

# MINOR REHABILITATION CONTRACT

## AGREEMENT

**WHEREAS**, the Office of Alcoholism and Substance Abuse Services, (hereinafter *OASAS*) is empowered to enter into agreements with public and not-for-profit private agencies for the acquisition of property, design, construction and rehabilitation of alcoholism and substance abuse treatment facilities pursuant to Articles 25 and 41 of the Mental Hygiene Law within the amounts available by appropriation; and

**WHEREAS**, \_\_\_\_\_, (hereinafter *CONTRACTOR*) is a not-for-profit corporation duly incorporated under the laws of the State of New York, and is empowered to enter into agreements and to acquire and lease real and personal property; and

**WHEREAS**, *CONTRACTOR* has submitted a request to the *OASAS* for the purpose of obtaining funds for minor renovations for their Alcoholism and/or Substance Abuse program(s) located at \_\_\_\_\_, in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of New York (hereinafter *PROJECT*); and

**WHEREAS**, the *OASAS* consents to provide financing to the *CONTRACTOR* in accordance with the terms and conditions of this *AGREEMENT*; and

**WHEREAS**, upon completion of such capital undertaking *CONTRACTOR* will conduct a *OASAS* certified treatment program (*PROGRAM*) for Alcoholism and/or Substance Abuse services on the premises.

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

### **1. PERIOD OF PERFORMANCE**

- 1.1 Notwithstanding the date of execution the period of this *AGREEMENT* shall be deemed to commence and conclude on the dates stated on the face page of this *AGREEMENT*.
- 1.2 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.

### **2. STATEMENT OF CONSTRUCTION WORK AND ASSURANCES**

- 2.1 *CONTRACTOR* shall cause the *PROJECT* to be constructed to final completion in accordance with the architectural plans and specifications submitted to and approved by the *OASAS*.
- 2.2 The *CONTRACTOR* shall construct the *PROJECT* or cause it to be constructed in such a manner as will render it appropriate for use as an Alcoholism and/or Substance Abuse program in accordance with the regulations and requirements of *OASAS*.
- 2.3 Notwithstanding any prior approval or directive of the *OASAS*, the *CONTRACTOR* shall at all times be responsible for the supervision and inspection of all aspects of the *PROJECT*. The *CONTRACTOR* may render such supervision and inspections by subcontract, said subcontract

subject to the prior approval of the *OASAS*. The *CONTRACTOR* agrees to conduct the *PROJECT* in full compliance with all applicable Federal and State laws, rules and regulations, and in addition to any and all applicable guidelines or other directives issued by the *OASAS*.

- 2.4 *CONTRACTOR* shall cause all work to be completed in a timely manner and in accordance with timeframes agreed upon by the parties.
- 2.5 *CONTRACTOR* shall obtain all approvals required by law, rule or regulation necessary for the construction on the property and the operation of the Alcoholism and/or Substance Abuse program thereon.

### **3. CONSIDERATION**

- 3.1 As consideration for the performance of this *AGREEMENT*, the *OASAS* agrees to pay for, and the *CONTRACTOR* agrees to accept as payment in full, and in complete discharge of the *OASAS*' obligation, the approved costs incurred by the *CONTRACTOR* in the conduct of the *PROJECT* pursuant to this *AGREEMENT*. In no event shall the total obligation of the *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 Exhibit "A", attached hereto and incorporated into this *AGREEMENT*.
- 3.2 *CONTRACTOR* agrees to perform all the obligations, assurances, and covenants articulated in this *AGREEMENT*.
- 3.3 All amendments or modifications to the proposed cost estimate as reflected in Exhibit "A" shall be requested from and approved by the *OASAS* in writing prior to implementation by *CONTRACTOR*.
- 3.4 In the event that the *PROJECT* includes subcontracts with other public or private agencies, the parties understand that the Maximum Reimbursable Amount specified as the monetary consideration for this *AGREEMENT* includes the particular amounts intended for all subcontracts. *CONTRACTOR* agrees to submit to the *OASAS* for approval copies of all such subcontracts. It is further understood and agreed to by the parties that financing pursuant to this *AGREEMENT* for any subcontractor shall not be payable unless the *CONTRACTOR* submits, when requested by *OASAS*, evaluative and such other data with respect to each subcontractor in the manner and form as shall be required by *OASAS*.

