

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES

AGREEMENT TO PROVIDE COOLING WATER
TO
THE COUNTY OF ALBANY
FOR USE AT THE TIMES UNION CENTER

THIS AGREEMENT, made as of the 1st day of August, 2009 by and between the People of the State of New York, acting by and through John C. Egan, Commissioner of General Services (hereinafter referred to as "State", "OGS" and "Commissioner", respectively), whose office is located on the 41st Floor, Mayor Erastus Corning II Tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 and the County of Albany, acting by and through Michael G. Breslin, County Executive (hereinafter "County" and "County Executive" respectively) whose office is located at the County Office Building, 112 State Street, Albany, New York 12207.

WITNESSETH:

WHEREAS, OGS operates and maintains the Riverfront Pumping Station adjoining the Hudson River at Albany (hereinafter the "Station"), for the cooling water supply needs of the Empire State Plaza and other State buildings under the jurisdiction and supervision of OGS; and

WHEREAS, the County wishes to receive and purchase a portion of the water supply produced by the Station, compatible with and as permitted by the State's needs for such supply, to be used as cooling water to service the Albany County Civic Center (currently known as the "Times Union Center") at South Pearl Street in the City of Albany, (hereinafter the "Civic Center"); and

WHEREAS, OGS estimates the total water production from the Station sufficient to permit the sale of a limited supply to the County for its requirements, compatible with the State's immediate and foreseeable needs, and is willing to furnish and sell such water supply-in the quantities and on the terms and conditions hereinafter specified;

WHEREAS, SMG, located at 51 South Pearl Street, Albany, NY 12207, which currently has a contractual obligation to the County to provide management services for the Civic Center, is acting as the agent of the County for execution of this Agreement; and

NOW THEREFORE, in consideration of their undertakings and commitments herein, the parties mutually agree as follows:

1. Civic Center

For the purposes of this Agreement, the term Civic Center shall mean or include only the structure defined as such by the term "Albany Project Improvements", exclusive of the parking structure, in the Albany Civic Center Repayment Agreement, prepared by the parties hereto and executed between the State, acting through the Director of the

Budget, and the County (and approved by the State Comptroller on May 26, 1989), such definition of "Albany Project Improvements" being incorporated herein by reference as if set forth at length. The parties agree that any water supplied by the State hereunder to the Civic Center shall be used to service or benefit only the Civic Center so defined, exclusive of the parking structure, and shall not be usable for any Other Site Development Improvements, as defined in said Repayment Agreement, or for any other purpose or use.

2. Water Supply

Subject to the conditions and limitations stated herein, OGS agrees to supply to the County, for use solely at the Civic Center, a quantity of water produced at the Station, to consist of and be measured at a flow rate which shall be limited to and at no time exceed 4100 gallons per minute ("gpm") (the "Maximum Flow Rate"). It is understood that such Maximum Flow Rate may be required during peak periods of usage by the Civic Center, with lesser quantities of water supply to be provided in accordance with the Civic Center's lower demand at other times.

3. Water Quality

The State makes no representation, commitment or warranties whatsoever concerning the quality of the water provided hereunder or its suitability for the use or purposes of the County. Without in any manner limiting the previous sentence, the County hereby specifically acknowledges that the State is not responsible for the presence of zebra mussels or other natural or unnatural contaminants in the water provided hereunder, or any damage to the County's equipment that may be caused in whole or in part thereby.

4. Water Connection

The water supply to be provided pursuant to this Agreement shall be furnished from the State's primary 48 inch supply main running from the Station to the Empire State Plaza (the "State Main"), by means of a supply main from a tapping valve on the State Main to the Civic Center, as herein specified (the "County Supply Main"). The County agrees to maintain a 20 inch County Supply Main from the Civic Center to, and including, a tapping valve on the State Main, located at an existing manhole housing a 20 inch valve outlet of the State Main, which manhole is located off the pavement at the north side of the Eagle Street ramp of the Empire State Plaza west bound arterial. The County also agrees to pay costs incurred for repair or replacement of any part of the County Supply Main, including the tapping valve. Additionally, the County agrees to pay costs incurred for future flow meter (which is located on the Civic Center site and reports to the respective recording stations of OGS and the County) and/or related materials replacements or upgrades as deemed necessary through inspections. The County agrees to recalibrate the meter, and share the calibration report with the State, on an annual basis and to allow the State to inspect the meter whenever deemed necessary by OGS.

5. Compensation

The costs of such equipment and installations provided by OGS, as described in Section 4, shall be paid by the County to OGS, upon completion of the respective work or installation, within sixty (60) days of receipt of OGS's billing therefor.

