rights:

- i. to accept or reject any or all proposals;
- ii. to waive or modify minor irregularities in proposals received;
- iii. to negotiate with proposers, within the proposal requirements, to best serve the interests of the Bronx River Alliance and the EFC;
- iv. to amend specifications after their release, with due notice given to all bidders, to modify their proposals to reflect changed specifications;
- v. to consider every offer as firm and not revocable for a period of sixty (60) days unless withdrawn in writing or otherwise specified in the solicitation;
- vi. to retain records and data as it deems necessary and appropriate; and
- vii. to award a contract for any or all parts of a proposal and negotiate with the successful bidder.

B. Confidentiality

Other than as provided in the Contract, the Bronx River Alliance will not provide the Contractor with any proprietary information and is under no obligation to protect any confidential or proprietary information provided by the Contractor in its proposal or otherwise.

C. Intellectual Property

The Contract will provide that any intellectual property created by the Contractor for any purpose in connection with this RFP or the Project shall belong to the Bronx River Alliance.

This RFP does not, and the Contract will not, entitle the Contractor to use intellectual property belonging to the Bronx River Alliance for any purpose.

The Bronx River Alliance will not use the Contractor's name, logo, emblem, and/or trademark without the prior written approval of the Contractor.

D. Conditions Governing Proposals

By submitting a proposal, the proposer agrees that (a) it accepts the conditions contained in this RFP and (b) will not make any claim for or have any right to damages because of any lack of information or misinterpretation of the information provided in this RFP.

The Bronx River Alliance is not liable for any costs incurred by any individual or firm for work performed to prepare its proposal or for any travel and/or other expenses incurred in the preparation and/or submission of its proposal. Further, the Bronx River Alliance is not liable for any costs incurred prior to approval of the contract.

The award of this proposal is subject to approval by the EFC and negotiation of a professional services contract, the terms of which are in form and substance satisfactory to the Bronx River Alliance, including but not limited to pertinent insurance provisions. The Contractor agrees to execute the contract within fifteen (15) days after receipt and to adhere to the anticipated project start date.

The selection and retention of the Contractor will be contingent upon the availability of the proposed key staff, unless substitutes are approved by the Bronx River Alliance during negotiations.

The Contract shall attach a copy of the Grant Agreement and shall expressly reference the Contractor's duty to comply with the material terms and conditions thereof. The owner and/or chief executive or a duly authorized representative of the Contractor shall provide a written acknowledgement that the Contractor is familiar with and agrees to the material terms and conditions thereof and shall agree to provide all relevant books, records, documents or electronic data of the Contractor necessary to review the Contractor's compliance with the material terms and conditions of the Grant Agreement.

Because the Bronx River Alliance will receive funds payable on a reimbursement basis for actual work performed and invoiced in accordance with the Grant Agreement, the Contractor agrees that the payment of funds by the Bronx River Alliance to the Contractor is contingent upon the Bronx River Alliance receiving such funds from the EFC under the Grant Agreement, as identified in Exhibit C (*Estimated Project Costs*) to Attachment A, subject, notwithstanding any fault of the Bronx River Alliance, to any retainage, penalties or liquidated damages. (See Section VIII.D (*Conditions Governing Proposals*)). No payment shall be made by the Bronx River Alliance for out-of-pocket expenses or disbursements made in connection with the services rendered or the work to be performed under the Contract.

The Contractor shall apply proceeds of any financial assistance from the Bronx River Alliance solely for Project costs in accordance with the Contract and the Grant Agreement, and shall reimburse the

Bronx River Alliance in the event that it fails so to apply such proceeds. The Bronx River Alliance may seek at any time to recoup proceeds from the Contractor if it determines that the Contractor was overpaid such proceeds.

E. Additional Questions

Questions regarding this RFP should be directed in writing to Julia Hitz, development@bronxriver.org. The Contractor will not respond to questions submitted orally. Information obtained from any other source is not official and should not be relied upon. Answers to questions that materially change the conditions and specifications of this RFP will be posted to the Bronx River Alliance's website: www.bronxriver.org.

