



E-2

## TOWN AND VILLAGE OF HARRISON ENGINEERING DEPARTMENT



**Michael J. Amodeo, P.E., CFM**  
*Town/Village Engineer*

Alfred F. Sulla, Jr. Municipal Building  
1 Heineman Place  
Harrison, New York 10528

**Frank Balbi, P.E., CFM**  
*Assistant Engineer*

December 3, 2012

---

Supervisor Ron Belmont and  
Members of the Town Board  
Town of Harrison  
1 Heineman Place  
Harrison, New York 10528

Re: Pre-Disaster Mitigation  
Installation of an Emergency Generator at Town Hall  
New York State Office of Emergency Management

Dear Supervisor Belmont and Members of the Town Board:

In 2008, the Town of Harrison applied for a grant for the installation of an emergency generator at Town Hall. We received notification that the project has been funded and we can commence with the final design plans and go out to bid for the project. The federal share of the grant is \$125,000.00 with the Town contributing at least \$51,570.00

Authorization is requested for the Law Department of review the attached agreement and upon review the Supervisor to execute same. This agreement is the New York State Office of Emergency Management and the Town of Harrison.

Respectfully submitted,

Michael J. Amodeo, P.E., CFM  
Town/Village Engineer

MJA/fmb

Attachment

Cc: Anthony P. Robinson, Commissioner of Public Works  
Maureen MacKenzie, Comptroller  
Law Department

## STATE OF NEW YORK MULTI-YEAR AGREEMENT

<p><b>STATE AGENCY</b> (Name and Address):                  New York State Office of Emergency Management                  ("NYSOEM") 1220 Washington Avenue, Bldg 22, Suite                  101, Albany, New York 12226</p>	<p><b>CONTRACT NUMBER:</b> C000612</p> <p><b>BUSINESS UNIT:</b> DHS01</p> <p><b>DEPARTMENT ID:</b> 1160000</p>
<p><b>CONTRACTOR</b> (Name and Address):                  Town and Village of Harrison                  1 Heineman Place                  Harrison, NY 10528-3055</p>	<p><b>TYPE OF PROGRAM(S):</b>                  Federal Emergency Management Agency – Legislative Pre-Disaster Mitigation (LPDM) 2008</p>
<p><b>CHARITIES REGISTRATION NUMBER:</b></p> <p><b>NYS VENDOR ID:</b> Town1000001489 &amp; Village                  1000001490</p> <p><b>MUNICIPALITY NO.:</b> (if applicable) 360912</p>	<p><b>INITIAL CONTRACT PERIOD</b>                  (enter the full multi-year contract term):</p> <p>FROM: October 12, 2012                  TO: October 12, 2014</p> <p><b>FUNDING AMOUNT FOR INITIAL PERIOD</b>                  (enter the full multi-year dollar amount):                  Federal Share - \$124,999.94                  Total Contract amount – \$124,999.94</p>
<p><b>STATUS:</b></p> <p>CONTRACTOR IS ( ) IS NOT (X)                  A SECTARIAN ENTITY</p> <p>CONTRACTOR IS ( ) IS NOT (X)                  A NOT-FOR-PROFIT ORGANIZATION.</p>	<p><b>MULTI-YEAR TERM</b>                  (enter the full multi-year contract term):</p> <p>FROM: October 12, 2012                  TO: October 12, 2014</p>
<p><b>APPENDICES ATTACHED AND PART OF THIS AGREEMENT:</b></p>	
<p><input checked="" type="checkbox"/> APPENDIX A</p>	<p>Standard Clauses as required by the Attorney General for all State contracts</p>
<p><input type="checkbox"/> APPENDIX A1</p>	<p>Agency-specific Clauses</p>
<p><input checked="" type="checkbox"/> APPENDIX B</p>	<p>Budget</p>
<p><input checked="" type="checkbox"/> APPENDIX C</p>	<p>Payment and Reporting Schedule</p>
<p><input checked="" type="checkbox"/> APPENDIX D</p>	<p>Program Workplan</p>
<p><input checked="" type="checkbox"/> APPENDIX X</p>	<p>Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)</p>
<p><input checked="" type="checkbox"/> OTHER (Identify)</p>	<p><u>Appendix - October 12, 2012 - FEMA – Grant Approval Letter</u></p>
<p><input type="checkbox"/> OTHER (Identify)</p>	<p>_____</p>
<p><input type="checkbox"/> OTHER (Identify)</p>	<p>_____</p>
<p><input type="checkbox"/> OTHER (Identify)</p>	<p>_____</p>

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

<p><b>CONTRACTOR</b></p> <p><u>Town of Harrison</u></p> <hr/> <p>By: _____</p> <p style="text-align: center;"><u>Ron Belmont</u> Printed Name</p> <p>Title: <u>Supervisor/Mayor</u></p> <p>Date: _____</p>	<p>Contract No. _____</p> <p><b>STATE AGENCY</b></p> <p><u>NYSOEM</u></p> <hr/> <p>By: _____</p> <p style="text-align: center;"><u>Susan A. Picarillo</u> Printed Name</p> <p>Title: <u>Deputy Director</u></p> <p>Date: _____</p> <p>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."</p>
--	---

STATE OF NEW YORK )  
 ) SS.:  
 County of \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, 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 \_\_\_\_\_, the corporation described herein which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the board of directors of said corporation.

