



NEW YORK STATE THRUWAY AUTHORITY
AND
TRANSCOM, INC

MULTI-YEAR AGREEMENT
2009 – 2013

C100949

**MULTI-YEAR AGREEMENT
TRANSCOM INC. 2009-2013**

This Agreement among the Connecticut Department of Transportation, Metropolitan Transportation Authority, MTA Bridges and Tunnels, MTA New York City Transit, New Jersey Department of Transportation, New Jersey Transit Corporation, New Jersey Turnpike Authority, New York City Department of Transportation, New York State Bridge Authority, New York State Department of Transportation, New York State Thruway Authority, Port Authority of New York and New Jersey, and Port Authority Trans-Hudson Corporation (collectively, the "Signatory Member Agencies") covers the period from January 1, 2009, through December 31, 2013.

WHEREAS, TRANSCOM Inc. is a non-profit corporation, as set forth in the Certificate of Incorporation of TRANSCOM Inc., its mission is to provide the support for and implementation of a successful partnership of regional transportation agencies, and a means of establishing a regional cooperative approach to transportation management, including a forum for the coordination of operating procedures, for improved agency communications, for the coordination of construction projects, and for the demonstration and implementation of various traffic management technologies to facilitate regional mobility across jurisdictional lines; and

WHEREAS, the Signatory Member Agencies are members of TRANSCOM Inc., as governed by the Bylaws of TRANSCOM Inc., and desire that there be resources sufficient to ensure the ongoing existence of TRANSCOM Inc., and agree to assist TRANSCOM Inc. by providing financial assistance to cover TRANSCOM Inc.'s base operations expenses;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed as follows:

1. Definitions:

As used in this Agreement, the term "Signatory Member Agency" shall mean any one of the Signatory Member Agencies of TRANSCOM Inc., as listed above,

"Member Agencies" shall mean the collective Member Agencies of TRANSCOM, as defined in the Bylaws of TRANSCOM Inc., and "Member Agency" shall mean any one of the Member Agencies.

"Board of Trustees of TRANSCOM Inc." (also herein referred to as the "Board") shall mean the Board as Constituted under the Bylaws of TRANSCOM Inc.

The TRANSCOM Inc. "Fiscal Year" shall be defined as the calendar year.

"Base Operations" or "Base Operations Activities" shall be defined as those activities that the Board of Trustees has determined that TRANSCOM will proactively pursue for the collective benefit of the Member Agencies, in order to provide core services to the Member Agencies and to secure TRANSCOM's continued operation. All activities with primarily collective benefits for the Member Agencies are included in this category. The specific activities included in this category shall be those approved by the Board as constituting budget Category A, as may be revised or redesignated by the Board from time to time.

2. Purpose:

The purpose of this Agreement is to extend the 2004-2008 TRANSCOM INC. Multi-year Agreement and thus fund the activities of TRANSCOM Inc. by means of the annual financial support of the Signatory Member Agencies as provided herein. TRANSCOM shall continue to operate in accordance with the Bylaws, incorporated herein by reference, as may be amended by the TRANSCOM Board from time to time.

3. Member Agency Dues:

Each Signatory Member Agency shall contribute annual financial support toward the TRANSCOM Inc. budget for Base Operations, according to the member dues percent shares presented in EXHIBIT I of this Agreement, incorporated into and made part of this Agreement. Specifically, the total costs for the Base Operations portion of the duly-approved budget, less any other revenues approved by the Board for application to Base Operations, shall be apportioned to the Signatory Member Agencies annually, on the basis of these percentages.

Changes to the dues percent shares and/or to the roster of Signatory Member Agencies in EXHIBIT I must be approved by the Board. Any such duly-authorized adjustments shall not require a formal amendment executed by the signatories to this Agreement; instead, the appropriate alterations or additions shall be indicated by the Executive Director on a reprinted EXHIBIT I and distributed to all of the Member Agencies, as if the affected provisions had been so written at the time of execution of this Agreement. In the event that the adjustment entails the addition of a Signatory Member Agency, then that agency shall execute a signatory page consistent with the form of this Agreement, in which the agency commits to the terms of this Agreement and its assigned dues percent share.