IX. Attachments

A. Grant Agreement (See attachment)

- a. Exhibit A: Project Description and Schedule
- b. Exhibit B: Definitions
- c. Exhibit C: Estimated Project Costs
- d. Exhibit D: Schedule of Additional Provisions
- e. Exhibit E: Form of Grant Disbursement Request
- f. Exhibit F: Form of Project Completion Certificate
- g. Exhibit G: Required Contract Language for Project Contracts and Subcontracts Funded by the Program
- h. Exhibit H: Lobbying Certification

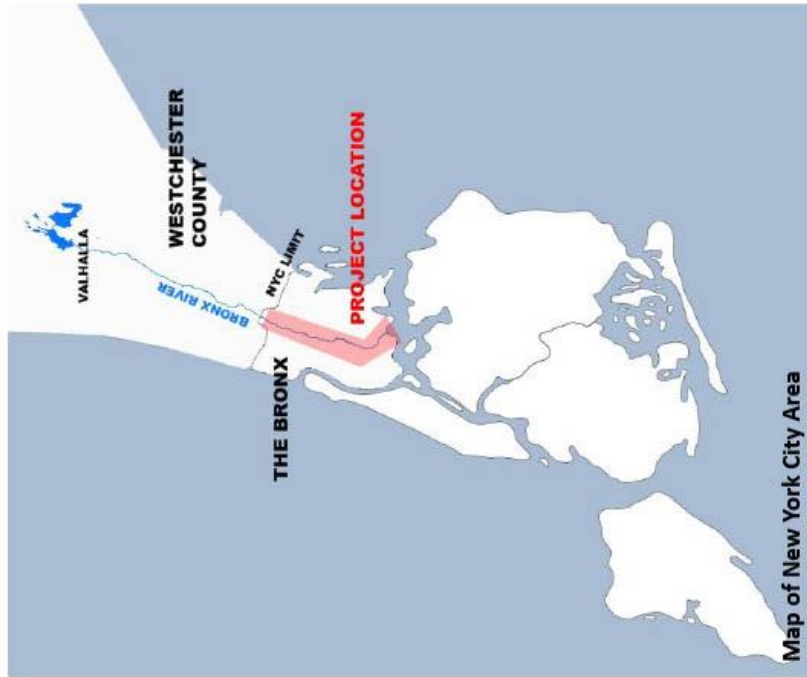
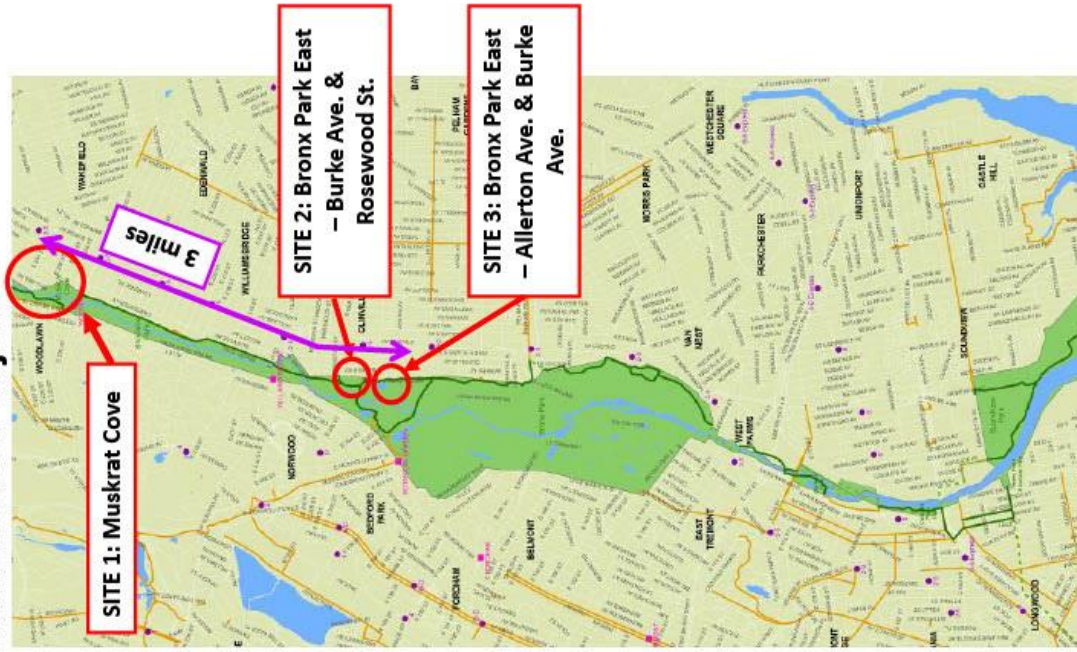
B. [2010 Intermunicipal Watershed Management Plan](https://bronxriver.org/resource/bronx-river-intermunicipal-watershed-plan)

