

RESOLUTION NO. 2017009

RE: AUTHORIZING THE COUNTY EXECUTIVE TO SIGN THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION AVIATION PROJECT FUNDING AGREEMENT FOR THE AIRPORT TERMINAL RENOVATION PROJECT (PIN 8902.41) AND ESTABLISH A CAPITAL PROJECT FOR RENOVATION OF THE AIRPORT TERMINAL BUILDING

Legislators PULVER, BORCHERT, BOLNER, SAGLIANO, HORTON, LANDISI, TRUITT, and INCORONATO offer the following and move its adoption:

WHEREAS, the Department of Public Works, Aviation Division, has applied to the New York State Department of Transportation for a grant which shall be used to renovate the Airport Terminal Building at the Dutchess County Airport at an estimated cost of \$988,500, representing 90% of the project cost, with the local share being \$98,850, representing 10% of the project cost, and

WHEREAS, the Airport Terminal Renovation project includes building envelope deficiencies and building code deficiencies, replacement of terminal facade, installation of an elevator to provide accessibility to the second floor, replacement of leaking and energy inefficient windows/doors, improvements to bathroom facilities, improvements to main entry automatic doors, preparation of space for a café and improvement of terminal signage, and

WHEREAS, it is necessary for this Legislature to authorize execution of the grant agreement and to establish a Capital Project Account for the project to provide for receipt and expenditure of the funds, now, therefore, be it

RESOLVED, that the Dutchess County Legislature hereby approves the above subject project, and it is further

RESOLVED, that this Legislature hereby authorizes the County Executive to accept the grant offers made by the NYSDOT in connection with the Airport Terminal Renovation Project and further authorizes and empowers the County Executive or his designee to execute said grant agreement and other agreements related to this project on behalf of the County of Dutchess when received, and be it further

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary agreement in connection with the project, and it is further

RESOLVED, that this resolution shall take effect immediately, and it is further

RESOLVED, that the Commissioner of Finance is authorized and directed to establish the following Capital Project Account:

APPROPRIATIONS

Increase

EA0502.5610.3150	Building-Reconstruction	\$988,500
A.9950.9801	Contribution to EA Capital	\$98,850
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		\$1,087,350
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REVENUES

Increase

EA0502.5610.35890.00	Other Transp. Capital Projects – NYS State	\$889,650
A9998.95110.87	Appropriated Reserve Capital	\$98,850
EA0502.5610.50310	Interfund Transfers	\$98,850
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		\$1,087,350
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CA-001-17

G-0103-D

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Fiscal Impact: See attached statement

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 23rd day of January 2017, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 23rd day of January 2017.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS *(To be completed by requesting department)*

Total Current Year Cost \$ 988,500

Total Current Year Revenue \$ 889,650

and Source

NYS DOT 2015 Aviation Capital Grant Program

Source of County Funds *(check one)*: Existing Appropriations, Contingency,
 Transfer of Existing Appropriations, Additional Appropriations, Other *(explain)*.

Identify Line Items(s):

Related Expenses: Amount \$ 0

Nature/Reason:

Anticipated Savings to County: \$ 0

Net County Cost (this year): \$ 98,850

Over Five Years: _____

Additional Comments/Explanation:

Dutchess County received an Aviation Capital Grant in the amount of \$988,500 to renovate the Airport Terminal Building. This resolution is requesting the Legislature to authorize the County Executive to sign the Aviation Project Funding Agreement (Project Identification No. 8902.41) and to establish a capital project for renovation of the terminal building. Renovation is to include building envelope deficiencies and building code deficiencies, replacement of terminal facade, installation of an elevator to provide accessibility to the second floor, replacement of leaking and energy inefficient windows/doors, improvements to bathroom facilities, improvements to main entry automatic doors, preparation of space for a cafe and improvement of terminal signage.

Prepared by: Robert H. Balkind, P.E., Commissioner

Prepared On: 11/15/2016

AVIATION PROJECT FUNDING AGREEMENT

This Agreement is by and between:

the New York State Department of Transportation ("NYSDOT"), having its principal office at 50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State");

and

the County of Dutchess (the "Municipality/Sponsor") with its office at Poughkeepsie, NY

This Agreement covers eligible costs incurred after January 1, 2016

This agreement identifies the party responsible for administration, establishes the method and provision for funding and implementation of an aviation project pursuant to appropriation as such project is more fully described by Schedule A-1 annexed to this agreement or one or more duly executed and approved Supplemental Schedules to this agreement. The project shall be identified for the purposes of this agreement as Terminal Building Renovations (as more specifically described in Schedule A-1, or supplemental Schedule A's, the "Project").

