

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY**

---

In the Matter of

Index No.

ANGELA RENNA and ROSS BRADY,

Petitioners,

-against-

**VERIFIED PETITION**

ANDREW CUOMO, in his official capacity as Governor of the State of New York; THE ASSEMBLY OF THE STATE OF NEW YORK; CARL HEASTIE, in his official capacity as Speaker of the Assembly of the State of New York; WILLIAM BARCLAY, in his official capacity as Minority Leader of the Assembly of the State of New York; THE SENATE OF THE STATE OF NEW YORK; ANDREA STEWART-COUSINS, in her official capacity as Temporary President of the Senate of the State of New York; ROBERT ORTT, in his official capacity as Minority Leader of the Senate of the State of New York; ROBERT MUJICA, in his official capacity as New York State Budget Director; ROSSANA ROSADO, in her official capacity as New York State Secretary of State; and, THOMAS DINAPOLI, in his official capacity as New York State Comptroller,

Respondents.

For a Judgment Under Article 78 of the Civil Practice Law and Rules

---

Petitioners Angela Renna and Ross Brady, for their Verified Petition in this hybrid Article 78 and declaratory judgment proceeding against Respondents Andrew Cuomo, in his official capacity as Governor of the State of New York; The Assembly of the State of New York; Carl Heastie, in his official capacity as Speaker of the Assembly of the State of New York; William Barclay, in his official capacity as Minority Leader of the Assembly of the State of New York; The Senate of the State of New York; Andrea Stewart-Cousins, in her official

capacity as Temporary President of the Senate of the State of New York; Robert Ortt, in his official capacity as Minority Leader of the Senate of the State of New York; Robert Mujica, in his official capacity as New York State Budget Director; Rossana Rosado, in her official capacity as New York State Secretary of State; and, Thomas DiNapoli, in his official capacity as New York State Comptroller, allege as follows:

### **Facts and Allegations**

1. In 2014 New Yorkers approved a constitutional amendment requiring an Independent Redistricting Commission to redraw the state and federal legislative district maps every ten years. The amendment was designed to bring independence, objective criteria and sound reasoning, and citizen participation to the redistricting process. It mandates at least 12 public meetings. It contains criteria for drawing districts, including not harming racial or language minority voting rights, discouraging competition, or favoring incumbents. Commission members are evenly appointed by the majority and minority leaders in each house of the Legislature.

2. As Governor Cuomo explained in 2011, “[r]edistricting in New York is a system that has prioritized incumbency and partisan interests over democratic representation. This process needs to be about the people and not the politics. To help restore faith in our State government, we need to reform the system.” Ten years later, however, neither the Governor nor the Legislature have much interest in seeing the reforms play out.

3. The Governor and his agencies have prevented the Commission from starting its work by withholding for months appropriated funds the commission needed to compensate staff and acquire equipment and then imposing unconstitutional terms for administering the funds.

4. Commissioners have been in place for almost a year with no money to operate. Co-executive directors were selected but have not been be paid. There has been no money for staff. The Commission does not have the equipment it needs begin the redistricting process. And time is of the essence.

5. By no later than September 15<sup>th</sup> this year and at least 30 days before the first of twelve mandatory public hearings, draft redistricting plans, related data, and other information must be made available to the public. The final redistricting plans must be submitted to the Legislature by January 1<sup>st</sup> next year.

6. There is a great deal of work to be done before the federal census data becomes available, including hiring staff, purchasing equipment, software, and software licenses, and forming plans for obtaining public input before and after the maps are drawn.

7. To redraw the electoral maps in a compressed time, the groundwork needs to be laid down now. This is especially true because the federal census data may be delayed until August and New York stands to lose at least one, if not two, Congressional seats.

8. The Commission can access certain data from the Census Bureau and other sources to set out a framework for redistricting plans in preparing for the census data release later this year. But it needs staff and equipment in place to make those preparations.

9. Unless the Commission receives funding immediately in a manner that it can use to operate as an independent body, its ability to meet its constitutional duty to obtain public participation and produce independent, objective, and fair redistricting plans will be compromised.

### **New Yorkers Amended the State Constitution in 2014 to Add an Independent Redistricting Commission.**

10. Legislative reapportionment and redistricting for state and federal districts occur every ten years, using population data from the decennial federal census.

11. In 2009, former New York City Mayor Ed Koch helped form and lead a coalition, New York Uprising, that made redistricting reform a priority issue. New York Uprising and other reform-minded groups pushed legislators to pledge support for redistricting reform.

12. Five years later, the Legislature put a constitutional amendment for redistricting reform before New York voters that passed in two separately elected Legislatures and Governor Cuomo supported.

13. The reform amendment established a bi-partisan commission charged with creating new districts, guided by standards designed to limit the ability of incumbent politicians to draw districts favorable to maintaining power.

14. New constitutional standards require that districts respect existing jurisdictional boundaries and take care to recognize local communities of interest, including those representing racial and ethnic minorities.

15. The reform amendment also requires that minority parties in the Senate and Assembly have a voice in the process. The Independent Redistricting Commission amendment provides two appointees respectively from the majority and minority parties in each house. Those eight members then vote to appoint two more members who cannot have been enrolled in either of the state's largest two political parties in the past five years.

### **The Constitution Mandates Funding for the Commission.**

16. Section 5-b(i) of Article III of the Constitution states:

The state budget *shall* include necessary expenses for the expenses of the independent redistricting commission, provide for compensation and reimbursement of expenses for the members and staff of the commission, assign to the commission any additional duties that the legislature may deem

necessary to the performance of the duties stipulated in this article, and require other agencies and officials of the state of New York and its political subdivisions to provide such information and assistance as the commission may require to perform its duties.

(emphasis added).

17. The state budget for the fiscal year ending March 31, 2020 (FY 2019-20) contained a \$250,000 appropriation for the Commission added by the Legislature.

18. The FY 2019-20 state budget appropriated the \$250,000 to the Department of State in the Aid to Localities budget bill.

19. A year ago, the four Legislative leaders made their appointments to the Commission.

20. The Legislature then added an additional \$750,000 to the budget for the fiscal year ending March 31, 2021 (FY 2020-21) and re-appropriated the unused \$250,000 amount from FY 2019-20.

21. Both amounts were appropriated to the Department of State in the Aid to Localities budget bill.

22. Neither budget bill contained the compensation and expense detail required under the Constitution.

23. Nor did the budget bills place any specific requirements on the executive branch to provide the Commission with the assistance it requires to be operational.

**The Executive Branch Has Failed to Fund the Commission as the Constitution Requires.**

24. The Governor and his officials have exploited the lack of legislative direction in the previous years' appropriations to do nothing to help get the Commission underway.

25. Last September the Commission's members sent a letter to Respondent Mujica, state Budget Director, asking for the Commission's funding to be released (**Exhibit A**).

26. He ignored them.

27. The Commission appointed co-executive directors as mandated by the Constitution in November, despite not having access to its funding.

28. The Commission tried again in December to get its funding released—this time writing to Governor Cuomo and the legislative leaders (**Exhibit B**).

29. Only Senate Minority Leader Ortt wrote back, expressing his desire that the executive branch honor the voters' will and release the Commission's funding so that it can carry out its important constitutional mandate (**Exhibit C**).

30. Meanwhile, a coalition of diverse organizations, including the NALEO Education Fund, LatinoJustice PRLDEF, Center for Law and Social Justice, CPC-Chinese Planning Council, The New York Immigrant Coalition, League of Women Voters of New York State, Citizens Union, and ReInvent Albany, sent a letter to Respondent Governor Cuomo urging the executive branch to release the Commission's funding (**Exhibit D**).

31. The coalition noted that funding delays are jeopardizing the Commission's ability to collaborate and meet with "organizations representing diverse communities throughout the state" and to fulfill its constitutional mandate to conduct a minimum 12 public hearings around the state.

**The Governor and the Legislature Are Violating the Constitution by Failing to Make Appropriations for the Commission for Next Fiscal Year.**

32. Despite the express constitutional mandate that funding "shall" be provided to the Commission, neither the Governor nor the Legislature have agreed to add a new appropriation with the required budget details in the fiscal year 2022 state budget.

33. Section 2 of Article VII of the Constitution requires the Governor to submit an annual budget “containing a complete plan of expenditures proposed to be made before the close of the ensuing fiscal year.”

34. Section 1 of Article VII of the Constitution requires the Legislature to provide by December 1st an itemized estimate of its financial need that the Governor must include in the budget without revision.

35. On January 12, 2021, the Commission’s co-executive directors submitted a budget request to Budget Director Mujica, asking that an additional \$3.2 million be included in the upcoming fiscal year state budget (FY 2021-22) so that the Commission could have adequate funding to undertake its work (**Exhibit E**).