Available at <https://bronxriver.org/resource/bronx-river-intermunicipal-watershed-plan>.

- C.** Site Map
- D.** Work Plan
- E.** Technical Force Account Certificate
- F.** Certification of Project Completion
- G.** Insurance Requirements

ATTACHMENT C: SITE MAP

Project: The Northern Bronx Native Riparian Restoration Project



Project: The Northern Bronx Native Riparian Restoration Project

SITE 2: Bronx Park East –Burke Ave. & Rosewood St.

Riparian Buffer Restoration and Creation of a Runoff Retention Garden at Rosewood Playground

- **Project Area:**
3.4 acres (150,763 Sqft)
- **Runoff Retention Garden**
0.5 acres (22,466 Sqft)

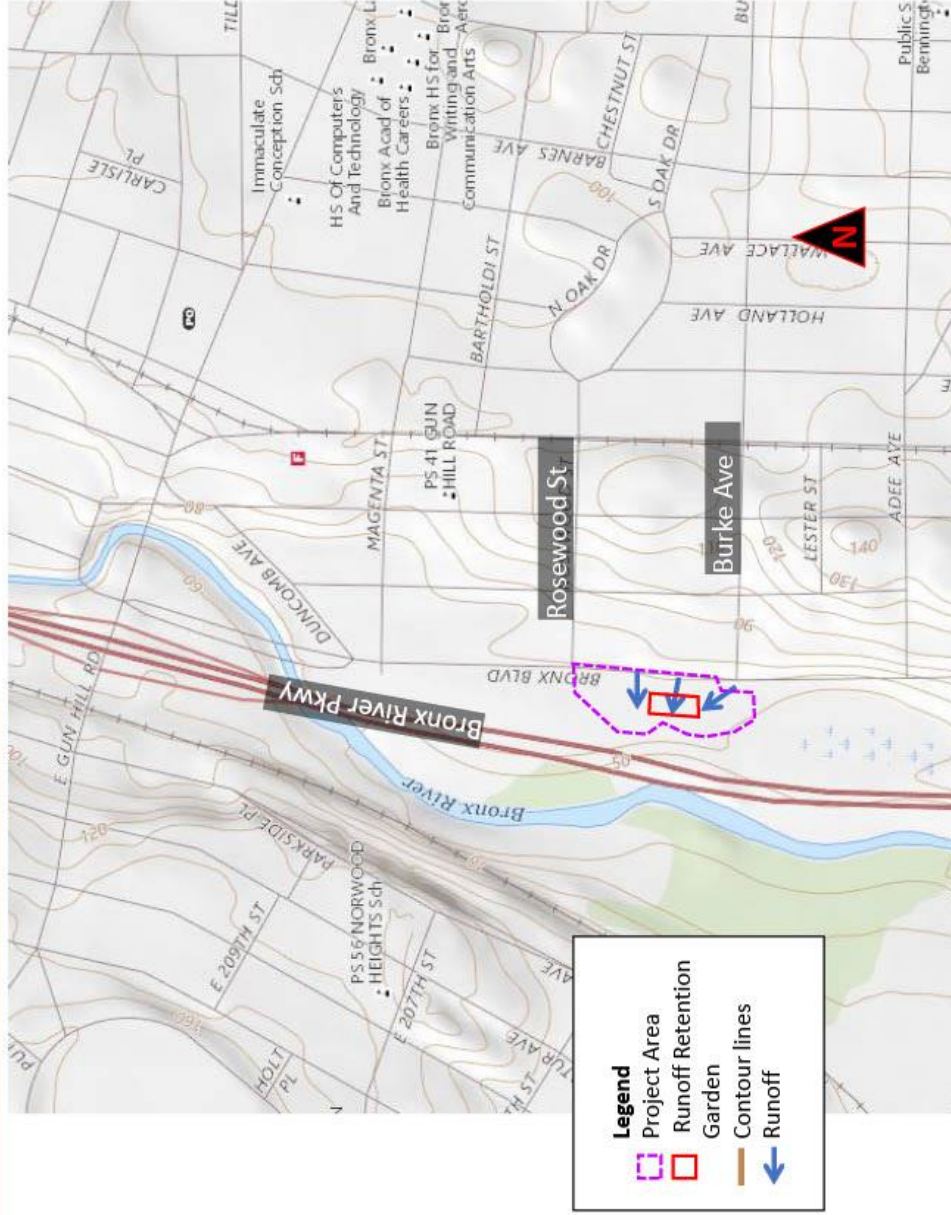
Invasive Species:
Oriental Bittersweet

Scientific name:
Celastrus orbiculatus



Project: The Northern Bronx Native Riparian Restoration Project

SITE 2: Bronx Park East –Burke Ave. & Rosewood St.



ATTACHMENT D: WORK PLAN

1. Qualification for Technical Work: The Consultant will execute and deliver the New York State Revolving Fund's required certification in order to receive disbursement on tasks.

Deliverable: Certification for Technical Work Force Account Use (See Attachment E).

2. Site Analysis: The Consultant will perform a site analysis to document existing conditions of the site, including topography, vegetation, and ponding and flooding issues. In addition, the Consultant will perform at least one site visit after heavy rain to review ponding areas and runoff at the site.

Deliverable: A report of findings with photo documentation, topographic surveys, and vegetation inventory.

3. Design: The Consultant will design the green infrastructure feature at Rosewood Playground. The Consultant will follow NYC Parks guidelines whenever possible. The consultant will incorporate native vegetation. The Project will also be designed to be constructed utilizing low-tech materials and hand-done techniques (not heavy machinery). The design will recommend native vegetation suitable to the green infrastructure purpose.

