



**Empire State
Development**



**Department of
Transportation**

REQUEST FOR PROPOSALS



FOR THE LONG-TERM LEASE OF FIVE DEVELOPMENT PARCELS AT REPUBLIC AIRPORT

East Farmingdale, New York

RepublicAirportRFP@esd.ny.gov

RFP RELEASE DATE:

Tuesday February 9, 2016

SITE TOUR DATE:

Tuesday, March 8, 2016

DEADLINE TO SUBMIT QUESTIONS:

Friday, March 11, 2016

DEADLINE TO SUBMIT PROPOSALS:

Friday April 15, 2016

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I. INTRODUCTION

New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”) on behalf of New York State Department of Transportation (“NYSDOT”), is seeking proposals from responsive and responsible parties for the long-term ground lease and redevelopment of up to five (5) sites at Republic Airport (“the Sites”) totaling approximately 41.5 acres in East Farmingdale, NY (the “Project”). While aviation or aviation-related uses are preferred, prospective respondents may propose alternative but compatible uses for consideration. Residential uses will not be considered. All sites and proposed uses are subject to Federal Aviation Administration (“FAA”) review.¹ Proposals must include a Project on at least one (1) of the Sites, but may include Projects for any or all of the Sites. Each party that submits a response (“Proposal”) to this Request for Proposals (“RFP”) is referred to herein as a “Respondent.” Each Respondent who is conditionally designated through this RFP process is referred to herein as a “Designated Developer.”

II. RFP TIMELINE

The following are significant dates under the RFP Process:

Event	Timeline
RFP Release Date	February 9, 2016
Site Tour	March 8, 2016
Question Submittal Deadline	March 11, 2016
Question Response Deadline	March 18, 2016
Proposal Due Date	April 15, 2016 @ 2:00 PM ET
Proposal Evaluation Begins	May 2016
Selection	June 2016

III. DESCRIPTION OF THE SITES AND SURROUNDING AREA

About Republic Airport

Occupying approximately 526 acres in East Farmingdale, New York, Republic Airport is one of thirteen (13) airports on Long Island. The original airport layout plan (“ALP”) was prepared in 1927 and was adopted shortly thereafter. Republic Airport was originally developed by Sherman Fairchild and began operation in the Spring of 1928. During these early years the flying field was used to test aircraft made by Fairchild, American, Grumman and Seversky. In 1965, Fairchild Hiller Corporation acquired Republic Airport and sold it to Farmingdale Corporation. In December 1966, the



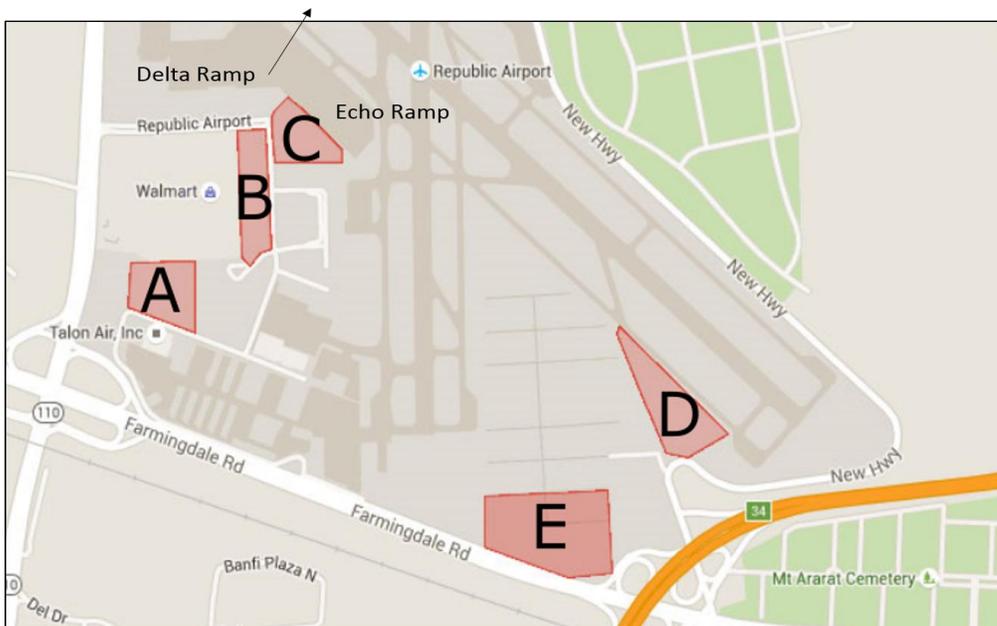
¹ Additional information on compatible land uses is provided by the FAA at http://www.faa.gov/airports/environmental/land_use/

airport became a general aviation airport. By March 1967, the airport was of interest to the Metropolitan Commuter Transportation Authority as a means of meeting demands of aviation on Long Island. Recognizing the airport as an asset, Metropolitan Transportation Authority two years later acquired the airport at the cost of \$25 Million. Ownership of the airport was transferred to the NYSDOT in 1982. As a General Aviation and reliever facility, Republic Airport generates \$214 million in economic impact to Nassau and Suffolk Counties each year. NYS DOT presently operates Republic Airport under an operations and management contract.

Today, Republic Airport is clearly postured for its many business aviation customers and is poised to attract new industries. Airport facilities include three fixed based operators (“FBO”) - with one additional FBO anticipated to be added within the next year to serve the needs of corporate and light general aviation customers. There is also a two-story terminal building that serves passengers ready to board charter flights to Atlantic City and other short-distance destinations. The Main Terminal facility has also accommodated a number of aviation related events open to the public. Republic Airport is home to the American Air Power Museum and the Long Island Republic Airport Historical Society. There is also a Republic Airport Commission (“RAC”) which acts as an advisory board to NYSDOT. The Commission meets six times a year to discuss airport issues. The NYSDOT Commissioner or designee is an ex-officio member of the Commission.

Description of Sites

The five sites, depicted below as Parcels A, B, C, D and E are located within the footprint of Republic Airport, which is owned by NYSDOT. Parcels A, B & C are accessible off of Route 110 and Grumman Lane. For Parcel C, respondents have the opportunity to include the adjacent Delta and Echo ramps in their Proposal, if an appropriate plan identifying costs and benefits to relocate them is submitted. Parcels D & E are only accessible through the airside operations area of the airport, however the State may consider access to Parcel E through Farmingdale Road if safe and appropriate. The boundaries shown in this RFP are approximate; a formal survey of the sites will be conducted by NYSDOT before selecting a developer. For more details on each parcel, please see **Appendix A**.



Zoning and Allowable Land Use

The Sites are not subject to local zoning; however the development of the sites must comply with FAA regulations, all applicable agreements, deed restrictions and laws, and is subject to other approvals including by NYSDOT, the Office of the State Comptroller (“OSC”) and the Attorney General’s (“AG”) Office. Prior to lease execution, an environmental review and determination consistent with the New York State Environmental Quality Review Act (“SEQRA”) is also required. Residential uses will not be considered.

Environmental Conditions

The selected Respondents are responsible for conducting all due diligence investigations including, but not limited to environmental site assessments, including sampling and testing of the soil, sediments and ground water (if any). No representation or warranty is made or shall be given by ESD, NYSDOT or the State of New York (the “State”) or any other entity as to any environmental condition at, or under the Sites, all of which are offered as is, where is. The term “environmental condition” as used herein includes but is not limited to any hazardous and/or toxic substance as defined in any State or Federal law, rule or regulation, solid waste, petroleum and/or petroleum by-products, endangered species of fauna or flora, archeological feature or artifact or any other matter or site condition which may affect the development of the Sites.

Ownership and Taxes

The Sites are currently owned by the State of New York acting through NYSDOT and are not subject to property taxes. Respondents should assume taxes or a payment in-lieu of taxes (PILOT) equal to full taxes for non-aviation uses (e.g. hotels, commercial uses). Aviation-related uses are not subject to a PILOT agreement.

Incentives

On April 13, 2015, as part of legislation signed by Governor Andrew M. Cuomo, Republic Airport became eligible for designation as a START-UP NY site. START-UP NY offers certain new and expanding businesses the opportunity to operate tax-free for 10 years. Respondents are encouraged to review the STARTUP NY program as well as other ESD incentives in Appendix B.

IV. DEVELOPMENT OBJECTIVES

Proposals should strive to address the following development objectives (the “Development Objectives”):

- Maximize value to NYSDOT through monthly lease payments;
- Enhance Republic Airport as an economic engine for Long Island;
- Provide a source of quality jobs for area and New York State residents; and
- Maximize incorporation of green building and sustainable design practices;

- Feature meaningful participation of Minority-Owned Business Enterprises (“MBE”), Women-Owned Business Enterprises (“WBE”) and Service-Disabled Veteran-Owned-Businesses (“SDVOB”)²

Transaction Structure

ESD, on behalf of NYSDOT, shall negotiate and NYSDOT shall execute leases to re-use Parcels A, B, C, D and/or E at Republic Airport with the selected Respondent(s). Execution of the leases will require certain approvals including by the NYS Office of the Attorney General and the NYS Office of the State Comptroller and compliance with all applicable laws and regulations including SEQRA, and any other applicable laws. The selected Respondent shall pay monthly lease payments to the State for the duration of each lease. A form of the lease is included in the Appendix I.

Each Proposal must include at a minimum basic high-level lease terms including: 1) a base rental payment schedule with escalations 2) any and all contingencies for the proposed lease terms and 3) details regarding the proposed development and anticipated use for each site that the Respondent is interested in. (See also, Section V “Required Proposal Contents.”) The lease term with Designated Developer will include Site development and long term operation and management of the improved parcel. Per FAA requirements (federal grant assurances), agreements resulting from this RFP process will ensure economic non-discrimination.

For financing purposes, lease-terms of up to forty-nine (49) years will be considered. The lease offer is expected to be a lease with no ongoing obligations by NYSDOT or the State of New York as the owner.

NYSDOT’s fee ownership and rental income stream shall not be subordinated. Prior to lease execution, it is anticipated that NYSDOT and the Designated Developer will agree to appropriate restrictions that will preserve the proposed use throughout the term of the lease.

NYSDOT shall have the absolute right to approve or disapprove any assignment or transfer of any long-term lease and intends to participate in any proceeds from any such assignment or transfer.

Upon designation, each selected Respondent will be required to pay a \$50,000 non-refundable good-faith deposit for each site.

The Designated Developer shall also pay all of ESD’s and NYS DOT’s out-of-pocket costs and expenses (including, without limitation, costs and expenses of consultants, legal counsel, and appraisers) and internal costs related to the disposition of the Sites and the Project. At the time of and as a pre-requisite to its designation, such Respondent and ESD shall enter into an agreement pursuant to which, among other things: (i) the Respondent shall deposit into an ESD imprest account funds (in an amount that shall be satisfactory to ESD) that shall be held by ESD and used by ESD for payment of such out-of-pocket costs and expenses; (ii) each time that the balance in the imprest account falls below 50% of the original amount required to be deposited into the account, the Respondent shall promptly make an additional payment into the ESD imprest account so that balance in the account shall be returned to such original amount; and (iii) the amount remaining in the imprest account after all such costs and expenses are paid will be returned to the Respondent.

² For more information on MBE, WBE and SDVOB requirements, please visit Section XI.

Upon lease execution, the Designated Developer will be required to pay a portion of the ground rent to NYSDOT in addition to an ESD administrative fee of an amount equal to 6.5% of the net present value of all annual lease payments.

All financial offers for the Sites should assume that the Sites, including any and all improvements, infrastructure and equipment at the Sites, will be leased “AS IS” and “WHERE IS” without any representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind or that the same is in condition or fit to be used for the Designated Developer’s purpose.

