

**NEW YORK STATE
OFFICE OF PARKS, RECREATION AND
HISTORIC PRESERVATION**

and

CITY OF SARATOGA SPRINGS

COOPERATIVE AGREEMENT and LICENSE

FOR ACCESS AND USE OF

HORSE BARN

Located at

79 Kaydeross Avenue West, Saratoga Springs, NY.

City of Saratoga Springs, New York



**New York State
Office of Parks, Recreation & Historic Preservation
and
City of Saratoga Springs**

Cooperative Agreement and License

**for access and use of a portion of the Horse Barn
Located at**

of

79 Kaydeross Avenue West, Saratoga Springs, NY.

This Cooperative Agreement and License (“Cooperative Agreement” or “Agreement”) made this _____ day of _____, 2014 by and between the **People of the State of New York, acting by and through the Office of Parks, Recreation and Historic Preservation** (hereinafter “State Parks”), with offices at 625 Broadway, Albany, New York 12207 (USPS Address: Albany, NY 12238), and the **City of Saratoga Springs**, (hereinafter “City”), with offices at 474 Broadway, Saratoga Springs, New York 12866. (State Parks and the City are collectively referred to herein as the “Parties” and individually as a “Party”).

WITNESSETH:

WHEREAS, pursuant to Section 3.09(2) of the N.Y.S. Parks, Recreation and Historic Preservation Law, State Parks is authorized to operate and maintain, either directly, or by contract, lease or license, historic sites and objects, parks, parkways and recreation facilities; and

WHEREAS, pursuant to Section 3.09(6) of the N.Y.S. Parks, Recreation and Historic Preservation Law, State Parks is authorized to encourage, promote and engage in cooperative recreational, education, historic and cultural activities, projects and programs undertaken by any federal, state or local governmental agency or private philanthropic or non-profit interest for the benefit of the public; and

WHEREAS, the City is a local municipality located within Saratoga County in the State of New York State; and

WHEREAS, the City’s Police Department maintains two horses as part of its mounted police patrol unit and is seeking space within a horse barn to board its horses; and

WHEREAS, State Parks owns and maintains a horse barn located at 79 Kaydeross Avenue West, Saratoga Springs, New York (hereinafter the “Premises”) which is currently used to board 4 horses utilized by the New York State Park Police as part of its mounted police patrol unit; and

WHEREAS, the Premises can be altered to provide for the City’s horses to board in the Premises upon completion of alterations to one stall and construction of a storage room for feed and supplies; and

WHEREAS, the parties are desirous of entering into a Cooperative Agreement whereby the City will provide for the consideration needed to complete the alterations to the Premises to provide for the additional storage space and one additional stall within the Premises at its own cost and expense and State Parks will license the use of the Premises to provide for the boarding of two of the City’s horses used by its Police Department subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the City Council of City of Saratoga Springs has passed Resolution No. _____ dated _____ authorizing the Mayor to execute this Agreement on behalf of the City.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Cooperative Agreement, State Parks and the City agree as follows:

1. Contract Documents

a) This Cooperative Agreement is comprised of the following documents, all of which are hereby incorporated by reference:

- i. Cooperative Agreement
- ii. Appendix A - Required Clauses for All New York State Contracts

b) In the event of any inconsistency in or conflict among the document elements of the Cooperative Agreement identified herein, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the order set forth below.

- i. Appendix A - Required Clauses for All New York State Contracts;
- ii. Cooperative Agreement

2. Grant of License

a) State Parks hereby grants to the City a license to access and provide for the routine boarding of two horses utilized by the City’s Police Department as part of their mounted police patrol unit within designated stalls within the Premises. State Parks and the City hereby acknowledge that the portion of the Premises occupied by the City constitutes public, non-residential spaces within State Park lands and that for all purposes hereunder State parks grants only a right to use the Premises “as is/where is” and without warranty, and subject to the City performing and undertaking the necessary alterations needed to

modify the Premises to accommodate 2 additional horses at the City's sole cost and expense and other consideration set forth herein.

