

# MAJOR CAPITAL CONTRACT

## AGREEMENT

**ENTERED INTO** by and between the People of the State of New York by its Office of Alcoholism and Substance Abuse Services with offices located at 1450 Western Avenue, Albany, New York (*OFFICE* or *OASAS*) and a not-for-profit corporation, \_\_\_\_\_, providing *OASAS* certified or approved alcoholism and alcohol abuse and/or substance abuse services in the State of New York also named on the face page of this *AGREEMENT* (*CONTRACTOR*).

**WHEREAS**, *OASAS* is empowered to enter into agreements with local governments, local agencies, municipalities and other public and not-for-profit private agencies for acquisition of property, design, construction and rehabilitation of alcoholism and/or substance abuse program facilities, pursuant to Articles 23, 25, 31 and 41 of the Mental Hygiene Law, within the amounts made available by appropriation; and

**WHEREAS**, the capital undertaking described herein is necessary to render suitable for use as an alcoholism and alcohol abuse and/or a substance abuse program facility (*FACILITY*) at the property described on the face page (*PREMISES*); and

**WHEREAS**, *CONTRACTOR* has submitted a request to *OASAS* for the purpose of obtaining funds for \_\_\_\_\_ located at \_\_\_\_\_ in the (City, Village, Town) of New York, County of \_\_\_\_\_, State of New York (*PROJECT*); and

**WHEREAS**, upon completion of such capital undertaking *CONTRACTOR* will conduct an *OASAS* certified or approved program (*PROGRAM*) for Alcoholism and/or Substance Abuse Services(*SERVICES*) on the *PREMISES*; and

**WHEREAS**, *CONTRACTOR* represents that it is ready, willing and able to undertake the *PROJECT* contemplated by this *AGREEMENT*.

**NOW, THEREFORE**, in consideration of the foregoing, and of the mutual covenants herein, it is agreed as follows:

### **1. CONSIDERATION**

1.1 Subject to appropriations and approval by the Division of the Budget and approvals by the Attorney General and the Comptroller of the State of New York, as consideration for the performance of this *AGREEMENT*, *OASAS* agrees to pay for, and *CONTRACTOR* agrees to accept as payment in full, and in complete discharge of *OASAS*' obligation, the approved costs incurred by *CONTRACTOR* in the conduct of the *PROJECT* pursuant to this *AGREEMENT*. In no event shall the total obligation of *OASAS* exceed the Maximum Reimbursable Amount stated on the face page of this *AGREEMENT*, subject to the maximum amounts indicated for the categories specified in the Schedule of Development Costs (attached Exhibit A).

1.2 *CONTRACTOR* agrees to perform all the obligations, assurances, and covenants articulated in this *AGREEMENT*.

- 1.3 *CONTRACTOR* consents to a lien, entitled State Aid Grant Lien, upon the *PREMISES* and improvements thereon in the amount of such monies referred to in Article 1.1 for a term of fifty years. *CONTRACTOR* further agrees to execute all documents necessary or desirable for the filing and perfection of such lien by *OASAS*.
- 1.4 *CONTRACTOR* warrants that it is in full compliance with all applicable provisions of Executive Law, Article 7-A-Solicitation and Collection of Funds for Charitable Purposes and the Estates, Powers and Trusts Law Section 8-1.4 or has evidence which substantiates exemption from such provisions.

## **2. PERIOD OF PERFORMANCE**

- 2.1 Notwithstanding the date of execution, the period of this *AGREEMENT* shall be deemed to commence as of the effective date stated on the face page of this *AGREEMENT*. Funding is provided to support the *PROJECT* described herein.
- 2.2 This *AGREEMENT* shall expire upon completion of this contract.
- 2.3 *OASAS* may, in its sole discretion, discontinue this *PROJECT* and terminate this *AGREEMENT* at any time.
- 2.4 This *AGREEMENT* shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the Comptroller of the State of New York.

