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A. Cover Page



Office for People With
Developmental Disabilities

CONTRACT FOR TITLE

| AGENCY | CONTRACTOR |
|---|---|
| NYS OPWDD (AGENCY) DDSOO (ADDRESS) (ADDRESS) | NAME OF COMPANY ADDRESS TELEPHONE # FACSIMILE# FEIN: SFS VENDOR ID |

CONTRACT TERM: (START DATE) THROUGH (END DATE)

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B. Agreement

AGREEMENT made this, (date)... by and between NYS OPWDD ... **(Agency)...** **Developmental Disabilities State Operations Office** (hereinafter "OPWDD"), with its principal office located in ... (City/Town)..., NY and ... **(VENDOR)...**, (hereinafter "Contractor"), a domestic business entity organized under the laws of the State of New York and having its principal office located in ... (City/State)....

WHEREAS, OPWDD requires the Contractor to provide.... Services..., as more fully set forth in Section G - Scope of Work; and

WHEREAS, Contractor has demonstrated it is qualified to provide such services; and

WHEREAS, OPWDD has determined that it is necessary to have Contractor provide such services.

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein set forth, the parties hereto agree as follows:

1. Contractor shall be paid a maximum sum of \$..... for all services provided hereunder.
2. Hierarchy of Precedent:

In the event of a conflict of interpretation between the parties, the order of the following documents shall prevail:

- a. Appendix A
 - b. This agreement, including other appendices listed on page one
 - c. Invitation for Bid - IFB
3. Contractor will submit billing for the services rendered. Payments will be made based on actual services rendered in accordance with the terms of the Scope of Work, and/or expenses incurred during the course of the engagement, in accordance with the appropriate hourly rates or other payment provisions provided in this Agreement, and/or State of New York ("State") reimbursement rates. Payments shall cover a period of not less than 30 days, and shall be paid after receipt of acceptable, properly documented, bills therefore.
 4. Contractor will meet with appropriate OPWDD personnel in order to obtain the information necessary to fulfill its service responsibilities.
 5. This agreement may be amended, pursuant to agreement of OPWDD, Contractor, and OSC. Contractor shall obtain the prior written approval of OPWDD and OSC approval for any change in the scope or nature of the services performed hereunder. Contractor shall remain responsible for such services.

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6. Contractor agrees that all work produced, and the product of all services rendered pursuant to this agreement, shall be the property of OPWDD. Contractor hereby agrees that any work based on the services rendered under this agreement shall be kept in confidence and not be released, published, or disseminated in any form without the express consent in writing of OPWDD.
7. Contractor shall comply with all laws, rules, orders, regulations, and requirements of Federal, State, and Municipal governments applicable thereto.
8. The relationship of the parties arising out of this agreement shall be that of independent contractor. Contractor shall not be considered an employee of OPWDD or the State, as the result of this agreement, nor shall Contractor represent that such employee relationship exists arising out of this contract.
9. In the event of any dispute regarding this agreement, including but not limited to the implementation and delivery of the services to be provided in this agreement, State laws shall be applied.
10. The contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages, and costs of every nature arising out of the provision of services pursuant to this agreement.
11. Contractor shall communicate with OPWDD as often as may be required in order to keep OPWDD fully apprised of the progress of the project hereunder.
12. Unless modified as provided herein, this contract shall begin on **01 APRIL, 2015** and end on **31 MARCH, 2020**. The State shall have the right to terminate this contract early for: (i) unavailability of funds; (ii) cause; or (iii) convenience. The State may only invoke its right to terminate for convenience if the State has given written notice to the contractor 30 days or more prior to the date of termination.
13. **Metro, Fineson, Brooklyn, Staten Island, IBR, Long Island**
Prices are to remain constant for the initial year of the contract. Approaching every contract anniversary date, the Contractor may request, or OPWDD give notice of, an annual price adjustment for the subsequent year. The request or notice must be submitted in writing between 30 days and 60 days prior to the contract anniversary date. OPWDD has the sole discretion in determining the rate to be approved. The adjustment shall be based upon the most recently available, "CPI-U", not seasonally adjusted, New York-Newark-Jersey City, all items, with the adjustment calculated on a 12-month percent change based on the month 60 days prior to the contract anniversary. Any price adjustment shall not exceed 3.0% per annum.