36. A week later Governor Cuomo introduced his executive budget, which did not contain a new appropriation for FY 2021-22. It did, however, include re-appropriations of the \$250,000 and \$750,000 amounts from the prior two fiscal years.

37. Neither the Legislature nor the Governor have made provisions for Commission expenditures in FY 2021-22.

38. On January 28, 2021, the Commission emailed a letter to Governor Cuomo and the legislative leaders again asking for \$1,000,000 previously appropriated to be released and requesting its necessary funding of an additional \$3.2 million be included in forthcoming FY 2021-22 budget amendments (**Exhibit F**).

39. The Commission cited the Governor and Legislature’s constitutional obligation to make necessary appropriations, provide for compensation and expense reimbursement for Commission members and staff, and require other agencies and officials to provide information and assistance as required by the Commission.

40. Governor Cuomo's 30-day budget amendments under Section 3 of Article VII of the Constitution published on February 19 did not contain any portion of the \$3.2 million the commission requested for FY 2021-22.

41. Meanwhile, a coalition of advocates submitted testimony to the Legislature's joint fiscal committee stressing the importance of Commission funding to its work (**Exhibit G**).

42. Among other things, the coalition noted that the Commission will have a minimum staffing cost of \$675,000, or 90 percent of the amounts previously appropriated and that technology and equipment costs alone could require more than the \$75,000 that remained.

43. The coalition also pointed out that the Legislature intends to appropriate funds for an existing entity, the Legislative Task Force on Demographic Research & Reapportionment (LATFOR), exceeding \$2 million.

44. The coalition further noted that LATFOR has a head-start on the Commission with staff, technology, and other resources in place to begin drawing new electoral maps.

45. Respondents Stewart-Cousins and Heastie each make two appointments to LATFOR, while Respondents Ortt and Barclay each make one.

46. LATFOR can be expected to provide assistance to the Senate and Assembly if the Commission's redistricting plans are rejected by the Legislature or Governor and made subject to legislative amendments under Section 4(a) of Article III of the Constitution.

**The Executive Branch Proposes to Release Appropriated Funds to the Commission in a Form that Violates the Constitution.**

47. At the time of its January 28 letter, the Commission had not yet seen a contract signed the day before between the Department of State and The Research Foundation for the State University of New York (**Exhibit H**).



48. The contract purports to fund the Commission through the SUNY Research Foundation using existing appropriations.

49. The Commission is not a party to the contract.

50. The SUNY Research contract introduces the SUNY Rockefeller Institute as academic support to the Commission and SUNY Research as the Rockefeller Institute's fiscal and staffing agent.

51. According to the contract, SUNY Research will assign staff to the Rockefeller Institute to conduct data gathering, research, and analysis to enable the Commission to do its redistricting work.

52. The Commission has no role in hiring staff assigned to Rockefeller Institute staff under the SUNY Research contract.

53. The Commission has no ability to fire staff assigned to Rockefeller Institute under the SUNY Research contract.

54. The SUNY Research contract does not contain a provision for the hiring, compensation, or reimbursement of expenses the co-executive directors the Commission members appointed under Section 5-b(h) of Article III of the Constitution.

55. The SUNY Research staff assigned to Rockefeller Institute would be employees of an independent contractor who would not qualify as public officers entitled under the Public Officers Law to be defended and saved harmless by the state in a civil action.

56. The Rockefeller Institute is not a party to the contract and has no obligation under the contract or under any law to provide services to the Commission.

57. The SUNY Research contract does not contain a provision for compensation or reimbursement of expenses for Commissioner members.

58. The Department of State reserves various rights to suspend or terminate the SUNY Research contract that excludes the Commission from having any input or control.

59. Section 5-b of Article III of the Constitution, however, exists to implement the people of New York's will to have an *independent* redistricting commission.

60. The Commission has an express constitutional duty to prepare a redistricting plan to establish senate, assembly, and congressional districts independent of the state government's executive, legislative, and judicial branches.

61. To that end, the Constitution provides that the co-executive directors appointed by the Commission members "*shall* appoint such staff as are necessary to perform the commission's duties."

62. The co-executive directors' duty to appoint is only qualified in the Constitution by a mandate that the Commission members must review the staffing plan.

63. The SUNY Research contract places staffing in the hands of SUNY Research and the Department of State and excludes the Commission's co-executive directors entirely.

64. The SUNY Research contract violates the Constitution's provision for staffing the Commission.

65. The executive branch is exercising control over the Commission and preventing it from carrying out its constitutional duties despite not having any right to appoint members to the Commission by design of the people of New York.

66. There is no meaning of "independent" that can be reconciled with the Governor controlling the Commission's staff appointments.

67. The Commission cannot be independent when the executive branch will not release appropriated funds for the Commission to use at its discretion.

68. Nor can the Commission be considered independent when neither the executive nor legislative branch are willing to propose budget amounts for the Commission in FY2021-22.

69. The Commission has an express constitutional duty to submit its redistricting plan to the Legislature no later than January 15, 2022.

70. Without funding, the Commission cannot meet its obligations under the Constitution.

71. New Yorkers are being harmed by the executive and legislative branches sabotaging a redistricting process aimed at restoring democratic representation in New York.

### **Parties**

72. Petitioner Angela Renna is a New York resident who pays taxes to the state. She was a candidate for state legislative office in the 2020 general election and is contemplating running again in 2022.

73. Petitioner Ross Brady is a New York resident who pays taxes to the state. He is a Commission member appointed under Section 5-b(5) of Article III of the Constitution by the eight legislative-appointed Commission members.

74. Respondent Governor is head of the executive branch of the government of the State of New York.

75. Respondent Assembly is a house of the Legislature empowered under the Constitution to exercise the legislative function.

76. Respondent Heastie is Speaker of the Assembly and an officer of the Assembly. As authorized by the Constitution and statute, the Speaker appoints commissioners to the Commission.

77. Respondent Barclay is Minority Leader of the Assembly and an officer of the Assembly. As authorized by the Constitution and statute, the Minority Leader appoints commissioners to the Commission.

78. Respondent Senate is a house of the Legislature empowered under the Constitution to exercise the legislative function.

79. Respondent Stewart-Cousins is Temporary President of the Senate and an officer of the Senate. As authorized by the Constitution and statute, the Temporary President appoints commissioners to the Commission.

80. Respondent Ortt is Minority Leader of the Senate and an officer of the Senate. As authorized by the Constitution and statute, the Minority Leader appoints commissioners to the Commission.

81. Respondent Mujica is the New York State Budget Director tasked by the Legislature to issue certificates of approval before moneys appropriated in the Aid to Localities Budget Bills of 2019 and 2020 can be paid.

82. Respondent Rosado is Secretary of State and heads the executive department tasked by the Legislature with administering appropriations for the Commission in the Aid to Localities Budget Bills of 2019 and 2020.

83. Respondent DiNapoli is the New York State Comptroller who is responsible for disbursements of state funds.

### **Jurisdiction and Venue**

84. This Court has jurisdiction under CPLR 7804(b) and CPLR 506(b) because all actions at issue in this case took place within the judicial district containing Albany County.

### **Declaratory Judgment: The Respondents Are Violating the Constitution**

85. The SUNY Research contract violates the Constitution's provisions designed to make the Commission independent.

86. The Governor and the legislature have not submitted budgets for FY 2021-22 containing proposed appropriations for the expenses of the Commission and provide for compensation and reimbursement of expenses for the members and staff of the Commission.

87. The Governor and the legislative respondents have failed to meet their obligations under the Constitution to provide specified budget items.

88. The Governor and the legislative respondents have violated Section 5-b(i) of Article III of the Constitution.

**Article 78 Cause of Action:  
Fund the Commission with Existing Appropriations**

89. Respondents Cuomo, Mujica, Rosado, and DiNapoli have failed to perform their duties enjoined on them by the Constitution and state law to release \$1,000,000 in funds to the commission so that it can operate independently.

90. Petitioners have no administrative remedies and have no other remedy at law.

91. Petitioners have not made any prior application for the relief requested here.

**Relief Requested**

92. Petitioners respectfully request that this Court issue an order:

- a. Declaring the SUNY Research contract in violation to the Constitution's provisions for making the Commission independent;
- b. Compelling the Respondents to take all necessary steps to release funds appropriated in 2019 and 2020 to the Commission and enable the Commission to operate as designed in the Constitution;
- c. Declaring that the Governor and the Legislature have an obligation under Section 5-b(i) of Article III of the Constitution to make appropriations for the expenses of the Commission and provide for

compensation and reimbursement of expenses for the members and staff of the Commission;

- d. Awarding attorneys' fees and costs incurred in this litigation; and
- e. Granting such other and further relief as this Court may deem just and proper.