- 4. Incorporation of Exhibits/Addenda:**
All Exhibits and Addenda either attached hereto or subsequently approved in writing are understood by the undersigned to be incorporated into and made part of this Agreement.
- 5. Agreement Renewal/Amendment:**
This Agreement may be renewed and/or amended by a writing signed by all parties.
- 6. Other Amendments:**
Any amendment shall require a written amendment executed by all of the signatories hereto.
- 7. Termination:**
Any party may terminate its participation in this Agreement upon providing a 60-day written notice to the other parties. Notwithstanding the effectiveness of such termination, the terminating party shall remain obligated for its total contribution through the end of the TRANSCOM Inc. Fiscal Year in effect at the end of the 60-day notice period.
- 8. Entire Agreement:**
The entire Agreement between the parties is contained herein, and no change in, modification to, termination, or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by all the parties, except as otherwise provided within this Agreement.
- 9. Assignment:**
This Agreement being based upon the special qualifications of each signatory, any assignment or other transfer of this Agreement or of any part hereof without the express consent in writing of the other parties shall be void and of no effect.
- 10. Liability:**
No commissioner, officer, agent, or employee of any party shall be charged personally by any party with any liability or held liable under any term or provision of this Agreement, or because of its execution or because of any breach hereof.
- 11. Immunity and Defense:**
No signatory hereto or Member Agency has agreed to waive any defense, right, immunity, or other protection under law, including any statutory provision, by entering into this agreement or otherwise

participating in TRANSCOM Inc.

12. Executory Clauses:

No signatory to this Agreement shall have any liability under any terms of this Agreement beyond the funds appropriated and available to it for this Agreement.

In accordance with Section 41 of the N.Y. State Finance Law, neither the State of New York nor any of its agencies shall have any liability under any terms of this Agreement beyond funds appropriated and available to them for this Agreement and in accordance with Section 112 of the N.Y. State Finance Law, this Agreement shall not be binding upon the State of New York or its agencies until approved by the New York State Comptroller and filed in his office. TRANSCOM shall submit to the New York State Department of Transportation a FIN 421–New York State Department of Transportation Consultant Payment Request, at which time the Department shall encumber the necessary funds and make the assigned percentage payment.

The New York State Thruway Authority shall have no liability under any terms of this Agreement or any program authorized under it beyond funds expressly authorized and approved by the New York State Thruway Authority Board.

The New Jersey Turnpike Authority shall have no liability under any terms of this Agreement or any program authorized under it, beyond funds expressly appropriated and approved by the New Jersey Turnpike Authority Commissioners for this Agreement.

This Agreement shall not be binding upon the Connecticut Department of Transportation until approved as to form by the Attorney General of the State of Connecticut.

This Agreement shall not be binding upon the New York City Department of Transportation until approved as to form by the Corporation Counsel of the City of New York.

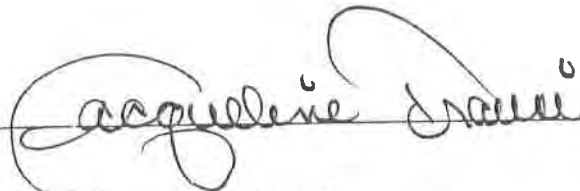
The Port Authority of New York and New Jersey shall have no liability under any terms of this Agreement or any program authorized under it beyond funds expressly authorized and approved by the Board of Commissioners of The Port Authority of New York and New Jersey.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the date set forth above.

AGENCY SIGNATURE PAGE

New Jersey Department of Transportation


ATTEST:

By: 

Name: JACQUELINE TRAUSI
SECRETARY
NEW JERSEY
DEPARTMENT OF TRANSPORTATION

Title: _____

Date: March 09, 2009



Tim Herlihy, Exec. Mgr.
Bureau Of ITS Engr.