The County further agrees to pay to OGS, in consideration for water supplied by the State during the effective period of this Agreement, compensation at the rate of \$.232 per one thousand (1000) gallons delivered. Said rate shall be inclusive of all operating, administrative, capital or other costs of the State for furnishing of water to the Civic Center hereunder, including costs associated with the State Pollution Discharge Elimination System (SPDES) permit. Such payment shall be made to OGS on a quarterly basis, within thirty (30) days of receipt of billing. It is understood and stipulated that, effective twenty-four (24) months after the commencement date hereof, and then upon every twenty-four (24) month interval thereafter, the State may increase the said rate of compensation specified above for water supplied, based upon a documented increase in the cost to the State of providing the water. Provided, however, that no such increases shall be allowable during the two (2) year notice period provided under Section 7 hereof in the case of a termination effectuated thereunder.

6. Term

The term of this Agreement shall commence on August 1, 2009 and shall end on July 31, 2019, but may be renewed upon written agreement of the parties approved by the State Comptroller, for up to two (2) additional ten (10) year periods.

7. Termination

Either party may terminate this Agreement, for cause or convenience, upon the giving of two (2) years advance notice in writing, respectively to the Commissioner or the County Executive. Any termination hereunder shall not be deemed a breach hereof, and the terminating party shall in no case be liable for any damages to the other party for lost profits or otherwise.

8. Reduction of Water Supply

The parties agree that in the event the State's demand for water from the Station should at any time temporarily increase to such a level that OGS cannot meet the contemporaneous demand of the Center, or in the event unforeseen mechanical or operational difficulties limit the amount of water output from the Station, OGS will at any such time completely meet and satisfy the State's water demands first and will then supply the County with only such quantities as will remain available for delivery to the Civic Center. OGS agrees to use its best efforts to advise the County's designated representative at the Civic Center of any necessary reduction in water supply to the Civic Center, such notice to be given orally and in advance, as is reasonably practicable. OGS will make reasonable efforts in such events to restore the supply to the Civic Center's demand level hereunder, as soon as practicable. The County undertakes and stipulates that it shall have no claim or right of reimbursement or indemnification whatever against

the State for any damages resulting in whole or in part from such suspension, interruption or discontinuance of its water supply from the State (or the failure of the State to adequately give notice to the County of any such suspension, interruption or discontinuance of the water supply), in the absence of a showing of intentional wrong doing on the part of the State, including any willful failure to undertake necessary repairs.

9. Station Maintenance

The parties agree that operational and maintenance requirements for the Station equipment, in particular the water pumps, dictate the scheduling of regular servicing and repair. Said maintenance work may require the temporary removal from service of one or more of the Station pumps and a consequent decrease in the amount of available water supply. In the event of any output reduction occasioned by regular maintenance, a reduction of the County's water supply may be required in accordance with section 8 above. OGS agrees to take all reasonable steps in the scheduling and conducting of said maintenance, so as to minimize the loss of water supply to the Civic Center. OGS agrees to use its best efforts to advise the County, through its authorized representative at the Civic Center, of any regularly scheduled maintenance at the Station, which will necessitate a reduction in pumping capacity. Said notice shall be provided as far in advance as possible, in no event less than twenty-four hours prior to the maintenance work. The County undertakes and stipulates that it shall have no claim or right of reimbursement or indemnification whatever against the State for any damages resulting in whole or in part from any such suspension, interruption or discontinuance of its water supply from the State due to any regularly scheduled maintenance (or the failure of the State to adequately give notice to the County of any such suspension, interruption or discontinuance of the water supply), in the absence of a showing of intentional wrong doing on the part of the State.

10. Indemnification

The County agrees to indemnify and hold the State harmless from any damage to, and destruction of the State Main or any of the State's equipment, plant, installations, fixtures or similar property related to its river water supply from the station and from all damage due to interruption of service from the Station, resulting from the negligent acts or omissions of the County, its agents, contractors or employees, during the term of this Agreement.

11. Force Majeure

Neither party will be liable for losses, defaults, or damages under this Agreement which result from delays in performing, or inability to perform any or all of the - obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Agreement, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, riots, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed or unable to perform. Such party will resume the full performance of its obligations and responsibilities hereunder promptly upon removal of any such cause.

12. Civic Center Operating Procedures

As part of its management program and operating procedures for the Civic Center, the County will endeavor to pre-cool the Civic Center by drawing the water supply from the Station, during the hours of 11:00 p.m. to 7:00 a.m. The County agrees to furnish OGS with its initial procedure manual for the Civic Center's HVAC system, and to supplement such with any revisions or updates thereto as they become available. The County also agrees to furnish OGS, prior to the commencement of each calendar quarter with a written listing or calendar of events at the Civic Center during such next quarter.

13. Compliance With Legal Requirements

The County agrees to comply, at its own expense, with all Federal, State and local laws and regulations applicable to the use and discharge of the condensing water provided herein. The County specifically agrees to obtain its own permits from the State Department of Environmental Conservation, to govern the discharge of its used condensing water (SPDES).