## **3. USE OF PREMISES**

- 3.1 *CONTRACTOR* shall use the *PREMISES* for the *PROJECT* and subsequently, to provide the *SERVICES* described herein for a period of fifty years from the first date of provision of such *SERVICES*.
- 3.2 Use of the *PREMISES* and the *SERVICES* shall be as approved in an *OASAS* certificate of approval, operating certificate or other documentation issued in accordance with Articles 23 or 31 of the Mental Hygiene Law, as appropriate.
- 3.3 *SERVICES* shall be provided either directly by *CONTRACTOR* or by making the *PREMISES* available at no cost to another provider of *SERVICES*. Any provider of *SERVICES* operating on the *PREMISES* must be acceptable to and approved in writing by *OASAS*.
- 3.4 *CONTRACTOR* shall make no changes in the nature of the *PROGRAM* without the prior written approval of *OASAS*.
- 3.5 *CONTRACTOR* shall take no action which will materially diminish the value of the *PREMISES*.
- 3.6 *CONTRACTOR* shall take no action which would impair or encumber its property rights herein, without obtaining the prior written approval of *OASAS*.
- 3.7 If at any time *OASAS* determines that *CONTRACTOR* is not performing in accordance with all applicable statutes, regulations, rules and contractual obligations, *OASAS* may direct assignment of this *AGREEMENT* to another approved provider of *SERVICES*.

3.8 The provisions of this Article, numbered 3.0, shall survive the duration of this *AGREEMENT* and shall terminate upon satisfaction of the requirements established in paragraph 3.1.

#### **4. STATEMENT OF WORK**

4.1 *CONTRACTOR* agrees to operate the *PROJECT* in accordance with all requirements and conditions for acceptance of a State Aid Grant provided for in 14 NYCRR Part 321 and/or Part 1055, which are incorporated herein by reference.

4.2 *CONTRACTOR* shall perform or cause to be performed the *PROJECT* described herein. *CONTRACTOR* shall cause the *PROJECT* to be constructed to final completion in accordance with the architectural plans and specifications submitted to and approved by *OASAS*. Such *PROJECT* is being undertaken to enable the *PREMISES* to be used in the support of *SERVICES* in this State.

4.3 *CONTRACTOR* shall construct and/or rehabilitate the *PREMISES* or cause it to be constructed and/or rehabilitated in such manner as will render it appropriate for use as a *FACILITY* in accord with the regulations and requirements of *OASAS*. *CONTRACTOR* shall be responsible at all times for the supervision and inspection of all aspects of the *PROJECT*. *CONTRACTOR* may render such supervision and inspection by subcontract, subject to the prior written approval of *OASAS*. *CONTRACTOR* shall at all times, however, be responsible for all aspects of the *PROJECT*. *CONTRACTOR* agrees to conduct the *PROJECT* in full compliance with all applicable Federal and State laws, rules and regulations, local laws and ordinances in addition to any and all applicable guidelines or other directives issued by *OASAS*.

4.4 *CONTRACTOR* shall cause all work to be completed in a timely manner, as such term is defined in the Owner – Contractor Agreement governing this *PROJECT*. If standard form AIA documents are not being used for the Owner-Contractor Agreement then the appropriate contract must be approved, prior to execution, by *OASAS* Counsel with specific reference to the definition of “timely manner”. Failure to complete work in such a timely manner constitutes default for which *OASAS* may exercise its rights as described in Article 11 of this *AGREEMENT*.

4.5 *CONTRACTOR* shall competitively bid all work to be performed under the terms of this contract. No less than three bids shall be received and examined to determine the lowest responsible bidder in each instance. All contracts shall be awarded to the lowest responsible bidder subject to the review and approval of *OASAS*.

4.6 *CONTRACTOR* shall obtain all permits and approvals required by law, rule or regulation necessary for the execution and completion of the *PROJECT* construction on the property and the operation of the *PROGRAM* or *FACILITY* thereon.

4.7 *CONTRACTOR* agrees to cooperate with any *OASAS* designated representative for the performance of any aspect of this *PROJECT*.

#### **5. PAYMENT**

5.1 It is expressly understood that the Maximum Reimbursable Amount stated on the face page of this *AGREEMENT* establishes the maximum amount to be paid by *OASAS* for work completed on the *PROJECT*.