3. Term

Initial term: three years

Commences: August 6, 2014

Terminates: June 30, 2017

This Cooperative Agreement may be extended for an additional term equal to the initial term by mutual agreement between State Parks and the City.

4. Coordination between the City and State Parks

The City shall cooperate with State Parks officials and will comply with all reasonable requests made by such officials with respect to the operation and maintenance of the Premises.

5. Maintenance and Cost Reimbursement Obligations of the Parties

a) State Parks shall provide for the routine maintenance of the Premises including electric service.

b) State Parks shall procure the necessary hay and feed for all the horses being boarded at the Premises for any one month. The City hereby agrees to reimburse State Parks for its allocated share of the total monthly cost of hay and feed based upon the total number of the City's horses being boarded at the Premises in a given month and the total number of horses being boarded at the Premises in the same month. For instance, if the total number of horses being boarded in a month is 4, and only one is the City's horse, the City shall be responsible to reimburse State Parks for 25 percent of the total cost of hay and feed. In the event the City determines that it will procure the feed for its own horses, it will notify State Parks at least one month in advance.

(1) The City shall be solely responsible for the cost and expense associated with the alteration of the Premises to accommodate its two extra horses and to provide for a storage space for the hay and feed currently located in one of the existing stalls.. All designs for the alteration of the Premises shall be approved by State Parks prior to construction.

(2) The City shall be solely responsible for the cost and expense associated with of the care and maintenance of its horses such as veterinarian care. In the event of a medical emergency for a City horse, State Parks shall take appropriate action and notify the City. The City shall be fully responsible for any extraordinary costs

necessary to maintain the City's horses, including all veterinarian charges incurred by Parks due to an emergency. The City agrees to hold harmless State Parks of any liability in the event State Parks takes immediate action in response to an emergency concerning a horse owned by the City.

6. Ingress and Egress

The City, for itself, its officers, employees and such business invitees shall have the right of ingress and egress between the Premises and the public streets. Such right shall be exercised by means of such public areas and pedestrian or vehicular ways, and by means of such other facilities for movement of persons or property, to be used subject to all the provisions of this Agreement and in common with others having rights of passage and movement as may from time to time be designated for the use of the public.

7. Insurance

a) The City shall procure at its sole cost and expense insurance with limits not less than those described below and as required by the terms of this Cooperative Agreement, or as required by law, whichever is greater and shall provide coverage to the City and State Parks for claims of damage to property and personal injuries, including death, which may arise from the conduct of the City, its employees, agents or contractors and/or the performance of the services authorized by this Cooperative Agreement. Limits may be provided through a combination of primary and umbrella/excess policies.

b) Upon annual renewal of insurance coverage, a current insurance certificate evidencing such insurance coverage must be submitted to State Parks. Insurance shall be provided in the following minimum amounts:

i. Commercial General Liability Insurance with a limit of not less than one million dollars (\$1,000,000) per occurrence. Such coverage shall be written on the ISO CG 00 01 or substitute form providing equivalent coverages and shall cover liability arising from premises operations, products-completed operations and personal and advertising injury. Fire legal liability of \$500,000 is required; if such insurance contains an aggregate limit, it shall apply separately on a per-location basis, and

ii. In the event that the City operates an automobile or other motor vehicle in conjunction with any activities authorized by this Cooperative Agreement, then the City will obtain **Comprehensive Business Automobile Liability Insurance** with a limit of not less than one million dollars (\$1,000,000) for each accident. Such insurance shall cover liability arising out of any automobiles including owned, leased, hired and non-owned automobiles (if vehicles are utilized for operations under this Cooperative Agreement).