WITNESSETH:

WHEREAS, Section 14-1 of the Transportation Law authorizes the NYSDOT Commissioner to implement the Airport Improvement and Revitalization Program; and

WHEREAS, pursuant to authorizations and appropriations therefore, NYSDOT and the Sponsor are desirous of progressing the Project; and

WHEREAS, the Sponsor attests that the Project has a useful service life as stated on the Schedule A-1 included herein; and

WHEREAS, the Sponsor will administer the Project and submit to NYSDOT for funding of eligible Project costs pursuant to this Agreement; and

WHEREAS, the Legislative or governing Body of the Sponsor by Resolution No. _____ adopted at meeting held on _____ approved the Project and the terms and provisions of this Agreement and has further authorized the _____ of the Sponsor to execute this Agreement on behalf of this Sponsor (copy of such Resolution is attached to and made a part of this Agreement); and

WHEREAS, the Sponsor is not a sectarian institution,

NOW, THEREFORE, the parties agree as follows:

1. *Documents Forming this Agreement.* The agreement consists of the following:
 - Agreement: This document titled "Aviation Project Funding Agreement";
 - Schedule A-1: Description of Project and Funding;
 - Schedule B: Phases, Sub-phase/Tasks, and Allocation of Responsibility;
 - Appendix A: Standard Clauses for New York State Contracts;
 - Appendix A-1: Supplemental Title VI Provisions (Civil Rights Act);

Appendix B: Requirements for Federally Aided Transportation Projects;

Appendix C: Additional New York State Required Contract Provisions;

Appendix D: Goals for Equal Employment Opportunity (EEO) Participation; and

Resolution(s) -- duly adopted municipal or, as applicable, corporate resolution(s) authorizing the appropriate official of the Sponsor to execute this Agreement on behalf of the Sponsor and appropriating the funding required therefore;

General Description of Work. The Sponsor shall procure and provide all services, materials and necessary to complete the Project as more particularly described in Schedule A-1 and Scope of Work Schedule B.

Maintenance. Upon completion and acceptance of the Project Facilities by Sponsor, Sponsor shall certify to the NYSDOT Commissioner that the Project Facilities have been completed. Upon its completion, Sponsor shall maintain the Project facilities as well as ancillary facilities useful or necessary to the function of said project in accordance with the requirements of the NYSDOT Commissioner for the period of time or the period of useful life for such project as determined by Section 61 of the State Finance Law. If the Sponsor has to have the project facilities maintained by another party, any necessary maintenance contract shall be submitted to NYSDOT before construction commences.

Disposition of Project Facilities. Sponsor agrees, that during the period of time during which Title to the Project Facilities is held by the State or in any event if funding of the State's share is from the State or other obligations issued by the State or any of its public benefit corporations, such Project Facilities shall not be sold, rendered unusable, relinquished, discontinued or disposed of by Sponsor without the express written consent of the NYSDOT Commissioner having first been obtained. In the event of such approved disposition Sponsor shall be responsible to the purchaser or transferee to assume Sponsor's continuing obligations under this Agreement, or shall be responsible for the pro-rata share of the grant over the remaining useful life of the Project.

Method of Performance of Work. Sponsor agrees to undertake or cause to be undertaken and to proceed with and complete the project as approved by the NYSDOT Commissioner and as described in the Scope of Work. The project shall be completed or cause to be completed said work within the time limits specified in said Scope of Work. The project shall be performed by Sponsor's own forces or by contract or contracts entered into by the Sponsor in accordance with the law and the requirements of this Agreement. Sponsor agrees to obtain or cause to be obtained all permits and licenses necessary to progress the work, and also agrees to comply or cause to be complied with all applicable Federal, State and Local Laws which in any way impact work to be accomplished by the project.

Funding of Project Costs. State financial assistance hereunder shall be in the form of a grant as more particularly described in Schedule A-1. Sponsor shall provide its share of the cost of the Project, if any. Sponsor shall make every effort to secure federal assistance, if any, for the project.

If federal assistance which was not included in the calculation of the state financial assistance becomes available to the Sponsor, the amount of the state financial assistance shall be recalculated by reducing the amount of the assistance by the amount of such federal assistance, and the Sponsor shall pay to the state the amount by which the amount of state financial assistance actually made exceeds the state financial assistance determined by the recalculation, if any.

Limits of Funding. Subject to the terms of the appropriation, NYSDOT agrees to make available funds up to the amount specified as State Aid in Schedule A-1 for eligible Project costs incurred by the Sponsor in the performance of the Project and the funding therefore is more fully described in Schedules A-1 and B. Project Costs in excess of the amount available for the work shall be the responsibility of Sponsor. Prior to start of construction, Sponsor shall ensure the availability of funds for Project Costs which are in excess of State funds being made available for the project. If the Sponsor loses funding eligibility, the State shall not be liable for any Project Costs in excess of the amount available for the work.

Eligible Project Costs. NYSDOT will fund eligible Project costs incurred by the Sponsor in connection with the performance of the Project as approved by the Sponsor. Eligible costs shall include, but not be limited to, costs of acquisition, construction, reconstruction, renovation and such other costs associated with the Project as are approved by the Sponsor and necessary in the performance of the Project. Eligible costs shall also include salaries and expenses of the Sponsor who are engaged in carrying out the Project, fees to consultants and professionals and expenses of the Sponsor for planning and performing the Project.