All Other DDSOOs

Prices are to remain constant for the initial year of the contract. Approaching every contract anniversary date, the Contractor may request, or OPWDD give notice of, an annual price

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adjustment for the subsequent year. The request or notice must be submitted in writing between 30 days and 60 days prior to the contract anniversary date. OPWDD has the sole discretion in determining the rate to be approved. The adjustment shall be based upon the most recently available, "CPI-U", not seasonally adjusted, Northeast Region, all items, with the adjustment calculated on a 12-month percent change based on the month 60 days prior to the contract anniversary. Any price adjustment shall not exceed 3.0% per annum.

14. If this contract is defined as subject to the Prevailing Wage provisions of either Article 8 or Article 9 of Labor Law, it shall be the responsibility of the contractor to determine the current wage rate for the attached PRC. Wage schedules are subject to change on 01 July of every year and the correct wages rate can be determined by entering the PRC number at, currently, <https://applications.labor.ny.gov/wpp/showFindProject.do?method=showIt>.
15. OPWDD reserves the right at any time during the term of this agreement to omit any portion of the services, as may be deemed reasonably necessary without constituting grounds for any claim by Contractor for allowances for damages. If such change or alteration results in a reduction of the services covered by this agreement, a proportionate deduction shall be made from the consideration herein.
16. OPWDD reserves the right to terminate this contract in the event it is found that the certification filed by the Offeror in accordance with State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, OPWDD may exercise its termination right by providing written notification to the Offeror in accordance with the written notification terms of this contract.
17. OPWDD reserves the right to terminate this contract in the event Contractor is unable to supply services for two consecutive weeks.
18. The Contractor agrees that without expense to the State, they will procure and will maintain during the period of the proposal and contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York, covering all operations under this proposal and contract.
 - A. Contractor shall furnish to OPWDD a Certificate or Certificates in a form satisfactory to OPWDD, showing that they have complied with the requirements of this section. New York State Office for People with Developmental Disabilities will be expressly named as additional insured on each policy in accordance with above. Certificates of insurance should be forwarded to OPWDD with the signed agreement and thereafter annually on the contract anniversary date. Certificates shall state that the policies shall not be changed or cancelled until 30 days written notice has been given to OPWDD Required insurances are:
 1. A policy covering the obligations of the successful bidder in accordance with the Workers' Compensation Law. The contract shall be void and of no effect unless the successful bidder procures such policy and maintains it during the period of the contract.

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2. Policies covering bodily injury, liability and property damage of the types hereinafter specified, each with limits of liability not less than \$1,000,000.00 for all damages arising out of bodily injury, including death at any time resulting there from, sustained by one person in any one accident, and subject to that limit for that person, and not less than \$2,000,000.00 for all damages arising out of bodily injury, including death at any time resulting there from, sustained by two or more persons in any accident and not less than \$2,000,000.00 for all damages arising out of injury or destruction of property.
 - B. Contractor's liability insurance issued to and covering the liability of the successful bidder with respect to all work performed by them under the proposal and the contract.
 - C. Protective liability insurance issued to and covering the liability of the people of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder, including omissions and supervisory acts of the State.
19. Contractor shall provide safeguards for services and confidentiality.
 - A. Services performed pursuant to this Agreement are secular in nature and shall be performed in a manner that does not discriminate based on religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
 - B. Funds provided pursuant to this Agreement shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.
 - C. Contractor shall treat all information, including but not limited to, information relating to OPWDD service recipients and providers, obtained by it through its performance under contract, as strictly confidential. Contractor shall not disseminate any information obtained in any manner, to any entity other than OPWDD, except as necessary to the proper discharge of its obligations under contract with OPWDD. All materials and documents produced by the Contractor in the fulfillment of its obligations under contract with OPWDD become the property of OPWDD. The Contractor may not utilize any information obtained via interaction with OPWDD or any other entity, public or private, under this contract in any public medium including, but not limited to (media - radio, television), (electronic/internet), (print - newspaper, policy paper, journal, periodical, book, etc.) or public speaking engagement without the official prior approval of OPWDD Senior Management. Contractor bears the responsibility to uphold these standards rigidly and to require compliance by their employees. Contractor shall require compliance with these confidentiality standards in writing from their subcontractors. Contractor shall keep all such confidentiality agreements on file with all other contract records. Requests for exemption to this policy shall be made in writing, at least 14 days in advance, to the OPWDD Contract Management Unit, 44 Holland Avenue, (3rd Floor), Albany, New York 12229.
20. Criminal History Record Check