- 5.2 The Maximum Reimbursable Amount specified as the monetary consideration for this *AGREEMENT* includes any and all amounts intended for subcontractors.
- 5.3 All amendments or modifications to the proposed development costs estimated and shown in Exhibit A shall be requested from and approved by OASAS in writing prior to implementation by CONTRACTOR.
- 5.4 All claims for payment by *CONTRACTOR* must be on a New York State Standard Voucher which shall provide such sufficient detail as may be required by *OASAS*. *CONTRACTOR* shall provide complete and accurate billing invoices to receive payment. Billing invoices submitted to the Agency must contain all information and supporting documentation required by the *AGREEMENT*, *OASAS*, and the State Comptroller. Payments for invoices submitted by the *CONTRACTOR* shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with State procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by telephone at 518.474.4032. *CONTRACTOR* acknowledges that it will not receive payment on any invoices submitted under this *AGREEMENT* if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.
- 5.5 Payment of contract funds shall be made by *OASAS* as reimbursement or advance, provided the appropriate documentation accompanies the claim for payment and *CONTRACTOR* has submitted all required reports to *OASAS*. At *OASAS*' discretion advances may be provided for site acquisition, construction/rehabilitation and/or other costs subject to the following:
- (a) Payment for site acquisition shall be up to one hundred percent (100%) of the amount required for this purpose as reflected in Exhibit A. This payment shall be issued at the *OASAS* scheduled contract closing.
  - (b) The initial payment for construction/rehabilitation purposes shall not exceed twenty-five percent (25%) of the amount required for this purpose as reflected in Exhibit A. This payment is eligible for disbursement upon completion of the construction bid opening and the *OASAS* scheduled contract closing.
  - (c) The initial payment for other costs shall not exceed fifty percent (50%) of the amount required for that purpose as reflected in Exhibit A. This advance is eligible for payment upon full execution of this *AGREEMENT*.
  - (d) Subsequent payments shall be in amounts and issued for periods determined by *OASAS* to be reasonably required by *CONTRACTOR* to meet *CONTRACTOR'S* financial obligations in the conduct of this *PROJECT*.
- 5.6 Any change orders shall require the prior written approval of *OASAS*.
- 5.7 *CONTRACTOR* shall submit claims for payment of contract funds in accordance with the terms of this *AGREEMENT*. Such claims shall be for costs incurred pursuant to Exhibit A or any *OASAS* approved modifications to Exhibit A. All payments shall be issued at times and in amounts to be determined by *OASAS* based upon construction/rehabilitation progress and satisfactory completion of the following conditions:

- (a) *CONTRACTOR* shall submit on a monthly basis actual construction and/or rehabilitation costs on an independent Architect's Application and Certificate for Payment, certified by *CONTRACTOR'S* independent architect as to percentage of completion of construction/rehabilitation and current total costs incurred for all construction/rehabilitation, or on such other form as may be prescribed by *OASAS*.
  - (b) *OASAS* reserves the right to withhold payments based on the *PROJECT'S* estimated construction/rehabilitation progress.
- 5.8 It is expressly understood that all payments made to *CONTRACTOR* and its subcontractors made pursuant to this *AGREEMENT* are made subject to audit. *OASAS* may directly, or through contract, audit payments pursuant to this *AGREEMENT* and the New York State Office of the State Comptroller, as well as appropriate agencies of the Federal government, may also audit these payments. *CONTRACTOR* and all subcontractors agree to cooperate fully in any such audit, and understand that any failure to so cooperate may be considered a breach of contract and result in withholding of payment of claims or termination of this *AGREEMENT*.
- 5.9 Any inconsistent provision of this *AGREEMENT* notwithstanding, the parties agree that, at the discretion of *OASAS* up to ten percent (10%) of the construction/rehabilitation costs described in Exhibit A of this *AGREEMENT* shall be withheld by *OASAS* as retainage pending full completion of the construction of the *PROJECT* as defined in Article 5.11.
- 5.10 The final payment shall be payable upon full completion of the *PROJECT* as attested to by the *PROJECT* Architect, inspection of the *PROJECT* and approval in writing by *OASAS* and satisfactory fulfillment of all terms and conditions of this *AGREEMENT* by *CONTRACTOR*.
- 5.11 In accordance with the Comptroller of the State of New York's Accounting Bulletin A-91, *OASAS* shall have a fifteen (15) day inspection period in which to review the request for payment submitted by *CONTRACTOR* for appropriateness and notify *CONTRACTOR* of any corrections/clarifications required.
- 5.12 Any portion of the consideration paid by *OASAS* to *CONTRACTOR* but not expended pursuant to this *AGREEMENT* shall be returned to *OASAS* by *CONTRACTOR*.
- 5.13 *CONTRACTOR* hereby certifies that requests for payment shall not duplicate reimbursement received from other sources providing funding support for costs related to this *AGREEMENT'S* purpose.
- 5.14 All funds received by *CONTRACTOR* pursuant to the terms of this *AGREEMENT* are subject to the trust fund provisions of Section Thirteen of the Lien Law.

