Attachment 11C

LEASE FOR STATE-OWNED LAND, NYSDOT

Inwood Mound Project (Phase Two)
Lease #L03110R
NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
REAL ESTATE DIVISION  
LEASE FOR USE OF STATE-OWNED PROPERTY

P.I.N. 0052.00.201    Inventory No. N/A    Account No. 02345

Property Location: Southwesterly side of Nassau Expressway between Rockaway Turnpike and Peninsula Boulevard Extension (Incinerator Road- Bay Boulevard); being a 278,007.3 ± Square Feet (6.38± acres) parcel shown and described on the 'Description and Map of the Subject Property' attached to and incorporated in this Lease as Exhibit A.

County: Nassau

Town: Hempstead    City/Village: Inwood

THIS LEASE, made this day of , 20 , between

Leasee:

Address:

hereinafter referred to as "Lessee," and the COMMISSIONER OF TRANSPORTATION FOR THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as "the State,"

WITNESSETH:

WHEREAS, the State is the owner of the above identified property; and

WHEREAS, the Lessee wishes to use, occupy and have exclusive possession and control of said property; and

WHEREAS, the Lessee has successfully completed the removal of debris located on the leased premises to the State’s satisfaction pursuant to Highway Work Permit #2014-10-37888.

NOW, THEREFORE, the State hereby grants this lease to the Lessee, subject to the following covenants and conditions:

1. The State hereby leases property on the southwesterly side of Nassau Expressway between Rockaway Turnpike and Peninsula Boulevard Extension (Incinerator Road- Bay Boulevard) and being a 278,007.3 ± Square Feet (6.38± acres) parcel shown and further described on the 'Description and Map of the Subject Property' attached to and incorporated in this Lease as Exhibit A. The premises shall be used only for the purposes stated in the Lessee’s RFP dated XXXX and incorporated in this lease as Exhibit B and will be subject to the sites current zoning.

2. The term of this lease shall be for forty years and shall commence on Date . There will be no extension of the term.

3. The Fee to be charged for use of the premises shall be pursuant to the rent schedule in Exhibit C.

4. Payment of fee is due on the first of the month unless otherwise stated. Fee must be paid by check, bank cashier's check or money order payable to "Department of Transportation" and mailed or delivered to:

    New York State Department of Transportation
    Revenue Section, POD 52
    50 Wolf Road
    Albany, New York 12232

5. The Lessee understands and agrees that if the full amount of the rent as stated herein is not paid within thirty days from the date billed as indicated on the billing invoice, interest penalties and collection fees will be imposed under the provisions of Chapter 55 of the Laws of 1992.
6. It is expressly understood and agreed that if there is a violation of or default on payment of rent and it remains uncured for five (5) days after the service of such Notice to Cure or if said default is as to any other provision of the lease including, but not limited to using the property for any use other than “additional retail store customer parking area under local zoning ordinances and for no other purpose” and it remains uncured for fifteen (15) days after such service of the Notice to Cure, the State may at anytime thereafter terminate this lease and the term hereof, on giving to the lessee five days notice in writing of the State’s intention to do so, and this lease and the term hereof shall expire and come to an end at midnight on the fifth day following the day upon which such Notice shall have been given as if said date was the date originally fixed in this lease for the expiration of the term hereof.

7. The State shall have the right to terminate the lease as to all or any portion of the property which the Commissioner of Transportation deems necessary for purposes connected with the highway system of the State pursuant to New York State Eminent Domain Procedure Law. Such termination shall be by six (6) month written notice to the Lessee. If the lease is terminated as to a portion of the property as provided in this paragraph 6, the rent will be reduced in proportion to the number of square feet in such portion.

8. Lessee, at the Lessee's expense and for the term of the lease, shall furnish and show evidence of General Liability Insurance coverage issued by an insurance carrier licensed to do business in the State of New York for the protection of the State of New York and Lessee against any claims, suits, demands or judgments by reason of bodily injury, including death, and for any claims resulting in property damage occurring on or in proximity to the leased area. Such General Liability Insurance shall be in the amount no less than $2,000,000.00 (combined property damage and/or bodily injury, including death) single limit per occurrence, and shall name the People of the State of New York as an additional insured. The State reserves the right to increase the amount of coverage at its sole discretion. The Lessee will furnish the State with a certificate of insurance, with a (30) thirty day(s) prior written notice of any cancellation or major change in the policy conditions. The lease shall be voided if insurance is canceled, modified or lapses. Approval of this lease shall be contingent upon receipt, by the State, of a copy of a properly executed insurance certificate.