c) The City shall require that all independent contractors shall have insurance policies providing commercial general liability with a limit of not less than one million dollars (\$1,000,000), workers compensation, disability and comprehensive business automobile liability insurance to the extent set forth in the section. The City shall provide State Parks with a certificate from such independent contractor evidencing such coverage, and naming The People of the State of New York as additional insureds. In order to comply with Sections 57 and 220(8) of the Workers' Compensation Law, State Parks requires annual proof of both Workers' Compensation Insurance and Disability Insurance. The following are the only acceptable means of proof (Please note that ACORD forms are NOT acceptable proof of coverage):

i. Disability Benefits:

- 1) WC/DB-100: Affidavit for New York Entities with no employees and certain out of state entities, that NYS Workers Compensation and/or Disability Benefits Insurance coverage is not required; or
- 2) DB-120.1: Certificate of Disability Benefits Insurance; or
- 3) DB-155: Certificate of Disability Benefits Self-Insurance.

ii. Workers' Compensation:

- 1) WC/DB-100(9-07): Affidavit for New York Entities with no employees and certain out of state entities, that NYS Workers Compensation and/or Disability Benefits Insurance coverage is not required; or
- 2) C-105.2(9-07): Certificate of Workers' Compensation Insurance; note: the State Insurance Fund provides its own version of this form, the U-26.3; or
- 3) SI-12: Certificate of Workers' Compensation Self-Insurance.

d) Insurance coverage shall be provided only by an insurance carrier licensed to do business in the State of New York that is rated A- Class VII or better throughout the term of this Cooperative Agreement.

e) All insurance policies and certificates shall name as additional insureds "*the People of the State of New York*." Designating the State of New York or State Parks as a "certificate holder" shall not constitute compliance with this section.

f) All insurance coverage shall be written such that State Parks is afforded at least thirty (30) days prior notice of cancellation or modification of coverage.

g) The City shall notify State Parks of any claims, including without limitation claims involving bodily injury, death or property damage, arising on or within the Premises. Such notice shall be provided in writing as soon as practicable, however in any event within five days of the City's receipt of notice of the accident or claim.

h) Coverage required in this section and any insurance retention or deductible may be adjusted by State Parks if, in its sole reasonable judgment, levels of risk associated with the City's operations require modification of coverage that is commercially available at commercially reasonable rates and carried by other operators of similar businesses.

i) Failure of the City to obtain and maintain appropriate insurance as specified and without gap may be deemed a material breach of this Cooperative Agreement and at the sole discretion of State Parks may be cause for termination. If the City is unable to maintain insurance coverage at the required levels and State Parks can obtain acceptable coverage, State Parks may elect to purchase such policies and the City shall immediately reimburse State Parks for all costs incurred.

8. Indemnification

a) The City assumes all risks in the performance of all activities authorized by this Cooperative Agreement and agrees to defend, indemnify and hold harmless the People of the State of New York, the Office of Parks, Recreation and Historic Preservation, their officers, employees, agents and assigns (hereinafter, collectively the "Indemnitees") from and against any and all claims, suits, losses, damage or injury to persons or property of whatsoever kind and nature, whether direct or indirect, caused or contributed to by the City and the City's contractors, vendors, materialmen, employees, agents, invitees and guests, and/or arising out of the City's conduct and/or the City's performance pursuant to this Cooperative Agreement, provided however that the City's indemnity shall not extend to any claims, liabilities, losses, damages, expenses, accidents or occurrences arising out of, relating to, or in connection with: (i) the negligence of any Indemnatee; or (ii) the Indemnitees' ordinary upkeep and maintenance of the Premises and its grounds and facilities outside of the Premises. The City shall defend at its sole cost and expense any action commenced for the purpose of asserting any claim of whatsoever character arising out of this Cooperative Agreement. The City's responsibility under this section shall not be limited to the required or available insurance coverage.