6.3 In no event shall this Agreement create any obligation to the Sponsor for funding or reimbursement of any amount in excess of the lower of:

- (a) the amount stated in Schedule A-1 for the State share of Project Costs; or
- (b) the amount so stated in Schedule A-1 as it is made available pursuant to certificate of the Division of the Budget; and
- (c) amounts described in the preceding paragraphs (a) or (b), less any duplicative funding of the same Project costs from other State sources.

6.4 *Debt Financing by Sponsor.* Grant monies shall not be used to pay for interest, issuance costs or reserves in connection with the issuance of debt by Sponsor to fund the Project, but may repay principal indebtedness incurred to fund eligible Project costs.

7. *Payments to Sponsor.* For work performed by or through the Sponsor, NYSDOT will fund or reimburse eligible Project costs either during the progress of construction or following completion of construction in accordance with NYSDOT policy and procedures.

7.1 *Progress Payments.* Sponsor may be reimbursed in progress payments, for eligible Project costs incurred by Sponsor in conformity with Schedule A-1, upon submission of a voucher by Sponsor in a form acceptable to NYSDOT.

7.2 *Final Payment.* Final payment to sponsor shall be made upon the application of Sponsor to NYSDOT, on a basis of work accomplished, upon submission of vouchers to the State, the submission of a Project Completion Report (hereinafter defined) together with such data as NYSDOT deems necessary to assure compliance with this Agreement evidencing that the work of the Project is completed.

Upon the completion of all said work by Sponsor pursuant to this Agreement, a final statement of costs shall be submitted to the State within one hundred eighty (180) days. Upon receipt of the final statement of costs by the NYSDOT Commissioner, the NYSDOT Commissioner will conduct an audit of the Sponsor project account records within one hundred eighty (180) days to determine the resources applied or used by Sponsor in fulfilling the terms of this Agreement.

7.3 *Payment Certification.* Each payment request will contain a certification by Sponsor that payment requests do not duplicate reimbursement of Project costs being funded from other sources.

In the event that any payments are made by the State to the Sponsor for costs incurred by Sponsor, which are subsequently determined to be ineligible for reimbursement under this Agreement, State may retain an amount equal to any such excess payments from any monies then or which may become due and owing to Sponsor under the Agreement, or Sponsor shall repay such amounts to State within forty-five (45) days from the date Sponsor receives notice of such determination of ineligibility.

All costs submitted by Sponsor shall be in conformity with accounting procedures acceptable to NYSDOT and shall be subject to approval by NYSDOT Commissioner, and to audit by the NYSDOT Commissioner and the State Comptroller. All requests for reimbursement shall be accompanied by appropriate supporting documentation including, but not limited, to the following: Inspector's Reports with associated invoices and receipts, Engineer's Diary, and the Engineer's recommendation(s) for payment to the Contractor.

All costs charged to the project shall be properly supported by executed payrolls or abstracts thereof, time, material and accounts payable distribution records, invoices, contracts, vouchers and/or canceled checks evidencing in proper detail the nature and propriety of the charges.

8. *Compliance.* The Sponsor understands that funding is contingent upon the Sponsor's compliance with the applicable requirements of the "Procedures for Locally Administered Federal Aid Projects" manual (available both in hard copy and through NYSDOT's web site at: <https://www.nysdot.gov/divisions/operating/opdm/lccal-programs-bureau/locally-administered-federal-aid-projects>), in particular the Appendices to Chapter 4 entitled Work Requirements, Record Keeping Guidelines and Consultant Selection Procedures, as such may be amended from time to time.

9. *Supplemental Agreement or Supplemental Schedule A-1.* Supplemental Agreements or Supplemental Schedules A-1 may be entered by the parties, and must be approved in the manner required for a State contract. In the event Project cost estimates increase over the amounts provided for in Schedule A-1 or one or more supplemental

Schedules A-1 as may hereafter be developed by the parties hereto or Eligible Project Costs in the Comprehensive List are increased by the legislature, no additional reimbursement shall be due to the Sponsor unless the parties enter into a Supplemental Agreement or Supplemental Schedule A-1 for reimbursement or additional Eligible Project Costs.

10. *Project Completion Report.* Sponsor shall 6 months from Project completion or final reimbursement by NYSDOT, whichever is earlier, submit a Project Completion Report to NYSDOT describing the sources and uses of all Project-related funds, including non-State funds, and the programmatic accomplishments of the Project.