## **6. RECORDKEEPING**

- 6.1 *CONTRACTOR* hereby agrees to accurately maintain separate records and accounts of the monies received and expended for the *PROJECT* under this *AGREEMENT* as well as fiscal controls together with vouchers and other satisfactory evidence of payment to assure proper accounting. *CONTRACTOR* shall set up and maintain a separate interest bearing checking account for deposit of all *PROJECT* income and for the disbursement of all *PROJECT* expenses. *CONTRACTOR* shall complete the Confirmation of Project Specific Bank Account form attached hereto and made a part hereof as Exhibit B indicating the checking account number, bank name and account title. Any income earned by the investment of such monies shall be added to this account and shall be used to reduce the Maximum Reimbursable Amount stated on the face page of this *AGREEMENT*.

- 6.2 *CONTRACTOR* shall keep copies of all bills and/or invoices received by *CONTRACTOR* for Development Costs listed in Exhibit A and copies of all bank statements and canceled checks received by *CONTRACTOR* relative to the bank account described in Exhibit B. Copies of all such records shall be provided to OASAS upon request.
- 6.3 *CONTRACTOR* shall, upon the request of OASAS, obtain and furnish to OASAS a financial audit. Such audit shall be completed in the form and manner prescribed by OASAS.
- 6.4 *CONTRACTOR* shall keep and maintain efficient, complete and separate accounting books and records concerning any and all costs incurred in the performance of this *AGREEMENT*. Such books and records shall be kept available for examination by OASAS, the New York State Office of the State Comptroller, and appropriate agencies of the Federal government at all reasonable times and places during the period of execution of this *AGREEMENT* and for six (6) years from the date of final payment.

## **7. APPROVALS**

- 7.1 *CONTRACTOR* shall obtain all approvals of OASAS as required by this *AGREEMENT*. All such approvals must be in writing.
- 7.2 *CONTRACTOR* and its subcontractors shall obtain all approvals required by any law, rule or regulation necessary for the rehabilitation of the Property and the operation of a *PROGRAM* thereon. All such approvals must be in writing and submitted to OASAS Capital Development Unit.
- 7.3 Where OASAS designates any designee or agent, *CONTRACTOR* shall obtain all requisite approvals from said designee or agent at the direction of OASAS. All such approvals must be in writing.

## **8. INDEMNIFICATION AND INSURANCE**

- 8.1 *CONTRACTOR* shall indemnify, save and hold harmless the State of New York and OASAS, their officers, agents, servants, and employees, from any and all liability for anything and everything whatsoever arising from loss or damage due to any fault or negligence arising from any act or omission of *CONTRACTOR*, clients under the direct jurisdiction, control and direct supervision of *CONTRACTOR*, *CONTRACTOR'S* agents, employees or sub-contractors.
- 8.2 *CONTRACTOR* shall maintain or cause to be maintained with responsible insurers authorized to do business in the State of New York, or in such other manner as may be required or permitted by law, all risk property insurance on the property, in an amount of one hundred percent (100%) of the replacement value thereof. In case of damage, loss or destruction of the property, or any part thereof, the proceeds of any such insurance which pertains to such property shall be used and applied by *CONTRACTOR* as promptly as possible to repair, restore, rebuild or replace the same as nearly as possible to the condition existing prior to such damage, loss or destruction: provided, however, that in the event of total loss or substantial destruction of the *PREMISES* and where *CONTRACTOR* elects not to repair, restore, rebuild or replace the same, it shall pay over to OASAS the proceeds of insurance. OASAS and/or the Dormitory Authority of the State of New York (*DASNY*) shall be named loss payee. Any such repair, restoration, rebuilding or replacement of the *PREMISES* must be in accordance with such design, plans and specifications as will be appropriate for the construction of an alcoholism and alcohol abuse and/or substance abuse services *FACILITY* and which design, plans and specifications will have received the approval of OASAS. The provisions of this paragraph shall survive the duration of this *AGREEMENT* and shall terminate upon satisfaction of the requirements established in paragraph

3.1.