b) For all purposes hereunder, State Parks shall not be liable for any injury, loss or damage to the City, its agents, servants, contractors, vendors, invitees and guests, or to any person happening on, in or about the Premises or its appurtenances, nor for any injury or damage to the Premises or to any property belonging to the City or to any other person, that may be caused by fire, theft, breakage, vandalism or any other use or misuse or abuse of any portion of the Premises, including but not limited to any common areas, sidewalks, roads, or water in or adjacent to the Premises, or that may arise from any other cause whatsoever, unless, and only to the extent of the proportion of which any such injury, loss or damage is determined to be caused by the negligence of State Parks.

c) State Parks shall not be liable to the City, its agents, servants, contractors, vendors, invitees and guests, or any other person, for any failure of water supply, gas supply or

electric current, nor for any injury or damage to any property of the City or any other person or to the Premises, caused by or resulting from spill or release of gasoline, oil, steam, gas, or electricity, or caused by leakage of any substance from pipes, appliances, sewers or plumbing works, or caused by hurricane, flood, tornado, wind or similar storm or disturbance, or caused by water, rain or snow that may leak or flow from the street, sewers or subsurface areas, or from any part of the Premises or any body of water within or adjacent to the Premises, or caused by any public or quasi-public work, unless, and only to the extent of the proportion by which any such injury, loss or damage is determined to be caused by the negligence of State Parks.

d) The City shall not create or cause to be created any lien, encumbrance or charge upon the Premises or any part thereof. If any mechanics, laborers or similar statutory or common law lien (including tax liens, provided that the underlying tax is an obligation of the City by law or by a provision of this Cooperative Agreement) caused or created by the City is filed against the Premises, or if any public improvement lien created or caused to be created by the City is filed against any assets of, or funds appropriated by State Parks, then the City shall, within forty-five (45) days after receipt of notice of the lien, cause it to be vacated or discharged of record by payment, deposit, bond, court order, or otherwise. However, the City shall not be required to discharge any such lien if the City shall have: (i) furnished State Parks with, at the City's option, a cash deposit, bond, letter of credit (from an institutional lender in a form satisfactory to State Parks), or other security reasonably satisfactory to State Parks in an amount sufficient to discharge the lien and all applicable interest, penalties and/or costs; and (ii) brought an appropriate legal proceeding to discharge the lien and is prosecuting such proceeding with diligence and continuity; except that if despite the City's efforts to discharge the lien State Parks reasonably believes the lien is about to be foreclosed and so notifies the City, the City shall immediately cause such lien to be discharged of record or State Parks may use the security furnished by the City in order to discharge the lien.

9. Waiver of Damages

The City waives any and all claims for compensation from the State of New York and State Parks for any and all loss or damage sustained by reason of any defect, deficiency or impairment of utility service including but not limited to light, electrical current, gas or water supply which may occur from time to time for any cause; and for any loss or damage sustained by the City resulting from weather, fire, water, tornado, civil commotion, riots, earth movement or other similar cause beyond the control of State Parks.

10. Environmental Conditions

a) The City shall at all times be responsible for all obligations and liabilities of an owner of the Premises imposed by law arising from or relating to any hazardous substances present on the Premises or that migrate to the Premises from elsewhere and the City agrees not to seek contribution from or impose liability on State Parks with

respect thereto except to the extent that the acts or omissions of State Parks, its employees, agents, contractors or invitees or any subtenant have caused or contributed to the presence, release, suspected release or threatened release of said hazardous substance or its migration to the Premises.

b) The City agrees to defend, indemnify and hold State Parks harmless from and against any and all claims damages or costs imposed upon or incurred by or asserted against State Parks directly or indirectly arising out of the presence, release, suspected release or threatened release of any hazardous substance on or under the Premises except to the extent that the actions or omissions of State Parks, its employees, agents, contractors or invitees or any subtenant give rise in the first instance to such claim, damage or liability.

11. Termination

This Agreement can be terminated at any time by either Party upon six months advance written notice.