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- A. A criminal history record check is a request for information regarding pending criminal charges and criminal convictions with respect to a subject party. Requests are made through OPWDD to the Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI). The check also includes a determination made by OPWDD based on the information received. A criminal history record check is conducted by submitting fingerprints to DCJS and the FBI through an OPWDD process.
- B. Potential employees of providers of services who will have regular and substantial unsupervised or unrestricted physical contact with people with developmental disabilities are required to have criminal history record checks.
- C. CBC Process
- 1) An authorized party must be appointed by the submission of the Authorized Party Designation Form. The authorized party is allowed to request a criminal history record check and receive the results. More than one authorized party may be designated. The authorized party must keep information confidential.
 - 2) Once it has been determined that an applicant meets the criteria for a criminal history record check, the individual must complete the Criminal History Record Check Consent Form. This form must be kept on file. It does not need to be submitted to the CBC unit; however, it must be able to be produced if so requested. The authorized party must then complete the Request for Criminal History Record Check. The Information for Fingerprint Submission Form must also be completed by the applicant and brought to the fingerprinting location.
 - 3) The DDSOO, voluntary agency, or registered provider can schedule an appointment to have fingerprints taken at the OPWDD DDSOO that is most convenient for them. A number of voluntary agencies are also available for "LIVESCAN" fingerprinting. The list of sites and contacts can be obtained by contacting the CBC unit or visiting the OPWDD website (www.omr.state.ny.us) in the "Information for Providers" section under "Criminal history record checks." The applicant must bring a copy of the Request for Criminal History Record Check Form, the Information for Fingerprint Submission Form and necessary identification (picture ID) to the DDSOO in order to be fingerprinted. Alternatively, the DDSOO, voluntary agency or registered provider may "ink and roll" applicants themselves or obtain an "ink and roll" set of fingerprints and mail the fingerprints with the aforementioned forms to the CBC unit or bring them to the DDSOO. Fingerprint cards can be obtained from the CBC unit.
 - 4) There is no out-of-pocket charge for prints taken at an OPWDD facility or for OPWDD, Division of Criminal Justice Services or Federal Bureau of Investigation processing. If fingerprints are taken at a location other than a DDSOO site, there may be a charge for the physical taking of prints.
 - 5) Results are typically available 2-3 days after the fingerprints are processed.
 - 6) Results will be sent to voluntary agencies and DDSOOs electronically through a secure message address. For registered providers, if the provider obtains a secure message address the results will be sent electronically. The OPWDD help desk (518.381.2100) can