- 8.3 *CONTRACTOR* shall at all times maintain a commercial general liability policy covering activities on the *PREMISES* for no less than *ONE MILLION DOLLARS* (\$1,000,000) per occurrence, *THREE MILLION DOLLARS* (\$3,000,000) aggregate, combined bodily and property damage. Such policy shall name *OASAS* as an additional insured.
- 8.4 *CONTRACTOR* shall obtain and maintain a Builder's Risk Policy insuring *CONTRACTOR* in an initial amount equal to the value of all insurable property. The value of the policy shall be increased monthly in amounts appropriate to work completed. *OASAS* shall be named to receive notices of any failure by *CONTRACTOR* or its designee to report the full increase in value each month.
- 8.5 Should any claim or demand be made, or any action brought against *OASAS* in any way relating to this *AGREEMENT* or its performance, *CONTRACTOR* agrees to render diligently to *OASAS*, without additional compensation, any and all cooperation which *OASAS* may require of *CONTRACTOR*.

## 9. **SUBCONTRACTORS**

As used in this Paragraph the term 'consultant' shall be defined as architectural, engineering, surveying and other professional services provided by licensed professionals or firms. The procurement of consultant services are not subject to the bidding requirements as outlined in Article 9.4.

- 9.1 *CONTRACTOR'S* use of subcontractors shall in no way diminish *CONTRACTOR'S* obligations to complete all *PROJECT* activities in accordance with this *AGREEMENT*.
- 9.2 If part or all of the performance under this *AGREEMENT* is to be conducted through subcontracts with other entities, then *CONTRACTOR* agrees that it shall make all subsequent provisions of this Article a formal part of all such subcontracts, and shall specifically make reference to the records required to be maintained, and the retention periods of such records as noted hereinabove, and that all such records maintained by such subcontractors shall be made available and disclosed to qualified personnel of *OASAS* and/or the New York State Department of Audit and Control.
- 9.3 All agreements between *CONTRACTOR* and its consultants and subcontractors must be approved in advance by *OASAS* and shall be made by written contract. All such subcontracts shall contain provisions specifying:
- (a) that the work must be performed in accordance with the terms of this *AGREEMENT*;
  - (b) that payments for goods or services shall not be advanced. Payments shall be reimbursed, not more than once monthly, based on work completed and subject to a ten percent (10%) retainage. Said retainage shall be paid upon satisfactory performance of the contract;
  - (c) that nothing contained in the subcontract, or in this or any *AGREEMENT* shall create any contractual relationship between any subcontractor and *OASAS* or its designees except as may be necessary to *OASAS* to exercise its option to substitute a new provider to complete the terms of this *AGREEMENT*;
  - (d) that nothing contained in the subcontract shall impair the rights of *OASAS* under this *AGREEMENT*;

- (e) that *CONTRACTOR* shall be fully and solely responsible for the enforcement of the terms of any and all agreements *CONTRACTOR* enters into with subcontractors to perform work called for by this *AGREEMENT*;
  - (f) that the subcontractor has been furnished with a copy of this *AGREEMENT*;
  - (g) that the subcontract shall be subject to the approval of *OASAS* and the continued availability of State funding;
  - (h) that the subcontractor acknowledges and assents to *OASAS*' option in the event of *CONTRACTOR*'S default, to direct *CONTRACTOR* to assign to *OASAS* or its agents *CONTRACTOR*'S rights and interests in the enforcement of the subcontract; and
  - (i) that the subcontractor shall not assign such subcontract without *CONTRACTOR*'S prior written approval.
- 9.4 All subcontracts for work performed or materials or supplies purchased pursuant to this *AGREEMENT* shall be bid and shall be awarded to the lowest responsible bidder furnishing the required security after invitation for sealed bids. No less than three bids shall be solicited to determine the lowest responsible bidder in each instance. All contract items shall be awarded to the lowest responsible bidder subject to the review and approval of *OASAS*.
- 9.5 *OASAS* may upon good cause shown, require *CONTRACTOR* to exercise *CONTRACTOR*'S right under any subcontract for performance of the *PROJECT*, to inspect or test the work or materials, stop the work, replace the subcontractor, terminate the subcontract and/or cause the work to be carried out in accordance with any applicable subcontracts. *OASAS* reserves the right to prescribe the form for any subcontract to be entered into for the performance of work or furnishing of materials which work or materials are necessary for the completion of this *AGREEMENT*.
- 9.6 In the event of default as defined in Article 11.0, *CONTRACTOR* shall, if directed in writing by *OASAS*, assign to *OASAS* or its agent, all of its rights and interests in the enforcement of any subcontract that *CONTRACTOR* enters into with any entity or person to carry out activities relating to the establishment and execution of the *PROJECT* which is the subject of this *AGREEMENT*.