Deliverable: Design drawings and construction specifications.

4. Permits: The Consultant will confirm the permits that will be required for the Project and submit those applications. These could include:

- Federal Wetland permit
- Army Corps of Engineers Wetland permit
- City Environmental Quality Review (CEQR)
- NYSDEC Permits:¹
 - General Permit for Management of Invasive Species, GP-0-15-005 and GP-0-21-004; Article 15 (6 NYCRR Part 608)
 - Use and Protection of Waters Permit; Article 24 (6 NYCRR Part 663)
 - Freshwater Wetlands Permit;
 - Section 401 Water Quality Certification

5. Construction Supervision: Once design is completed and approved, the Bronx River Alliance's conservation team will carry out construction. The Consultant will oversee construction and will perform site visits throughout Project construction.

¹ If work involves standing water, an Article 15 Aquatic Pesticides Permit would be required. However, such permits are handled directly by NYSDEC Pesticides.

Deliverable: Site visit logs and photo documentation of construction progress.

6. Project Completion: A final site inspection will be conducted by the Consultant with appropriate parties and the Consultant will execute and deliver the EFC's required certification for project completion.

Deliverable: Final site inspection report; Certification of Project Completion (See Exhibit F (Form of Project Completion Certificate) to Attachment A).

ATTACHMENT E: TECHNICAL WORKFORCE ACCOUNT CERTIFICATE



New York State Revolving Fund Requirements for Technical Work Force Use Account

Technical Work Force Account consists of SRF eligible engineering and/or construction tasks performed by the Applicant's employees, including the associated equipment, fuel, and material costs used for planning, design and/or construction.