REVIEWED AND APPROVED AS TO FORM:

By: 

Name: Richard J. Harcar
Deputy Attorney General

Title: _____

Title: _____

Date: 3/5/09

AGENCY SIGNATURE PAGE

New York State Department of Transportation

ATTEST:

By: Vincent A. Palleschi

Name: VINCENT A. PALLESCHI

Title: ASSISTANT DIRECTOR, OFFICE OF CONTRACT MANAGEMENT

Date: SEPTEMBER 3, 2009

REVIEWED AND APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

Date: _____

STATE OF New York
COUNTY OF ALBANY

On the 3rd day of September, in the year 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared Vincent Palleschi, personally known to me ~~on the basis of satisfactory evidence~~ to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ capacity, and that by his/~~her~~ signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Scott M. Nussbaum
Notary Public, State of NY
(Notary Public) No. 01NU6138835

Qualified in Warren County
Commission Expires 11/27/2011

AGENCY SIGNATURE PAGE

Port Authority of New York & New Jersey

ATTEST:


By: 

Name: Victoria Cross Kelly

Title: Director, TB & T

Date: 3-31-09

REVIEWED AND APPROVED AS TO FORM:

By: 

Name: Tracy G. Stickeman

Title: Assistant General Counsel

Date: 3-6-09

AGENCY SIGNATURE PAGE

MTA Bridges and Tunnels

ATTEST:

By: Susan Kupferman

Name: Susan Kupferman

Title: President

Date: 3/23/09

REVIEWED AND APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

Date: _____

AGENCY SIGNATURE PAGE

Metropolitan Transportation Authority

ATTEST:

By: Linda Kleinbaum

Name: Linda Kleinbaum

Title: DED Administration

Date: 2/24/09

REVIEWED AND APPROVED AS TO FORM:

By: Catherine Blue

Name: Catherine Blue

Title: Associate Counsel

Date: 2/26/09

AGENCY SIGNATURE PAGE

New Jersey Turnpike Authority

ATTEST:

By: Rose Stanko

Name: Rose Stanko

Title: Secretary

Date: 8-25-2009

REVIEWED AND APPROVED AS TO FORM:

By: Diane Gutierrez-Scaccetti

Name: Diane Gutierrez-Scaccetti

Title: Executive Director

Date: 8-21-2009

STATE OF NJ
COUNTY OF Middlesex
On the 21st day of August, in the year 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared Diane Gutierrez-Scaccetti, personally known to me, on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Lisa M. Burns
(Notary Public)

LISA M. BURNS
NOTARY PUBLIC STATE OF NEW JERSEY
COMMISSION EXPIRES FEBRUARY 23, 2010

AGENCY SIGNATURE PAGE

New York City Department of Transportation

ATTEST:

By:  _____

Name: Janette Sadik-Khan _____

Title: Commissioner _____

Date: March 2, 2009

REVIEWED AND APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

Date: _____

AGENCY SIGNATURE PAGE

Connecticut Department of Transportation

ATTEST:

By: 

Name: H. James Boice

Title: Deputy Commissioner

Date: February 27, 2009

REVIEWED AND APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

Date: _____

AGENCY SIGNATURE PAGE

MTA New York City Transit

ATTEST:

By: 

Name: Howard H. Roberts Jr.

Title: President

Date: 2/25/09

REVIEWED AND APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

Date: _____

AGENCY SIGNATURE PAGE

New Jersey Transit

ATTEST:

By: Richard R. Sarles

Name: Richard R. Sarles

Title: Executive Director

Date: 3/10/09

REVIEWED AND APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

Date: _____

AGENCY SIGNATURE PAGE

New York State Thruway Authority

ATTEST:

By: 

Name: Michael R. Fleischer

Title: Executive Director

Date: 6/18/09

REVIEWED AND APPROVED AS TO FORM:

By:  PST

Name: William J. Estes

Title: General Counsel

Date: 8/18/09

AGEND SIGNATURE PAGE

New York State Thruway Authority

ATTEST:

By: [Signature]

Name: Michael R. Fleischer

Title: Executive Director

Date: 5/18/09

REVIEWED AND APPROVED AS TO FORM:

By: [Signature]