11. *Records and Accounts.* Sponsor shall maintain accurate records and accounts of all financial transactions which show in detail all income and all expenditures, including but not limited to, payments for eligible Project costs. Said records shall include the amount of payment by the State, the amount of federal assistance if any received by the municipality for the project and all monies expended by the municipality for the project. Such records and accounts shall include, without limitation, property, personnel and financial records, cash receipts and disbursements journal and general subsidiary ledgers. All records and accounts shall be maintained in accordance with generally accepted accounting standards. All expenditures of the grant reimbursed monies shall be supported by invoices and/or other documentation sufficient to establish that such monies have been used in accordance with the terms of this Agreement. The NYSDOT Commissioner, Comptroller of the State of New York and any other authorized representatives of the State of New York shall have the right to examine all records and accounts relating to Sponsor's financial transactions, including the expenditure of the grant and all other funds secured and services rendered for the benefit of Sponsor in connection with the Project. Sponsor shall maintain records relating to this Agreement for not less than six (6) years after the date of completion.

12. *Ethics.* No member of Sponsor's governing body, or any member of the Board of Directors or staff, nor any member of their families shall benefit financially either directly or indirectly from the grant unless such action is necessary for the accomplishment of the Project. In such event, Sponsor shall disclose such relationship to NYSDOT and shall obtain prior written approval therefore from NYSDOT.

13. *NYSDOT Review.* NYSDOT may review the Sponsor's performance of this agreement in such manner and at such times as the Commissioner shall determine, and such review may include field visits by NYSDOT representatives to the Project and/or the offices of Sponsor. Sponsor shall at all times make available its employees, records and facilities to authorized NYSDOT representatives in connection with any such review. Such review shall be for the purpose, among other things, of ascertaining the quality and quantity of Sponsor's performance of the Project, its use and operation.

14. *Suspension or Termination.* If NYSDOT determines that Sponsor has failed to diligently progress the Project or is in default of Sponsor's obligations hereunder, NYSDOT may by written notice to Sponsor terminate this agreement, whereupon this agreement shall terminate or, as specified by NYSDOT, NYSDOT obligations hereunder, shall be suspended upon the date of such notice, or if such notice provides an opportunity to cure such failure or default, such later date as may be set forth in such notice.

14.1 *Repayment to State upon Suspension or Termination.* In the event this contract is terminated for nonperformance or default, the Sponsor must refund all funds received under this agreement to NYSDOT. The State may offset any other State aid due to the Sponsor by such amount and apply such offset to satisfy such refund.

15. *Inspection and Audit.* Sponsor shall permit the authorized representative of NYSDOT and/or the State Comptroller to inspect and audit all books, records and accounts of Sponsor pertaining to the Project under this Agreement. Sponsor shall notify NYSDOT of any audit by any governmental agency of any projects, operations or reports of Sponsor, within five (5) days of receiving information relating thereto.

16. *Term of Agreement.* As to the Project and phase(s) described in Schedule(s) A-1 executed herewith, this agreement takes effect as of the date this agreement is approved by the State Comptroller. This agreement takes effect as to the Project and phase(s) established in any duly executed and approved supplemental Schedule(s) A-1 as of the date of the approval by the State Comptroller. This agreement shall remain in effect for the longer of (a) so long as State aid funding authorizations are in effect and funds are made available pursuant to the laws controlling such authorizations and availabilities; or, (b) the duration of any loan repayment obligation until such debt is retired.

However, for the purposes of calculating the period described in the preceding subdivision (a), if such funding authorizations or availabilities lapse and are not renewed, continued or reenacted, as to funds encumbered or available and to the extent of such encumbrances or availabilities, this agreement shall remain in effect for the duration of such encumbrances or availabilities. Although the liquidity of encumbrances or the availability of funds may be affected by budgetary hiatuses, a budgetary hiatus will not by itself be construed to lapse this agreement, provided any necessary appropriations or other funding authorizations therefore are eventually enacted.

17. *Contract Executory.* It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the moneys available to the State and no liability on account thereof shall be incurred by the State beyond moneys available for the purpose hereof.

18. *Sponsor Liability; Indemnification.*

18.1 The Sponsor shall be responsible for all damage to person or property arising from any act or negligence performed by or on behalf of the Sponsor, its officers, agents, servants or employees, contractors, subcontractors or others in connection therewith. The Sponsor specifically agrees that its agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

18.2 The Sponsor shall indemnify and save harmless the State for all damages and costs arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Sponsor its officers, agents, servants, employees contractors, subcontractors or others under this Agreement. Negligent performance of service within the meaning of this Article shall include, in addition to negligence founded upon tort, negligence based upon the Sponsor's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

19. *Independent Contractor.* The officers and employees of the Sponsor, in accordance with the status of the Sponsor as an independent contractor, covenant and agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as nor claim to be an officer or employee of the State by reason hereof, and that they will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to, Workers Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit.