In order for tasks completed by Technical Work Force Account to be eligible for SRF financial assistance:

- The Applicant and Applicant's consulting engineer must complete and certify this form;
- The scope of work for the construction tasks must be approved by the appropriate regulatory agency and EFC/DOH must deem the applicable contract documents (or other acceptable documentation) eligible for SRF financial assistance;
- The project must be in compliance with all requirements of the SRF Financing Agreement;
- A project description that clearly identifies the work to be performed by Applicant's employees and its location, map, proposed construction schedule and a breakdown of costs including staff resources with job titles, equipment owned, equipment rented, fuel, and materials must be provided;
- A map indicating project work areas for Infiltration/Inflow (I/I) correction and sewer/water rehabilitation work must be provided;
- EFC/DOH must deem the Technical Work Force Account as presented in this document eligible for SRF financing.

In order to receive disbursement on the tasks:

- Substantiation of costs must be provided for each employee's technical work associated with the project and shall be detailed by a cost summary and tabulation signed by the employee at the time of disbursement;
- Substantiation of costs must be provided for equipment, fuel, and material costs by submitting records and invoices or current FEMA Schedule of Equipment Rates including Cost Code, Size, and Rate along with equipment manufacturer and model number;
- Certification of Project Completion, AIA form G704 Certificate of Substantial Completion, or other acceptable form, must be signed and submitted with final disbursement request;
- Any proposed scope, schedule, or budget changes from originally approved documentation must be submitted and found to be eligible by EFC.

EFC reserves the right to request additional information including, but not limited to:

- Job descriptions / resumes of individuals performing the work;
- Applicant's organizational chart;
- Engineer's inspection report;



CERTIFICATION FOR TECHNICAL WORK FORCE ACCOUNT USE

I hereby certify on behalf of

(Applicant)

that it will meet or has met the requirements identified below for the performance of work by Technical Work Force

on SRF or GIGP Project No. _____

Please check the appropriate boxes and provide the information requested below:

For Applicant's employees performing engineering services, employees will be or were under the direct supervision of an engineer who is licensed to practice professional engineering in the State of New York under the Education Law of the State of New York.

For Applicant's employees performing construction tasks, employees will be or were under the direct supervision of an engineer who is licensed to practice professional engineering in the State of New York under the Education Law of the State of New York and who will be or was responsible to inspect work necessary for the construction of the project and determine whether such work is performed in accordance with the approved plans and specifications.

By certifying this form, I attest to the following:

- the Applicant's employees possess or possessed the necessary skills, experience, and managerial resources to accomplish the work;
- the Applicant's employees can complete or completed the work in a timely fashion so that the project schedule will not be delayed or was met;
- time sheets for each employee performing or who performed technical work will be completed and kept on file, clearly identifying the task(s) performed, the actual hours spent, hourly rate and overhead rate.

Certified by Applicant:

(Signature of Authorized Recipient Official)

(Date)

(Please Print Name)

(Title)

Certified by Professional Engineer:

(Signature)

(Company/Municipality)

(Title)

(Date)



(Seal)

ATTACHMENT F: CERTIFICATION OF PROJECT COMPLETION

**NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION (EFC)
CERTIFICATION OF PROJECT COMPLETION**

Recipient: _____
 Project No.: _____
 County: _____
 Location: _____
 Name of Project: _____
 Project Description: _____

Construction of the above project must be under the supervision of a person or firm licensed to practice professional engineering in the State of New York, as required under the Education Law. The person or firm supervising the above project must file a Certification of Project Completion within 30 days after completion of construction with the New York State Environmental Facilities Corporation, 625 Broadway, Albany, New York 12207-2997.

Construction Contract Title:	Construction Start Date:	Construction Substantial Completion Date:	Construction Final Completion Date:
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

I certify that the construction of the above project including environmental mitigating measures, if any, was completed in accordance with the approved plans and specifications or approved amendments thereto and was under the supervision of a professional engineer licensed in New York State.