- assist in obtaining a secure message address. If a registered provider does not wish to obtain a secure message address results will be sent by US mail to the authorized party.
- 7) The CBC unit will notify the authorized party of the determination indicating denial, pending denial, abeyance (meaning that a determination cannot be made at the present) or non-denial for each employee. At the time of notification, the CBC unit will also inform the authorized party what actions shall or may be taken by the provider regarding the person.
 - 8) Voluntary agencies are permitted to utilize employees (including deemed employees) or volunteers prior to receiving the results from the CBC unit, once fingerprints are submitted to OPWDD. OPWDD requirements restrict the person's activities and mandate oversight during this period. Temporarily approved status is not available for employees of registered providers.
 - 9) People hired by a registered provider cannot work with OPWDD or voluntary agency consumers until the results are received from the CBC unit.
 - 10) If the CBC unit intends to issue a denial the person has the right to submit a written explanation as to why the application should not be denied. In addition, the person may obtain, review, and seek correction of his or her criminal history record information in accordance with procedures established by the Division for Criminal Justice Services (DCJS) and/or the Federal Bureau of Investigation (FBI). OPWDD must be kept informed of the status of a request to correct criminal history record information.
 - 11) At any point when a subject party ceases to be employed by or affiliated with the provider (or is not hired) the CBC unit must be notified by the submission of the Subject Party Change in Status Form within 14 days. If the subject party is taking a leave of absence, the provider is not required to submit the form. If a provider hires a seasonal employee and the employee is expected to return the next year, the provider does not have to submit the form. If a seasonal employee is not expected to return, the form must be submitted.
21. **VENDOR RESPONSIBILITY:** The CONTRACTOR agrees to adhere to all New York State vendor responsibility requirements relative to business integrity, previous contract performance, legal capacity and regulatory authority to conduct business in New York State and financial and organizational capacity.
- 1) **General responsibility language:**

The CONTRACTOR shall at all times during the contract term remain responsible. The CONTRACTOR agrees, if requested by the Commissioner of the Office for People with Developmental Disabilities or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
 - 2) **Suspension of work for non-responsibility finding:**

The Commissioner or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this CONTRACT, at any time, when she or her designee discovers information that calls into question the responsibility of the CONTRACTOR. In

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the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the suspension order. CONTRACT activity may resume at such time as the Commissioner or her designee issues a written notice authorizing a resumption of performance under the CONTRACT.

3) Termination for non-responsibility:

Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard with appropriate Office for People with Developmental Disabilities officials or staff, the CONTRACT may be terminated by the Commissioner of the Office of People with Developmental Disabilities or her designee at the CONTRACTOR'S expense where the CONTRACTOR is determined by the Commissioner of the Office for People with Developmental Disabilities or her designee to be non-responsible. In such event, the Commissioner of the Office for People with Developmental Disabilities or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

22. This agreement constitutes the entire agreement of the parties hereto and all previous communications between the parties, whether written or oral, with reference to the subject matter of this contract are hereby superseded.

DO NOT COMPLY

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1) Signature Page

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the dates appearing next to their signatures:

(Contractor)
(Address)
(Address)

Signature Date

Print Name & Title

NYS OPWDD
_____ DDSOO
C/O Taconic DDSOO
26 Center Circle,
Wassaic, New York 12592

Signature Date

Deborah C. Grieco, Business Officer

Print Name & Title

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.

Approved as to Form:
Attorney General

Approved:
Thomas P. DiNapoli
State Comptroller

By: _____

By: _____

Date: _____

Date: _____



C. Appendix A – Standard Clauses for New York State 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 State Finance Law § 41, 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 State Finance Law § 138, 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 Approval.** In accordance with State Finance Law § 112 (or, if this contract is with the State University or City University of New York, Education Law § 355 or § 6218), 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 \$25,000, 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 § 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, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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

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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 State Finance Law § 139-d, 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 Labor Law § 220-f and State Finance Law § 139-h, 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 (2 NYCRR § 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

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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 Executive Law § 312 and 5 NYCRR Part 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

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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 clause. 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 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.

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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, prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and complies with specifications and provisions regarding use of tropical hardwoods as detailed in Finance Law § 165. 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 Contractor to meet with State approval.

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 Finance Law § 165), 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, New York 10017
Telephone: 212-803-2414 email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) 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 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879 (5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana, and Hawaii.
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 § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.
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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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.

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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 § 5-a, if the contractor fails to make the certification required by Tax Law § 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/Offerors pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferors-pursuant-nys-iran-divestment-act-2012>

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.

27. Admissibility of Reproduction of Contract. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

October 2019



D. Appendix A: Supplement

The parties to the attached contract, Contract **Enter Contract Number here**, agree to be bound by the following, which are hereby made part of said contract.