Dated: Albany, New York  
March 5, 2021

Respectfully submitted,



---

Cameron J. Macdonald  
Government Justice Center  
30 South Pearl Street, Suite 1210  
Albany, New York 12207  
(518) 434-3125  
cam@govjustice.org

*Counsel for Petitioners*

**VERIFICATION**

STATE OF NEW YORK            )  
  :SS  
COUNTY OF ALBANY            )

I, Cameron Macdonald, being duly sworn, deposes and says:

I am the attorney for the Petitioners in the above-captioned action.

I have reviewed the foregoing Petition and know its contents to be true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true based on my review of pertinent documents and conversations with persons with personal knowledge.

This verification is made by me rather than Petitioners because the Petitioners reside outside Albany County where I maintain my office.



\_\_\_\_\_  
Cameron Macdonald

**NEW YORK STATE INDEPENDENT REDISTRICTING COMMISSION**

September 14, 2020

Robert F. Mujica Jr.  
Director  
New York State Division of the Budget  
The Capitol  
Albany, New York

Dear Director Mujica:

We write as the New York State Independent Redistricting Commission, which was duly appointed this past February under the State Constitution. While the Legislature allocated a total of \$1 million to commence its critical work, for reasons not clear to us, the money has not been released.

We cannot ignore the important constitutional obligations that this Commission is required to perform, and the short time that we have to perform them. Thus, we respectfully request that the Commission's legislative appropriation immediately be released, so that we may fulfill our constitutional duties. As you know, the State Constitution mandates this funding, and does not contemplate an indefinite delay before releasing it.

We are committed to completing the many tasks before us, and we look forward to your response.

Sincerely,

Members of the Independent Redistricting Commission

Eugene Benger   John Flatau   Elaine Frazier   David Imamura   Jack Martins   Charles  
Nesbit   George Winner   Keith Wofford

cc: Senate and Assembly Majority and Minority Leadership



**Exhibit B**

December 10, 2020

By Email

Governor Andrew M. Cuomo  
Majority Leader Andrea Stewart-Cousins  
Speaker Carl E. Heastie  
Minority Leader Robert G. Ort  
Minority Leader William A. Barclay

Dear Colleagues:

The commissioners of the Independent Redistricting Commission respectfully request that the appropriations allocated to the Commission in the Fiscal Years 2019-20 and 2020-21 New York State budgets be released for the Commission to fulfill the work that is required as stated in the New York State Constitution. As stated in our letter to you, dated September 8, 2020, the Constitution mandates this funding and does not contemplate an indefinite delay before releasing it.

The Legislature has appropriated, through the Department of State, funding for the Commission, but for reasons unknown to us, that agency has failed to release the funding. Article III, Section 5-b of the New York State Constitution mandates that the necessary appropriations for the Commission to perform its duties and prepare a redistricting plan by January 2022. Without the appropriated funds we cannot execute our mandated duties within the statutory time frame.

The U.S. Census Bureau has indicated that there may be a delay in the release of apportionment numbers. However, their schedule for the release of geographic products such as the TIGER Line file, has not changed. The commission must have staff hired and ready to receive this data by January 22, 2021.

We are urging you to release the funding so we may initiate the hiring process for staff, as required by the amendment, and begin the great task before us. We look forward to your response.

Sincerely,

Members of the Independent Redistricting Commission

Eugene Benger  
Ross Brady  
Ivelisse Cuevas-Molina  
John Flateau  
Elaine Frazier

David Imamura  
Jack Martins  
Charles Nesbitt  
George Winner  
Keith Wofford

Cc: Director Robert F. Mujica Jr.

**Exhibit C**

**ALBANY OFFICES**  
ROOM 300 LEGISLATIVE OFFICE BUILDING  
ALBANY, NEW YORK 12247  
518 455 2024

ROOM 315 STATE CAPITOL  
ALBANY, NEW YORK 12247  
518 455 2079



**THE SENATE  
STATE OF NEW YORK  
ALBANY 12247**

**ROBERT G. ORTT  
62ND SENATE DISTRICT  
SENATE MINORITY LEADER**

**DISTRICT OFFICE**  
175 WALWORTH STREET  
SUITE 400  
LOCKPORT, NEW YORK 12801  
(518) 439-6800

**E MAIL**  
ORTT@NYSENATE.GOV

**WEBSITE:**  
ORTT@NYSENATE.GOV

**December 14, 2020**

**Members of the Independent Redistricting Commission**

**Eugene Bengert  
Ross Brady  
Ivelisse Cuevas-Molina  
John Flateau  
Elaine Frazier**

**David Imamura  
Jack Martins  
Charles Nesbitt  
George Winner  
Keith Wofford**

**Dear Members of the Independent Redistricting Commission:**

**Please know that I am in full agreement that funds appropriated in Fiscal Years 2019-20 and 2020-21 for the Independent Redistricting Commission should be released in full immediately.**

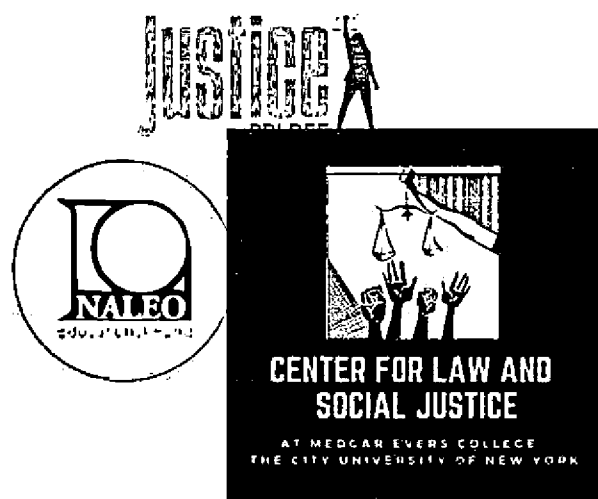
**The Governor and Legislative Majorities should honor the will of the voters and immediately release this long overdue funding. The Commission has a substantial amount of work to complete in a very short amount of time and it is clear that the continued failure to release these funds is significantly impeding the ability of the Commission to operate and fulfill its constitutional mandate.**

**Sincerely,**

**Robert G. Ort  
Senator, 62<sup>nd</sup> District**

**Cc: Director of Budget Robert F. Mujica Jr.  
Secretary of State Rosanna Rosado**

Exhibit D



CITIZENS  
UNION  
OF THE CITY OF NEW YORK

LEAGUE OF WOMEN VOTERS

December 14, 2020

The Honorable Andrew M. Cuomo  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

Dear Governor Cuomo,

We write to urge you to immediately order the New York State Department of State to release the \$750,000 in funds appropriated to the Independent Redistricting Commission so that they can begin their critical work soliciting public input to draft new state and congressional legislative lines.

The Commission has hired its Co-Executive Directors and begun holding regular meetings to set its goals and agenda. At its most recent meeting, Commissioner Martins stated that the Commission was more than 8 months behind because of the delay in the release in this funding. This is a gross injustice to democracy and the people of New York State who voted to approve this new Commission.

Without funding, the public has no way to participate in this redistricting process as the Commission has no way to hire staff to undertake major projects including creating a public website, collaborating and meeting with organizations representing diverse communities throughout the state, and scheduling the 12 public meetings set to be held in the coming year.

We find it highly concerning that this Commission has not received its relatively small funding appropriation, yet the State Legislative Task Force on Demographic Research and Reapportionment has received more than \$1 million in the last year. A further delay in the release of these funds undermines the

transparent, bi-partisan, and independent process voted for by millions of New Yorkers as a ballot initiative in 2014. We again urge you to immediately release these funds.

Sincerely,

Arturo Vargas  
CEO  
NALEO Educational Fund

Juan Cartagena  
President and General Counsel  
LatinoJustice PRLDEF

Lurie Daniel-Favors, Esq.  
Interim Executive Director  
Center for Law and Social Justice, Medgar Evers College, CUNY

Carlyn Cowen  
Chief Policy & Public Affairs Officer  
CPC - Chinese-American Planning Council

Paul Westrick  
Manager of Democracy Policy  
The New York Immigration Coalition

Laura Ladd Bierman  
Executive Director  
League of Women Voters of New York State

Betsy Gotbaum  
Executive Director  
Citizens Union

John Kaehny  
Executive Director  
ReInvent Albany

**Exhibit E****NEW YORK STATE INDEPENDENT REDISTRICTING COMMISSION**

January 12th, 2021

By Email

Robert F. Mujica Jr.  
Director  
New York State Division of the Budget  
The Capitol  
Albany, New York

Dear Director Mujica:

We write as the Co-Executive Directors of the Independent Redistricting Commission, duly appointed this past November by the Commission. We are requesting a \$3.2 million dollar appropriation in the upcoming 2021-2022 budget.