V. REQUIRED PROPOSAL CONTENTS

Each Respondent is required to submit a Proposal compliant with all required terms detailed below. Respondents may submit a Proposal including a Project at one or more of the Sites, assuming they meet the applicable requirements. Respondents must submit a minimum of one complete Proposal in response to this RFP using the format and forms provided.

The State reserves the right, in its sole discretion, to reject any Response that is deemed incomplete or unresponsive to the RFP requirements. The State also reserves the right, in its sole discretion, to reject any and all Responses for any reason or for no reason, and to proceed (or not proceed) with the development of any Sites (either by itself or in conjunction with one or more third-party(ies)) without completing this RFP process.

In evaluating the capabilities of the Respondent, the State may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent, and demonstrate the Respondent’s capability to satisfy the requirements and objectives set forth in this RFP. The State further reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents.

A. Respondent Description

Each Respondent submitting a Proposal must demonstrate sufficient financial resources and professional ability to develop the Site in a manner consistent with its Proposal.

Each Proposal must include a description of the Respondent, owner or the development team, including:

- The intended form and structure of the owner and any proposed partnership or joint venture must be clearly explained. A chart/diagram of the owner showing structure (percentages) of ownership and investment must be included.
- Name, address, phone number and email of each member of the Respondent owner or development team. Respondents must provide the Federal EIN numbers of the development entity and identify a primary contact person.
- Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Proposal.
- A copy of the most recent credit report for key members of the ownership team.

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- Documentation addressing whether the Respondent, or any participating member of the team, has been involved in any litigation or legal dispute regarding a real estate venture during the past five (5) years.
 - Evidence of ability to finance the Project including letters of interest and/or intent from equity sources and lenders.
 - Evidence of Respondent's commitment to pay, from the date of its conditional designation: (i) the security deposit; and (ii) ESD's administrative fee, paid upon lease execution.
 - Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project in a timely manner.
 - Disclosure of any existing or contemplated relationship with any other person or entity, including relationships with any parent, subsidiary or affiliated firm, which would constitute an actual or potential conflict of interest in connection with the Proposal. Respondents must also indicate how they will notify ESD if a conflict arises at any point after the submission of this Response, and how such a conflict would be resolved.

B. Team Member Qualifications

Proposals should include a list of and background information for all key members of the development team, including: Identification and qualifications of each member of the development team, for all persons or entities that will design, develop, or operate the Project, as well as the attorney, engineer, general contractor and other professionals, as appropriate, including leasing and management, who will be involved with this Project.

- A description of similar projects undertaken by the members of the Respondent's team.
- A summary of the availability of each of the principal members of each firm and their availability for commitment to the Project.
- Documentation addressing whether any participating team members have been involved in litigation or legal dispute regarding a real estate venture during the past five years.
- Background information of the owner, including resumes describing the relevant experience of all principal members. This information must be submitted for every participant in a joint venture and should highlight similar projects (including a project description and approximate dollar value for each).

C. Project Description

The Project description should include a detailed narrative describing all relevant aspects of the Project and any plans/timing of phasing of the development. The description should address:

- The proposed use(s).
- Type, bulk and size of each component of the development program (gross and net square footages).

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- Description of the proposed uses, a list of potential tenants and any letters of interest and/or intent from potential tenants.
 - The description should address how this project will advance the Development Objectives set forth in this RFP
 - The total cost to develop the Site(s).
 - Number of permanent and construction jobs estimated.

D. Site Plan and Architectural Design

Each entity submitting a Proposal must provide the following:

- A summary of the proposed building program for the Project with square footages for each use.
- At a minimum, a set of concept sketches on 8.5” x 11” paper, showing the proposed Project and a set of schematic renderings of the proposed Project showing the principal elevations and massing, floor plans for each use, streetscape and landscape plans, entry feature and signage.
- A description of the proposed exterior materials and other relevant specifications.
- A description of sustainable building practices that will be incorporated into the project during construction/renovation and operation of the improvements.

E. Development Timeframe

Respondent must submit a development timeline (subdivided into phases, if necessary), identifying the estimated length of time to reach key milestones, including: commencement and completion of design; financing; commencement and completion of construction; potential tenants; and operational stabilization for each component of the development program. Any contingencies that may affect this time line should be identified.

F. Project Sources and Uses

Respondent shall provide an estimated schedule, budget and funding sources for the proposed project.

G. Lease Term Sheet

Respondent must provide a high level term sheet outlining all key deal terms including, monthly and annual rent, escalations, term, restricted uses and options.

H. Other Proposal Information

The Respondent shall specifically state its acceptance of all Terms and Conditions contained in this RFP by completing and submitting the Respondent Information and Certifications Form (**Appendix D**), to

indicate a Respondent's **acceptance of all** of the terms and conditions contained in the RFP. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and will lead to the proposal being deemed non-responsive and subsequently dismissed.

Consultant Identification Number and SFS Vendor ID Number:

If known at time of proposal submission, Respondent must reference its Consultant Identification Number (CIN) in Appendix D. If a Respondent does not have a CIN and is selected, it will be required to obtain one through the following DOT web site prior to negotiation:

<https://www.dot.ny.gov/portal/page/portal/main/business-center/consultants/forms-publications-and-instructions>

Each Respondent must reference its SFS Vendor Identification Number. If a Respondent does not have an SFS number and is selected, it will be required to obtain one through NYSDOT sponsorship.

VI. SELECTION CRITERIA

ESD, on behalf of NYSDOT shall establish a review committee, which shall evaluate proposals. When evaluating Proposals and Supplemental Proposals, the following selection criteria will be considered with the accompanying weightings used to calculate an overall Proposal score:

Financial Offer (30%): Provision of competitive terms for the leasing of the proposed site.

Development Concept (25%): Quality of proposal, design, sustainable building practices and use including consistency with allowed uses at the airport.

Respondent Qualifications (20%): Experience, development skills and financial resources necessary to complete a high-quality project pursuant to the terms of the RFP.

Schedule and Timing (10%): Proven ability to complete the project in a timely manner.

Employment Impact (5%): Creation of construction and permanent on-site jobs and payroll. Indirect job creation through on-site job training programs may also be considered.

Economic Impact (5%): Projected expenditures, construction costs, annual operating costs and other direct spending that will help spur economic activity. The impact of indirect spending that the project will generate and any applicable tax revenue.

Diversity Practices (5%): Respondents to the RFP will be evaluated for Diversity Practices using the attached Diversity Practices Scoring Matrix (see Appendix J). Up to 5 percent will be awarded based upon the contents of the Diversity Practices Questionnaire (see Appendix J) submitted by each Respondent to the RFP.

The proposal with the highest score for each site shall be recommended for selection. The results of the evaluation process will be documented in report which will be forwarded to NYSDOT for approval. The designation(s) will be publically announced on NYSDOT's website.

ESD and NYSDOT also reserve the right to conduct interviews with or pose questions in writing to individual Respondents in order to clarify the content of their proposals and to ensure a full and complete understanding of each proposal. ESD and NYSDOT shall pursue uniformity in the questions it asks to Respondents to the extent practicable, but ESD and NYSDOT may ask different or additional questions to different Respondents in the context of any individual interview or in writing. ESD and NYSDOT shall convene a committee of staff who shall be permissible contacts for the purpose of such interviews, and Respondents who are invited will receive additional instructions upon their invitation.

NYSDOT further reserves the right to elect to dispose of the Sites via lease or not. Determination of whether NYSDOT will elect to lease the Site(s) will depend on the offers received, obligations to comply with Federal rules, and NYSDOT's, with ESD's input, assessment of the best interests of the State.

VII. DEVELOPER DUE DILIGENCE

"As Is, Where Is" Condition

Respondents should assume that the Site(s), including land, improvements, and any supporting building infrastructure, will be long-term leased "AS IS" and "WHERE IS" without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the Respondent's purpose.

ESD will post information regarding the RFP on the RFP website (<http://www.esd.ny.gov/CorporateInformation/RFPs.html>); Respondents are encouraged to check back for updates. ESD makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to the potential Respondents or to the Respondents. Prospective Respondents should notify ESD of their interest as soon as possible in order to ensure that they receive all updates associated with this solicitation by sending an email to RepublicAirportRFP@esd.ny.gov.

Respondents must rely on their own research and investigations for all matters, including, costs, title, survey, development, financing, construction, and remediation.

VIII. PROPOSAL SUBMISSION INSTRUCTIONS

A. Proposal Submission

Seven (7) hard copies and one (1) complete electronic copy (in the form of a flash drive) of the Proposal identified by "Republic Airport RFP" must be received by ESD by **April 15, 2016 at 2:00 PM** at the following address:

Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017
Attn: Edgar Camacho, ESD Procurement Unit
Re: Republic Airport RFP

B. RFP Inquiries

ESD will accept written questions via email from prospective Respondents regarding the RFP. Please submit questions to: RepublicAirportRFP@esd.ny.gov

Written questions must include the requestor's name, e-mail address and the Respondent represented and should be received by **March 11, 2016 @ 5:00 PM**. Responses to all timely and appropriate questions will be posted on ESD's website **close of business March 18, 2016** at: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

No contact related to this solicitation with ESD Board members, ESD or NYSDOT staff or consultants, other than emails to the designated email account for the solicitation (attention Thomas Conoscenti) at RepublicAirportRFP@esd.ny.gov will be allowed by Respondents or employed representatives of Respondent team members during the procurement period of this RFP. Any such contact by a Proposer will be grounds for disqualification.

C. Site Tours

ESD and DOT has scheduled a Site tour date of **March 8, 2016**. Respondents are not required to attend and must email RepublicAirportRFP@esd.ny.gov at least two days in advance if they wish to participate. When responding, please provide the name of the firm, and the name, title, telephone number and email address of all representatives who are attending. Due to security and logistics reasons, we ask that no more than five people per responding team attend the tour. Depending on demand, multiple tours will be scheduled, with the first tour schedule for 10AM. The tour is anticipated to last approximately one hour and will include a drive through of the Sites.

ESD reserves the right to modify this RFP schedule at its discretion. Notification of changes in connection with this RFP will be made available to all interested parties by e-mail and via ESD's website: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

IX. LEASING PROCESS

The following is a summary description of the disposition process.

After a review of the Proposals, NYSDOT intends to conditionally designate one or more of the Respondents as a Designated Developer. The selection shall be made to the Respondent whose proposal(s) receives the highest evaluation score for each parcel. In the event two or more proposals are found to be "substantially equivalent," NYSDOT reserves the right to select the Respondent under the terms of State Finance Law Section 163(10)(a). Any 'ties' shall be decided by the substantially equivalent rule contained in the approved evaluation process document.

The appropriate NYSDOT executive will approve the results of the proposal evaluation process and designate the selected Respondent, subject to vendor responsibility review.

At the conclusion of the evaluation period, an announcement of NYSDOT's designation(s) will be posted on NYSDOT's website. All Respondents will be notified in writing regarding the results from the

solicitation, pending completion of the evaluation process. All non-designated Respondents will be offered an opportunity to attend a debriefing.

The Designated Developer(s) will enter into lease(s) with NYSDOT, describing the improvements, and a separate Cost Agreement (“Cost Agreement”) with ESD regarding payment by the Designated Developer of expenses as described at the end of this section.

Prior to execution of a lease, the Designated Developer must comply with all legal and regulatory requirements such as but not limited to: (i) SEQRA ; (ii) The New York State Historic Preservation Act; (iii) the New York State Coastal Zone Management Policies; (iv) New York State Finance Law; and all other applicable laws and regulations. Certain approvals and compliance will be required prior to disposition of the Site to the Designated Developer, certain compliance under these and other regulations may be on-going.