1. The contractor shall not discriminate against any applicant for services for reasons based upon religion or religious belief. The contractor shall not use any monies received from the State to benefit or inhibit a particular religion or religious belief.
2. The relationship of the contractor to the State is that of an independent contractor and the officers and employees of the contractor shall conduct themselves in a manner consistent with such status, shall neither hold themselves out as nor claim to be officers, employees, or agents of the State by reason thereof, and shall not make any claim, demand or application to or for any right of the State, including, but not limited to, Workers' Compensation coverage, unemployment insurance benefits, Social Security coverage or retirement membership credit.
3. The contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons or property, including death, arising out of or related to the services to be rendered by the contractor. It shall indemnify and hold harmless the State and its officers and employees from any and all claims, suits, actions, damages and costs of every nature and description arising out of or related to the services to be rendered by the contractor or the violation by the contractor, its employees, servants, agents, or contractors, of any law, ordinance, rule or regulation in connection therewith.
4. Neither party shall be liable for losses, defaults, or damages under this contract which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this contract, due to or because of acts of God, the public enemy, earthquake, floods, typhoons, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party shall resume full performance of such obligations and responsibilities promptly upon removal of any such cause.
5. If any term or provision of the contract shall be found to be illegal or unenforceable, then, notwithstanding, the contract shall remain in full force and effect and such term or provision shall be deemed stricken from the contract.
6. The contractor shall comply with all statutory requirements relating to the confidentiality of information obtained during the performance of the contract.
7. The contractor shall certify that payment requests do not duplicate reimbursement of costs and services received from other sources.
8. Upon termination of the contract, there shall be a reconciliation based upon the services provided by

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the contractor and the payments made by the State. The contractor shall refund to the State any overpayments made by the State pursuant to the contract.

9. Unless otherwise provided, the contract may be amended, modified, renewed, and/or renegotiated by written agreement of the parties which shall become effective upon approval by the Office of the State Comptroller.
10. Unless otherwise provided, the OPWDD may cancel the contract without cause upon serving thirty (30) days' written notice on the contractor. Cancellation by mutual agreement of all parties to the contract will be allowed subject to documentation in writing.
11. No part of the contractor's income or resources shall be used directly or indirectly for the benefit of, or payment to, any State employee for services provided under this contract other than employees whose names are furnished to the OPWDD and no employee so identified shall receive any benefit or payment under this contract without prior written approval by the OPWDD.
12. This contract contains all the terms and conditions agreed upon by the parties and no statement or representation, oral or written, express or implied, shall be deemed to exist or to bind either party or to vary any of the terms and conditions of the contract.
13. Where applicable, the contractor shall maintain eligibility for reimbursement from any program that provides payment for services and shall apply for and obtain all funds available for the program from any public or private source. Upon request, the OPWDD shall assist in establishing the contractor's eligibility for such funds.
14. Contractor must comply with the provisions of Mental Hygiene Law Section 16.33 and Executive Law Section 845-b, the regulations related to criminal history record checks adopted by OPWDD in connection with the fingerprinting of certain individuals and the policies and procedures of OPWDD in connection therewith. In particular, any individual employed by or affiliated as a volunteer with a provider of services as defined in Section 1.03(5) of the Mental Hygiene Law who has regular and substantial unsupervised or unrestricted physical contact with people receiving services (such contact hereinafter referred to as "consumer contact") and who hereafter submits or who has submitted an application for employment or otherwise becomes or became affiliated with the Contractor on or after April 1, 2005 (such individual hereinafter referred to as "a subject party") shall be required to consent and submit to a criminal history record check. Upon the completion thereof, the contractor shall deny or hold in abeyance employment or volunteer opportunities involving consumer contact to a subject party when directed to do so by OPWDD and in those instances the contractor shall notify the subject party that his or her criminal history record information is the basis for such action taken by the contractor.
15. Federal False Claims Act (31 USC Sections 3729-3733) and the New York State False Claims Act (State Finance Law Article XIII, Sections 187-194) – contractor is bound by all of the related laws. The law requires that OPWDD provide its contractors with information about the federal False Claims Act, the New York State False Claims Act, and other federal and State laws that play a role in preventing and detecting fraud, waste and abuse in federal health care programs. This