Engineer Name: _____ Engineer Title: _____ Engineering Firm: _____ Eng. Firm Address: _____ _____ Signature Date
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ATTACHMENT G: INSURANCE REQUIREMENTS

1. Contractor's Obligation to Insure:

(a) From the date the Contract is executed through the date of its expiration or termination, the Contractor shall ensure that the types of insurance indicated in this Attachment are obtained and remain in force, and that such insurance adheres to all requirements. The Bronx River Alliance may require higher liability limits, provided they are commercially reasonable, if, in the Bronx River Alliance's opinion, Contractor's operations warrant it.

(b) The Contractor is authorized to undertake or maintain operations under the Contract only during the effective period of all required coverage.

2. Commercial General Liability Insurance

(a) The Contractor shall maintain Commercial General Liability insurance for \$3,000,000 per occurrence for bodily injury (including death) and property damage and \$1,000,000 per occurrence for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Site and such per-location aggregate shall be at least \$3,000,000. This insurance shall protect the insureds from claims that may arise from any of the operations under this Contract. Coverage shall be at least as broad as that provided by the most recently issued Insurance. Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Bronx River Alliance, and shall be "occurrence" based rather than "claims-made."

(b) Such Commercial General Liability insurance shall name the Bronx River Alliance, together with its directors, officers and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 2026.

3. Workers Compensation Insurance, Employers Liability and Disability Benefits Insurance:

The Contractor shall maintain Workers' Compensation Insurance, Employers Liability Insurance and Disability Benefits Insurance on behalf of, or with regard to, all of its employees involved in the Contractor's operations under the Contract, and such insurance shall comply with the laws of the State of New York.

4. Commercial Automobile Liability Insurance:

(a) With regard to all activities under the Contract, in the event that vehicles are brought onto the Site or used in Contractor's operations, Contractor shall maintain or cause to be maintained Commercial Automobile Liability Insurance in the amount of at least \$1,000,000 each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned, or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

(b) If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability Insurance

shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

5. General Requirements for Insurance Coverage and Policies:

(a) Policies of insurance required under this Attachment shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A-/"VII" or a Standard and Poor's rating of at least A, unless written approval is obtained from the Bronx River Alliance.

(b) Policies of insurance required under this Attachment shall be primary and non-contributing to any insurance or self-insurance maintained by the Bronx River Alliance.

(c) There shall be no self-insurance program with regard to any insurance required under this Attachment unless approved in writing by the Bronx River Alliance. The Contractor shall ensure that any such self-insurance program provides the Bronx River Alliance with all rights that would be provided by traditional insurance under this Attachment, including, but not limited to, the defense and indemnification obligations that insurers are required to undertake in liability policies.

(d) The Bronx River Alliance's limits of coverage for all types of insurance required under this Attachment shall be the greater of:

(i) The minimum limits set forth in this Attachment; or,

(ii) The limits provided to the Contractor under all primary, excess, and umbrella policies covering operations under the Contract.

(e) All required policies, except for Workers' Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the Bronx River Alliance with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to the Bronx River Alliance. Such notice is to be sent at least thirty days before the expiration, cancellation, or termination date, except in cases of non-payment, where at least ten days' written notice would be provided.

(f) All required policies, except Workers' Compensation Insurance, Employers Liability Insurance and Disability Benefits Insurance, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

6. Proof of Insurance:

(a) Certificates of Insurance for all insurance required in this Attachment must be submitted to and accepted by the Bronx River Alliance prior to or upon execution of the Contract.

(b) For Workers' Compensation Insurance, Employers Liability Insurance, and Disability Benefits Insurance policies, the Contractor shall submit one of the following:

- (i) C-105.2 Certificate of Workers' Compensation Insurance;
- (ii) U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance;
- (iii) Request for WC/DB Exemption (Form CE-200);
- (iv) Equivalent or successor forms used by the New York State Workers' Compensation Board;
or,
- (v) Other proof of insurance in a form acceptable to the Bronx River Alliance (ACORD forms are not acceptable proof of Workers' Compensation coverage).