Name: William Estes

Title: General Counsel

Date: 8/18/09

STATE OF New York
COUNTY OF Albany
On the 18 day of August, in the year 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael R. Fleischer, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
(Notary Public)

RESA SIEGEL TANNER
Notary Public, State of New York
Qualified in Albany County
No. 4935419
Commission Expires June 6, 2010

AGENCY SIGNATURE PAGE

Port Authority Trans-Hudson Corporation

ATTEST:

By: Michael P. DePallo

Name: Michael P. DePallo

Title: Director / General Manager - PATH

Date: 3-4-09

REVIEWED AND APPROVED AS TO FORM:

By: TGS

Name: Timothy G. Stickman

Title: Assistant General Counsel

Date: 2-28-09

AGENCY SIGNATURE PAGE

NEW YORK STATE BRIDGE AUTHORITY

ATTEST:

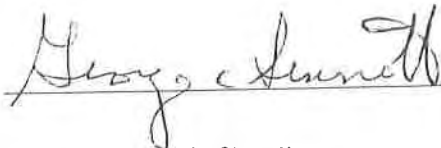
By:  _____

Name: Gregory Herd

Title: Director of Information Technology

Date: MAR 04 2009

REVIEWED AND APPROVED AS TO FORM:

By:  _____

Name: George C. Sinnott
EXECUTIVE DIRECTOR

Title: _____

Date: MAR 04 2009

EXHIBIT I

TRANSCOM INC. MEMBER AGENCY DUES PERCENT SHARES

Agency	Percent Share
New Jersey Department of Transportation	15.69%
New York State Department of Transportation	15.69%
Port Authority of New York & New Jersey	15.69%
MTA Bridges and Tunnel	7.84%
Metropolitan Transportation Authority	7.84%
New Jersey Turnpike Authority	7.84%
New York City Department of Transportation	7.84%
Connecticut Department of Transportation	3.93%
MTA New York City Transit	3.93%
New Jersey Transit	3.93%
New York State Thruway Authority	3.93%
Port Authority Trans-Hudson Corporation	3.93%
New York State Bridge Authority	1.96%

IN WITNESS WHEREOF, the parties hereto executed this Agreement on the dates shown above. Annual dues shall be payable to:

TRANSCOM, INC.
Newport Financial Center
111 Pavonia Avenue, 6th Floor
Jersey City, New Jersey 07310-1755

Federal ID# [REDACTED]

NEW YORK STATE THRUWAY AUTHORITY

Approved as to the Availability of Funds:

[Handwritten Signature]
Chief Financial Officer

Proposed 2010
Tribal Operating
Budget.

NEW YORK STATE

Approved as to Form:

APPROVED AS TO FORM
NYS ATTORNEY GENERAL
FEB 12 2010
[Signature]
Attorney General
ASSOCIATE ATTORNEY

Approved:

APPROVED
DEPT OF AUDIT & CONTROL
MAR 1 2010
State Comptroller
[Signature]
FOR THE STATE COMPTROLLER

CERTIFICATION FOR C100949

In addition to the acceptance of this Agreement, the Authority certifies that original or original duplicates, of this signature page will be attached to all original or original duplicates, of this Agreement.

[Handwritten Signature]
Purchasing Agent

APPENDIX A

Standard Clauses For New York State Thruway Authority And New York State Canal Corporation Procurement Contracts

The parties to the attached contract, license, lease, amendment or other agreement of any kind ("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 and its agents, successors and assigns, other than the Thruway Authority ("Authority") or Canal Corporation ("Corporation"), whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. NON-ASSIGNMENT CLAUSE. This contract may not be assigned by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the Authority/Corporation and any attempts to assign the contract without the Authority's/Corporation's written consent are null and void.

2. COMPTROLLER APPROVAL. Unless otherwise provided by resolution of the Authority or Corporation Board, if this contract involves the expenditure of funds for goods or services in excess of \$50,000, or the expenditure of funds for any other purpose in excess of \$15,000, or if, by this contract, the Authority/Corporation agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, this contract shall not be valid, effective or binding upon the Authority/Corporation until it has been approved by the State Comptroller and filed in his office.