Upon selection, the Designated Developer is expected to pay to a non-refundable security deposit in the amount equal to \$50,000 for each Site for which they are selected under this RFP.

The Designated Developer shall also pay all of ESD’s and NYSDOT’s out-of-pocket costs and expenses (including, without limitation, costs and expenses of consultants, legal counsel, and appraisers) related to the leasing of the Site(s) and the Project. At the time of and as a pre-requisite to its designation, such Respondent shall enter into an agreement with ESD pursuant to which, among other things: (i) the Respondent shall deposit into an imprest account funds (in an amount that shall be satisfactory to the State) that shall be held by ESD and used by ESD for payment of such out-of-pocket costs and expenses; (ii) each time that the balance in the imprest account falls below 50% of the original amount required to be deposited into the account, the Respondent shall promptly make an additional payment into the ESD imprest account so that balance in the account shall be returned to such original amount; and (iii) the amount remaining in the imprest account after all such costs and expenses are paid will be returned to the Respondent. Designated Developer shall also pay an ESD administrative fee equal to 6.5% of the net present value of all annual lease payments at lease execution.

X. STATEMENT OF LIMITATIONS

The RFP submissions from Respondents to this RFP, and any relationship between the State and Respondents arising from or connected or related to this RFP, are subject to the specific limitations and representations expressed below, as well as the terms contained elsewhere in this RFP.

1. By responding to this RFP, Respondents are deemed to accept and agree to this Statement of Limitations. By submitting a response to this RFP, the entity acknowledges and accepts ESD’s and NYSDOT’s rights as set forth in the RFP, including this Statement of Limitations.
2. The issuance of this RFP and the submission of a Response by any firm or the acceptance of such Response by ESD does not obligate ESD or NYSDOT in any manner whatsoever. Legal obligations will only arise upon execution of a lease by NYSDOT and the firm(s) selected upon approval of the AG and OSC.
3. ESD, on behalf of NYSDOT, reserves the right: (i) to amend, modify, or withdraw this RFP; (ii) to revise any requirements of this RFP; (iii) to require supplemental statements or information from any responding party; (iv) to accept or reject any or all responses thereto; (v) to extend the deadline for submission of responses thereto; (vi) to negotiate or hold discussions with any respondent and to

correct deficient responses which do not completely conform to the instructions contained herein; and (vii) to cancel, in whole or part, this RFP, for any reason or for no reason. ESD may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of each Respondent.

4. All information submitted in response to this RFP is subject to the Freedom of Information Law ("FOIL"), which generally mandates the disclosure of documents in the possession of ESD or NYSDOT upon the request of any person, unless the content of the document falls under a specific exemption to disclosure. If any Respondent wishes to claim that any information submitted in its response to this RFP constitutes a Trade Secret or is otherwise exempt from disclosure under FOIL, such claim must be made at the time of the response, and must be in writing supported by relevant and material arguments.
5. The State reserves the right, in its sole discretion, without liability, to utilize any or all of the RFP Responses, including late Responses, in its planning efforts. ESD and NYSDOT reserve the right to retain and use all the materials and information, and the ideas, suggestions therein, submitted in response to this RFP (collectively, the "Response Information") for any purpose. Each Respondent must grant an unconditional and perpetual license without charge to ESD and NYSDOT to use any copyright or other legally protected rights in and to the Response Information. By submitting a Response, each Respondent waives any and all claims against ESD, NYSDOT, and the State, relating to the retention or use of the Response Information. All proposals, upon submission to NYSDOT, shall become its property for use as deemed appropriate. By submitting a proposal, Respondents covenant not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information.
6. This RFP shall not be construed in any manner to implement any of the actions contemplated herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for efforts expended in preparing a Response to the RFP. Neither ESD nor NYSDOT will be responsible for any costs incurred by Respondents related to preparing and submitting a Response to this RFP, attending oral presentations, or for any other associated costs.
7. To the best of ESD's and NYSDOT's knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of Responses.
8. Should NYSDOT determine that negotiations with the selected Respondent will not result in an executable lease agreement, NYSDOT and ESD may begin negotiations with the next-best-value Respondent without again requesting proposals.
9. NYSDOT asserts the prerogative with regard to proposals submitted:
 - a. To adopt any or all of a successful Bidder's proposal;
 - b. To negotiate modifications to the Lease Payment schedule and total Lease cost, and other terms and conditions with the selected Respondent prior to selection only if it is in the best interest of the state to do so;

- c. To disqualify a Respondent from being selected if such Respondent, or anyone in the Respondent's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
- d. To eliminate any requirement that is found to be unmet by all Respondents;
- e. To make inquiries, by means it may choose, into the Respondent's background or statements made in the proposal to determine the truth and accuracy of all statements made therein; and
- f. To select the Respondent whose proposal represents the best value to NYSDOT.

XI. PROCUREMENT FORMS AND REQUIREMENTS

Additional requirements for this RFP are described below. Relevant forms, where required to be submitted, must be executed and included in the submission in the same order as listed below:

- A. State Finance Law §§139-j and 139-k forms
- B. New York State Vendor Responsibility Questionnaire For-Profit Business Entity
- C. Iran Divestment Act Statement
- D. Non-Discrimination and Contractor & Supplier Diversity Requirements
- E. Encouraging the Use of NYS Businesses in Contract Performance Form
- F. Certification Under State Tax Law Section 5-a
- G. Schedule A (for review only—no separate form requirement)
- H. Project Sunlight (for review only—no separate form requirement)
- I. Registration with NYSDOT
- J. Registration with Statewide Financial System (SFS)
- K. Insurance Requirements

A. State Finance Law Sections 139-j and 139-k forms

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed below; the completion by Respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

http://www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by prospective respondents during the Restricted Period, make a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a prospective respondent is found to have knowingly and willfully violated the State Finance Law provisions, that prospective respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible Respondent and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is Thomas Conoscenti at RepublicAirportRFP@esd.ny.gov.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

<http://esd.ny.gov/CorporateInformation/RFPs.html>

(under “ESDC Policy Regarding Permissible Contacts under SFL 139”).

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

B. Vendor Responsibility

All Respondents to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to enter into a lease agreement with New York State entities such as NYSDOT. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the lease agreement to be entered into between NYSDOT and the Designated Developer, if any, shall include clauses providing that the Designated Developer remain “responsible” throughout the term of the lease agreement, that NYSDOT may suspend the lease if information is discovered that calls into question the responsibility of the contracting party, and that NYSDOT may terminate the lease based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ESD requires that all respondents to this RFP register in the State's Vendor Responsibility System (“VendRep System”). The VendRep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Respondents are to file the required Vendor Responsibility Questionnaire online via the VendRep System or may choose to complete and submit a paper questionnaire. Please include a copy of your VendRep submission receipt with your proposal. If you submit a paper questionnaire please submit it using certified mail and provide a copy of the return receipt.

To enroll in and use the VendRep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/forms_vendor.htm and execute accordingly pertaining to the company's trade industry. Per the website, respondents are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)." For ESD RFPs concerning the purchase and redevelopment of real estate, it is most common for a Respondent to complete the form as a "Non-Construction" company. Unless the Respondent is primarily a Construction firm, the Respondent should thus fill out the Vendor Responsibility Questionnaire as a "Non-Construction" entity, either as a For-Profit or Not-For-Profit entity, depending on the Respondent organization type.

C. Iran Divestment Act

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each Respondent and each person signing on behalf of any Respondent certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each Respondent is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. No Response that fails to certify compliance with this requirement may be accepted as responsive.

D. Non-Discrimination and Contractor & Supplier Diversity Requirements

Contractor Requirements and Procedures for Business Participation Opportunities from New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

New York State Law

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§140-145 ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of ESD contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and

Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in state procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that ESD establishes goals for maximum feasible participation of New York State Certified minority- and women-owned business enterprises ("MWBE") and the employment of minority group members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State certified minority-owned business enterprises ("MBE") participation and 15% for New York State certified women-owned business enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs) on each Project contract (each a "Contract" and collectively the "Contracts") that is funded, directly, indirectly, by reimbursement, or otherwise with public monies (including, without limiting the foregoing, all monies provided by or through ESD). The Selected Developer and each of its contractors (each a "Contractor") on a subject Contract must document use good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract, and each of the Selected Developer and the Contractor agrees that ESD may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, each of the Selected Developer and its Contractor on each Contract acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of the Contract by the Contractor and a breach of the Selected Developer's agreements with ESD, and ESD may withhold payment from the Selected Developer and the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Selected Developer and the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a proposal, a Respondent, on behalf of itself and each of its Contractors, agrees that, if the Respondent becomes the Selected Developer, each of the Selected Developer and its Contractor on each Contract will demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Selected Developer and its Contractor may arrange to provide such evidence via a non-electronic method by contacting ESD's Office of Contractor & Supplier Diversity ("OCSD") at OCSD@ESD.NY.GOV. Please note that the NYSCS is

a one stop solution for all of your MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Bidder's MWBE requirements please see the attached MWBE guidance, "Your MWBE Utilization and Reporting Responsibilities Under Article 15-A."

Additionally, the Respondent and each of its proposed Contractors will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan (Form OCSD-3) with the Respondent's proposal. If the Respondent becomes the Selected Developer, any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD.

ESD will review the submitted MWBE Utilization Plan and advise the Respondent of ESD's acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the Respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to ESD's OCSD, at 633 Third Avenue, 35th Floor, New York, NY 10017 or at OCSD@ESD.NY.GOV, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Respondent and direct the Respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals (Form OCSD-5). Failure to file the waiver form in a timely manner may be grounds for disqualification of the proposal.

- C. ESD may disqualify a Respondent as being non-responsive under the following circumstances:

- i. If a Respondent fails to submit a MWBE Utilization Plan;
- ii. If a Respondent fails to submit a written remedy to a notice of deficiency;
- iii. If a Respondent fails to submit a request for waiver; or
- iv. If ESD determines that the Respondent has failed to document good faith efforts.

Each of the Selected Developer and the Contractor on each Contract will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to the Respondent becoming the Selected Developer or any Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment to the Selected Developer and to the Contractor on the Contract.

Each of the Selected Developer and the Contractor on each Contract will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report (Form OCSD-6) to the ESD's OCSD, at 633 Third Avenue, 35th Floor, New York, NY 10017 or at OCSD@ESD.NY.GOV, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a proposal in response to this solicitation, the Respondent on behalf of itself and each of its Contractors agrees with all of the terms and conditions of ESD's Non-Discrimination and Contractor & Supplier Diversity policy. The Respondent will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, Form OCSD-1, to ESD with their proposal. The Selected Developer and each Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

To ensure compliance with this Section, the Respondent will be required to submit with the proposal an Equal Employment Opportunity Staffing Plan (Form OCSD-2) identifying the anticipated work force to be utilized on each Contract and if the Respondent becomes the Selected Developer, the Selected Developer and each Contractor will, upon request, submit an Equal Employment Opportunity Workforce Employment Utilization Compliance Report identifying the workforce actually utilized on the Contract, if known, through the New York State Contract System; provided, however, that a Bidder may arrange to provide such report via a non-electronic method by contacting OCSD.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Selected Developer, each Contractor and each sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Selected Developer's agreements with ESD, leading to the withholding of funds, suspension or termination of all agreements between the Selected Developer and ESD or such other actions or enforcement proceedings as allowed by law or such agreements.