20. *Insurance.* Sponsor agrees to procure and maintain without direct cost to the State except as noted during the pendency of this Agreement, insurance of the kinds and in amounts hereinafter provided by insurance companies authorized to do business in the State of New York or, if Sponsor is a municipality that self-insures, an endorsement for such self insurance covering all operations under this Agreement whether performed by it or subcontractors. Before commencing the work, Sponsor shall furnish to NYSDOT a certificate or certificates, in a form satisfactory to NYSDOT, showing compliance with this Article, which certificate or certificates, shall provide that such insurance shall not be changed or canceled until thirty (30) days written notice has been given to NYSDOT. Said insurance policies shall name the People of the State of New York, New York State, its officers, agents and employees as additional insureds thereunder. Upon written request by the State, the Sponsor shall furnish to the State a letter certifying that the State of New York, and other required insureds, have been named as additional insureds to such policy. The kinds and amounts of insurance required are as follows:

20.1 *Worker's Compensation and Disability Benefits.* Policy covering the obligations of Sponsor in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Worker's Compensation Law, and also by the provisions of Article 9 of the Worker's Compensation Law known as the Disability Benefits Law, and this Agreement shall be void and of no effect unless Sponsor procures such policy and maintains it until final acceptance of all work described herein;

20.2 *For construction and operating support projects,* Comprehensive General Liability Insurance insuring Sponsor and, as additional insureds, NYSDOT and its employees with respect to all operations under this Agreement by Sponsor, including such coverage any omissions and supervisory acts of the State and its employees. Policies of personal injury liability insurance of the types hereinafter specified, each with a combined single limit of \$1 million per occurrence/\$2 million aggregate for all damages arising out of personal injury, including death at any time resulting therefrom, sustained by one person in any one accident and, subject to that limit for each person, all damage arising out of bodily injury, including death at any time resulting therefrom, sustained by two or more persons in any one accident, damages arising out of injury to or destruction of property in any one accident and, subject to that limit per accident, for all damages arising out of injury to or destruction during the policy period.

20.3 *Automobile Liability and Property Damage Insurance.* Subject to the same required level of coverage set forth in §20.2 above, a policy covering the use in connection with the work covered by the Agreement of all owned, not owned and hired vehicles bearing or, under the circumstances under which they are being used required by New York State law to bear, license plates.

20.4 *Public Liability Insurance.* With respect to the operations performed, regular Contractor's Public Liability Insurance is provided for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

20.5 - *Protective Public Liability Insurance.* With respect to the operations performed, subcontractors provide regular Contractor's Protective Public Liability Insurance for a limit of not less than \$2,000,000 Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a violation of the Agreement.

21. *Assignment or Other Disposition of Agreement.* The Sponsor agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title or interest therein, or its power to execute such Agreement to any person, company or corporation without previous consent in writing of the Commissioner.

22. *Appendix A.* Appendix A, Standard Clauses for New York State Contracts, is attached hereto and is hereby made a part of this agreement as if set forth fully herein.

23. *Appendix B.* Appendix B, Requirements for Federally Aided Transportation Projects, is attached hereto and is hereby made a part of this agreement as if set forth fully herein.

24. *Procurement Standards.* Sponsor will award contracts funded pursuant to this Agreement in accordance with procurement laws applicable to Sponsor and otherwise in accordance with the requirements of this Agreement.

25. *NYSDOT Obligations.* NYSDOT's responsibilities and obligations are specified set forth in this contract and neither NYSDOT nor any of its officers or employees shall be responsible or liable, nor shall the Sponsor assert or join in any claim or demand against NYSDOT, its officers or employees, for any damages or other relief based on any alleged failure of NYSDOT, its officers or employees, to undertake or perform any act, or for undertaking or performing any act, which is not specifically required or prohibited by this contract.

26. *E-Mail Provision Notice.*

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
 - (a) via certified or registered United States mail, return receipt requested;
 - (b) by facsimile transmission;
 - (c) by personal delivery;
 - (d) by expedited delivery service; or
 - (e) by e-mail.

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

State of New York Department of Transportation

Name: Jackie Van Heusen
Title: Assistant Aviation Grants Coordinator
Address: NYSDOT Aviation Bureau
50 Wolf Road P.O.D. 6-4
Albany, NY 12232
Telephone Number: 518-485-7691
Facsimile Number: 518-457-9779
E-Mail Address: jackie.vanheusen@dot.ny.gov

[Contractor Name]

Name: Robert Balkind
Title: Commissioner of Public Works
Address: 626 Dutchess Turnpike, Poughkeepsie, NY 12603
Telephone Number: 845-486-2086
Facsimile Number: 845-486-6554
E-Mail Address: dpwadmin@dutchessny.gov

2. 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 or email, upon receipt.

3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

27. *Contract Payments.* Contractor shall provide complete and accurate billing invoices to the Agency in order to receive payment. Billing invoices submitted to the Agency must contain all information and supporting documentation required by the Contract, the Agency and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at <http://www.osc.state.ny.us/epay/index.htm>, by e-mail at epayments@osc.state.ny.us or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

28. *Proposed Increase Clause.* Any proposed increase in contract amount, change in contract term, or change in scope of work not previously approved by OSC requires a contract amendment, and may require either a Contract Reporter Exemption, or a new procurement. The agency must submit a proposed amendment to OSC immediately for any such proposed change. Scope changes requested of OSC after the fact may be denied.