(Notary) \_\_\_\_\_

<p><b>ATTORNEY GENERAL'S SIGNATURE</b></p> <p>_____</p> <p>Title: _____</p> <p>Date: _____</p>	<p><b>STATE COMPROLLER'S SIGNATURE</b></p> <p>_____</p> <p>Title: _____</p> <p>Date: _____</p>
--	--

STATE OF NEW YORK  
MULTI YEAR AGREEMENT

This AGREEMENT is hereby made by and between the State of New York agency (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

---

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT;

NOW THEREFORE, in consideration of the promises, responsibilities and covenants herein, the STATE and the CONTRACTOR agree as follows:

I. Conditions of Agreement

- A. The period of this AGREEMENT shall be as specified on the face page hereof. Should funding become unavailable, this AGREEMENT may be suspended until funding becomes available. In such event the STATE shall notify the CONTRACTOR immediately of learning of such unavailability of funds, however, any such suspension shall not be deemed to extend the term of this AGREEMENT beyond the end date specified on the face page hereof.
- B. Funding for the entire contract period shall not exceed the amount specified as "Funding Amount for Initial Period" on the face page hereof.
- C. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- D. To modify the AGREEMENT, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, change in scope, or change in the term, is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A1.

- E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Workplan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.
- F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.
- G. Any proposed modification to a contract that will result in a transfer of funds among program activities or budget cost categories, but does not affect the amount, consideration, scope or other terms of such contract must be submitted to OSC for approval when:
  - The amount of the modification is equal to or greater than ten percent of the total value of the contract for contracts of less than five million dollars; or
  - The amount of the modification is equal to or greater than five percent of the total value of the contract for contracts of more than five million dollars.
- H. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.

## II. Payment and Reporting

- A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.

- B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services, a sum not to exceed the amount noted on the face page hereof. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.
  - C. The CONTRACTOR shall meet the audit requirements specified by the STATE.
- 

### III. Terminations

- A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.
- B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.
- C. The STATE may terminate this AGREEMENT without cause by ninety (90) days prior written notice.
- D. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A1.
- E. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.
- F. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.
- G. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

IV. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. 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.
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

V. Property

- A. Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A1.

VI. 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 on the basis of 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. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the contract and in conformity with applicable provisions of laws and regulations, or specified in Appendix A1.





U.S. Department of Homeland Security  
Region II  
Jacob K. Javits Federal Office Building  
26 Federal Plaza, Room 1311  
New York, New York 10278-0002



**FEMA**

October 12, 2012

Mr. Steven Kuhr  
Governor's Authorized Representative  
New York State Division of Homeland Security & Emergency Services  
Office of Emergency Management  
Building #22, Suite 101  
1220 Washington Avenue  
Albany, New York 12226-2251

RE: Pre-Disaster Mitigation – Joint Explanatory Statement (LPDM-JES) FY 2008  
LPDM-PJ-02-NY-2008-024  
Town/Village of Harrison

Dear Mr. Kuhr:

This letter serves as a supplemental notice of the Town/Village of Harrison sub-grant award through the Pre-Disaster Mitigation-Joint Explanatory Statement grant program. The sub-grant award was accepted by your office on September 26, 2012. Agreement Articles and conditions of approval are identified within the Federal Emergency Management Agency (FEMA) eGrants system where this letter is attached as an amendment.

The approved scope of work requires that Town/Village of Harrison, as Sub-grantee, satisfy the requirements of Section 203 (g)(h)(i) of the Robert T. Stafford Act Relief Emergency Assistance Act.

Based on the information provided within the application, an October 12, 2014 project completion deadline is established for this project. This deadline provides, ample time for the Sub-grantee to complete all activities identified within the approved scope of work. The proposed scope of work is to install a generator at the municipal building.

Any change to the approved scope of work as identified in the Town/Village of Harrison's sub-application and this correspondence must be submitted by your office to FEMA for consideration and approval prior to implementation. Any modification to the approved scope of work that does not receive prior approval from FEMA would jeopardize grant reimbursement.