URLs:

Form OCSD-1

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEEOPolicyStatement.pdf

Form OCSD-2

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_2StaffingPlan.pdf

Form OCSD-3

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_3MWBEUtilizationPlan.pdf

Form OCSD-4

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_4GoodFaithEfforts.pdf

In the event that the above links are unavailable or inactive, the forms may also be requested from ESD's Office of Contractor & Supplier Diversity ("OCSD") at OCSD@ESD.NY.GOV.

For purposes of providing meaningful participation by MWBEs on the project and achieving the project goals established herein, Respondent should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/>.

Only the Respondents shall complete these forms. In the Utilization Goal Plan (Form OCSD-3) Respondents must list all of the Contractors and sub-contractors Respondent proposes to use and/or solicit in achieving the MWBE goal requirement. The Respondent may use the aforementioned directory of Certified MWBEs to identify firms that it proposes to utilize. OCSD is also available to assist in the identification of New York State certified MWBEs that can provide goods and services in connection with this project.

If you require listings of certified MWBE firms or have other questions relating to the requirements herein, please contact OCSD with your inquiries and comments. Be sure to include all relevant contact information for your company and details pertaining to this RFP.

Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Respondents is practical, feasible, and appropriate. Accordingly, Respondents shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (see Appendix J).

Service-Disabled Veteran-Owned Businesses

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, respondents for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

Respondents need to be aware that they will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, Respondents are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

For purposes of the RFP, ESD hereby establishes a goal of 3% for SDVOBs, based on the current availability of qualified SDVOBs. The Contractor must document Good Faith Efforts to provide meaningful participation by SDVOBs in the performance of the Contract

A copy of each Respondent's SDVOB Contract Performance Use form proposing specific certified firms to be utilized or industries where SDVOB firms shall be sought is to be included as part of the response to this RFP.

A copy of the aforementioned form is available at:

<http://esd.ny.gov/CorporateInformation/Data/RFPs/SDVOBContractPerformanceUse.pdf>

General inquiries or questions relating to aforementioned policies, MWBE and SDVOB participation and the goals specified herein may be addressed to OCSD at OCSD@ESD.NY.GOV.

E. Encouraging the Use of NYS Businesses in Contract Performance Form

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Respondents/proposers for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here:

<http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

F. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. **To comply with STL 5-a, all Respondents to this solicitation must include in their Proposals a properly completed Form ST-220-CA, or an affidavit that the Respondent is not required to be registered with the State Department of Taxation and Finance. A copy of the ST-220-CA form and affidavit is accessible at the Required Forms for Vendors link at the ESD web site: labeled "Schedule A- Conditions Applicable to the Corporation's Agreements for Materials and Services (includes ST220 and all other required forms) at <http://esd.ny.gov/CorporateInformation/RFPs.html>.**

Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

G. Schedule A

Following final selection of a Designated Developer, NYSDOT will prepare a contract defining all project terms and conditions and the Designated Developer's responsibilities in conformance with "Schedule A," which can be found at Appendix C. Please note Respondents do not need to complete the entire

Schedule A with the submission of their Proposal. However, Respondents should still review these terms, which are standard in all NYSDOT contracts, and raise any concerns present prior to submission of their Proposal, as the Designated Developer will need to accept these terms prior to contract execution.

H. Project Sunlight

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, “appearances” (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract for real property (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

I. Registration with NYSDOT

All Bidders entering into contracts and lease agreements with the New York State Department of Transportation (NYSDOT) whether as prime consultants, joint venture partners or subconsultants, are required to electronically register their firm using NYSDOT’s Consultant Selection System web application (CSSWeb). All Bidders entering into NYSDOT agreements are required to create and register an account to: 1) Create and assign Consultant Identification Numbers (CINs) for each office registered by the Bidder; and 2) Provide general Bidder information including, but not limited to: legal Bidder name; Federal Identification Number (FEIN); ownership type; DBE, MBE and/or WBE status; Bidder principals; and office(s) address information. All Bidders participating in a potential agreement (negotiations) must be registered electronically with DOT prior to that agreement being forwarded to the Office of the State Comptroller for approval. Registered Bidders are responsible for verifying and updating their registration information for the duration of the agreement.

Bidder Registration instructions are available at:

https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/instructions_cssweb_firm.rtf

or via:

https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/instructions_cssweb_firm.pdf

Bidder Registration begins at: <https://www.dot.ny.gov/main/business-center/consultants/css-web>

Questions regarding the CSSWeb application and Bidder registration should be directed to the CSSWeb Administrator by email at css@dot.ny.gov or by telephone at 518-457-2600.

J. Registration with Statewide Financial System (SFS)

Should this solicitation lead to a designation, the Bidder shall be required to electronically register with the Statewide Financial System (SFS) - if not already registered. DOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The result of this process is an established SFS vendor number assigned to the Prime consultant. If a Bidder has already registered in SFS in connection with another procurement effort, it will likely not need to re-register for this opportunity. However, a SFS vendor number is Bidder name specific. Since many Bidders have different variations of their business identities, Bidders will be required to register in the name of the business entity that DOT is doing business with.

K. Insurance Requirements

1 Lessees shall procure, at their own sole cost and expense, and shall maintain in force at all times during the term of this lease including any extensions or renewals thereof, the policies of insurance covering all operations under the lease whether performed by Lessees or its sub-lessees as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of (A -) or better or approved by Lessor. Lessor may, at its sole discretion, permit the placement of policies with a non-authorized carrier or carriers upon request by Lessees accompanied by the documentation required by 11 NYCRR §27.0 et seq.; provided that nothing herein shall be construed to require NYSDOT to accept insurance placed with a non-authorized carrier under any circumstances. Lessees shall deliver to Lessor evidence of such policies as Lessor deems necessary to verify that the required insurance is in effect. Lessor reserves the right to modify limits based on periodic reviews of coverage.

1.1. Conditions Applicable to Insurance. All policies of insurance required by this agreement must meet the following requirements:

1.1.1 Coverage Types and Policy Limits. The types of coverage and policy limits required from Lessees are specified in Section 1.2 Insurance Requirements below.

1.1.2 Policy Forms. Except as may be otherwise specifically provided herein or agreed in writing by LESSOR, policies must be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy.

1.1.3 Certificates of Insurance/Notices. Lessees shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commissioner, before commencing any work under this lease. Certificates or transmittal correspondence shall reference the NYSDOT Lease D Number. Certificates shall be mailed to the:

NYSDOT Director of Office of Right of Way _____

[50 Wolf Road, Albany NY 12232](#) _____

and
NYSDOT Region 8
Regional Real Estate Officer
Address: _____

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (i) canceled, (ii) materially changed or (iii) permitted to expire or lapse for any reason except upon thirty (30) days' prior written notice to Lessor by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by Lessor, Lessees shall deliver to Lessor within forty-five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

- a) Be in the form acceptable to Lessor;
- b) Be signed by an authorized representative of the insurance carrier or producer;
- c) Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the lease;
- d) Specify the Additional Insureds and Named Insureds as required herein;
- e) Refer to this Lease on the face of the certificate, and
- f) Expressly reference the inclusion of all required endorsements.

If at any time during the term of this lease, it shall come to the attention of Lessor that required insurance is not in effect or that adequate proof of insurance has not been provided, Lessor may, at its option subject to Lessees' right to cure any such default as set forth in Article 18:

- a) Declare Lessees to be in default and take action to procure such insurance as is deemed necessary and charge the expense of such insurance to Lessees, or
- b) Treat such failure as a breach or default of the lease as defined in Article 11.

1.1.4 Additional Insureds. All insurance policies required herein, except workers' compensation and professional liability shall be endorsed to provide coverage to **"The State of New York/New York State Department of Transportation and any consultants working for or on the Premises, and their agents or employees as well as the New York State Urban Development Corporation"** with respect to any claim arising from Lessees' tenancy under this lease or as a result of Lessees' activities. The endorsement shall be effected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a form(s) that provides equivalent coverage.

1.1.5 Primary Coverage. All insurance policies, excepting workers' compensation and professional liability, shall provide that the required coverage shall be primary as to any other insurance that may be available to Lessor for any claim arising from Lessees' Work under this lease, or as a result of the Lessees' activities.

1.1.6 Waiver of Subrogation. As to every type and form of insurance coverage required from Lessees, there shall be no right of subrogation against the State of New York/New York State Department of Transportation, its agents or employees. To the extent that any of Lessees' policies of insurance prohibit such a waiver of subrogation, Lessees shall secure the necessary permission to make this waiver.

1.1.7 Policy Renewal/Expiration. At least thirty (30) calendar days prior to the expiration of any policy required by this lease, evidence of renewal or replacement policies of insurance with terms no less favorable to Lessor than the expiring policies shall be delivered to Lessor in the manner required for service of notice in Paragraph 1.1.3. Certificates of Insurance/Notices above.

1.1.8. Self-Insured Retention/Deductibles. Lessees utilizing self-insurance programs are required to provide a description of the program for Department approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the Lease Documents of a particular project, Lessees or third-party-administered insurance deductible shall be limited to the amount of \$100,000.00. Security is not required if it is otherwise provided to an administrator for an approved risk management program. Lessor will not accept a self-insured retention program without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. Lessees shall be solely responsible for all claim expense and loss payments within any permitted deductible or self-insured retention. If Lessees' deductible in a self-administered program exceeds \$100,000, Lessees shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by Department must be issued by a guarantor or surety with an AM Best Company rating of (A -) or better. If, at any time during the term of this agreement, Lessor, in its sole discretion, determines that Lessees are not paying its deductible, it may require Lessees to collateralize all or any part of the deductible or self-insured retention on any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due Lessees.

1.1.9. Waiver of Indemnities. Lessees waive any right of action it and/or its insurance carrier might have against Lessor (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this lease. Lessees waive any right of action it and/or its insurance carrier might have against Lessor (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.

1.1.10. Sub-lessee's Liability Insurance. In the event that any portion of the property described in this lease is occupied by an approved sub-lessee, the insurance requirements of this Article shall be incorporated into the sublease agreement. Sub-lessee insurance requirements shall include the requirements for Workers' Compensation, Commercial General Liability (at least \$1,000,000.00 per occurrence and not less than \$2,000,000.00 aggregate), and, if applicable, Commercial Auto. Excess or umbrella insurance is not required for sub-lessees. Lessees shall require that Certificates of Insurance, meeting the requirements of Lessor are provided to Lessor documenting the insurance coverage for each and every sub-lessee employed by them to do work under this lease.

1.2. Insurance Requirements. The types of insurance and minimum policy limits shall be as follows:

1.2.1. Workers' Compensation and Disability Insurance. As required by State Finance Law §142, Lessees shall maintain in force workers' compensation insurance upon forms required by or acceptable

to the Workers Compensation Board for all of Lessees' employees. Lessees shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.

1.2.2. Commercial General Liability Insurance. Lessees shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured lease (including the tort liability of another assumed in a business lease) occurring on or in any way related to the premises or occasioned by reason of the operations of Lessees. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of not less than \$5,000,000.00 per occurrence and not less than \$5,000,000.00 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:

- a) Coverage for contractual liability assumed by Lessees insured under an insured lease (including the tort liability of another assumed in a business contract).
- b) All insurance policies required by these specifications except workers' compensation and professional liability shall be endorsed to provide coverage to "The State of New York/New York State Department of Transportation and any consultants working for or on the Premises, and their agents or employees" using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.
- c) Products-Completed Operations Coverage, as provided in the General Liability Policy, or in certain instances through ISO form CG 26 11 09 99 or suitable equivalent.
- d) Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
- e) Coverage for claims for liability stemming from the accidental discharge of pollutants that may otherwise be the subject of a pollution exclusion with limits of liability of no less than \$1,000,000.00.