14. Assignment

The County agrees that it will not assign this Agreement, or any interest herein, without the prior written consent of the Commissioner.

15. Captions

The captions contained in this Agreement are intended for convenience and reference purposes only and shall in no way be deemed to define, limit or describe the scope or intent of this Agreement, or any provision thereof, nor in any way affect this Agreement.

16. Conditions Precedent

This Agreement shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the State Comptroller.

17. Appendix A

Appendix A, standard clauses for New York State contracts, attached hereto, is hereby expressly made a part of this Agreement as fully as if set forth at length herein.

18. Repair of Equipment

The parties agree that each of them respectively shall be responsible for the ordinary maintenance and repair of their respective equipment, structures, water main installations and related property that they own or operate under and with relation to this Agreement. The State's equipment shall extend only up to and including the valve where the County Supply Main taps into the State Main, all as more fully described in Section 4

hereof. The County hereby acknowledges that it is aware of the need to have proper automatic shutoff mechanisms installed on its equipment to safeguard against damages that might result in the case of any suspension, interruption or discontinuance of its water supply from the State, and represents that it has, or will be acquiring, such automatic shutoff mechanisms.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CONTRACT NUMBER X003015

Agency Certification

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

SMG, ACTING AS AGENT FOR
THE COUNTY OF ALBANY

By:

Name: Bob Belber
Title: Gen. Mgr.
Federal I.D. No.:

By:

Name: William Hill
Title:

APPROVED AS TO FORM
ANDREW M. CUOMO
Attorney General

APPROVED
THOMAS P. DINAPOLI
State Comptroller

APPROVED AS TO FORM
NYS ATTORNEY GENERAL

OCT 14 2009

Lorraine I. Remo
LORRAINE I. REMO
ASSOCIATE ATTORNEY

APPROVED
DEPT. OF AUDIT & CONTROL

DEC 14 2009

Patricia H. Warner
FOR THE STATE COMPTROLLER

2009 DEC 16 PM 1:43

Individual, Corporate, Partnership or LLC Acknowledgment

STATE OF *New York* }
 :SS.: }

COUNTY OF *Albany* }

On the 8th day of September, in the year 2009 before me personally appeared Robert Belber, known to me to be the person who executed the Invitation for Bids, who being duly sworn by me did depose and say that he resides at 61 Cindy Court Drive in the Town of Rutland, County of Schenectady, State of New York, and further that:

[Check One]

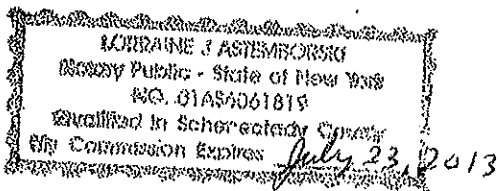
(☐ If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

(☒ If a corporation): he is the General Manager of Tony Union Center (SMC), the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing in the name of and on behalf of said corporation as the act and deed of said corporation.

(☐ If a partnership): ___ he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, ___ he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, ___ he executed the foregoing in the name and on behalf of said partnership as the act and deed of said partnership.

(☐ If a Limited Liability Company): _____ he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _____ he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of _____ he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company

Thomas J. A. Temborski
Notary Public



APPENDIX A
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS
TABLE OF CONTENTS

1. Executory Clause
2. Non-Assignment Clause
3. Comptroller's Approval
4. Workers' Compensation Benefits
5. Non-Discrimination Requirements
6. Wage and Hours Provisions
7. Non-Collusive Bidding Certification
8. International Boycott Prohibition
9. Set-Off Rights
10. Records
11. Identifying Information and Privacy Notification
12. Equal Employment Opportunities For Minorities and Women
13. Conflicting Terms
14. Governing Law
15. Late Payment
16. No Arbitration
17. Service of Process
18. Prohibition on Purchase of Tropical Hardwoods
19. MacBride Fair Employment Principles
20. Omnibus Procurement Act of 1992
21. Reciprocity and Sanctions Provisions
22. Purchases of Apparel

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 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) **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.emplre.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.

STATE OF NEW YORK)

) ss.:

COUNTY OF ALBANY)

On the ____ day of _____ in the year 2009, before me personally appeared _____, to me known and known to me to be the _____ Commissioner of General Services of the State of New York, a duly authorized representative of the People of the State of New York, and _____ he duly acknowledged to me that _____ he executed the same as said _____ Commissioner for and on behalf of the People of the State of New York.

Notary Public

STATE OF NEW YORK)

) ss.:

COUNTY OF ALBANY)

On the ____ day of _____ in the year 2001, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides in the County of Albany, the municipal corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed pursuant to the authority of Resolution No. _____ adopted ____/____/____ of the Albany County Legislature; and that _____ he signed her/his name thereto by like order.

Notary Public