### **4. CLAIMS FOR REIMBURSEMENT OR ADVANCE PAYMENTS**

- 4.1 The *OASAS* shall provide to the *CONTRACTOR* payments of contract funds on an advance or reimbursement basis, provided that documentation acceptable to the *OASAS* accompanies the claim for payment. Payment is subject to the following conditions:
  - (a) Appropriations shall be available to the *OASAS*, and no liability on account thereof shall be incurred by the *OASAS* beyond monies available for the purpose thereof.
  - (b) The *CONTRACTOR* shall submit copies of all bills/invoices in addition to an approvable NYS Standard Voucher.
  - (c) Except for the final payment, in no event shall the sum of the payments to the *CONTRACTOR* exceed 95% of the Maximum Contract Amount.
  - (d) The final payment shall be payable upon full completion of the construction of the *PROJECT* and approval in writing by the *OASAS* and satisfactory fulfillment of all terms and conditions of this *AGREEMENT* by *CONTRACTOR*.

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

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

**5. FISCAL PROCEDURES**

- 5.1 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.
- 5.2 In accordance with the Office of the State Comptroller's Accounting Bulletin A-91, the *OASAS* shall have a fifteen (15) day inspection period in which to review the request for payment submitted by the *CONTRACTOR* for appropriateness and notify the *CONTRACTOR* of any corrections/clarifications required.
- 5.3 Any portion of the consideration paid by the *OASAS* to the *CONTRACTOR* but not expended pursuant to this *AGREEMENT* shall be returned to the *OASAS* by *CONTRACTOR*.
- 5.4 (a) *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.
- (b) The parties agree that all payments to the *CONTRACTOR* and its subcontractors made pursuant to this *AGREEMENT* are made subject to audit. The *OASAS* may directly, or through contract, audit payments pursuant to this *AGREEMENT*. The Office of the State Comptroller, as well as appropriate agencies or contractors of the Federal government, may also audit these payments. The *CONTRACTOR* and all subcontractors agree to cooperate fully in any such audit, and agree that failure to cooperate will result in a breach of contract and result in withholding of payment or termination of this *AGREEMENT*. If an audit by the *OASAS*, the Comptroller, or an independent auditor retained by the *CONTRACTOR* determines that any payments made pursuant to this *AGREEMENT* were based upon a mistake of fact or upon misrepresentation, the *CONTRACTOR* agrees to repay such sums within ninety (90) days of such audit finding.

5.5 *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.

## **6. CONSTRUCTION RELATED PROCEDURES**

6.1 (a) *CONTRACTOR* will permit *OASAS* or its representatives, agents, or designates, to enter upon the premises during regular business hours in order to inspect the *PROJECT* so as to assure compliance with the provisions contained herein.

(b) *OASAS* may, upon good cause shown, require the *CONTRACTOR* to inspect or test the materials for work, stop the work, or replace the subcontractors, and the *OASAS* may arrange for completion of the work by others in accordance with the approved plans and specifications.

6.2 *CONTRACTOR* will demonstrate that sufficient funds will be available to meet the non-*OASAS* share of the cost of this *PROJECT*.

6.3 *CONTRACTOR* or any person acting on behalf of the *CONTRACTOR* shall not enter into any business arrangement, financial transaction, or professional activity with any person, partnership, corporation, or organization or incur an obligation of any nature which might reasonably tend to improperly influence the *CONTRACTOR*, impair the independent judgment of either party, or substantially conflict with the proper discharge of the *CONTRACTOR'S* duties and functions pursuant to this *AGREEMENT*.

## **7. INDEMNIFICATION AND INSURANCE**

7.1 The *CONTRACTOR* shall indemnify and hold harmless the State of New York and the *OASAS* from claims, costs, damages, actions, judgments or injuries to persons or property of whatsoever kind or nature due to any fault or negligence arising from any act or omission of the *CONTRACTOR* or the *CONTRACTOR'S* agents, employees or contractors relating to the performance of this *AGREEMENT*.