1.2.3. Commercial Automobile Insurance including liability and required coverage for New York (applicable to any project where automobiles or other vehicles will be employed to complete the work). In the event that automobiles are used in connection with Lessees' business or operations with Lessor, Lessees shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of Lessee's automobiles (including owned, hired and non-owned vehicles) on and around the project. This should be ISO form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than \$1,000,000.00 each accident.

1.2.4. Property Insurance. Lessees shall procure and maintain commercial property insurance in policy form providing coverage, for perils under a broad form risks of loss. Subject to the allowances stated in Section 1.18. Self-Insured Retention/Deductibles, above, the deductible not to exceed \$100,000.00. Policy shall cover the total value of structures and buildings, supplies and materials on the leased premises. The policy shall cover the cost of removing debris, including demolition as may be legally

necessary by the operation of any law, ordinance or regulation, and for loss or damage to any owned, borrowed, leased or rented capital equipment, and tools. Such policy shall name Lessees as insured, and The People of the State of New York, and Sub-lessees as additional insureds.

1.2.5. Lessees' Risks. Lessees shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) business interruption, such as gross earnings, extra expense, or similar coverage, (b) personal property, and/or (c) automobile physical damage and/or theft. In no event shall Lessor be liable for any damage to, or loss of, personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this agreement, even if such loss is caused by the negligence of Lessor.

1.2.6 Site Pollution Liability Insurance. Lessees shall procure and maintain, either through an endorsement to a commercial general liability policy or through a separate policy, insurance protecting Lessees and Lessor from the liability and financial loss relating to Lessees' contamination of soil and the accidental release of petroleum products, chemicals and/or toxic gases from broken pipelines, utilities and stationary and mobile fuel tanks that can result from Lessees' operations. Such coverage shall be written on policy form providing coverage for contamination both on and off the leased premises and shall provide coverage in an amount of not less than \$10,000,000.00 per occurrence and not less than \$10,000,000.00 aggregate.

XII. TERMINATION AND CANCELLATION

a) If any one or more of the following events (each an "Event of Default") shall occur:

- (1) Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
- (2) By order or decree of a court Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors or, if the Lessee is a corporation by any of the stockholders of the Lessee, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
- (3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed within ninety (90) days after the filing thereof; or

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- (4) The leasing hereunder or the interest or estate of the Lessee under this Lease shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation; or
 - (5) The Lessee, if a corporation, shall, without the prior consent of the Lessor, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
 - (6) The Lessee, if a partnership, and said partnership shall be dissolved as the result of any act or omission of its partners or any of them, or by operation of law or by order or decree of any court having jurisdiction or for any other reason whatsoever; or
 - (7) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all the property of the Lessee, or any execution or attachment shall be issued against the Lessee or any of its property, whereupon possession of the Premises shall be taken by someone other than the Lessee, and any such possession or control shall continue in effect for a period of fifteen (15) days; or
 - (8) Any lien is filed against the Premises because of any act or omission of the Lessee and is not removed within thirty (30) days after notice to Lessee; or
 - (9) The Lessee shall voluntarily abandon, desert, vacate or discontinue its operations in the Premises, or, after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of thirty (30) days by action of any governmental agency from conducting its operations on the Premises, regardless of the fault of the Lessee; or the Lessee shall fail to take occupancy or commence operations within fifteen (15) calendar days after the Commencement Date; or
 - (10) Lessee shall fail duly and punctually to pay the rent or to make any other payment required hereunder when due to the Lessor; or
 - (11) Lessee shall fail to keep, perform, observe or cure each and every other promise, covenant and agreement set forth in this Lease on its part to be kept, performed, or observed, within thirty (30) days after receipt of notice of default thereunder from the Lessor (except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have commenced to perform whatever may be required for fulfillment within thirty (30) days after receipt of notice and continues such performance without interruption except for causes beyond its control; or
 - (12) If this Lease shall require a guarantor of one or more of the Lessee's obligations under this Lease and any of the events described in subparagraphs (1), (2), (3) or (7) above shall occur
-

to or with respect to the guarantor (whether or not they shall also occur to or with respect to the Lessee);

then upon the occurrence of any such Event of Default or at any time thereafter during the continuance thereof, the Lessor may by thirty (30) days' notice terminate the Lease, such termination to be effective upon the date specified in such notice.

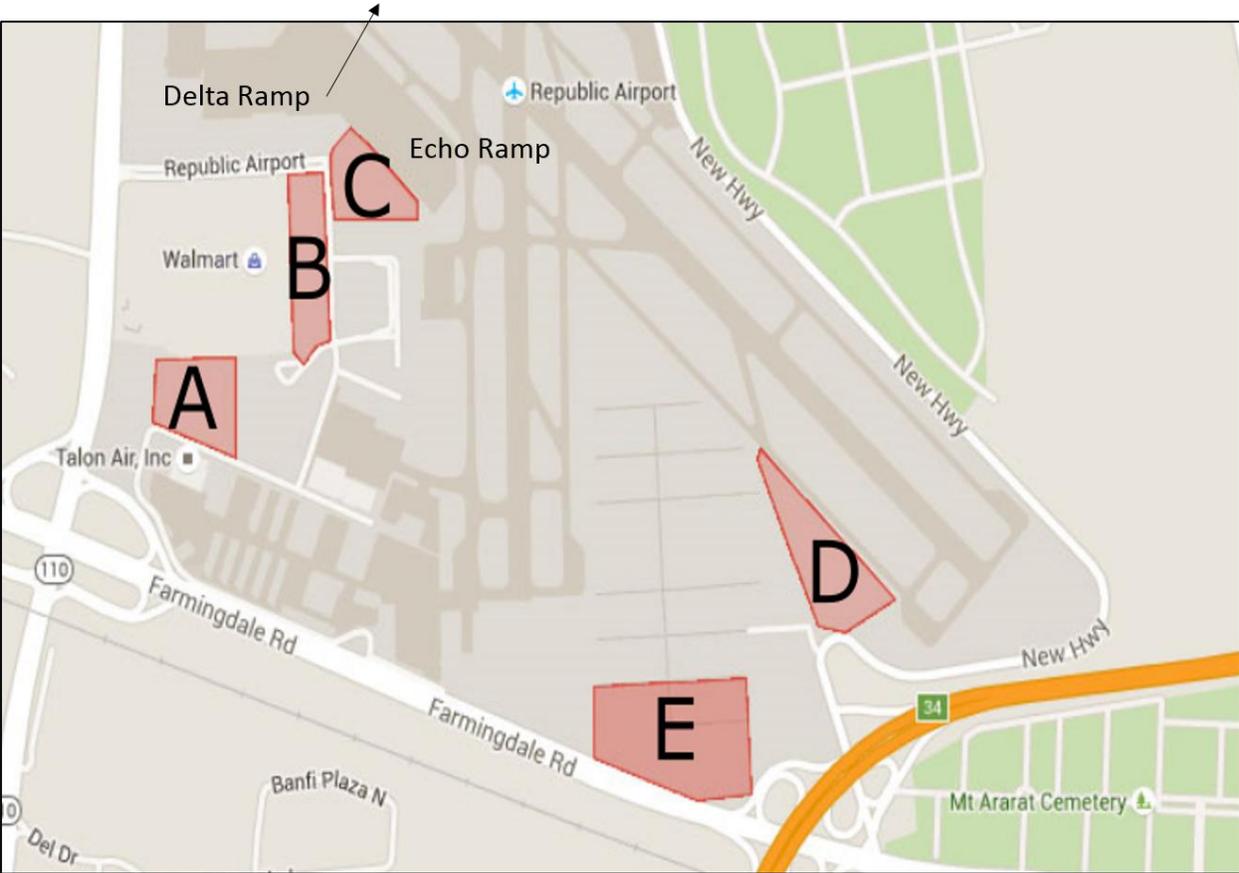
- b) No acceptance by Lessor, of rent, fees, charges or other payments in whole or in part for any period or periods after a default in any of the terms, covenants and conditions to be performed, kept or observed by Lessee shall be deemed a waiver of any right on the part of Lessor to terminate this Lease.
- c) No waiver by Lessor of any default on the part of Lessee in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by Lessee shall be or be construed to be a waiver by Lessor of any other or subsequent default in performance of any of the said terms, covenants and conditions.
- d) The rights of termination described above shall be in addition to any other rights of termination provided in this Lease and in addition to any rights and remedies that Lessor would have at law or in equity consequent upon any breach of this Lease by Lessee, and the exercise by Lessor of any right of termination shall be without prejudice to any other such rights and remedies.
- e) The Lessee shall not interpose any counterclaims in any summary proceeding or action for non-payment of rent which may be brought by the Lessor.
- f) Cancellation by the Lessor requires thirty (30) days written notice except for cause, in which event cancellation can be effected on five (5) days written notice. Lessee may cancel this lease by giving thirty (30) days written notice.

XIII. APPENDIX

Below is a list of appendices attached to and made a part of this solicitation:

- Appendix A: Parcels At Republic
- Appendix B: Available Incentives
- Appendix C: Standard Clauses for NYS Contracts
- Appendix D: Supplemental Title VI Provisions (Civil Rights Act)
- Appendix E: Responsibility Provisions
- Appendix F: Respondent Information and Certifications
- Appendix G: Procurement Lobbying Law Compliance
- Appendix H: Responsibility When Proposing Former NYSDOT Employees
- Appendix I: Draft Lease for State-Owned Land, NYSDOT
- Appendix J: Diversity Practices Questionnaire and Scoring Matrix (attached)

APPENDIX A
PARCELS AT REPUBLIC



Parcel A

Acres: Approximately 5.5 acres

Adjacent uses: Aviation, commercial and State Police

Utilities: Water, gas, sewer, electric and telecom under Route 110



Parcel B

Acres: Approximately 6 acres

Adjacent uses: Commercial

Utilities: Water, gas, electric, sewer and telecom under Route 110 and Republic Airport Drive



Parcel C

Acres: Approximately 5 acres

History: Building was formerly a restaurant

Utilities: Water, gas, electric, sewer and telecom under Route 110 and Republic Airport Drive

Adjacent uses: Commercial and Airport Terminal

NOTE: Parcel C may include Echo and Delta Ramp if Respondent so chooses



Parcel D

Acres: Approximately 7 acres

Restrictions: Adjacent to runway

Utilities: None

Adjacent uses: Industrial and recreational



Parcel E

Acres: Approximately 18 acres

Environmental: No known environmental issues

Adjacent uses: Industrial and recreational

Utilities: Sewer, gas, telecom and electric run along Farmingdale Road



APPENDIX B
AVAILABLE INCENTIVES

About START-UP NY

Tax-Free: Participating companies in START-UP NY will not pay any taxes (no income tax; no business, corporate state or local taxes; no sales tax; no property tax; and no franchise fees) for 10 years. Employees in participating companies will pay no income taxes for the first five years. For the second five years, employees will pay no taxes on income up to \$200,000 of wages for individuals, \$250,000 for a head of household, and \$300,000 for taxpayers filing a joint return. The number of net new jobs eligible for personal income tax benefits will not exceed 10,000 new jobs per year.

Eligibility: In order to locate into a START-UP NY tax-free community, a business needs to be aligned with or further the academic mission of the campus, college or university sponsoring the tax-free community. Businesses participating in the program will need to have positive community and economic benefits. Every business must create and maintain net new jobs in order to participate. Businesses must:

- Be a new start-up company;
- Be a company from out-of-state that is relocating to New York State; or
- Be the expansion of an existing New York State company for example, a company creating a new line of business or opening a new advanced manufacturing facility as long as it can demonstrate that it is creating new jobs and not moving existing jobs.

In addition, New York State start-ups that hatch from New York State incubators will be eligible to enter tax-free communities and be eligible for the benefits under the program.