We cannot without adequate funding complete the important constitutional obligations that this Commission is required to perform, and in the short time that we have to perform them. Thus, we respectfully request that the Commission receive the requested additional \$3.2 Million dollar appropriation in the 2021-2022 budget, so that we may fulfill our mandated duties.

We look forward to your response.

Sincerely,

Co-Executive Directors

Douglas Breakell  
Karen Blatt

cc: Hon. Governor Andrew M. Cuomo  
Majority Leader Andrea Stewart-Cousins  
Speaker Carl E. Heastie  
Minority Leader Robert G. Ort  
Minority Leader William A. Barclay

**Exhibit F**

January 28, 2021

VIA EMAIL

Honorable Andrew Cuomo  
Governor  
New York State Capitol  
The Executive Chamber  
Albany, New York 12224

Honorable Andrea Stewart-Cousins  
NYS Senate Majority Leader  
188 State Street, Room 907  
Legislative Office Building  
Albany, NY 12247

Honorable Carl E. Heastie  
NYS Assembly Speaker  
Legislative Office Building room 932  
Albany, NY 12248

Honorable Robert G. Ort  
NYS Senate Minority Leader  
Capitol Building Room 315  
Albany, NY 12247

Honorable William A. Barclay  
NYS Assembly Minority Leader  
Legislative Office Building room 933  
Albany, NY 12248

Dear Governor Cuomo and legislative Leaders:

As duly appointed members of New York State's Independent Redistricting Commission, we are contacting you to request the immediate release of the \$1 million in state funding appropriated to the Department of State in the enacted 2020-21 state budget to fund the Commission, as well as the inclusion of "necessary" funding for the Commission in the 2021-22 Executive Budget through your forthcoming 30-day amendments.

Nearly one year ago, the Majority and Minority Leaders of the State Senate and State Assembly made their appointments to the Commission consistent with Article III Section 5-b(a) of the State Constitution. Subsequently, the enacted 2020-21 State Budget appropriated \$750,000 to the Department of State "[f]or services and expenses of the Independent

Redistricting Commission” (see page 848 lines 23 and 24 of S.7503-C) and contained another \$250,000 in reappropriated funds for the Commission (see page 851 lines 12 and 13 of S.7503-C).

As of the date of this correspondence, however, no such funding has been released by the Department of State to fund the Commission and the 2020-21 Executive Budget that you submitted to the State Legislature on January 20, 2021 neglected to include any new funding for the Commission.

Pursuant to Article III Section 5-b(h) of the State Constitution, “[t]he state budget **shall include necessary appropriations** for the expenses of the independent redistricting commission, provide for the compensation and reimbursement of expenses for the members and staff of the commission, assign to the commission any additional duties that the legislature may deem necessary to the performance of the duties stipulated in this article, and require other agencies and officials of the state of New York and its political subdivisions to provide such information and assistance as the commission may require to perform its duties.” (emphasis added)

By failing to disburse the \$1 million appropriated by the State Legislature in the 2020-21 New York State Budget, your administration has failed to live up to the standard you set when you said, “this historic constitutional amendment” would “finally refor[m] the state’s broken redistricting process.” At present, your administration has not lived up to the provisions of the State Constitution and State Legislative Law—fundamentally negating what Dr. Michael MacDonald, who served as a professor at George Mason University and a Senior Fellow at the Brookings Institution, called your “principled stand” during the last redistricting process.

To this end, I direct your attention to bipartisan correspondence sent to the New York State Budget Director on September 14, 2020 signed by all eight commissioners appointed by the state legislative leaders. In that letter, all eight Republican and Democratic commissioners “respectfully request[ed] that the Commission’s legislative appropriation immediately be released, so that we may fulfill our constitutional duties.” Moreover, we reminded the Budget Director that “the State Constitution mandates this funding and does not contemplate an indefinite delay before releasing it.” That correspondence elicited no response.

Recognizing that the Budget Director failed to even acknowledge our letter, the entire Commission reiterated this request in an email sent to you, Senate Majority Leader Andrea Stewart-Cousins, Assembly Speaker Carl Heastie, Senate Minority Leader Robert Ort and Assembly Republican Leader William Barclay on December 10, 2020. In that correspondence, the Commissioners again “respectfully request[ed] that the appropriations allocated to the Commission” be released and stated that, [w]ithout the appropriated funds we cannot execute our mandated duties within the statutory time frame.” Further, we cautioned that the release of this funding was necessary to “have staff hired and [be] ready to receive [Census Bureau] data.” Unfortunately, there was no official response from you. That said, Senate Minority Leader Ort’s response dated December 14, 2020 noted that “the Governor and Legislative

Majorities should honor the will of the voters and immediately release this long overdue funding...[because] the continued failure to release these funds is significantly impeding the ability of the Commission to operate and fulfill its constitutional mandate.”

We also direct your attention to a letter sent to you on December 14, 2020 that was signed by the principals at the NALEO Educational Fund, Latino Justice PRLDEF, Center for Law and Social Justice at Medgar Evers College, Chinese-American Planning Council, New York Immigration Coalition, League of Women Voters of New York State, Citizens Union and ReInvent Albany. Their message echoed our continued call for the immediate release of this legislative appropriation and, in relevant part, stated:

The Commission has hired its Co-Executive Directors and begun holding regular meetings to set its goals and agenda. At its most recent meeting, Commissioner Martins stated that the Commission was more than eight months behind because of the delay in the release of this funding. This is a gross injustice to democracy and the people of New York State who voted to approve this new Commission.

Without funding, the public has no way to participate in this redistricting process as the Commission has no way to hire staff to undertake major projects including creating a public website, collaborating and meeting with organizations representing diverse communities throughout the state, and scheduling the 12 public meeting set to be held in the coming year.

We find it highly concerning that the Commission has not received its relatively small funding appropriation, yet the State Legislative Task Force on Demographic Research and Reapportionment has received more than \$1 million in the last year. A further delay in the release of these funds undermines the transparent, bipartisan and independent process voted for by millions of New Yorkers as a ballot initiative in 2014.

To the best of our knowledge, you have not responded to this correspondence.

Finally, the Commission’s Co-Executive Directors, as appointed by the members of the Commission pursuant to Article III Section 5-b(h) of the State Constitution, submitted a bipartisan request for funding in the 2021-22 New York State Budget on January 12, 2021. This correspondence was sent to the State Budget Director, with copies sent to you and the state legislative leaders. On behalf of the Commission, they requested a “\$3.2 million appropriation in the upcoming 2021-22 budget,” stating that “[w]e cannot without adequate funding complete the important constitutional obligations that this Commission is required to perform, and in the short time that we have to perform them.” Again, the Commission received no official response to this request and, as documented above, no new funding was included in the Executive Budget for the Commission. Prospectively, we encourage you and to fulfill your constitutional obligation to include the “necessary appropriations” in the 2021-22 State Budget and do so in a manner that realizes the voters’ intent by enabling the Commission to operate as



a fully-functioning, yet independent, arm of state government, with all of the appropriate accommodations afforded Commission members and employees.

As of date of this letter, the urgency expressed, in bipartisan fashion, by the Commission's Co-Executive Directors has come to pass. Nationwide, fifteen states have established redistricting commissions and, currently, New York State's independent Redistricting Commission is the only such entity that remains unfunded—leaving New York as the lone state unprepared to begin the redistricting process. In fact, the Commission was recently forced to inform the United States Census Bureau that it was unable to accept its Topologically Integrated Geographic Encoding and Referencing system ("TIGER") data because the absence of funding has prevented the Commission from acquiring the equipment and personnel necessary to manage it. In addition, your administration's decision to withhold funding has rendered the Commission unable to solicit or receive input or make records from previous meetings available to the public. Without immediate action, the constitutionality of the state's redistricting process is in jeopardy.

Both the Republican and Democratic members of the Commission are at a loss to explain your administration's refusal to disperse funding that you signed into law after it was appropriated by the State Legislature, nor can we comprehend and the state's clear desire to subvert the will of an overwhelming majority of voters who ratified this constitutional amendment. When the amendment first passed the State Legislature, you said that it made New York "a leader among the growing number of states that have reformed their redistricting process in an effort to stop gerrymandering." With the moment now upon us, we hope that your commitment to this principle remains true.

Respectfully yours,

Independent Redistricting Commission

Ivelisse Cuevas-Molina

David Imamura

Charles Nesbitt

George Winner

Elaine Frazier

Ross Brady

Jack Martins

Eugene Benger

John Flateau

Keith Wofford

cc: Robert Mujica, Director, New York State Division of the Budget  
Rossana Rosado, Secretary, New York Department of State  
Hon. Letitia James, NYS Attorney General  
Hon. Monty Wilkinson, Acting United States Attorney General

## Exhibit G

**JOINT LEGISLATIVE PUBLIC HEARING  
ON 2021-2022 EXECUTIVE BUDGET PROPOSAL ON PUBLIC PROTECTION**

**JOINT TESTIMONY TO THE FISCAL COMMITTEES OF THE  
NEW YORK STATE SENATE AND NEW YORK STATE ASSEMBLY  
PRESENTED VIRTUALLY  
FEBRUARY 10, 2021**

**Introduction**

Following the 2014 constitutional amendment to Article III, Section 5-b of the New York State Constitution, State Legislative and Congressional maps will now be drawn by an independent redistricting commission (the "Commission"). The 2014 amendment also mandates that the state provide necessary appropriations for the expenses of the redistricting commission including compensation and reimbursement of expenses for the members and staff of the commission.