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information must include the whistleblower protections that are in these laws. OPWDD must also provide its contractors with information about OPWDD's own policies and procedures for detecting and preventing waste, fraud and abuse. You can find detailed descriptions of these laws, their whistleblower protections and OPWDD's policies on the OPWDD website – (www.opwdd.ny.gov). At the home page, select Information for Providers on the left side of the page, then select False Claims Recoveries. You can also visit the New York State Medicaid Inspector General website at www.omig.state.ny.us to obtain information about these laws. A paper copy of the detailed descriptions of the laws and of OPWDD policies and procedures related to waste, fraud and abuse is available from the OPWDD Contract Management Unit, 3rd floor, 44 Holland Ave., Albany NY 12229-0001. As a contractor of OPWDD, you are required to participate in the reviews and audits described in OPWDD's policies, and to abide by these policies with respect to funding for OPWDD services. You are also required to make the information at the OPWDD website address listed above available to all your employees and to all of your contractors involved in performing work under your contract with OPWDD.

16. Both the United States Department of Health and Human Services and the Office of the Medicaid Inspector General (OMIG) can exclude persons and organizations from federal and State healthcare programs. If this contract is funded through the New York State Medicaid program, the following applies:

For contractors

The contractor represents that:

- (1) The United States Secretary of Health and Human Services has not excluded the contractor from participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§1320a-7 or 1320a-7a, or excluded the contractor from eligibility to provide services under the Social Security Act on a reimbursable basis under 42 U.S.C. §1320c-5;
- (2) The Secretary of Health and Human Services has not directed the New York State Department of Health or any other New York State government agency to exclude the contractor from participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§1320a-7(d) or 1320a-7a(a);
- (3) The New York State Medicaid Inspector General has not excluded the contractor from participation in the New York Medicaid program under 18 NYCRR Part 515, and
- (4) No federal or State agency has otherwise excluded the contractor from participation in the New York Medicaid program or excluded the contractor from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis.

If, during the term of this contract, the contractor is excluded from participation in a federal health care program or the New York Medicaid program, or is excluded from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis, under the authorities stated above, this contract shall be immediately

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terminated.

17. On February 12, 2007 the Diesel Emissions Reduction Act took effect as law. Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL"), it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirements of the law apply to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. As a contract vendor, the Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and State or regional public authorities. Therefore, the bidder/contractor hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the bidder/contractor.

18. Notices:

(1). All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

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

State of New York, Office for People with Developmental Disabilities (OPWDD)

Name: Deborah C. Grieco

Title: Business Officer

Address: 26 Center Circle, Wassaic, NY 12592

Telephone Number: (845) 877-6821 x3122

Facsimile Number: (845) 877-3004

E-Mail Address: Deborah.C.Grieco@opwdd.ny.gov

Contractor Name: **Enter text.**

Name: **Enter text.**

Title: **Enter text.**

Address: **Enter text.**

Telephone Number: **Enter text.**

Facsimile Number: **Enter text.**

E-Mail Address: **Enter text.**

(2). Any such notice shall be deemed to have been given either at the time of personal delivery

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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.

- (3). 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.
19. 14 NYCRR Sec. 624.5(u)(2) An agency shall not take any retaliatory action against an employee or agent who believes that he or she has reasonable cause to suspect that a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD in accordance with this section and/or if the employee or agent cooperates with the investigation of a report made to the VPCR or OPWDD. This extends to NY State contractors; associated language can be found at:
- https://opwdd.ny.gov/regulations_guidance/opwdd_regulations/Implementation-ofProtectionofPeoplewithSpecialNeedsActandReformstoIncidentManagement%E2%80%932-15
20. General conditions relating to Article 15-A and Article 17B of the Executive Law are set forth in the following pages.