In New York City, Long Island and Westchester County, businesses must be start-ups or high-tech companies. Statewide, certain types of businesses are excluded from the program, including retail and wholesale businesses; restaurants and hospitality; professional practices like law firms and medical practices; and energy production and distribution companies.

Companies will be eligible to enter into the program until December 31, 2020 and by that time, ESD will prepare an evaluation of the effectiveness of the program in order to determine whether eligibility should be extended.

Each university community will develop a plan for the types of businesses it intends to attract and the

locations that will be tax-free. Businesses will apply directly to the participating college and, once a business is accepted, ESD will have 60 days to review the application to ensure eligibility.

Bans Competition with Existing Businesses: Under the START-UP NY program, businesses that might compete unfairly with other local businesses outside the tax-free area would be ineligible to participate.

Eligible Colleges and Universities: SUNY, CUNY and independent colleges and universities will all have the opportunity to develop tax-free communities.

SUNY: Every SUNY community college and 4-year college/university can establish a tax-free community using:

- Vacant land on the SUNY campus (for every campus outside of New York City);
- Vacant space in buildings on the SUNY campus (for every campus outside of NYC);
- Any business incubator with a bona fide affiliation to the campus, university or college; and
- Up to 200,000 square feet within one mile of a campus (for every campus north or west of Westchester County), or further with approval from ESD.

CUNY: CUNY will be able to establish a tax-free community on a campus in each borough Manhattan, the Bronx, Queens, Brooklyn and Staten Island in an area of economic distress. CUNY Tax-Free NY communities may include:

- Vacant land on the CUNY campus;
- Vacant space in buildings on the CUNY campus; and
- Any business incubator with a bona fide affiliation to the campus, university or college.

Private Colleges: The program also provides 3 million square feet (with the potential of another 600,000 more) of tax-free areas primarily dedicated to private colleges and universities on land north of Westchester County, to be allocated by the START-UP NY program board (consisting of three members with significant experience in academic-based entrepreneurship appointed by the Governor, the Speaker of the Assembly and the Temporary President of the Senate) in a manner that ensures regional balance and balance among eligible rural, urban and suburban areas in the State.

For private colleges and universities north of Westchester County, the tax-free areas can include vacant land and vacant space on- or off-campus, as well as any business incubator with a bona fide affiliation to the campus, university or college.

Robust Protections Against Fraud: START-UP NY includes strong provisions to protect against fraud. Businesses will have to submit certification to ESD, and falsifying certifications will be a felony. The legislation also includes strict provisions to guard against abuses such as shifting jobs among related entities or shirtchanging, when a company simply reincorporates under a new name and claims its existing employees are now new jobs. In addition, START-UP NY includes measures to prevent self-dealing and conflicts of interest. In cases of fraud, the State will be empowered to claw-back benefits granted to the business. Companies that do not meet the terms of the program including meeting their job creation targets may have their benefits reduced, suspended or terminated. ESD will have the authority to review company data to ensure that jobs have been created and maintained, and to end participation by companies that have not created net new jobs. ESD will be required to publish a comprehensive annual report to enable the public to evaluate the programs impact.

About Excelsior Jobs Program

Overview

The Excelsior Jobs Program provides job creation and investment incentives to firms in such targeted industries as biotechnology, pharmaceutical, high-tech, clean-technology, green technology, financial services, agriculture and manufacturing. Firms in these industries that create and maintain new jobs or make significant financial investment are eligible to apply for up to four new tax credits. The Program encourages businesses to expand in and relocate to New York while maintaining strict accountability standards to guarantee that businesses deliver on job and investment commitments. Program costs are capped at \$500 million annually to maintain fiscal affordability and ensure that New Yorkers realize a positive return on their investment.

Tax Credits

Firms in the Excelsior Jobs Program may qualify for four new, fully refundable tax credits. Businesses claim the credits over a 10 year period. To earn any of the following credits, firms must first meet and maintain the established job and investment thresholds outlined in Program Eligibility below:

The Excelsior Jobs Tax Credit: A credit of 6.85 percent of wages per new job to cover a portion of the associated payroll cost.

The Excelsior Investment Tax Credit: Valued at two percent of qualified investments.

The Excelsior Research and Development Tax Credit: A credit of 50 percent of the Federal Research and Development credit up to three percent of research expenditures in NYS.

The Excelsior Real Property Tax Credit: Available to firms locating in certain distressed areas (see Investment Zone list below) and to firms in targeted industries that meet higher employment and investment thresholds (Regionally Significant Project).

Program Eligibility

The Program is limited to firms making a substantial commitment to growth – either in employment or through investing significant capital in a New York facility. The Job Growth Track comprises 75% of the Program and includes all firms in targeted industries creating new jobs in New York. Twenty-five percent is set aside for the Investment Track firms who meet the minimum job retention criteria and make significant new capital investments in a New York facility and which meet a benefit-cost threshold of at least \$10 of investment and new wages for every \$1 of tax credit.

As detailed in the charts below, every firm approved for participation in the program is eligible to apply for the Jobs Tax Credit, the Investment Tax Credit, and the R&D Tax Credit. Only certain categories of firms are eligible to also apply for the Real Property Tax Credit. Participation in the Program and the amount of credits authorized is at the discretion of the Commissioner. Benefits will be provided if a firm meets the eligibility criteria.

Application Process

Applicants must complete a consolidated funding application (CFA) that will be submitted to the local ESD regional office. The CFA can be accessed at <http://nyworks.ny.gov>.

If the application is approved, then within the available credits each year, ESD will enter into a formal agreement with the firm that clearly states the tax credits as well as the job and investment requirements for each year. Firms that meet the eligibility criteria will be issued a certificate allowing them to claim eligible tax credits.

Accountability and Transparency

In each year from 2011 through 2015, ESD may commit up to \$500 million in tax credits to firms in the Excelsior Jobs Program. The Program's total lifetime value is \$2.25 billion. A firm may only claim tax credits after demonstrating that it meets the minimum eligibility criteria.

ESD will post online quarterly reports providing information both on program statistics and individual participant performance.

APPENDIX C

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

(January 2014)

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

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

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

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

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

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

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

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty

of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and

women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the

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

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

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

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

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

APPENDIX D

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 E
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.

APPENDIX F

RESPONDENT INFORMATION AND CERTIFICATIONS

PROJECT NUMBER:

PROJECT TITLE:

I. RESPONDENT INFORMATION

RESPONDENT NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____

ZIP CODE: _____ - _____

TELEPHONE : (____) ____ - _____ FAX: (____) ____ - _____

E-MAIL ADDRESS: _____

CONTACT PERSON: _____

Respondent's Federal Identification Number (FIN): _____

Respondent's NYSDOT Consultant Identification Number (CIN): _____

Respondent's New York State SFS Vendor Identification Number: _____

Please indicate below the name, title, address, and telephone/fax numbers of the person who prepared this proposal, as well as any other individual(s) with authority to negotiate and contractually bind the Respondent and also who may be contacted during the period of proposal evaluation:

Preparer's Name/Title: _____

Address: _____

Telephone: (____) ____ - _____ FAX: (____) ____ - _____

Other Authorized Individual(s):

Name/Title: _____

Address: _____

Telephone: (____) ____ - _____ FAX: (____) ____ - _____

II. RESPONDENT CERTIFICATIONS

By signing below, I, _____, authorized individual
(Name)

of _____ make the following
(Respondent)

certifications regarding the subject proposal:

- 365-Day Offer: This proposal is a firm offer for a 365-day (or more) period from the date of submission.
- The Respondent has read and will follow the procedure outlined in **Attachment F** if it proposes the services of a former NYSDOT employee(s).
- Vendor Responsibility: If selected, the Respondent will complete and submit the required Vendor Responsibility forms to NYSDOT within 10 days of notification of designation both electronically and in hard copy per the NYSDOT Web site.
(<https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>)
- ST-220: If selected, the Respondent will complete and submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to negotiation with NYSDOT. You should make yourself familiar with these forms by visiting the following Web sites:
http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA)
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)
- The Respondent is in compliance with the requirements of the Omnibus Procurement Act as described in the Procurement Forms and Requirements Section.

Signature: _____

III. **ACCEPTANCE OF TERMS**

By signing below, I, _____, authorized individual

(Name)

of _____ hereby **certify that I have read and**

(Respondent)

accept all terms and conditions contained in this RFP

Signature: _____

(Name of Acceptor)

APPENDIX G:

PROCUREMENT LOBBYING LAW COMPLIANCE

1. Required Forms: The Respondent shall sign and e-mail/fax the following forms. These forms are part of and due with the Respondent's proposal.

- a) **"Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)"**
- b) **"Offerer Disclosure of Prior Non-Responsibility Determinations".**

2. NYSDOT Guidelines and Procedures

Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through NYSDOT Contract Management Bureau (*Designated Contacts). Until a designation is made, communication with any other NYSDOT employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.

Refer to "NYSDOT PROCUREMENT LOBBYING LAW GUIDELINES AND PROCEDURES" – see the Consultant's page at NYSDOT's "Doing Business With DOT" web site:

<https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>

3. Summary of the policy and prohibitions regarding permissible contacts

a) Contacts prior to designation:

Any communications involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons:

The Contract Management Designation Contract Analyst

The Contract Management Designation Analyst Supervisor

The Contract Management Civil Rights Unit Supervisor

The Contract Management Assistant Directors

The Contract Management Director

These are some communications exempted from this restriction:

Participation in a pre-proposal conference.

Protests, complaints of improper conduct or misrepresentation

If any other NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee. If NYSDOT determines an impermissible contact was made, that Respondent cannot be selected. A second violation would lead to a four year bar on the award of public contracts to the Respondent.

b) Contacts after designation

NYSDOT identifies its primary negotiation contacts. The designated contacts include:

The Contract Management Designation Contract Analyst

The Contract Management Designation Analyst Supervisor

The Contract Management Civil Rights Unit Supervisor

The Contract Management Assistant Directors

The Contract Management Director

The Consultant Management Bureau consultant job manager

The Consultant Management Bureau consultant job manager's immediate supervisor

The law does not limit who may be contacted during the negotiation process. However, if any NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee.

c) Information Required from Respondents that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller:

The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by e-mail or fax as directed by NYSDOT:

Person's name, Respondent person works for, address of employer, telephone number, occupation, Respondent they are representing, and whether owner, employee, retained by or designated by the Respondent to appear before or contact the NYSDOT.

d) Applicability to an executed contract:

Restrictions similar to those described above apply to approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the Respondent. The staff noted above as well as the project manager and consultant manager are considered designated contact persons. NYSDOT may identify other contact persons for each of these processes.

4. Rules and regulations and more information on this law, please visit:

<http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/Faq.htm> (Advisory Council FAQs)

<http://jcope.ny.gov/law/lob/lobbying2.html> (New York State Lobbying Act)

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

For more information, go to ESD's website at <http://www.esd.ny.gov>

or contact Thomas Conoscenti at RepublicAirportRFP@esd.ny.gov

APPENDIX H:

RESPONDENT'S RESPONSIBILITY WHEN PROPOSING FORMER NYSDOT EMPLOYEES

It is the Respondent's responsibility to ensure they propose staff that is eligible to work on the proposed project. It is an individual's responsibility to comply with the Public Officer's Law.

The following procedure applies if either of the following criteria is met.

- It is two years or less between the date that the individual is proposed and the individual's date of separation from the State.
- The individual proposed has worked on the project while employed by NYSDOT regardless of how long ago they left NYSDOT.