Despite this mandate, the 10-member Commission has yet to receive any funding to complete its work. The FY 2020-2021 budget included \$1 million in funding for the Commission, but that funding has now been delayed for more than 9 months for undetermined reasons. The Commission has been told that this funding will be paid out through SUNY Research Foundation and that \$350,000 will be set aside for legal fees and a 10% payment to SUNY Research Foundation leaving the Commission with only \$750,000 to use for their work.

The new Independent Redistricting Commission has been tasked with fulfilling the monumental task of redrawing the state's Assembly, Senate, and Congressional district lines in less than a year's time. This work is critical to ensuring our democracy moves forward in representing the interests of all New Yorkers in critical areas like healthcare, education, housing, transportation, and other basic services for the next ten years. The Commission must hold a minimum of 12 public hearings to allow for input from all communities in New York State and submit their first draft maps to the public all before September 15th. Although Census population data counts are not expected until the end of July, the Commission has already expressed a desire to begin holding conversations with stakeholder groups planning their work.

Because the Commission has not yet received any funding, New Yorkers cannot participate in the redistricting process as mandated by law. The public has no way to contact the Commission or submit public comment. There is no website with public data, no email addresses for Commissioners, no salary for the Co-Executive Directors, and no server to house public comments. The Commission has even had to rely on the State Senate's webcasting service to hold their regular meetings in order to comply with Public Meetings laws.

Our joint organizations are highly concerned that the Governor has only appropriated \$750,000 in funding for the Commission and has not proposed any new funding for the coming fiscal year. While it is difficult to predict exactly how much funding the Commission will require, our joint organizations recommend that the Legislature consider how much the Legislative Task Force on Demographic Research & Reapportionment (LATFOR) has received in years it was charged with redrawing the state's legislative maps when determining a new appropriation for the Commission.

**LATFOR Funding Comparison**

The Legislative Task Force on Demographic Research & Reapportionment (LATFOR) was formerly tasked to assist the Legislature with drawing maps. However, since passage of the 2014 constitutional amendment to create the Independent Redistricting Commission, LATFOR is no longer the chief agency charged with drawing state and Congressional district lines. Yet, it has continued to receive annual state funding. In FY 2020-2021, LATFOR received \$2,031,705 in funding. The Legislature has proposed, and the Governor has included in the budget, that LATFOR once again receive this level of support for FY 2021-2022. This appropriation includes \$208,000 for equipment, \$122,602 for contractual services, and more than \$1 million for staffing.

LATFOR already has in place staff, technology, and other resources to draw maps for the state of New York. Our groups question the disparity in funding given that LATFOR was replaced by the Commission as the legal entity responsible for taking public comments and creating maps, and LATFOR now has much more limited responsibilities. It is unclear if LATFOR will be obligated to share any of their mapping resources or staff with the new Commission. We are supportive of keeping the Commission separate from LATFOR so that it can maintain its independence, but we believe that at a minimum the Commission should receive equal funding to LATFOR.

**Funding Needs for the Redistricting Commission**

For the Commission to properly function and adhere to the constitutional mandates for the redrawing of State Legislative and Congressional lines, it must be given funding to hire professional staff, acquire computer software for creating maps, and secure locations for the initial 12 public hearings. Given the ongoing COVID-19 outbreak, our organizations believe it is possible to hold these hearings remotely but would urge that additional opportunities to submit public comment be made available because of the limits on in-person interactions.

Our organizations have identified the following potential cost factors:

*Staffing:* The Commission has already hired two co-executive directors but is unable to pay those staff members at this time. The co-executive directors are scheduled to receive a \$145,000 annual salary - approximately \$290,000 not including fringe benefits. The Commission will also need to hire two assistants to these directors, a legal counsel, demographer, numbers analyst, experienced map maker, and web designer. If each of these staff members is paid an average salary of \$55,000, the total staffing cost will be more than \$675,000 leaving the Commission with only \$75,000 for the remainder of its expenses.

*Public Hearings:* The state constitution requires the Commission to initially hold a minimum of 12 public hearings in Albany, Buffalo, Syracuse, Rochester, White Plains, Bronx County, Kings County, New York County, Richmond County, Queens County, Nassau County, and Suffolk County. Given the ongoing COVID-19 pandemic, it is unlikely that these public hearings will be held in person.

Virtual hearings and meetings come with their own set of expenses. Webinar programs like Zoom and Cisco Webex can cost thousands of dollars per month depending on functionality included in the program's package. For example, Zoom's webinar feature can cost as little as \$400 a year for a webinar that allows up to only 100 attendees. On the higher end, Zoom's webinar feature that allows for 10,000 participants per meeting costs \$64,900 per year.

And the second round of hearings after the Commission releases its proposed maps may be done in-person, which would involve additional travel and site costs.

*Mapping Software:* Unlike LATFOR, the new Commission does not have a pre-existing contract with any map making software company. Most states use the program Maptitude to draw their legislative district lines. According to the Caliper website, a New Remote License for Maptitude 2020 costs \$995 per user. This price does not include training on the software which is priced at \$300 per day for 3 days of classes (\$900) or \$250 for a one-hour training. Data is also not included in the price of the program - US Census block groups are \$250, US Census blocks are \$795, US Congressional Districts are \$495, State Legislative districts are between \$495 and \$1,295, and US school districts are \$250.<sup>1</sup> Given these necessary add-ons, Maptitude can cost up to \$5,000 for a single user. Any additional users would cost at a minimum \$1,895 for the licensing and training.

*Other Software and Technology:* In addition to mapping software and virtual meeting programs, the Commission must create its own website and begin soliciting public input through email or other electronic means. Similar to virtual meeting technology, the cost of creating a website can vary significantly. Some website hosts are as low as \$12 per month, but for a secure platform that would handle large volumes of data and graphical interfaces, as well as allow for adequate cyber security, the cost is much higher. On top of the cost of the platform, an additional staff person may be needed to ensure the website is functioning properly and that live meetings and webcasts are easily accessible by the public.

### **Conclusion**

For both FY 2011-2012 and 2012-2013, the last period of redistricting, LATFOR's budget was \$1,858,759. During this period, LATFOR held 21 public hearings throughout the state, maintained a public website, and drafted new maps for the state Senate and Assembly. With consideration for inflation and the increased cost of operating in a virtual space, our organizations strongly believe that an appropriation of \$1 million is not a sufficient amount of funding for the Commission to fulfill its constitutional mandates and propose legislative lines for our Assembly, Senate, and Congressional districting. Underfunding this Commission risks limiting the public's ability to provide input into the new redistricting process.

---

<sup>1</sup> <https://www.caliper.com/maptpric.htm>

**This Testimony is Submitted by:**

APA VOICE (Asian Pacific Americans Voting and Organizing to Increase Civic Engagement)

Asian Americans for Equality

Asian American Legal Defense and Education Fund

Caribbean Equality Project

Chhaya Community Development Corporation

Chinese Progressive Association

Center for Law and Social Justice at Medgar Evers College

Citizens Union

CPC - Chinese-American Planning Council

Dominicanos USA

Hispanic Federation

Korean Community Services

LatinoJustice PRLDEF

League of Women Voters of New York State

MinKwon Center for Community Action

New York Immigration Coalition

OCA-NY Asian Pacific American Advocates

Reinvent Albany

Shetu

South Asian Council for Social Services

Taking Our Seat

<p>STATE AGENCY (Name &amp; Address):</p> <p>NYS Department of State One Commerce Plaza 99 Washington Ave- Suite 1110 Albany NY 12231</p>	<p>BUSINESS UNIT/DEPT. ID: 3800000</p> <p>CONTRACT NUMBER: C1001844</p> <p>CONTRACT TYPE:</p> <p><input type="checkbox"/> Multi-Year Agreement <input type="checkbox"/> Simplified Renewal Agreement <input checked="" type="checkbox"/> Fixed Term Agreement</p>
<p>CONTRACTOR SFS PAYEE NAME:</p> <p>Research Foundation for the State University of New York</p>	<p>TRANSACTION TYPE:</p> <p><input checked="" type="checkbox"/> New <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment</p>
<p>CONTRACTOR DOS INCORPORATED NAME:</p> <p>Research Foundation for the State University of New York</p>	<p>PROJECT NAME: Administration of funds on behalf of the State University of New York's Rockefeller Institute's support of the State Independent Redistricting Commission</p>
<p>CONTRACTOR IDENTIFICATION NUMBERS:</p> <p>NYS Vendor ID Number: 1000013735 Federal Tax ID Number: DUNS Number (if applicable):</p>	<p>AGENCY IDENTIFIER:</p> <p>NA</p> <p>CFDA NUMBER (Federally Funded Grants Only):</p> <p>NA</p>
<p>CONTRACTOR PRIMARY MAILING ADDRESS:</p> <p>35 State Street Albany, NY 12207-2826</p> <p>CONTRACTOR PAYMENT ADDRESS:</p> <p><input type="checkbox"/> Check if same as primary mailing address</p> <p>CONTRACT MAILING ADDRESS:</p> <p><input type="checkbox"/> Check if same as primary mailing address</p>	<p>CONTRACTOR STATUS:</p> <p><input type="checkbox"/> For Profit <input type="checkbox"/> Municipality, Code: <input type="checkbox"/> Tribal Nation <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Not-for-Profit</p> <p>Charities Registration Number:027303</p> <p>Exemption Status/Code:</p> <p><input type="checkbox"/> Sectarian Entity</p>