March 2020



E. Addendum to Appendix A: Supplement

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The Office for People with Developmental Disabilities (OPWDD) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR") for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OPWDD, to fully comply and cooperate with OPWDD in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State-certified minority and women-owned business enterprises ("MWBEs"). The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to OPWDD pursuant to the Contract and applicable law.
- D. OPWDD's agency MWBE goals are: an overall goal of 30 percent for MWBE participation, 17 percent for New York State-certified minority-owned business enterprise ("MBE") participation and 13 percent for New York State-certified women-owned business enterprise ("WBE") participation (collectively, "MWBE Contract Goals").

II. Contract Goals

- A. For purposes of this Contract, OPWDD hereby establishes an overall goal of zero (0) percent for MWBE participation, zero (0) percent for New York State-certified minority-owned business enterprise ("MBE") participation and zero (0) percent for New York State-certified women-owned business enterprise ("WBE") participation (collectively, "MWBE Contract Goals") based on the



current availability of MBEs and WBEs.

OPWDD encourages contractors to make every effort to include the participation of MWBE firms whenever practical in the performance of this contract to meet OPWDD's agency goals.

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25percent of the total value of the contract]
- D. The Contractor must document "good faith efforts," pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
 2. Any responses by MWBEs to the Contractor's outreach;
 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by OPWDD with MWBEs; and,
 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity ("EEO")

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:

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1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to OPWDD within seventy-two(72) hours after the date of the notice by OPWDD to award the Contract to the Contractor.
3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, OPWDD may require the Contractor or subcontractor to adopt a model statement (see Equal Employment Opportunity Policy Statement)
4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
 - c. 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.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Staffing Plan (is required for state contracts with a total expenditure in excess of \$250,000)

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by OPWDD.

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D. Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by OPWDD on a monthly basis for construction contracts or a quarterly basis for all other contracts during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.

- E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by OPWDD, through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to OPWDD either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OPWDD shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by OPWDD. Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, OPWDD shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If OPWDD, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, OPWDD may issue a notice of deficiency to

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the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to OPWDD by the 5th day following the end of each quarter during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where OPWDD determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to OPWDD liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by OPWDD the Contractor shall pay such liquidated damages to OPWDD within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

March 2020



**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

By signing this contract, the awardee/contractor/organization agrees to adopt the following policies with respect to the project/program/product being developed or services rendered at the New York State Office for People with Developmental Disabilities.

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and 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.

(b) This organization shall state in all solicitation 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 disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

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STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

| | | |
|---------------------------|---|--|
| Solicitation No.: | Reporting Entity: | Report Includes Contractor's/Subcontractor's: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force |
| Offeror's Name: | <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor | |
| Offeror's Address: | Subcontractor's name _____ | |

| EEO – Job Category | Total Work Force | Work force by Gender | | Work force by Race/Ethnic Identification | | | | | | | | | | Disabled | | Veteran | | |
|----------------------------|------------------|----------------------|--------------|--|--|---------------|--|------------------|--|---------------|--|-------------------------|--|----------|-----|---------|-----|--|
| | | Total Male | Total Female | White (M) (F) | | Black (M) (F) | | Hispanic (M) (F) | | Asian (M) (F) | | Native American (M) (F) | | (M) | (F) | (M) | (F) | |
| Officials / Administrators | | | | | | | | | | | | | | | | | | |
| Professionals | | | | | | | | | | | | | | | | | | |
| Technicians | | | | | | | | | | | | | | | | | | |
| Sales Workers | | | | | | | | | | | | | | | | | | |
| Office/Clerical | | | | | | | | | | | | | | | | | | |
| Craft Workers | | | | | | | | | | | | | | | | | | |
| Laborers | | | | | | | | | | | | | | | | | | |
| Service Workers | | | | | | | | | | | | | | | | | | |
| Temporary / Apprentices | | | | | | | | | | | | | | | | | | |
| Totals | | | | | | | | | | | | | | | | | | |

| | | |
|--------------------------------------|-------------------|--|
| Prepared by (Signature): | Telephone: | Date: |
| | Email: | |
| Name & Title of Preparer: | | Submit completed with bid or proposal M/WBE 101 (Rev 03/11) |



General Instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (MWBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

Instructions for completing:

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the OMWBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** – (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** – a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** – person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** – a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** – a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES

- **DISABLED INDIVIDUAL** – any person who:
 - Has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - Has a record of such impairment, or
 - Is regarded as having such an impairment
- **VIETNAM ERA VETERAN** – a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** – male or female

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PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. NYS Office of People with Developmental Disabilities recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of NYS Office of People with Developmental Disabilities contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, NYS Office of People with Developmental Disabilities conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>.

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

Rev 03-2020

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 Department Code: 3660____



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F. M/WBE Utilization Plan

INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided be each Minority and Women-owned Business Enterprise under the contract. Attach additional sheets if necessary.

Offeror's Name:

Federal Identification Number:

Address:

Solicitation Number:

City, State, Zip Code:

Telephone Number:

Region/Location of Work:

M/WBE Goals in the Contract: MBE % WBE %

| 1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No. | 2. Classification | 3. FEIN | 4. Detailed Description of Work (Attach additional sheets, if necessary) | 5. Dollar Value of Subcontracts/Supplies/Services and Intended performance dates of each component of the contract. |
|--|---|---------|---|---|
| A. | NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE | | | |
| B. | NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE | | | |

6. IF UNABLE TO FULLY MEET THE M/WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (MWBE 104).

| | | |
|---|--|---------|
| Prepared By: Signature: _____ Date: _____ Print Name & Title: SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE CONTRACT TERMINATION. | Telephone No: | E-mail: |
| | FOR MWBE USE ONLY | |
| | Reviewed By: | Date: |
| | UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: Contract No: Contract Award Date: Estimated Date of Completion: Amount Obligated Under the Contract: Description of Work: NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ NOTICE OF ACCEPTANCE ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ | |



G. Scope of Work

*****Copy and paste Scope of Work from IFB, make sure you review any reference to schedules or locations for accuracy specific to the contract*****

*****Please make sure the following language is included in the ACCOUNTING section*****

eInvoicing information may be found at: <https://bsc.ogs.ny.gov/nys-vendors>

The State of New York may require the Contractor to submit billing invoices electronically.

PAYMENT

Payments will be made based on actual services rendered. (****This language should be used if applicable.****)

Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.

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H. Cost & Justification

Contract Term: _____

Cost Proposal: \$... per month

| | |
|------------------|--|
| Company Name: | |
| Address | |
| FEIN: | |
| Telephone Number | |
| | |

Cost assumes an annual CPI increase of 3% maximum

| | | Monthly Cost | # of Months | | | Period (FY) Total | |
|--|--|--------------|-------------|--|--|-------------------|--|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | Total | |

DO NOT COMPLETE

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Department Code: 3660____



NEW YORK STATE

Contract Number: _____

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I. Appendix X

CONTRACT TERM: _____

REVISED TOTAL FUNDING: _____

This AGREEMENT between the STATE OF NEW YORK, acting by and through _____ Developmental Disabilities Office (OPWDD), and _____ (Contractor), for modification of contract number noted above as follows:

All other provisions of said Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures:

SIGNATURES

Contractor

OPWDD

By _____

By _____

(Print Name):

(Print Name):

Title _____

Title _____

Date _____

Date _____

State 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.

State of _____)
County of _____) ss:

On this ____ day of _____, 20____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____ that he/she is the _____, of the CONTRACTOR described in and which executed the above instrument; and that he/she has the authority to sign on behalf of said CONTRACTOR; and that he/she executed the foregoing agreement for and on behalf of said CONTRACTOR

Notary Public

ATTORNEY GENERAL:

OFFICE OF THE STATE COMPTROLLER:

(Signature)

(Signature)

Title _____

Title _____

Date _____

Date _____