29. *Proposed Modification Clause.* Any proposed modification to the contract which results in a change of greater than 10 percent to any budget category, must be submitted to OSC for approval.

30. *Minority and Women's Business Enterprise (M/WBE) Requirements.* The New York State Legislature enacted major changes to the State's Minority and Women's Business Enterprise (M/WBE) Laws, effective October 13, 2010. Appropriate M/WBE participation goals are required to be assigned to each grant project.

30.1 *Construction Contracts.* For every construction contract under this grant in which the contract award amount totals \$100,000 or more and involves the construction, demolition, replacement, major repair or renovation of real property, M/WBE goals will be assigned based on current guidance. The total M/WBE goal applicable to contracts under this program is 25%. The MBE goal is 10% and the WBE goal is 15%, measured as a percentage of the contract award amount. Please refer to Chapter 21 of the New York State Department of Transportation Highway Design Manual (HDM) for guidance in determining M/WBE goals for qualifying projects. This guidance may be accessed online at:
<https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/chapter-21/dmwbe-goals>.

Assigned M/WBE goals must be included in the contract documents when submitted for Department approval prior to project advertisement. Any requests for a reduction or waiver of the goals must be submitted at this time as well so that the correct goals are included in the project advertisement. Sponsors should refer to NYSDOT's Standard Specifications Section 102-12, "D/M/WBE Utilization" for contract requirements. NYSDOT's Standard Specifications are available online at:

<https://www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us>

Low bidder must submit an M/WBE utilization plan to the Project Sponsor(s) between letting and award. This utilization plan should document commitments to employ qualifying M/WBE contractors for at least the portion of work assigned by the goals. M/WBE utilization plans include but are not limited to the following forms:

- AAP 10LL NYS – M/WBE Solicitation Log
- AAP 15LL NYS – Designation of AA Representatives (one for the prime contractor as well as each subcontractor)
- AAP 19LL NYS – M/WBE Schedule of Utilization
- AAPHC 20LL NYS – Part 1 M/WBE Utilization Worksheet, Part 2 Subcontractor Approval
- AAP 22LL NYS – M/WBE Material Supplier Commitment Information
- AAP 23LL NYS – M/WBE Trucking Commitment Information

These forms may be accessed online at:

<https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/multi-modal/forms>

If the apparent low bidder did not meet one or both of the goals (M/WBE are two separate goals), he/she must submit evidence of good faith efforts to obtain the goal(s). Submitting a complete and accurate utilization plan with bid documents is a condition of award, as well as meeting the goals or demonstrating good faith efforts to do so.

30.2 *Consultant Engineering Agreements.* Consultant engineering agreements are not required to incorporate M/WBE goals; however, consultants are encouraged to subcontract to M/WBE firms to the greatest possible extent when contracting to provide engineering services to airport sponsors. The value of utilization level is calculated based on Direct Technical Labor (DTL). Utilization of M/WBE firms in consultant engineering agreements may not be applied to construction contracts to facilitate attainment of M/WBE goals.

When considering sub-contracting portions of engineering service agreements to M/WBE firms, consultants and sponsors should refer to the Guidelines for Commercially Useful Functions (CUF). The Guidelines are available online at:

<https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/cuf.pdf>

For those instances where the prime consultant is deemed eligible to perform engineering services in conjunction with state funded grants because selection was based on a qualification-based competitive process and the consultant firm is on retainer for AIP work, commitments to utilize M/WBE firms should be in place prior to approval of the design and/or construction engineering agreement(s). It is highly recommended that the prime consultant coordinate with the Department as early as possible to reach a consensus on which portions of the scope of work may be performed by M/WBE subconsultants.

30.3 *Monitoring and Reporting.* M/WBE participation shall be monitored by the Sponsor as the project progresses. For construction contracts, attainments shall be reported by the prime contractor to the Sponsor by the 15th of the month for the previous month, utilizing form AAP 21 LL NYS Contractor Report of Contract Payments. For consultant engineering agreements, attainments shall be reported by the prime consultant to the Sponsor each time a payment request (request for re-imbursment) is submitted utilizing form AAP 7LL NYS Summary of Consultant Payments to Subconsultants. The Sponsor is responsible for reporting M/WBE commitment and actual utilization to the Empire State Development Corporation's Division of Minority/Women's Business Development. Copies should be submitted to the Aviation Bureau.

31. *Equal Employment Opportunity (EEO) Requirements.*

31.1 *Construction Contracts.* For every project which has an Engineer's Estimate of at least \$100,000 and involves the construction, demolition, replacement, major repair or renovation of real property, EEO goals will be applied based on the project location. Please see Appendix D to determine EEO goals for qualifying projects.