Contract Number: # C1001844

Page 1 of 2

Master Grant Contract, Face Page

**CURRENT CONTRACT TERM:**  
 From: 04/01/2019 To: 03/31/2022

**CURRENT CONTRACT PERIOD:**  
 From: 04/01/2019 To: 03/31/2022

**AMENDED TERM:**  
 From: To:

**AMENDED PERIOD:**  
 From: To:

**CONTRACT FUNDING AMOUNT:**  
 (Multi-year - enter total projected amount of the contract; Fixed Term/Simplified Renewal - enter current period amount):

**CURRENT: \$ 1,000,000**

**AMENDED:**

**FUNDING SOURCE(S)**

State  
 Federal  
 Other

**FOR MULTI-YEAR AGREEMENTS ONLY - CONTRACT PERIOD AND FUNDING AMOUNT:**  
 (Out years represent projected funding amounts)

#	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT
1				
2				
3				
4				
5				

**ATTACHMENTS PART OF THIS AGREEMENT:**

- Attachment A:
  - A-1 Program Specific Terms and Conditions
  - A-2 Federally Funded Grants and Requirements Mandated
- Attachment B:
  - B-1 Expenditure Based Budget
  - B-2 Performance Based Budget
  - B-3 Capital Budget
  - B-1(A) Expenditure Based Budget (Amendment)
  - B-2(A) Performance Based Budget (Amendment)
  - B-3(A) Capital Budget (Amendment)
- Attachment C: Work Plan
- Attachment D: Payment and Reporting Schedule
- Other:
-



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

CONTRACTOR:

The Research Foundation for the State University of New York

By:

*Scott E. Shurtleff* *JAY BARCLAY*

Scott E. Shurtleff, JD JAY BARCLAY  
(printed name) *operations manager*

Title: VP Sponsored Programs & Regulatory Affairs

Date: January 27, 2021

STATE AGENCY:

New York State Department of State

By:

*LuAnn I. Hart*

LUAnn I. Hart

(printed name)

Title: Director of Financial Administration

Date: 1/27/2021

STATE OF NEW YORK

County of Saratoga (Jay Barclay) and County of Albany (James Leary): *Remote Notarization per EO 202.7*

On the 27<sup>th</sup> day of January, 2021, before me personally appeared Jay Barclay to me known, who being by me duly sworn, did depose and say that he/she resides at Burnt Hills, NY, that he/she is the Operations Manager of the Research Foundation for the SUNY, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Master Contract.

(Notary)

*James W. Leary*

JAMES W LEARY  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02LE6348457

Qualified In Saratoga County  
My Commission Expires 09-26-2027

ATTORNEY GENERAL'S SIGNATURE  
APPROVED AS TO FORM

By: \_\_\_\_\_  
Printed Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE COMPTROLLER'S SIGNATURE

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED  
DEPT. OF AUDIT & CONTROL  
Printed Name  
Feb 02 2021  
Paul A. Bachman  
FOR THE STATE COMPTROLLER

**STATE OF NEW YORK  
MASTER CONTRACT FOR GRANTS**

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

**I. WITNESSETH:**

**WHEREAS**, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

**WHEREAS**, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract

**NOW THEREFORE**, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

**II. STANDARD TERMS AND CONDITIONS**

**I. GENERAL PROVISIONS**

**A. Executory Clause:** In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

**B. Required Approvals:** In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master 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, and filed with, the AG and OSC.

**Budget Changes:** An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more

than five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

**C. Order of Precedence:**

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2<sup>1</sup>, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2<sup>2</sup>, Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

**D. Funding:** Funding for the term of the Master Contract shall not exceed the amount specified as "Contract Funding Amount" on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

**E. Contract Performance:** The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

**F. Modifications:** To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the

---

<sup>1</sup> To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

<sup>2</sup> To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

**G. Governing Law:** The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

**H. Severability:** Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

**I. Interpretation:** The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

**J. Notice:**

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
  - a) by 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.
2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).
3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).
4. 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 e-mail, upon receipt.

5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Master Contract by giving fifteen (15) calendar days prior 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 the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

**K. 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. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

**L. 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 the Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master 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 OSC.

**M. Indemnification:** The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

**N. Non-Assignment Clause:** In accordance with Section 138 of the State Finance Law, the Master 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 shall be considered to be 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 State Agency and with the concurrence of OSC, where the original contract was subject to OSC'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 the merged 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 the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**O. Legal Action:** No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term "litigation" shall include commencing or threatening to commence a

lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the State of New York, the State Agency, or any county, or other local government entity. The term "regulatory action" shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

**P. No Arbitration:** Disputes involving the Master 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.

**Q. Secular Purpose:** Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

**R. Partisan Political Activity and Lobbying:** Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

**S. Reciprocity and Sanctions Provisions:** The Contractor is hereby notified that if its 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 it offers shall 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 it be denied contracts which it would otherwise obtain.<sup>3</sup>

**T. Reporting Fraud and Abuse:** Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

**U. Non-Collusive Bidding:** By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor's behalf.

**V. Federally Funded Grants and Requirements Mandated by Federal Laws:** All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto. To the extent

---

<sup>3</sup>As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

that the Master Contract is funded, in whole or part, with Federal funds or mandated by Federal laws, (i) the provisions of the Master Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable Federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

## II. TERM, TERMINATION AND SUSPENSION

**A. Term:** The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

**B. Renewal:**

1. **General Renewal:** The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a "Simplified Renewal Contract"). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

**2. Renewal Notice to Not-for-Profit Contractors:**

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ("Unusual Circumstances"), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, "Unusual Circumstances" shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State's intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

## C. Termination:

### 1. Grounds:

- a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.
- b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.
- c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.
- d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.
- e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.
- f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

### 2. Notice of Termination:

- a) Service of notice: Written notice of termination shall be sent by:
  - (i) personal messenger service; or



(ii) certified mail, return receipt requested and first class mail.

b) **Effective date of termination:** The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

(i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

(ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

### ***3. Effect of Notice and Termination on State's Payment Obligations:***

a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

### ***4. Effect of Termination Based on Misuse or Conversion of State or Federal Property:***

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

a) the repayment to the State of any monies previously paid to the Contractor; or

b) the return of any real property or equipment purchased under the terms of the Master Contract; or

c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

**D. Suspension:** The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time

as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

### III. PAYMENT AND REPORTING

#### A. Terms and Conditions:

1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.
3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, 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.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

**B. Advance Payment and Recoupment:**

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).
2. Initial advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page. Subsequent advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the dates specified in Attachment D (Payment and Reporting Schedule).
3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.
5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

**C. Claims for Reimbursement:**

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

Contract Number: # \_\_\_\_\_

The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:<sup>4</sup> Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:<sup>5</sup> Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:<sup>6</sup> Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:<sup>7</sup> The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service

<sup>4</sup> A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.

<sup>5</sup> Fee for Service is a rate established by the Contractor for a service or services rendered.

<sup>6</sup> Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

<sup>7</sup> Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

reports shall be used to determine funding levels appropriate to the next annual contract period.

h) Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).

i) Fifth Quarter Payments:<sup>8</sup> Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.
5. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
6. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.
7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

#### **D. Identifying Information and Privacy Notification:**

<sup>8</sup> Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, 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 Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number, (ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. 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 principle 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. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This 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.

#### **E. Refunds:**

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).