Procedure

- Before the Respondent proposes an individual, the individual must obtain an opinion from the New York State Joint Commission on Public Ethics (<http://www.jcope.ny.gov/>) that approves their participation in the project as they are proposed.
- A copy of this opinion must be on file in the Respondent's office and available for review by NYSDOT if requested.
- Failure to obtain New York State Joint Commission on Public Ethics approval for an individual's participation in a project may jeopardize the firm's designation for that project.

APPENDIX I

DRAFT LEASE FOR STATE-OWNED LAND, NYSDOT

**DESIGN, DEVELOPMENT and SUBSEQUENT LEASING of STATE-OWNED
PROPERTY at REPUBLIC AIRPORT in E. FARMINGDALE by NYSDOT**

Lease # _____

Parcel # _____

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

REAL ESTATE DIVISION

LEASE FOR USE OF STATE-OWNED PROPERTY

Lease Number: _____

P.I.N. _____

Inventory No. _____

Account No. _____

Property Location: _____ **described on the 'Description and Map of the Subject Property' attached to and incorporated in this Lease as Exhibit ____.**

County: **Suffolk**

Town: **East Farmingdale**

City/Village: _____

THIS LEASE, made this _____ day of _____, 201__ between

Lessee:

Address:

City, State, Zip Code

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 control of said property; and

WHEREAS, the Lessee has successfully competed for lease award per Empire State Development's Request for Proposal entitled: "FOR THE LONG-TERM LEASE OF FIVE DEVELOPMENT PARCELS AT REPUBLIC AIRPORT" dated February 8, 2016, and Lessee was a Respondent who was conditionally designated through Empire State Development's RFP process by NYSDOT and per that RFP is also known as the "Designated Developer".

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

1. PREMISES

The State hereby leases property on ____ (Parcel Description) ____ and further described on the 'Description and Map of the Subject Property' attached to and incorporated in this Lease as Exhibit _____. The premises shall

be used only for the purposes stated in the Lessee's "Republic Airport RFP" Proposal dated XXXX and incorporated in this lease as Exhibit __ and will be subject to all applicable airport rules and regulations, and federal, state, and local laws and regulations.

2. TERM

The term of this lease shall be for forty-nine (49) years and shall commence on ____ (Date) _____. There will be no extension of the term.

3. FEE SCHEDULE

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

4. PAYMENT

Payment of fee is due on _____ 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. PENALTIES

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. TERMINATION AND CANCELLATION

a) If any one or more of the following events (each an "Event of Default") shall occur:

(1) Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or

(2) By order or decree of a court Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors or, if the Lessee is a corporation by any of the stockholders of the Lessee, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

-
- (3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed within ninety (90) days after the filing thereof; or
- (4) The leasing hereunder or the interest or estate of the Lessee under this Lease shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation; or
- (5) The Lessee, if a corporation, shall, without the prior consent of the Lessor, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
- (6) The Lessee, if a partnership, and said partnership shall be dissolved as the result of any act or omission of its partners or any of them, or by operation of law or by order or decree of any court having jurisdiction or for any other reason whatsoever; or
- (7) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all the property of the Lessee, or any execution or attachment shall be issued against the Lessee or any of its property, whereupon possession of the Premises shall be taken by someone other than the Lessee, and any such possession or control shall continue in effect for a period of fifteen (15) days; or
- (8) Any lien is filed against the Premises because of any act or omission of the Lessee and is not removed within thirty (30) days after notice to Lessee; or
- (9) The Lessee shall voluntarily abandon, desert, vacate or discontinue its operations in the Premises, or, after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of thirty (30) days by action of any governmental agency from conducting its operations on the Premises, regardless of the fault of the Lessee; or the Lessee shall fail to take occupancy or commence operations within fifteen (15) calendar days after the Commencement Date; or
- (10) Lessee shall fail duly and punctually to pay the rent or to make any other payment required hereunder when due to the Lessor; or
- (11) Lessee shall fail to keep, perform, observe or cure each and every other promise, covenant and agreement set forth in this Lease on its part to be kept, performed, or observed, within thirty (30) days after receipt of notice of default thereunder from the Lessor (except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have commenced to perform whatever may be required for fulfillment within thirty (30) days after receipt of notice and continues such performance without interruption except for causes beyond its control); or
- (12) If this Lease shall require a guarantor of one or more of the Lessee' obligations under this Lease and any of the events described in subparagraphs (1), (2), (3) or (7) above shall occur to or with respect to the guarantor (whether or not they shall also occur to or with respect to the Lessee);
-

then upon the occurrence of any such Event of Default or at any time thereafter during the continuance thereof, the Lessor may by thirty (30) days' notice terminate the Lease, such termination to be effective upon the date specified in such notice.

- b) No acceptance by Lessor, of rent, fees, charges or other payments in whole or in part for any period or periods after a default in any of the terms, covenants and conditions to be performed, kept or observed by Lessee shall be deemed a waiver of any right on the part of Lessor to terminate this Lease.
- c) No waiver by Lessor of any default on the part of Lessee in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by Lessee shall be or be construed to be a waiver by Lessor of any other or subsequent default in performance of any of the said terms, covenants and conditions.
- d) The rights of termination described above shall be in addition to any other rights of termination provided in this Lease and in addition to any rights and remedies that Lessor would have at law or in equity consequent upon any breach of this Lease by Lessee, and the exercise by Lessor of any right of termination shall be without prejudice to any other such rights and remedies.
- e) The Lessee shall not interpose any counterclaims in any summary proceeding or action for non-payment of rent which may be brought by the Lessor.
- f) Cancellation by the Lessor requires thirty (30) days written notice except for cause, in which event cancellation can be effected on five (5) days written notice. Lessee may cancel this lease by giving thirty (30) days written notice.

7. INSURANCE REQUIREMENTS

The Lessee shall procure, at its own sole cost and expense, and shall maintain in force at all times during the term of this lease including any extensions or renewals thereof, the policies of insurance covering all operations under the lease whether performed by Lessee or its sub-lessees as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of (A -) or better or approved by NYSDOT. NYSDOT may, at its sole discretion, permit the placement of policies with a non-authorized carrier or carriers upon request by the Lessee accompanied by the documentation required by 11 NYCRR §27.0 *et seq.*; provided that nothing herein shall be construed to require NYSDOT to accept insurance placed with a non-authorized carrier under any circumstances. The Lessee shall deliver to NYSDOT evidence of such policies as NYSDOT deems necessary to verify that the required insurance is in effect. NYSDOT reserves the right to modify limits based on periodic reviews of coverage.

Conditions Applicable to Insurance. All policies of insurance required by this agreement must meet the following requirements:

Coverage Types and Policy Limits. The types of coverage and policy limits required from the Lessee are specified in Section 1.2 Insurance Requirements below.

Policy Forms. Except as may be otherwise specifically provided herein or agreed in writing by NYSDOT, policies must be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy.

Certificates of Insurance/Notices. Lessee shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commissioner, before commencing any work under this lease. Certificates or transmittal correspondence shall reference the NYSDOT Lease Number _____. Certificates shall be mailed to the:

Office of Airport Director and Manager
7150 Republic Airport, Room 216
E. Farmingdale NY 11735
infor@republicairport.net

and

New York State Department of Transportation
Aviation Bureau, POD 5-4
50 Wolf Road, Albany NY 12232

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (i) canceled, (ii) materially changed or (iii) permitted to expire or lapse for any reason except upon thirty (30) days' prior written notice to NYSDOT by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by NYSDOT, the Lessee shall deliver to NYSDOT within forty-five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

- a. Be in the form acceptable to NYSDOT;
- b. Be signed by an authorized representative of the insurance carrier or producer;
- c. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the lease;
- d. Specify the Additional Insureds and Named Insureds as required herein;
- e. Refer to this Lease on the face of the certificate, and
- f. Expressly reference the inclusion of all required endorsements.

If at any time during the term of this lease, it shall come to the attention of NYSDOT that required insurance is not in effect or that adequate proof of insurance has not been provided, NYSDOT may, at its option subject to Lessee's right to cure any such default as set forth in Article 18:

- a. Declare the Lessee to be in default and take action to procure such insurance as is deemed necessary and charge the expense of such insurance to the Lessee, or
- b. Treat such failure as a breach or default of the lease as defined in Article 18.

Additional Insureds. All insurance policies required herein, except workers' compensation and professional liability shall be endorsed to provide coverage to **"The State of New York/New York State Department of Transportation and any consultants working for or on the airport property, and their agents or employees"** with respect to any claim arising from the Lessee's tenancy under this lease or as a result of the Lessee's activities. The endorsement shall be effected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a form(s) that provides equivalent coverage.

Primary Coverage. All insurance policies, excepting workers' compensation and professional liability, shall provide that the required coverage shall be primary as to any other insurance that may be available to NYSDOT for any claim arising from the Lessee's Work under this lease, or as a result of the Lessee's activities.

Waiver of Subrogation. As to every type and form of insurance coverage required from the Lessee, there shall be no right of subrogation against the State of New York/New York State Department of Transportation, its agents or employees. To the extent that any of Lessee's policies of insurance prohibit such a waiver of subrogation, Lessee shall secure the necessary permission to make this waiver.

Policy Renewal/Expiration. At least thirty (30) calendar days prior to the expiration of any policy required by this lease, evidence of renewal or replacement policies of insurance with terms no less favorable to NYSDOT than the expiring policies shall be delivered to NYSDOT in the manner required for service of notice in Paragraph 1.1.3. *Certificates of Insurance/Notices* above.

Self-Insured Retention/Deductibles. Lessees utilizing self-insurance programs are required to provide a description of the program for Department approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the Lease Documents of a particular project, Lessee or third-party-administered insurance deductible shall be limited to the amount of \$100,000.00. Security is not required if it is otherwise provided to an administrator for an approved risk management program. NYSDOT will not accept a self-insured retention program without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The Lessee shall be solely responsible for all claim expense and loss payments within any permitted deductible or self-insured retention. If the Lessee's deductible in a self-administered program exceeds \$100,000, the Lessee shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by Department must be issued by a guarantor or surety with an AM Best Company rating of (A -) or better. If, at any time during the term of this agreement, NYSDOT, in its sole discretion, determines that the Lessee is not paying its deductible, it may require the Lessee to collateralize all or any part of the deductible or self-insured retention on any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the Lessee.

Waiver of Indemnities. The Lessee waives any right of action it and/or its insurance carrier might have against NYSDOT (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this lease. The Lessee waives any right of action it and/or its

insurance carrier might have against NYSDOT (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.

Sub-lessee's Liability Insurance. In the event that any portion of the property described in this lease is occupied by an approved sub-lessee, the insurance requirements of this Article shall be incorporated into the sublease agreement. Sub-lessee insurance requirements shall include the requirements for Workers' Compensation, Commercial General Liability (at least \$1,000,000.00 per occurrence and not less than \$2,000,000.00 aggregate), and, if applicable, Commercial Auto. Excess or umbrella insurance is not required for sub-lessees. Lessee shall require that Certificates of Insurance, meeting the requirements of NYSDOT are provided to NYSDOT documenting the insurance coverage for each and every sub-lessee employed by them to do work under this lease.

Insurance Requirements. The types of insurance and minimum policy limits shall be as follows:

Workers' Compensation and Disability Insurance. As required by State Finance Law §142, the Lessee shall maintain in force workers' compensation insurance upon forms required by or acceptable to the Workers Compensation Board for all of Lessee's employees. Lessee shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.