9. Lessee is responsible for any repairs, improvements or maintenance work of any kind on the property at Lessee's expense. The State may, at any time, periodically inspect the premises to determine whether same is in good repair and maintenance, structurally sound, and that no unsafe, hazardous, unsanitary, or defective conditions exist. Lessee hereby agrees to admit State representatives and prospective purchasers or Lessees to examine the property during reasonable business hours.

10. Lessee shall not place or store, or allow others to place or store, any flammable, explosive hazardous, toxic or corrosive materials, debris of any description, garbage or any materials commonly referred to as “junk” within the leased area, except fuel kept in the fuel tanks of legally parked vehicles allowed under the terms of this lease. The Lessee is responsible for the removal of these materials and/or all expenses incurred in their removal.

11. All arrangements of services for utilities, removal of garbage, rubbish, litter, snow and ice will be made by the Lessee at the Lessee's expense, unless hereafter specified. The State shall have no responsibility to provide any services not specifically set forth in writing herein.

12. Lessee is responsible to maintain the occupancy in compliance with any and all applicable local, State, and Federal laws, ordinances, codes, rules and regulations affecting the use of the property. Lessee shall not conduct or allow any use or activity on the premises inconsistent with law and shall not conduct or allow any use or activity on the premises which may require a permit or other approval by a government agency without having lawfully obtained such permit or approval.

13. Lessee shall not sublet the premises nor assign or transfer the lease to any other parties in part or in whole without the prior written consent of the State.

14. It is understood and agreed by and between the parties that the Lessee and/or any Sublessee will not be entitled to any relocation benefits provided under State and Federal law.
15. Lessee agrees and understands that the State is under no obligation to sell the property to the Lessee and that no commitment, express or implied, is made by the State to give the Lessee any preemptive right of purchase. If the property is sold during the initial lease period, it is sold subject to this lease.

16. In accordance with 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 Lessee will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Neither shall the Lessee discriminate in the use of this premises or any access thereto if such premises is used as a public accommodation or in connection with a public service.

17. Lessee hereby agrees to indemnify and save harmless the State from any claim or loss including legal expenses by reason of the use or misuse of the premises under this lease and/or from any claim or loss by reason of any accident or damage to any person or property being on said premises, caused by the Lessee, its employees, agents or invitees.

18. All work or proposed work requires a Highway Work Permit. If any proposed improvements are to be made on the property, a written request must be submitted to the Region 10 - Regional Real Estate Office for review and approval before any improvement may be added. Such approval shall not be unreasonably withheld or delayed provided NYSDOT deems the improvements to be consistent with the stated and accepted land use as stated in the selected Bidder’s response to the RFP. The Lessee may be required to (as may be necessary) complete and or obtain:

- **Surety Bond (Performance)** at https://www.dot.ny.gov/divisions/operating/oom/transportation-systems/repository/PERM%2044%20(9-10).pdf

In addition to completing these NYSDOT Traffic & Safety forms:
- page 5 of the **Perm 33** application
- The Permittees insurance carrier will fill out the **Perm 17** for protective liability insurance
- The Permittees bonding company provide **Performance Bond Perm 44e** in the amount of $100,000.

19. The State shall have no responsibility whatever for the loss or destruction of any improvements made by the Lessee or for personal property stored or being used on the premises.

20. The Lessee agrees not to post or affix any signs on or outside of the property without prior written approval of the Property Manager of the Region 10 - Regional Real Estate Office, such approval not to be unreasonably withheld.

21. After clearance of the Site, no living tree(s) shall be removed from the property without prior approval from NYSDOT and applicable local Town or Zoning municipality.

22. Lessee is responsible for keeping the property secure from any unauthorized use. At the conclusion of the occupancy, the Lessee agrees to surrender any and all keys and copies thereof, if any, to the State.

23. If any of the provisions of this lease are held invalid, such invalidity shall not affect or impair other provisions herein which can be given effect without the invalid provisions, and to this end the provisions of this lease are severable.

24. 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:

The State at:

Michael Librizzi, Real Estate Officer 3 (Michael.Librizzi@dot.ny.gov)
Office of Right of Way, Room 6A10
250 Veterans Memorial Highway
Hauppauge, N.Y. 11788

or

Clifford Winter, Real Estate Officer 1
Office of Right of Way, Room 6A10
250 Veterans Memorial Highway
Hauppauge, N.Y. 11788
Office: 631-952-6089
Fax: 631-952-7934

The Lessee at:

Contact: _____________________
Address: _____________________
Office: _____________________
Fax: _____________________
E-Mail: _____________________

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

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.