2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

**F. Outstanding Amounts Owed to the State:** Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

#### **G. Program and Fiscal Reporting Requirements:**

Contract Number: # \_\_\_\_\_

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.
2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:
  - a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:
    - (i) *Narrative/Qualitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.
    - (ii) *Statistical/Quantitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)
    - (iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.
    - (iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).
    - (v) *Consolidated Fiscal Report (CFR)*: The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).
  - b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.
- (ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

#### H. Notification of Significant Occurrences:

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.
2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

### IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

#### A. Contractor as an Independent Contractor/Employees:

1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. Notwithstanding the foregoing, the State and the Contractor



agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

**B. Subcontractors:**

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. If requested by the State, when a subcontract equals or exceeds \$100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

**C. Use Of Material, Equipment, Or Personnel:**

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.

2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

**D. Property:**

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.

a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.

b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.

c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.

d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.

- e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.
  - f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.
  - g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.
2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:
- a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.
  - b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.
3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).
4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.
5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

#### **E. Records and Audits:**

##### **1. General:**

- a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).
- b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry

(e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

- (i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.
  - (ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.
  - (iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.
  - (iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.
- c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), 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.
- d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law 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 Section 87 of the Public Officers Law, is reasonable.
- e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

## **2. Cost Allocation:**

- a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. **Federal Funds:** For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

**F. Confidentiality:** The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must 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).

**G. Publicity:**

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or

(ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first

submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

**H. Web-Based Applications-Accessibility:** Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

**I. Non-Discrimination Requirements:** Pursuant to 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 and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. 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 the Master Contract shall be performed within the State of New York, the 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 the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 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 the Master Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

**J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises:** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State 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 State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State 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 Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;
2. The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;
3. The Contractor shall 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, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, 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 shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall 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 subclauses 1 – 5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State 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 State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall 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.

**K. 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.

1. If the total dollar amount of the Master Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:

a) The Contractor has made reasonable efforts to encourage the participation of 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 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 the Master Contract and agrees to cooperate with the State in these efforts.

**L. Workers' Compensation Benefits:**

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

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

**M. Unemployment Insurance Compliance:** The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;

2. any debts owed for UI contributions, interest, and/or penalties;



3. the history and results of any audit or investigation; and
4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

**N. Vendor Responsibility:**

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.
2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.
3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.
4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:
  - a) to require updates or clarifications to the Questionnaire upon written request;
  - b) to inquire about information included in or required information omitted from the Questionnaire;
  - c) to require the Contractor to provide such information to the State within a reasonable timeframe; and
  - d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
  - e) to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Master Contract, the Contractor agrees

to comply with any such additional conditions that have been made a part of the Master Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Master Contract.

6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Master Contract based on:

a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or

b) the State's discovery of any material information which pertains to the Contractor's responsibility.

7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

**O. Charities Registration:** If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

**P. Consultant Disclosure Law:**<sup>9</sup> 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.

**Q. 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

<sup>9</sup>Not applicable to not-for-profit entities.

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 condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

## ATTACHMENT A-1

### New York State Department of State (4/21/20)

#### III. Agency Specific Clauses

For the purposes of this Agreement, the terms "State" and "Department" are interchangeable, unless the context requires otherwise. In addition, the terms "Agreement" and "Contract" are interchangeable, unless the context requires otherwise.

##### A. *Project Timetable*

The Contractor agrees to proceed expeditiously with the Project and to complete the Project in accordance with any timetable associated therewith as set forth in the Work Plan (Attachment C) as well as with the conditions of any applicable permits, administrative orders, or judicial orders and this Agreement.

##### B. *Budget Modifications*

Prior DOS written approval, which requires a detailed breakdown and justification, is required for all requests for budget modifications, regardless of the amount of the modification. Additional approvals will be required when modifications exceed thresholds described below.

Any proposed modification to a contract that will result in a transfer of funds among program activities or budget cost categories, but does not affect the amount, consideration, scope or other terms of such contracts must be submitted to DOS for submission to the Office of State Comptroller for approval when:

1. The amount of the modification is equal to or greater than ten percent of the total value of the contract for contracts of less than five million dollars; or
2. The amount of the modification is equal to or greater than five percent of the total value of the contract for contracts of more than five million dollars.

##### C. *Applicable Terms*

In addition to the criteria set forth in IV(E)(1)(b) of the Standard Terms and Conditions, documentation of personal service expenditures shall:

1. Be based upon actual work performed;
2. Be supported by internal controls that provide a reasonable assurance that the charges are accurate, allowable, and properly allocated; and
3. Comply with the Contractor's established accounting policies.

Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

##### D. *License to Use and Reproduce Documents, Intellectual Property and Other Works:*

By acceptance of this Agreement, Contractor transfers to the Department a perpetual, transferable nonexclusive license to  
Contract Number: # C1001844  
Attachment A – Program Specific Terms and Conditions

use, reproduce in any medium, and distribute, for any purpose, any intellectual property or other work purchased, developed or prepared for or in connection with the Project using funding provided pursuant to this Contract, including but not limited to reports, maps, designs, plans, analysis, and documents regardless of the medium in which they are originally produced. Contractor warrants to the Department that it has sufficient title or interest in such works to license pursuant to this Agreement, and further agrees and warrants that it shall not enter into any subcontract or other agreement purporting to limit such title or interest in such works in any manner that may compromise Contractor's ability to provide the aforesaid license to the Department. Such warranties shall survive the termination of this agreement. Contractor agrees to provide the original of each such work, or a copy thereof which is acceptable to the Department, to the Department before payments shall be made under this Agreement.

E. *Property*

The ownership of all property or intellectual property described herein and purchased, developed or prepared under the terms of this Contract shall reside with the Contractor with a reversionary interest in such property or intellectual property held by the Department, unless otherwise authorized or directed in writing by the Department. Except as otherwise provided in Section II.C.4 of the Standard Terms and Conditions, Contractor shall retain ownership of such property or intellectual property after the term of this Contract so long as such property or intellectual property is used for purposes similar to those contemplated by this Contract. Otherwise, the Contractor shall return such property or intellectual property to the Department at the Contractor's cost and expense, and Contractor's ownership interests, rights and title in such property or intellectual property shall revert to the Department. The ownership of all property purchased with federal funds provided pursuant to this Agreement, however, shall be governed by the terms of applicable federal law and OMB Circulars including, but not limited to, 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," as amended.

F. *Termination*

The Department may terminate the Agreement in accordance with the terms and conditions set forth in the Master Grant Contract section of this Agreement. In addition to other reserved rights it has to terminate this Agreement, the Department may terminate or suspend the Agreement under the following circumstances:

1. The Contractor shall complete the project as set forth in this Agreement, and failure to render satisfactory progress or to complete the project to the satisfaction of the State may be deemed an abandonment of the project and may cause the suspension or termination of any obligation of the State. In the event the Contractor should be deemed to have abandoned the project for any reason or cause other than a national emergency or an Act of God, all monies paid to the Contractor by the State and not expended in accordance with this Agreement shall be repaid to the State upon demand. If such monies are not repaid within one year after such demand, the State Comptroller of the State of New York may cause to be withheld from the Contractor any State assistance to which the Contractor would otherwise be entitled in an amount equal to the monies demanded.

2. In the event that the Department has provided written notice to the Contractor directing that the Contractor correct any failure to comply with this Agreement, the Department reserves the right to direct that the Contractor suspend all work during a period of time to be determined by the Department. If the Contractor does not correct such failures during the period provided for in the notice, this Agreement shall be deemed to be terminated after expiration of such time period. During any such suspension, the Contractor agrees not to incur any new obligations after receipt of the notice without approval by the Department.
3. If the Department determines the Contractor has breached a term of the Agreement and if the Department determines the defect can be remedied, it may, in its sole discretion, issue a written notice providing the Contractor with a minimum of 30 days to correct the defect and the notice may include a prospective termination date. If the Contractor fails to correct the defect or fails to make a good faith effort to do so as determined by the Department to the Department's satisfaction, the Department may terminate the Agreement for cause.
4. The Department shall also have the right to postpone or suspend the Agreement or deem it abandoned without this action being a breach of the Agreement. The Department shall provide written notice to the Contractor indicating the Agreement has been postponed, suspended or abandoned. During any postponement, suspension or abandonment the Contractor agrees not to do any work under the Agreement without prior written approval of the Department.
5. In the event the Agreement is postponed, suspended, abandoned or terminated, the Department shall make a settlement with the Contractor upon an equitable basis in good faith and under the general compensation principles and rates established in the Agreement by the Department. This settlement shall fix the value of the work which was performed by the Contractor to the Department's satisfaction prior to the postponement, suspension, abandonment or termination of the Agreement.
6. Any funds paid to the Contractor by the Department which are not expended under the terms of the Agreement shall be repaid to the Department.