3. WORKERS' COMPENSATION AND DISABILITY BENEFITS. 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 State Workers' Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included.

4. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, military status, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with State Labor Law §220-e, 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 State Labor Law §230, then, in accordance with §239 thereof, the 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. The Contractor is subject to fines of \$50 per person per day for any violation of State Labor Law §§220-e or 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

5. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the State Labor Law or a building service contract covered by Article 9 thereof, neither the 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 State Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the 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 State Labor Law.

6. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with State Public Authorities Law §2878, if this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further warrants that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the Authority/Corporation a non-collusive bidding certification on the Contractor's behalf.

7. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with State Labor Law §220-f, if this contract exceeds \$5,000, the Contractor agrees, as a material

condition of this 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. §§2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the 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 Authority/Corporation within five (5) business days of such conviction, determination or disposition of appeal.

8. **SET-OFF RIGHTS.** The Authority/Corporation shall have rights of set-off. These rights shall include, but not be limited to, the Authority's/Corporation'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 by the Contractor to the Authority/Corporation with regard to this contract, or any other contract with the Authority/Corporation, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority/Corporation for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Authority/Corporation and third parties in connection therewith.

9. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively, "Records") for a period of six (6) years (or any other longer period required by law) following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Authority/Corporation, State Comptroller, State Attorney General and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within New York State, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, during the contract term, any extensions thereof and said six (6) year period thereafter, for purposes of inspection, auditing and copying. As used in this clause, "termination of this contract" shall mean the later of completion of the work of the contract or the end date of the term stated in the contract. The Authority/Corporation will take reasonable steps to protect from public disclosure those Records which are exempt from disclosure under State Public Officers Law §87 ("Statute") provided that: (i) the Contractor shall timely inform an appropriate Authority/Corporation official, in writing, that said records should not be disclosed; (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 Authority's/Corporation's right to discovery in any pending or future litigation.

10. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Authority/Corporation must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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 State Tax Law §5. Disclosure of this information by the seller or lessor to the Authority/Corporation 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 State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

The above personal information is maintained at the New York State Thruway Authority/Canal Corporation, Department of Finance and Accounts, P.O. Box 189, Albany, New York 12201.

11. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with State Executive Law §312, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the Authority/Corporation 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 Authority/Corporation; or (ii) a written agreement in excess of \$100,000 whereby the Authority/Corporation 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 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, or major

repair or renovation of real property and improvements thereon for such project, then:

(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, 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. As used in this clause, "affirmative action" shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off or termination, and rates of pay or other forms of compensation.

(b) At the request of the Authority/Corporation, 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.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that in the performance of this 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.

The Contractor shall include the provisions of (a), (b) and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such 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; or (iii) banking services, insurance policies or the sale of securities.

12. 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.

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

14. LATE PAYMENT. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by State Public Authorities Law §2880 and 21 NYCRR Part 109.

15. 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.

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

17. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (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 Authority/Corporation.

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 State Finance Law §165. Any such use must meet with the approval of the Authority/Corporation; 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 Authority/Corporation.

18. 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 State Finance Law

§165), and shall permit independent monitoring of compliance with such principles.

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl Street – 7th Floor
Albany, NY 12245
Phone: (518) 292-5220

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

NYS Department of Economic Development
Minority and Women's Business Development Division
30 South Pearl Street – 2nd Floor
Albany, NY 12245

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, the Contractor certifies 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 Authority/Corporation;

(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 NYS 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 Authority/Corporation upon request; and

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

20. 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 (Chapters 684 and 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

21. PURCHASES OF APPAREL. In accordance with State Finance Law §162(4-a), the Authority/Corporation shall not purchase apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws; and (ii) vendor will supply with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the Authority/Corporation), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

22. OBSERVANCE OF LAWS. The Contractor agrees to observe all Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

23. NO WAIVER OF PROVISIONS. The Authority's/Corporation's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Authority/Corporation of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Authority/Corporation, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

24. ENTIRE AGREEMENT. This contract, together with this Appendix A and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.