25. This lease shall constitute the entire Agreement made between the parties and cannot be changed orally.

26. This Lease, Appendix A, Required Clauses for all New York State Contracts, and Appendix A-1, Supplemental Title VI Provisions (Civil Rights Act)), Appendix 2, Iran Divestment Act, and Appendix 3 Responsibility Provisions attached hereto and made a part hereof, shall bind the successors, assigns, and representatives of the parties hereto.

ACCEPTANCE:

In consideration of the granting of this lease, the undersigned accepts all of the above terms, conditions and provisions.

[Lease]

Soc. Sec. No. ________________  Signed: _____________________
Fed. I.D. No. ________________  Signed: _____________________

By: _____________________
Its: _____________________

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FOR INDIVIDUAL ACKNOWLEDGMENTS

On the _____ day of ____________, 20___, before me, personally came the undersigned, personally appeared ___________________________________________________________ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

__________________________________________
(Notary Public)

FOR CORPORATION ACKNOWLEDGMENTS

On the _____ day of ____________, 20___, before me, personally came the undersigned, personally appeared ___________________________________________________________ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

__________________________________________
(Notary Public)

FOR PARTNERSHIP ACKNOWLEDGMENTS

On the _____ day of ____________, 20___, before me, personally came the undersigned, personally appeared ___________________________________________________________ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

__________________________________________
(Notary Public)

RECOMMENDED:

__________________________________________
Real Estate Officer 3

Date: ________________________
Lessee certifies that all information provided to the Agency with respect to Executive Order Number 127 is complete, true and accurate.

Contract Number ________________

Lessee Certification: I certify that all information provided to the Agency with respect to Executive Order Number 127 is complete, true and accurate.

By: ___________________________ Date: ___________________________
Name: __________________________
Title: ___________________________
Lessee: __________________________
Address: ________________________
________________________________

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.

By: ___________________________ Date: ___________________________
Name: __________________________
Title: ___________________________

Approved:
Attorney Generals Signature: Thomas P. DiNapoli, Comptroller

By: ___________________________ By: ___________________________
Date: ___________________________ Date: ___________________________
EXHIBIT A

Description and Map of the Parcel

Beginning at the point of compound curvature on the northeasterly side of lot 1145 of the “Map of Rason Road Development Area”, filed in the Nassau County Clerks Office, March 12, 1980, Case number 8820. Said point being at the southeasterly end of a curve with a radius of 40.00’ and a length of 83.16’. Thence S 54° 59’ 30” E a length of 62.45’ to a point; thence S 43° 54’ 44” E a length of 216.77’ to a point; thence S 32° 16’ 41” W a length of 285.27’ to a point; thence S 31° 30’ 51” E a length of 501.33’ to a point; thence S 53° 36’ 16” W a length of 392.91’ to a point; thence along the arc of a curve, bearing to the left having a radius of 1,966.00’ and a length of 458.99’ to a point; thence N 22° 02’ 02” W a length of 137.34’ to a point; thence along the arc of a curve, bearing to the right having a radius of 333.00’ and a length of 395.99’ to a point; thence N 46° 05’ 38” E a length of 91.81’ to a point; thence along the arc of a curve, bearing to the left having a radius of 113.00’ and a length of 105.98’ to the POINT OF BEGINNING.

The above described parcel contains 278,007.3 ± Square Feet (6.38 ± acres).

Access will be allowed only from Bay Blvd.

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EXHIBIT B

RFP

(TO BE INSERTED)
EXHIBIT C

RENT SCHEDULE

(TO BE INSERTED)
APPENDIX A

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220 of the Labor Law, if this is a contract for the construction, alteration or repair of any 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 in hiring 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-COLLABORATIVE 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-collaborative 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 therefor 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 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 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 Section 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.
20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

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

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

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

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

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

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

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

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

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

NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

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

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.
25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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

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

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law Section 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.

Updated February 2014
APPENDIX A-1

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.

(4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
   (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
   (b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
APPENDIX 2

RESPONSIBILITY PROVISIONS

General Responsibility. The Consultant shall, at all times during the Agreement, remain responsible. The Consultant agrees, if requested by the Commissioner of NYSDOT or his 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.

Suspension or Work (for Non-Responsibility). The Commissioner of NYSDOT (or his or her designee), in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement at any time when he or she discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the Agreement.

Termination (for Non-Responsibility). Upon written notice to the Consultant, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the Agreement may be terminated by Commissioner of NYSDOT (or his or her designee) at the Consultant’s expense where the Consultant is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his 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.

--- END OF LEASE L03110R ---

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