12. Force Majeure

If either State Parks or the City shall be delayed or prevented from the performance of any act required by this Agreement by reason of acts of God, weather, earth movement, lockout or labor trouble, unforeseeable restrictive governmental laws or regulation, or acts of war, riot or other similar causes, without fault and beyond the reasonable control of the party obligated, performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

13. Compliance with all Laws, Rules and Regulations

Each party shall comply with all laws, codes and regulations applicable to the conduct of the activities authorized by this Agreement. State Parks shall comply with the State Environmental Quality Review Act and procure at its own expense all permits, licenses or other approvals necessary for the operation and maintenance of the Premises; the City shall cooperate in said efforts by State Parks.

14. Choice of Law/Damages

a) This Agreement shall be governed and interpreted in accordance with the laws of the State of New York. Any and all claims against State Parks arising out of this Agreement shall be limited to money damages and commenced exclusively in, and subject to the jurisdiction of the New York State Court of Claims.

b) Any and all actions to enforce the terms and conditions of this Agreement shall be enforceable in any appropriate court in Monroe County, New York, which shall be the sole venue.

15. Integration Clause

This Agreement shall not be materially amended, changed or otherwise modified except in writing signed by authorized representatives of each party. Except to the extent that documents are incorporated herein by reference, this Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection therewith. No covenant, representation or condition not expressed herein shall be effective to interpret, change or restrict the express provisions of this Agreement. This Agreement shall be interpreted without construing any provision in favor of or against either party by reason of the drafting of the provision.

16. Notices

a) All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- i. via certified or registered United States mail, return receipt requested;
- ii. by facsimile transmission;
- iii. by personal delivery;
- iv. by expedited delivery service; or
- v. by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

If to State Parks:

Commanding Officer
New York State Park Police
Hudson Valley District/Saratoga Zone
65 South Broadway, Suite 103
Saratoga Springs, New York 12866
(518)584-2004

and

General Counsel
NYS Office of Parks, Recreation and Historic Preservation
Albany, NY 12238-0001
Counsel@parks.ny.gov

If to City:

Commissioner of Public Safety
City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866
Non Emergency Telephone: 518-584-1800

b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

17. Agency

Nothing contained herein shall constitute or be construed to create or constitute a legal or *de facto* partnership, joint venture or an agency relationship between the parties.

Signature Pages Follow

SIGNATURE PAGE

IN WITNESS WHEREOF, State Parks and the City have executed this Agreement on the day and year indicated.

Agreed to by City of Saratoga Springs

Date

By: _____
Typed Name: Joanne Yepsen
Title: Mayor

Federal Employer Identification No.: 14-6002423

Agreed to by State Parks:

Recommended by Region:

Date

By: _____
Alane Ball Chinian
Regional Director

Recommended by Park Police

Date

By: _____
Major David Herrick
Acting Director
Division of Law Enforcement
New York State Park Police

Date

By: _____
Andy Beers
Executive Deputy Commissioner

Acknowledgement of the City

STATE OF NEW YORK)
) SS:
COUNTY OF)

On this _____ day of _____ in the year 2014, before me, the undersigned a notary public in and for said state, personally appeared _____, personally known, to me, or proved to me on the basis of satisfactory evidence to be the individual whose name is described within the instrument and acknowledged to me that he/she executed the same in his/her capacity as Mayor of the **City of Saratoga Springs** and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Notary Public

Acknowledgement of State Parks

STATE OF NEW YORK)
) SS:
COUNTY OF)

On this _____ day of _____ in the year 2014, before me, the undersigned a notary public in and for said state, personally appeared Andy Beers, personally known, to me, or proved to me on the basis of satisfactory evidence to be the individual whose name is described within the instrument and acknowledged to me that he/she executed the same in his/her capacity as Regional Director and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Notary Public

APPENDIX A

Version Date January 2014

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University

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

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

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

manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the

Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a

written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of

race, creed, color, national origin, sex, age, disability or marital status.

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

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

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

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach

thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid

may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

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

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

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

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383,

respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

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

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

the Contractor in accordance with the terms of the agreement.

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

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

26. **IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at:
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined

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

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