EEO goals and specifications must be included in the contract documents and project advertisement. Sponsors should refer to NYS DOT's Standard Specifications Section 102-11 Equal Opportunity Requirements for these contract requirements. Contractors must submit form AAP 35 LL NYS Workforce Participation Plan to indicate the projected combined workforce during the pre-construction meeting.

31.2 *Consultant Engineering Agreements.* There are no specific EEO goals assigned to consultant engineering agreements, however, firms must provide equal opportunity in all aspects of employment. EEO specifications must be included in project proposals and contracts. Sponsors should refer to NYSDOT's Standard Specifications Section 102-11 Equal Opportunity Requirements paragraphs D, E and F only, for these contract requirements. Standard Specifications may be accessed at:

<https://www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us>

31.3 *Monitoring and Reporting.* EEO participation shall be monitored by the Sponsor as the project progresses. For construction contracts, attainment shall be reported by the prime contractor to the Sponsor by the 15th of the month for the previous month, utilizing form AAP 33 LL NYS Employment Utilization Report. An AAP 33 LL NYS shall be submitted as follows: a report for the prime contractor's workforce, a report for each subcontractor's workforce, and a composite report for the combined workforce. An AAP 33 LL NYS is only submitted if the firm is submitting a payroll. If there is a training requirement on the contract, an AAP 26 LL NYS shall be submitted by the prime contractor to the Sponsor by the 15th of the month for the previous month. The Sponsor is responsible for reporting M/WBE commitment and actual utilization to the Empire State Development Corporation's Division of Minority/Women's Business Development. Copies should be submitted to the Aviation Bureau.

Reporting forms are available online at:

<https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/multi-modal/forms>

Questions regarding the M/WBE and EEO requirements may be directed to the NYSDOT Local Programs Bureau, 60 Wolf Road, POD 5-2, Albany, NY 12232 by phone at (518) 486-9959 or E-mail the Statewide Multi-Modal Program Manager at:

MultiModal@dot.state.ny.us

32. *Reporting Requirements.* The Municipality/Sponsor agrees to comply with and submit to NYSDOT in a timely manner all applicable reports required under the provisions of this Agreement and the Aviation Capital Grant Program Guidelines and in accordance with current Federal and State laws, rules, and regulations or as requested by NYSDOT. Reporting forms and schedules will be provided by NYSDOT as reporting requirements are identified.

Aviation Project Funding Agreement - Schedule A-1

OSC Contract # _____

Project Commencement Date 01/01/2016

Project Completion Date 12/31/2021

AGREEMENT PURPOSE MAIN Agreement SUPPLEMENTAL Agreement or Schedule

AGREEMENT COVERS (as shown in tables below):

Grant Agreement

PROJECT TYPE:

Capital Improvement

PROJECT IDENTIFICATION NUMBER: 8902.41

Design and construction of renovations to the airport terminal building to address building envelope deficiencies and building code deficiencies, as well as to promote usage of unoccupied space within the terminal for small businesses. Renovations include replacement of terminal facade, installation of an elevator to provide accessibility to the second floor, replacement of leaking and energy inefficient windows/doors, improvements to bathroom facilities, improvements to main entry automatic doors and preparation of unused space for a terminal café.

The sponsor attests that the above Project has a useful service life of 30 years.

Estimated Expenditure Activities (Planning, Design, etc) as per original submitted application

Location: Dutchess County Airport

Owner/Operating and Maintenance Responsibility: County of Dutchess

Type of Airport Organization:

- Municipality Public Authority Not-for-Profit Corporation Public Benefit Corporation
 Business Corporation Partnership Proprietorship _____

B. SUMMARY OF ELIGIBLE PROGRAM COSTS

AIR'99 FUNDING		OTHER NECESSARY FUNDING	TOTAL
GRANT	LOCAL SHARE		
\$889,650 (90%)	\$98,850 (10%)		\$988,500

Project is: (check which applies) part of an approved airport layout plan, OR
 consistent with an approved airport layout plan

IN WITNESS WHEREOF, NYSDOT has caused this Agreement to be signed by its authorized representative and Sponsor has caused this Instrument to be signed by its duly authorized officer, to be effective on the date first written above.

Sponsor

NYSDOT DEPARTMENT OF TRANSPORTATION

BY: _____

for the Commissioner of Transportation

DATE: _____

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

(28)

BY: _____

TITLE: _____

DATE: _____

Sponsor ACKNOWLEDGEMENT

STATE OF NEW YORK)

COUNTY OF _____)

On this _____ day _____, 201____, before me personally came _____ to me known, who being by me duly sworn did depose and say that he/she resides at _____;

That he/she is the _____ of the Sponsor described in and which executed the above Instrument; that he/she was authorized to execute the document on behalf of said Sponsor pursuant to a resolution which was duly adopted on _____ and to which a certified copy is attached and made a part hereof.