## **10. LIENS, ENCUMBRANCES AND ASSIGNMENTS**

- 10.1 *OASAS* shall cause to be filed with the recording officer of the county wherein the *PREMISES* are situated, a Notice of Lien entitled, State Aid Grant Lien, provided through this contract and in accordance with Articles 25 and 41 of the Mental Hygiene Law.
- 10.2 Assignment of this *AGREEMENT*, or any of its parts, shall require the prior written approval of *OASAS*.
- 10.3 In the event that *CONTRACTOR* is conducting the *PROJECT* on leased *PREMISES*, the lease shall be assignable in accordance with and for the sole purposes described in this *AGREEMENT*, and shall require the prior written approval of *OASAS*.

## 11. DEFAULT

11.1 In addition to any default which may be found at common law, *CONTRACTOR* shall be in default of this *AGREEMENT* upon the happening of any of the following:

- (a) *CONTRACTOR'S* failure to keep, observe and perform any of the covenants, conditions or agreements contained in this *AGREEMENT* or any conditions or limitations on the fee to the *PREMISES*, or any prior mortgage, or subsequent mortgage or any conditions of any of the following agreements:
  - (i) *OASAS* Operating *AGREEMENT*;
  - (ii) Application for *OASAS* Capital Assistance;
  - (iii) Certificate of Need approval application regarding this *PROJECT*; and
  - (iv) Operating Certificates or Certificates of Approval for the *PROGRAM*.
- (b) a default in the payment of any insurance premium or the assigning or delivering of the policies insuring the *PROJECT* against loss by fire or *CONTRACTOR* against general liability; or
- (c) a substantial breach of the laws, rules and regulations of the State of New York or *OASAS* relating to the operation of the *PROGRAM* after receipt of such due notice and such opportunity to cure as is provided by the governmental entity having jurisdiction over the breached law, rule or regulation, in accordance with such standards of due process as are incorporated within the procedure or process within which the substantial breach is declared; or
- (d) a failure to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department possessing jurisdiction over the *PREMISES* within three months from the issuance thereof; or
- (e) the happening of an event that poses a substantial threat to the health and safety of the clients of the *PROGRAM*, or the permanent or temporary suspension or revocation or limitation of any Operating Certificate or Certificate of Approval for the *PROGRAM*; or
- (f) the happening or threatening of an event constituting the waste, damage, disfigurement, injury, removal, demolition or destruction of or to any of the buildings, fixtures, chattels or articles of personal property, or any part thereof, comprising the *PROJECT*, unless the same are promptly replaced by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from chattel mortgages or other encumbrances thereon and free from any reservation of title thereto; or if the improvements on said *PREMISES* are not maintained in reasonably good repair; or
- (g) the assignment of any funds due for the operation of the *PROGRAM* or the rents of the *PREMISES* or any part thereof without the written consent of *OASAS*; or

- (h) the filing of a petition of bankruptcy by *CONTRACTOR* or a receiver or trustee of the property of *CONTRACTOR* is appointed and not dismissed within thirty days of *CONTRACTOR'S* actual or constructive notice of such filing or appointment, whichever event is sooner; or the filing by *CONTRACTOR* of a petition for reorganization under any of the provisions of the Bankruptcy Act or of any other law, state or federal, or *CONTRACTOR'S* making an assignment for the benefit of creditors or is adjudged insolvent by any state or federal court of competent jurisdiction.

11.2 In the event of such default, *OASAS* shall provide *CONTRACTOR* written notice thereof by registered or certified mail. *CONTRACTOR* shall have thirty days from the posting of such notice to effectuate a cure. This period to cure may be extended at the sole option of *OASAS*. If the event constituting a default is defined in paragraph 11.1(e) or (f), *CONTRACTOR* shall only be provided such opportunity to cure as is reasonable under the circumstances. It is agreed, upon a failure to effectuate a cure, and in addition to any other right or remedy for breach articulated herein or otherwise available pursuant to law, that:

- (a) In addition to any other remedies or amounts due and owing by operation of any separate agreements between the parties hereto, upon a default, *CONTRACTOR* shall be indebted to *OASAS* in an amount equal to:
  - (i) The amount of the State aid grant, if any, issued on behalf of *CONTRACTOR*, in accordance with the Application, less a credit equal to five percent (5%) of the amount of the State aid grant issued to *CONTRACTOR* for each year in which *CONTRACTOR* has operated the *PROJECT*.
  - (ii) The amount of any payments on any mortgage lien, judgment, or other encumbrance upon the *PROJECT*, incurred by or on behalf of *CONTRACTOR*, which in the sole discretion of *OASAS*, *OASAS* is compelled to make; and
  - (iii) The cost of repairs to the *PREMISES*, that are capital expenditures, as that phrase is commonly understood; and
  - (iv) The reasonable value of the services provided by *OASAS* or the State of New York, including legal services, in obtaining possession to the *PREMISES* and collecting the value of the State aid grant.
- (b) *OASAS* shall have the right to possession and occupancy of the *PROJECT* for the unexpired term during which *CONTRACTOR* has agreed to operate the *PROGRAM*.
  - (i) The exercise of this right will be made subject to any rights of any lienor who acquired its interest in the *PROJECT* upon the consent of *OASAS*.
  - (ii) This shall include the right to sublet or contract with third parties for the operation of the *PROGRAM* without any charge or fee due *CONTRACTOR* therefor.
  - (iii) *CONTRACTOR* agrees to execute any documents and consent to any orders necessary to effectuate such possession and occupancy by *OASAS* or its assigns.

- (c) Upon any default, the obligations of *CONTRACTOR* shall become a lien upon the real property of the *PROJECT*, junior to that of any mortgage made to secure the proceeds of a *DASNY* bond issuance.

11.3 The provisions of this Article, numbered 11.0, shall survive the duration of this *AGREEMENT* and shall terminate upon satisfaction of the requirements established in paragraph 3.1.

## **12. STANDARDS OF CONDUCT**

12.1 *CONTRACTOR* shall at all times conduct this *PROJECT* in a professional, competent manner, consistent with appropriate standards of ethical behavior.

12.2 *CONTRACTOR* and its directors, officers and employees shall, in all dealings of any nature related to this *AGREEMENT*, comport themselves in accordance with standards set forth in Sections 515 through 721 of the Not-For-Profit Corporation Law.

12.3 The provisions of this Article, numbered 12.0, shall survive the duration of this *AGREEMENT* and shall terminate upon satisfaction of the requirements established in paragraph 3.1.

## **13. MENTAL HYGIENE SERVICES FACILITIES IMPROVEMENT PROGRAM**

13.1 *CONTRACTOR* understands and agrees that any State financial assistance extended to *CONTRACTOR* by *OASAS* after the date hereof shall be repaid by *CONTRACTOR* if *CONTRACTOR* is, or becomes, eligible to participate in the Mental Hygiene Services Facilities Improvement Program, as described in Articles 3, 5 and 9 of the Facilities Development Corporation Act. *CONTRACTOR* agrees to participate in such a loan program, including financings and refinancings, if requested by *OASAS*, and shall be required to repay such financial assistance only to the extent requested by *OASAS*. Further, *CONTRACTOR* shall include all costs eligible for the Mental Hygiene Services Facilities Improvement Program financing in any requested loan amount whether or not previously met by State financial assistance granted hereunder including, without limitation, interest or interim financing.

13.2 *CONTRACTOR* shall repay to *OASAS* the amount of all interim assistance advanced to *CONTRACTOR* hereunder upon the earliest of the following dates:

- (a) the date that *CONTRACTOR* is scheduled by *OASAS* to receive a mortgage loan from the Dormitory Authority of the State of New York (*DASNY*) for the *PROJECT*; or
- (b) the date, determined by *OASAS*, by which *CONTRACTOR* has failed to comply with a written demand by *OASAS* to proceed with the application for the mortgage loan from *DASNY*.

13.3 When repayment is due to *OASAS* in accordance with the provisions of this Article, *OASAS* shall be repaid directly out of the proceeds of the *DASNY* mortgage loan; or in the event such mortgage loan has not been executed by the repayment date hereunder, *OASAS*, at its option, may set off any monies owed by the State of New York to *CONTRACTOR* which are in possession of the State of New York. Any acts undertaken by *OASAS* to repay itself in accordance with the provisions of this paragraph shall not be deemed an election of remedies and *OASAS* shall have the additional right to pursue any other legal remedies available to enforce repayment hereunder.

13.4 The provisions of this Article, numbered 13.0, shall survive the duration of this *AGREEMENT* and shall terminate upon satisfaction of the requirements established in paragraph 3.1.