(c) For all insurance required under this Attachment other than Workers' Compensation, Employers Liability and Disability Benefits, the Contractor shall submit one or more Certificates of Insurance in a form acceptable to the Bronx River Alliance. All such Certificates of Insurance shall:

- (i) Certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and,
- (ii) Be accompanied by the provision(s) or endorsement(s) in the Contractor's policy/ies, including its general liability policy, by which the Bronx River Alliance has been made an Additional Insured or Loss Payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the Bronx River Alliance or certified copies of all policies referenced in such Certificate of Insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to the Bronx River Alliance before the expiration date of coverage of all policies required under the Contract. Such Certificates of Insurance shall comply with subparagraphs (c) (i) and (ii) directly above.

(e) The Bronx River Alliance's acceptance or approval of a Certificate of Insurance or any other matter does not waive Contractor's obligation to ensure that insurance fully consistent with the requirements of this Attachment is secured and maintained, nor does it waive Contractor's liability for its failure to do so.

(f) The Contractor shall be obligated to provide the Bronx River Alliance with a copy of any policy of insurance required under this Attachment upon the Bronx River Alliance's request.

7. Miscellaneous:

(a) The Contractor may satisfy its insurance obligations under this Attachment through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(b) The Contractor shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the Bronx River Alliance is an insured under the policy.

(c) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Attachment, the Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under the Contract, including notice to Commercial General Liability insurance carriers for events relating to the Contractor's own employees, no later than 20 days after such event. For any policy where the Bronx River Alliance is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the Bronx River Alliance as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence or accident, and the identity of the persons or things injured, damaged or lost. The Contractor shall simultaneously send a copy of such notice to:

Julia Hitz, Grant Manager

development@bronxriver.org

(d) The Contractor's failure to secure and maintain insurance in complete conformity with this Attachment, or to give the insurance carrier timely notice on behalf of the Bronx River Alliance, or to do anything else required by this Attachment shall constitute a material breach of the Contract. Such breach shall not be waived or otherwise excused by the Bronx River Alliance's action, other than a writing signed by the Bronx River Alliance, or inaction at any time.

(e) Insurance coverage in the minimum amounts provided for in this Attachment shall not relieve the Contractor of any liability under the Contract, nor shall it preclude the Bronx River Alliance from exercising any rights or taking such other actions as are available to it under any other provisions of the Contract or the law.

(f) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Attachment, the Contractor shall at all times fully cooperate with the Bronx River Alliance with regard to such potential or actual claim.

(g) The Contractor waives all rights against the Bronx River Alliance, including its officials and employees, for any damages or losses that are covered under any insurance required under this Attachment, whether or not such insurance is actually procured or claims are paid thereunder, or any other insurance applicable to the operations of the Contractor and/or its employees, agents, or servants of its contractors, or subcontractors.

(h) If the Contractor requires any entity, by contract or otherwise, to procure insurance with regard to any operations under the Contract and requires such entity to name the Contractor as an Additional Insured

under such insurance, the Contractor shall ensure that such entity also name the Bronx River Alliance, including its directors, officers and employees, as an additional insured with coverage at least as broad as ISO form CG 2026.

(i) If the Contractor receives, notice, from an insurance company or other person, that any insurance policy required under this Attachment shall expire or be cancelled or terminated (or has expired or been cancelled or terminated), for any reason, the Contractor shall immediately forward a copy of such notice to:

Julia Hitz, Grant Manager

development@bronxriver.org

Notwithstanding the above, the Contractor shall ensure that there is no interruption in any of the insurance coverage required under this Attachment.

ATTACHMENT F: INDEMNIFICATION REQUIREMENTS

Contractor Responsibility

(a) As between Contractor and the Bronx River Alliance, Contractor shall be responsible for the safety and protection of its employees, agents, servants, contractors and subcontractors, and for the safety and protection of its contractors or subcontractors' employees, agents or servants.