Notary Public

APPROVED:

APPROVED AS TO FORM:

BY: _____

BY: _____

For the NYS Comptroller pursuant to Section 112, State Finance Law

NYS Attorney General

SCHEDULE B: Phases, Sub-phase/Tasks, and Allocation of Responsibility Page 1 of 3

Instructions: Enter an "X" to indicate the appropriate Phase, then assign the responsibility for each applicable Sub-phase task by entering an "X" in either the NYSDOT column to allocate the task to State Labor Forces or a State Contract, or enter an "X" in the other appropriate column to indicate a task allocated to Non-State Labor Forces or a Locally Administered Contract.

CONSTRUCTION PHASE/SUB-PHASE	Allocation of Responsibility	
	NYSDOT	NON-STATE LABOR FORCES
A1. Preliminary Engineering ("PE") Phase		X
1. Scoping: Prepare & distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.		X
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, land use and development analysis and forecasts.		X
3. Preliminary Design: Prepare & distribute Design Report/Design Approval Document (DAD), including environmental analysis/assessments, and other reports required to demonstrate the completion of specific design Sub-phases or tasks and/or to secure the approval/authorization to proceed.		X
4. Review & Circulate all project reports, plans, and other project data to obtain the necessary review, approval, and/or other input and actions required of other NYSDOT units and external agencies.		X
5. Obtain aerial photography and photogrammetric mapping.		N/A
6. Perform all surveys for mapping and design.		N/A
7. Detailed Design: Perform all project design, including preparation of plan sheets, cross-sections, profiles, detail sheets, specialty items, shop drawings, and other items required in accordance with the Highway Design Manual, including all Highway Design, including pavement evaluations, including taking and analyzing cores; design of pavement mixes and applications procedures; preparation of bridge site data package, if necessary, and all Structural Design, including hydraulic analyses, if necessary, foundation design; and all design of highway appurtenances & systems (e.g., Signals, IVHS facilities), and maintenance and protection of traffic plans. RPA criteria will apply to all work.		X
8. Perform landscape design (including erosion control).		N/A
9. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need for cultural resources survey.		X
10. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance separately, any portions of the project which may be more appropriately progressed separately and independently.		X

CONSTRUCTION PHASE/SUB-PHASE		Allocation of Responsibility	
		NYSDOT	MUNICIPALITY
11.	Complete PS&E package, including all plans, proposals, specifications, estimates, notes, special contract requirements, and any other contract documents necessary to advance the project to construction.		X
12.	Conduct any required soils and other geological investigations.		N/A X
13.	Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocation plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.		X
14.	Determine the need and apply for any required permits, including U. S. Coast Guard, U. S. Army Corps of Engineers, Wetlands (including identification and delineation of wetlands), SPDES, NYSDOT Highway Work Permits, and any permits or other approvals required to comply with local laws, such as zoning ordinances, historic districts, tax assessment and special districts.		X
15.	Prepare and execute any required agreements, including: <ul style="list-style-type: none"> - Railroad force account. - Maintenance agreements for sidewalks, lighting, signals, betterments. - Betterment Agreements - Utility Work Agreements for any necessary Utility Relocations of Privately owned Utilities. 		N/A
16.	Provide overall supervision/oversight of design to assure conformity with Federal and State design standards or conditions, including final approval of PS&E by NYSDOT.		X
B. Construction (C), Supervision (C/S) and Inspection (C/I) Phase			
1.	Advise contract lettings and distribute contract documents to prospective bidders.		X
2.	Conduct all contract lettings, including receipt, opening, and analysis of bids, evaluation/certification of bidders, notification of rejected bids/bidders, and amending of the construction contract(s).		X
3.	Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.		X
4.	Compile and submit Contract Award Documentation Package.		X
5.	Review and approve any proposed subcontractors, vendors, or suppliers.		X
6.	Conduct & control all construction activities in accordance with the plans and proposal for the project. Maintain accurate, up-to-date project records & files, including all diaries & logs, to provide a detailed chronology of project construction activities. Procure or provide all materials, supplies & labor for the performance of the work on the project, & insure that the proper materials, equipment, human resources, methods and procedures are used.		X
7.	Test and accept materials, including review and approval for any requests for substitutions.		X

CONSTRUCTION PHASE/SUB-PHASE		Allocation of Responsibility	
		NYSDOT	MUNICIPALITY
8.	Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.		X
9.	Administer construction contract, including the review and approval of all contractor requests for payment, orders-on-contract, force account work, extensions of time, exceptions to the plans and specifications, substitutions or equivalents, and special specifications.		X
10.	Review and approve all shop drawings, fabrications details, and other details of structural work.		X
11.	Administer all construction contract claims, disputes or litigation.		X
12.	Perform final inspection of the completed work to determine and verify final quantities, prices, and compliance with plans specifications, and such other construction engineering supervision and inspector work necessary to conform to Municipal, State and FHWA requirements, including the final acceptance of the project by NYSDOT.		X

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

January 2014

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). 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 his conscientious and active efforts to employ and utilize minority group members and women in his 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 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). 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 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). 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 A-1 SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)
(To be included in all contracts)

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, religion, age, color, sex 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.