Commercial General Liability Insurance. The Lessee shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured lease (including the tort liability of another assumed in a business lease) occurring on or in any way related to the premises or occasioned by reason of the operations of Lessee. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of not less than \$10,000,000.00 per occurrence and not less than \$10,000,000.00 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:

- a. Coverage for contractual liability assumed by the Lessee insured under an insured lease (including the tort liability of another assumed in a business contract).
- b. All insurance policies required by these specifications except workers' compensation and professional liability shall be endorsed to provide coverage to **"The State of New York/New York State Department of Transportation and any consultants working for or on the airport property, and their agents or employees"** using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.
- c. Products-Completed Operations Coverage, as provided in the General Liability Policy, or in certain instances through ISO form CG 26 11 09 99 or suitable equivalent.
- d. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
- e. Coverage for claims for liability stemming from the accidental discharge of pollutants that may otherwise be the subject of a pollution exclusion with limits of liability of no less than \$1,000,000.00.
- f. Coverage for hangar keepers' liability with limits of liability of no less than \$5,000,000.00.

Commercial Automobile Insurance including liability and required coverage for New York (applicable to any project where automobiles or other vehicles will be employed to complete the work). In the event that automobiles are used in connection with Lessee's business or operations with NYSDOT, the Lessee shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of Lessee's automobiles (including owned, hired and non-owned vehicles) on and around the project. This should be ISO form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than \$1,000,000.00 each accident.

Property Insurance. The Lessee shall procure and maintain commercial property insurance in policy form providing coverage, for perils under a broad form risks of loss. Subject to the allowances stated in Section 1.18. *Self-Insured Retention/Deductibles*, above, the deductible not to exceed \$100,000.00. Policy shall cover the total value of structures and buildings, supplies and materials on the leased premises. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation, and for loss or damage to any owned, borrowed, leased or rented capital equipment, and tools. Such policy shall name the Lessee as insured, and The People of the State of New York, and Sub-lessees as additional insureds.

Lessee's Risks. The Lessee shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) business interruption, such as gross earnings, extra expense, or similar coverage, (b) personal property, and/or (c) automobile physical damage and/or theft. In no event shall NYSDOT be liable for any damage to, or loss of, personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this agreement, even if such loss is caused by the negligence of NYSDOT.

Site Pollution Liability Insurance. The Lessee shall procure and maintain, either through an endorsement to a commercial general liability policy or through a separate policy, insurance protecting Lessee and NYSDOT from the liability and financial loss relating to Lessee's contamination of soil and the accidental release of petroleum products, chemicals and/or toxic gases from broken pipelines, utilities and stationary and mobile fuel tanks that can result from Lessee's operations. Such coverage shall be written on policy form providing coverage for contamination both on and off the leased premises and shall provide coverage in an amount of not less than \$10,000,000.00 per occurrence and not less than \$10,000,000.00 aggregate.

8. Lessee shall be responsible for proper planning, permitting and development of Parcel # ____ per the Designated Developer's winning proposal dated _____, including being responsible for all applicable local, state and federal laws and regulations.

9. Lessee is responsible for any and all cleanup (including hazardous materials), 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.

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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. 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
 19. The Lessee agrees not to post or affix any signs on or outside of the property without prior written approval of the State.
 20. 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.
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21. 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.

22. 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:

New York State Department of Transportation:
Contact Person's Name: William A. Howe, Lease # _____
Title: Director
Address: NYSDOT Contract Management, 50 Wolf Rd, 6th Fl, Albany, NY 12232
Telephone Number: 518-457-2600
Facsimile Number: 518-457-2875
E-Mail Address: bill.howe@dot.ny.gov

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.

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

24. This Lease, Appendix A, Required Clauses for all New York State Contracts, and Appendix A-1, Supplemental Title VI Provisions (Civil Rights Act), Appendix B Requirements for Federally-Aided Transportation Projects, Appendix C Special Equal Opportunity Provisions, the State's Request for Proposals (RFP; dated January 6, 2016; as possibly amended) incorporated by reference as Exhibit __, and the Lessee's Proposal (dated _____; as possibly amended) incorporated by reference as Exhibit __, 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.

[Lessee]

By: _____ Date: _____

Name: _____

Title: _____

Lessee: _____

Address: _____

I certify that all information provided to the STATE with respect to the requirements contained in State Finance Law Sections 139j & 139k is complete, true and accurate.

STATE OF NEW YORK)

COUNTY OF)SS:
)

FOR INDIVIDUAL ACKNOWLEDGMENTS

On the _____ day of _____, 201____, 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)

STATE OF NEW YORK)

COUNTY OF)SS:

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FOR CORPORATION ACKNOWLEDGMENTS

On the ____ day of _____, 201__, 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)

STATE OF NEW YORK)

COUNTY OF)SS

FOR PARTNERSHIP ACKNOWLEDGEMENTS

On the ____ day of _____, 201__, 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 BY: _____ Date: _____

APPROVED: Commissioner of Transportation
for the People of The State of New York

By: _____ Date: _____
Director, Contract Management Bureau

NYS DOT Certification: In addition to the acceptance of this Agreement, the Department also certifies that original copies of this signature page will be attached to all other exact copies of this Agreement.

APPROVED:

By: _____ Date: _____
Attorney General's Approval
(for the Attorney General)

APPROVED:

By: _____ Date: _____
State Comptroller's Approval
(for the State Comptroller pursuant to Section 112 State Finance Law)

APPENDIX A
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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

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

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

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin,

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

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

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

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

thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

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

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

the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in 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 Respondent 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 Respondents, 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: mwb certification@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. Respondents 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 Respondents/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 January 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:

- (6) **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.
- (7) **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.
- (8) **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.
- (9) **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.
- (10) **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:
 - (c.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (d.) cancellation, termination or suspension of the contract, in whole or in part.
- (7) **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 B

REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally-aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its "Procedures for Locally Administered Federal-Aid Projects" (available through NYSDOT's web site at: www.dot.ny.gov/plafap). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: www.fhwa.dot.gov/programadmin/contracts/1273.htm).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION**. No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY**. In connection with the execution of this Agreement, the Municipality/Sponsor's contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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3. **DISADVANTAGED BUSINESS ENTERPRISES.** In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under [18 U.S.C. 1001](#) and/or the Program Fraud Civil Remedies Act of 1986 ([31 U.S.C. 3801](#) et seq.).

FEDERAL SINGLE AUDIT REQUIREMENTS

Non-Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations". Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency³ the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

³ The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance ([CFDA](http://www.cfda.gov/)⁴), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

THE CFDA IDENTIFICATION NUMBER

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205. Additional CFDA numbers for other transportation and non-transportation related programs are:

20.215	Highway Training and Education
20.219	Recreational Trails Program
20.XXX	Highway Planning and Construction - Highways for LIFE;
20.XXX	Surface Transportation Research and Development;
20.500	Federal Transit-Capital Investment Grants
20.505	Federal Transit-Metropolitan Planning Grants
20.507	Federal Transit-Formula Grants
20.509	Formula Grants for Other Than Urbanized Areas
20.600	State and Community Highway Safety
23.003	Appalachian Development Highway System
23.008	Appalachian Local Access Roads

PROMPT PAYMENT MECHANISMS

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

⁴ www.cfda.gov/

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

March 2013

APPENDIX C

SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

1. GENERAL (a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive Order 45, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

(b) The CONSULTANT will work with the STATE and the Federal Government in carrying out equal employment opportunity obligations and in their review of their activities under this contract.

(c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of \$10,000 or more will comply with the following minimum specific requirements of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to contractors and sub-contractors.) The CONSULTANT will include these requirements in every sub-contract with such modification of language as is necessary to make them binding on the sub-contractor.

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY The CONSULTANT, their sub-consultant and/or sub-contractor or any person acting on behalf of the CONSULTANT or sub-consultant and/or sub-contractor will accept as their operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, national origin, age, disability or marital status, and to promote the full realization of equal employment opportunity through a positive continuing program. "It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, or during consideration for employment, without regard to their race, religion, sex, or color, national origin, age, disability or marital status. Such non-discriminatory action shall include, but not be limited to: employment, job assignment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER The CONSULTANT will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer and a Minority Business Enterprise officer (hereinafter referred to as the EEO Officer and M.B.E. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.

4. DISSEMINATION OF POLICY (a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.

(3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)

(b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

(1) Notices and posters setting forth the CONSULTANT'S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this agreement and the Regulations relative to non-discrimination.

5. RECRUITMENT (a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.

(b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority

group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration. In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.

(c) The CONSULTANT will encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. PERSONNEL ACTIONS Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age, disability or marital status. The following procedures shall be followed:

(a) The CONSULTANT will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(b) The CONSULTANT will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory practices.

(c) The CONSULTANT will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONSULTANT will promptly take corrective action. If the review indicated that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(d) The CONSULTANT will promptly investigate all complaints of alleged discrimination made in connection with obligations under this agreement, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the NYS Department of Transportation Compliance Officer within 7 days after such action has taken place. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONSULTANT will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.

7. TRAINING AND PROMOTION (a) The CONSULTANT will assist in locating, qualifying and increasing the skills of minority group and women employees, and applicants for employment.

(b) Consistent with the CONSULTANT's work force requirements and as permissible under the Federal and State regulations, the CONSULTANT shall make full use of training programs; i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. In the event the Training Special Provision is provided under this contract, this subparagraph is superseded thereby.

c) The CONSULTANT will advise employees and applicants for employment of available training programs and entrance requirements for each.

(d) The CONSULTANT will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. UNIONS If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT's compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT's association acting as agent, will include the procedures set forth below:

(a) The CONSULTANT will use their best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

(b) The CONSULTANT will use their best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability or marital status.

(c) The CONSULTANT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the CONSULTANT. The CONSULTANT shall so certify to the STATE and shall set forth what efforts have been made to obtain such information. Further, if the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiations of this contract, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

(d) In the event the union is unable to provide the CONSULTANT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the CONSULTANT will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability or marital status, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the CONSULTANT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event

the union referral practice prevents the CONSULTANT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONSULTANT shall immediately notify the New York State Department of Transportation.

9. AFFIRMATIVE ACTION IN SUBCONTRACTING (a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.

(b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action, the CONSULTANT will identify and contact minority business firms and solicit proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).

(c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time or submittal of a formal proposal to the State's Contracts Bureau.

(d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.

(e) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.

10. RECORDS AND REPORTS (a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:

- (1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.
- (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
- (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

(5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

(b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.

(c) Failure to comply with these Special EEO Provisions may be considered unsatisfactory performance and may subject the agreement to termination under the termination article of this agreement. Non-compliance may result in the CONSULTANT's being declared ineligible for future agreements made by or on behalf of the STATE or a public authority or agency of the STATE, until he satisfies the State Commissioner of Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded them to be heard publicly before the State Commissioner of Human Rights or official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to:

- (1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or
- (2) cancellation, termination or suspensions of the agreement in whole or in part.

11. TRAINING SPECIAL PROVISIONS This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246.

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows:

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.

The number of months of training to be provided under these special provisions is previously stated in Article II.

In the event that the CONSULTANT subcontracts a portion of the contract work, it shall be determined how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the CONSULTANT shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The CONSULTANT shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their proposal, the CONSULTANT shall submit to the New York State

Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less than 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The CONSULTANT will be reimbursed for the cost of any and all training under the payment terms of this agreement. This can include offsite training cost as discussed above. All offsite training must be defined in the training schedule. All costs claimed or calculated for training must be directly related to the work defined in the scope of this agreement and/or added by supplemental agreement.

The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

Updated December 2012

APPENDIX J

DIVERSITY PRACTICES QUESTIONNAIRE AND SCORING MATRIX

To download a copy of the Diversity Practices Questionnaire and Scoring Matrix, please visit:
<http://esd.ny.gov/corporateinformation/rfps.html>