October 12, 2012  
Mr. Steven Kuhr  
LPDM-PJ-02-NY-2008-024  
Page 2 of 2

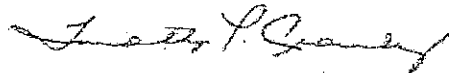
Funding has been made available in an amount not to exceed the total project cost of \$176,570.34 with a Federal share of \$124,999.94 and a required 25% non-Federal matching share of \$51,570.40.

Please notify the Subgrantee of project approval. In order to request a period of performance extension, the State must submit a formal written request to the Regional Director. The request must be made no later than 60 days prior to the expiration of the period of performance and must include a justification for the extension. This justification must also demonstrate that work is in progress and that it can be completed within the extended period of performance being requested. Other information required with this request includes a revised budget information form (regardless of whether or not there are changes to the budget); copies of any contracts entered into between the subgrantee with vendors, percentage of work completed and a description of all work completed. Extensions may not be considered for projects that are a result of delays in project initiation and implementation.

Any modifications to the scope of work must be submitted to FEMA for approval or funding will not remain eligible for this project. Problems or circumstances affecting completion dates, scope of work, or project costs that are expected to result in noncompliance with the approved grant conditions are to be described in the quarterly progress report. Requests for project time extensions will only be considered in instances where applicants have provided the grantee with accurate quarterly status reports. It is suggested that quarterly meetings be scheduled to review the projects status.

FEMA's staff is available to support State and local staff and provide technical assistance as requested. If you, your staff, or the Subgrantee should have any questions please contact Yemi Odutola at 212-680-8525 or [Yemi.Odutola@fema.dhs.gov](mailto:Yemi.Odutola@fema.dhs.gov)

Sincerely,



Timothy P. Crowley  
Director  
Mitigation Division

## APPENDIX B

### Budget Information Legislative Pre-Disaster Mitigation (LPDM) 2008 – Grant Program Project Expenditure Plan

You must provide a detailed (Line Item) Expenditure Plan that reflects the elements of the approved LPDM project identified in your original application and approved in the FEMA approval letter. The expenditure plan and approved project scope of work must be linked. Include funding in the activity/line items that are appropriate to your project. All costs should be reasonable based on industry standards. Reflected among your project's costs may be but not limited to:

<u>Activity/Line Item</u>	<u>Total Project Cost</u>	<u>Federal Share (75%)</u>
▪ Engineering and Design	_____	_____
▪ Demolition and Removal	_____	_____
▪ Construction and project improvement	_____	_____
▪ Labor	_____	_____
▪ Materials and Supplies	_____	_____
▪ Equipment and Equipment Rentals	_____	_____
▪ Transportation	_____	_____
▪ Other	_____	_____
<b>TOTALS:</b>	<b>\$176,570.34</b>	<b>\$124,999.94</b>

Please use total project cost when computing your individual line item expenditures.

## Appendix C

### Payment and Reporting Schedule

**Payments/Reimbursement Requests:** The Grant Program is a reimbursement program. This means, Contractor is reimbursed for work completed and funds expended. Contractor shall submit to NYSOEM written requests for reimbursement based upon ongoing project implementation and the submission and verification of eligible expenditures. Reimbursement does not have to await the full completion of approved projects; instead, periodic reimbursements can be made as the project is being implemented. In instances where the periodic reimbursement approach is desired, such requests should not be made more frequently than once every three months.

#### Reporting Schedule –

**Quarterly Reports:** During the project implementation process the Contractor shall submit quarterly progress reports to the State until project completion. These reports are reviewed and approved by the State before being transmitted to FEMA. Quarterly reports must include project status, relevant non-construction and construction activities, anticipated completion date, financial information such as expenditure to date, problems encountered, assistance required, etc... Any problem or circumstances affecting completion dates, scope of work or project costs or which could be expected to result in noncompliance with the approved grant conditions shall be described in the report. Requests for additional project time extensions will only be considered in instances where Contractor has provided State with accurate quarterly status reports.

**The first quarterly report is due to OEM within fifteen days after the end of the first full quarter following the notification of project approval.** Therefore, the first quarterly report might include activities extending longer than three months. Whether or not construction has begun, this first report is still due within the required timeframe. The Quarterly Progress Report Form provided in the Project Management Handbook should be completed and submitted to OEM when the first quarterly report is due, and for subsequent quarterly reports. Quarterly reports are due by the 15th of the month following the end of every quarter, until the project is completed. Reports are therefore due by January 15, April 15, July 15 and October 15.

## **Appendix D**

### **Program Work Plan**

Scope of Work: Install generator at the municipal building.

---

---

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

December, 2011

**TABLE OF CONTENTS**

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
<hr/>	
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7

**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

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

required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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



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

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

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually

agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to

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

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

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

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict

with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the

subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.**

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

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

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

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

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

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

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

retained the documentation of these efforts to be provided upon request to the State;

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.**

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

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

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

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