**14. GENERAL PROVISION**

14.1 All documents required to be submitted by *CONTRACTOR* shall be submitted to *OASAS* at the following address:

*NYS Office of Alcoholism and Substance Abuse Services  
Bureau of Capital Management  
1450 Western Avenue  
Albany, NY 12203-3526*

14.2 *CONTRACTOR* agrees to perform all of its obligations under this *AGREEMENT* in accordance with all applicable Federal, State and local laws, regulations and ordinances and any directives issued by *OASAS* or its designee.

14.3 Nothing contained in this *AGREEMENT* shall create or give to *CONTRACTOR*, its subcontractors, assigns or other party any claim or right of action against the State, against *OASAS* or any of *OASAS*' designees, which right does not legally exist without regard to this *AGREEMENT*.

14.4 *CONTRACTOR* shall comply with any *OASAS* directive regarding the form or substance of proposed subcontracts pursuant to this *AGREEMENT*, including but not limited to, requiring use of DASNY approved procedures and documents and including but not limited to, requirements for contracts with architects, engineers, appraisers, other consultants and construction companies, and consultant selection and bidding standards and procedures.

14.5 Where the provisions of Exhibits A and/or B are inconsistent with the provisions of this *AGREEMENT* the provisions of such Exhibits shall control.

14.6 *CONTRACTOR* shall comply with the provisions of Appendix A, *Standard Clauses for All New York State Contracts* a copy of which is attached hereto, and made a part hereof.

14.7 *CONTRACTOR* agrees that in the event that this contract or any document associated with this contract requires conformance as to any matters of form only *CONTRACTOR* will cooperate fully with and promptly respond to any and all requests by *OASAS* for execution of applicable documents.

14.8 *CONTRACTOR* agrees that all information obtained by it in carrying out this *AGREEMENT* shall be kept in strictest confidence, and that it shall not issue any publicity release, or make any statements regarding the execution of, or the implementation of, this *AGREEMENT*, without first obtaining prior clearance and approval from *OASAS*, provided, however, that this paragraph shall not be deemed to prevent the making or preparing of such usual and ordinary reports as may be required by applicable law, or in order to carry on the day-to-day affairs of *CONTRACTOR*.

14.9 Notwithstanding any other provision of this *AGREEMENT* to the contrary, *CONTRACTOR* shall be liable for all direct damages attributable to the negligence of *CONTRACTOR* and its agents, employees or subcontractors.

**15. COMPLETE UNDERSTANDING**

This *AGREEMENT* constitutes the complete understanding of the parties hereto. It may only be revised in writing by mutual agreement of the said parties.

**16. SEVERABILITY**

If any term or provision of this *AGREEMENT* or its application to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this *AGREEMENT*, or the application of such term or provision to persons or circumstances other than those to which it is held unenforceable, shall not be affected and every other term and provision of this *AGREEMENT* shall be valid and enforceable.

**17. EFFECTIVE DATES**

This *AGREEMENT* shall not be deemed executed, valid or binding unless and until approved in writing by the Comptroller of the State of New York.

# EXHIBIT A

## Office of Alcoholism and Substance Abuse Services

### Schedule of Development Costs

Category of Development Cost

Estimated Allotment

**Site Acquisition**

**Construction/Renovation\***

**Contingency**

**Equipment/Furniture**

**Design**

**Other Costs**

*Maximum Reimbursable Amount*

\* **Brief Project Description.** The scope of work (as outlined in the former sentence) may be added to, if necessary to the intent of the project, and it is approved by OASAS and the work does not increase the amount of the contract.

**EXHIBIT B**

**CONFIRMATION OF PROJECT SPECIFIC BANK ACCOUNT**

In accordance with Article 6.1 of this *AGREEMENT*, a separate project specific bank account has been established for the deposit of funds received through this *AGREEMENT* for the *PROJECT* identified on the face page hereof.

The specific bank account information is as follows:

**BANK:** \_\_\_\_\_ **ACCOUNT TITLE:** \_\_\_\_\_

**ACCOUNT NUMBER:** \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

## 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 previous consent, in writing, of the State and any attempts to assign the contract without the State’s written consent are null and void. The Contractor may, however, assign its right to receive payment 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).

**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.

**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 setoff 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) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number.

The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, 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, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. 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 Governor's Office 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 State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §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  
30 South Pearl St -- 7th Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

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

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

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the 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. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

Revised February 2010