(b) The Contractor shall take all reasonable precautions to protect the persons and property of the Bronx River Alliance or others from damage, loss or injury resulting from its operations under the Contract.

(c) As between Contractor and the Bronx River Alliance, Contractor shall be responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to its operations under the Contract, whether or not due to the Contractor's negligence, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, servants, agents, contractors, subcontractors or any other person, excluding injuries or damages that are the result of the negligence or misconduct of the Bronx River Alliance.

(d) The Contractor shall use the Site in compliance with, and shall not cause or permit the Site to be used in violation of, any and all Federal, State or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the Contractor or the Site (collectively "Environmental Laws"). Except as may be agreed by the Bronx River Alliance as part of the Contract, Contractor shall not cause or permit, or allow any of the Contractor's personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on the Site. As used here, "Hazardous Materials" means any chemical, substance or material, which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties, or effects.

Indemnification and Related Obligations

(a) For all circumstances where the Contractor is required by the Contract to indemnify the Bronx River Alliance (see clause (b) below), such indemnification shall not require payments to the Bronx River Alliance for any amount in excess of the maximum amount of any insurance policy required under Attachment E (*Insurance Requirements*). However, this limitation of liability shall not apply to any of the Contractor's contractors, subcontractors or agents. In addition, the Contractor's failure to maintain any insurance policy under Attachment E (*Insurance Requirements*) shall not limit the Contractor's requirement to indemnify the Bronx River Alliance for damages up to the amounts of insurance coverage required by Attachment E (*Insurance Requirements*).

(b) Subject to clauses (a) and (c) but notwithstanding any other provisions of the Contract, the Contractor shall indemnify, defend and hold the Bronx River Alliance and its officials and employees harmless against

any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) relating to or arising out of, or alleged (by a person other than the Bronx River Alliance) to relate to or arise out of the Contract as a result of the following:

- (i) The Contractor's or any of its employees', servants', contractors', subcontractors' or agents' negligence or failure to comply with any of the requirements of the Contract, including but not limited to the Contractor's maintenance and/or repair obligations, if any;
- (ii) The Contractor's or any of its employees', servants', contractors', subcontractors' or agents' failure to comply with any applicable federal, state, or local laws, rules or regulations;
- (iii) The Contractor's or any of its employees', servants', contractors', subcontractors' or agents' infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party; and
- (iv) The Contractor's activities conducted outside of the Site;

However, to the extent any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arise from the negligence or willful misconduct of the Bronx River Alliance or any of its officials, employees, contractors or agents (except for any negligence imputed to the Bronx River Alliance or any of its officials, employees, contractors, or agents arising from the negligence by the Contractor in the performance of its maintenance obligations under this Attachment), they shall be excluded from the Contractor's indemnification and defense obligations under this clause (b).

(c) Notwithstanding any other provisions of the Contract, the Bronx River Alliance shall indemnify the Contractor only for claims arising out of activities that the Bronx River Alliance has designated as safe and appropriate and for which the Contractor has complied with all requirements set forth per Section 4 of the Work Plan, where the Bronx River Alliance gives express approval for indemnification.

(d) Insofar as the facts or law relating to any of the foregoing would preclude any party from being completely indemnified by the other party subject to limitations of liability set forth in clauses (a) and (b), the other party shall be partially indemnified to the fullest extent permitted by law.

(e) Upon receipt by any party of actual notice of a claim to which such party is entitled to indemnification in accordance with this Attachment, each party shall give prompt written notice of such claim to the other party. Each party shall assume and prosecute the defense of such claim at their respective sole cost and expense. The Contractor may settle any such claim in its discretion without consent of the Bronx River Alliance only if (i) the sole relief under the settlement is monetary damages, (ii) the Contractor indemnifies the Bronx River Alliance for the full amount of the settlement, (iii) the settlement involves no admission by the Bronx River Alliance or finding of guilt and (iv) such settlement includes an unconditional release of the

Bronx River Alliance. Any other settlement of a claim shall require consent from the Bronx River Alliance.