7.2 The *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; fire, extended coverage, vandalism and malicious mischief insurance on the property, in an amount not less than eighty per centum (80%) 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 the *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 the *CONTRACTOR* elects not to repair, restore, rebuild or replace the same, it shall pay over to the *OASAS* the proceeds of insurance. Notwithstanding anything to the contrary the above-said loss-payee provision shall be subject and subordinate to any insurance loss-payee provision of any mortgage or mortgages entered into by the *CONTRACTOR* during the Project Construction Period. 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 treatment services facility and which design, plans and specifications will have received the approval of the *OASAS* or its designee.

7.3 *CONTRACTOR* shall at all times maintain a personal injury 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 the OASAS as additional insured.

## 8. DEFAULT

8.1 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) the *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*
  - (iv) Operating Certificates or licenses 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 the *CONTRACTOR* against general liability; or
- (c) a substantial breach of the laws, rules and regulations of the State of New York or the *OASAS* relating to the operating of the program which the *CONTRACTOR* is obligated to operate after receipt of such due notice and such opportunity to cure as is provided by the governmental entity having jurisdiction over the 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 being operated, or the permanent or temporary suspension or revocation or limitation of any Operating Certificate 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 the OASAS; or
- (h) the filing of a petition of bankruptcy by or against the *CONTRACTOR* or a receiver or trustee of the property of the *CONTRACTOR* is appointed and not dismissed within thirty days of *CONTRACTOR'S* actual or constructive notice of such filing or appointment; 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.

8.2 In the event of such default, the OASAS shall provide the *CONTRACTOR* written notice thereof by registered 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 the OASAS. If the event constituting a default is an emergency, *CONTRACTOR* shall only be provided such opportunity to cure as is reasonable in the circumstances. It is agreed that, 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 not provided from the proceeds of a Dormitory Authority of the State of New York (*DASNY*) bond issuance, if any, issued on behalf of the *CONTRACTOR*, in accordance with the Application, less a credit equal to 5% of the amount of the State aid grant issued to the *CONTRACTOR* for each year in which the *CONTRACTOR* has operated the *PROJECT* in accordance with 14 NYCRR Part 321 or Part 1055, and
  - (ii) The amount of any payments on any mortgage lien, judgment, or other encumbrance upon the *PROJECT*, incurred by or on behalf of the *CONTRACTOR*, other than a mortgage made with the proceeds of a *DASNY* bond issuance, which in the sole discretion of OASAS, OASAS is compelled to make, and
  - (iii) The cost of repairs to the premises possessed by OASAS, 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.

## **9. GENERAL PROVISIONS**

9.1 The parties hereto shall be bound by the standard of reasonableness in light of the circumstances of this *AGREEMENT*, and covenants or deed restrictions upon the premises, the nature of the services to be provided in and upon the premises and in furtherance of the duties of the OASAS in its statutory role as a regulator entity, in exercising its judgment, requiring any further activities, taking or failing to take any action, or approving or failing to approve any request provided for under this *AGREEMENT*.

- 9.2 *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. Where the provisions of Appendix A are inconsistent with the provisions of this *AGREEMENT*, the provisions of Appendix A shall control.
- 9.3 The *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 or has evidence which substantiates exemption from such provisions.
- 9.4 *CONTRACTOR* agrees as a condition of this *AGREEMENT* to comply with the provisions of Article 15-A of the Executive Law.
- 9.5 *CONTRACTOR* shall comply with all provisions of 9 NYCRR Part 540, commonly known as the Equal Employment Opportunity Regulations.
- 9.6 This *AGREEMENT* constitutes the complete understanding of the parties hereto. It may only be revised in writing by mutual agreement of the said parties.

# EXHIBIT A

## Office of Alcoholism and Substance Abuse Services

### Schedule of Development Costs

Category of Development Cost Estimated Allotment

**Site Acquisition**

**Construction/Renovation\***

**Contingency**

**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.

## 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 June 2006