G. Subcontracting Requirements

1. Contractor agrees that it shall not enter into any subcontract for the performance of work in furtherance of this Contract with any subcontractor that at the time of contracting: (1) is listed on the New York State Department of Labor's list of companies with which New York State cannot do business (available at <https://dbr.labor.state.ny.us/EDList/searchPage.do>); (2) is listed as an entity debarred from federal contracts (available at: <https://www.sam.gov/portal/public/SAM>); or (3) fails to possess requisite workers compensation and disability insurance coverage (see <http://www.wcb.ny.gov>). In addition, Contractor agrees that it shall immediately suspend or terminate any subcontract entered into for the performance of work in furtherance of this Contract if at any time during the term of such subcontract the subcontractor: (1) is listed on the New York State Department of Labor's list of companies with which New York State cannot do business (available at <https://dbr.labor.state.ny.us/EDList/searchPage.do>); (2) is listed as an entity debarred from federal contracts (list available at: <https://www.sam.gov/portal/public/SAM>); or (3) fails to maintain requisite workers compensation or disability insurance coverage (see <http://www.wcb.ny.gov>). Contractor agrees that any such suspension shall remain in place until the condition giving rise to the suspension is corrected by the subcontractor. The terms of this clause shall be incorporated in any and all subcontracts entered into in furtherance of this Contract.

2. The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the Work in accordance with the Contract. The Contractor shall control and coordinate the Work of its subcontractors.
3. The Contractor shall be responsible for informing its subcontractors of all the terms, conditions and requirements of the Contract Documents including, but not limited to the terms of the Master Grant Contract, any and all Appendices, and any changes made by amendments thereto, and ensuring that any and all subcontracts entered into in furtherance of this Contract conform to and do not conflict with such terms.
4. Contractor shall file each and every subcontract entered into in furtherance of this Contract with the Department of State no later than fifteen (15) calendar days following the signing of the subcontract, unless otherwise authorized or directed by the Department of State.
5. In addition to the requirements of Section IV.B.2 of the Standard Terms and Conditions, the Department reserves the right to require, upon notice to the Contractor, that, commencing from the date of such notice or a date otherwise specified in such notice, Contractor must obtain written approval from the Department prior to entering into any and all subcontracts valued at or below \$100,000 for the performance of any activities covered by this Contract (as provided for in Attachment C). Contractor agrees to require any proposed subcontractors to timely provide to the Department such information as may be requested by the Department as necessary to assess whether the proposed subcontractor is a responsible entity capable of lawfully and satisfactorily performing the work. In the event the Department invokes this right of prior approval and a request for approval is submitted by Contractor and denied by the Department, Contractor agrees that it shall not enter into the proposed subcontract and that no costs associated with such subcontract shall be allowable under this Contract.

**H. *Compliance with Procurement Requirements***

1. All contracts by municipalities for service, labor, and construction involving not more than \$35,000 and purchase contracts involving not more than \$20,000 are subject to the requirements of General Municipal Law §104-b, which requires such contracts to comply with the procurement policies and procedures of the municipality involved. All such contracts shall be awarded after and in accordance with such municipal procedures, subject to the MWBE requirements as set forth in Section M and any additional requirements imposed by the State as set forth in Attachment C hereof.
2. The municipal attorney, chief legal officer or financial administrator of the Contractor shall certify to the Department of State that applicable public bidding procedures of General Municipal Law §103 were followed for all service, labor, and construction contracts involving more than \$35,000 and all purchase contracts involving more than \$20,000. In the case of contracts by municipalities, service, labor, and construction contracts involving not more than \$35,000 and purchase contracts involving not more than \$20,000, the municipal attorney, chief legal officer or financial administrator shall certify that the procedures of the municipality established pursuant to General Municipal Law §104-b were fully complied with, in addition to the MWBE requirements as set forth in Section M of this Agreement and any additional requirements imposed by the State as set forth in Attachment C hereof.

3. For non-municipal entities such as community-based organizations, the chief legal officer or financial administrator of the Contractor shall certify to the State that alternative proposals and quotations for professional services were secured by use of written requests for proposals through a publicly advertised process satisfactory to meet the MWBE requirements set forth in Section M of this Agreement and to ensure the prudent and economical use of public funds for professional services of maximum quality at reasonable cost.

I. *Vendor Responsibility Determinations*

1. A Vendor Responsibility Questionnaire and Certification is required for certain contracts. This Questionnaire is designed to provide information to assist the contracting agency in assessing a CONTRACTOR's responsibility, prior to entering into a contract, and must be completed and submitted electronically or returned with the contract. Contractor is invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at <http://osc.state.ny.us/vendrep/index.htm> or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Department of State or the Office of the State Comptroller's Help Desk for a copy of the paper form.
2. Contractor hereby acknowledges that the Vendor Responsibility Questionnaire (VRQ), as described in Section IV (N) of the Master Grant Contract, as well as any updated or amended version of the VRQ submitted during the term of this contract, or any contractor responsibility information that may be requested by the Department and submitted during the term of this contract, is made a part of this contract by reference hereto and that any misrepresentation of fact in the information submitted, may result in termination of this contract. During the term of this Contract, any changes in the information provided in the questionnaire shall be disclosed to the Department, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of the contract.

J. *State Attorney General Charities Registration*

In accordance with the Estates, Powers and Trust Law § 8-1.4 (s), the recipient certifies that it is in compliance with the requirements of Estate, Powers and Trusts Law sections 8-1.4 (d), (f), and (g), regarding organizations which administer property for charitable purposes registering and filing periodic reports (together with the appropriate filing fees) with the New York State Attorney General's Charities Bureau. This certification is a material representation of fact upon which reliance was placed by the Department of State in entering into this Agreement with the Contractor.

The Contractor agrees that it will provide immediate written notice to the Department of State if at any time it learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances.

K. *Records Access*

The Contractor shall make such records available for review by the Department upon request at any time. The Department shall have the right to conduct progress assessments and review books and records as necessary. The Department shall have the right to conduct an on-site review of the Project and/or books and records of the Contractor prior to, and for reasonable time following, issuance of the final payment. The Department shall be entitled to disallow any cost or expense,



and/or terminate or suspend this Agreement, if the Contractor has misrepresented any expenditures or Project activities in its application to the Department, or in this Agreement, or in any progress reports or payment requests made pursuant hereto. The Contractor shall maintain such books and records in a manner so that reports can be produced therefrom in accordance with generally accepted accounting principles. The Contractor shall maintain separate financial books and records for all funds received through the Department pursuant to this Agreement.

**K. Notices**

Pursuant to Section J of the Master Grant Contract, notice hereunder shall be addressed as follows:

1. Notice to the State

Name, Title	LuAnn Hart, Director, Bureau of Fiscal Management
Agency/Division	NYS Department of State
Address	1 Commerce Plaza, 99 Washington Avenue, Ste. 1110 Albany, NY 12231
Phone/ Fax/Email	(P): 518-474-2754 (F): 518-474-4777 (E): luann.hart@dos.ny.gov

2. Notice to the Contractor

Name, Title	Scott Shurtleff
Address	35 State Street Albany, NY 12207-2826
Phone/ Fax/Email	(P): (518) 434-7284 (F): (E): Scott.Shurtleff@rfsuny.org

**L. Limits on Administrative Expenses and Executive Compensation (19 NYCRR Part 144, incorporated herein by reference):**

**M. 1. If Contractor is a "covered provider" within the meaning of 19 NYCRR § 144.3(d) at any time during the life of this Agreement, then during the period when Contractor is such a "covered provider":**

1. a. Contractor shall comply with the requirements set forth in 19 NYCRR Part 144, as amended; and
2. b. Contractor's failure to comply with any applicable requirement of 19 NYCRR Part 144, as amended, including but not limited to the restrictions on allowable administrative expenses, the limits on executive compensation, and the reporting requirements, may be deemed a material breach of this Agreement and constitute a sufficient basis for, in the discretion of the Department, termination for cause, suspension for cause, or the reduction of funding provided pursuant to this Agreement.

2. Contractor shall include the following provision in any agreement with a subcontractor or agent receiving State funds or State-authorized payments from the Contractor to provide program or administrative services under this Agreement:

[Name of subcontractor/agent] acknowledges that, pursuant to this Agreement, it is receiving "State funds" or "State-authorized payments" originating with, passed through, or approved by the New York State Department of State in order to provide program or administrative services on behalf of [Name of CONTRACTOR]. If at any time during the life of this Agreement [Name of subcontractor/agency] is a "covered provider" within the meaning of Section 144.3(d) of DOS regulations, [Name of subcontractor/agent] shall comply with the terms of 19 NYCRR Part 144, as amended. A failure to comply with 19 NYCRR Part 144, where applicable, may be deemed a material breach of this Agreement constituting a sufficient basis for suspension or termination for cause. The terms of 19 NYCRR Part 144, as amended, are incorporated herein by reference.

N. *Minority and Women Owned Business Participation*

Article 15-A of the New York State Executive Law, as amended, authorized the creation of a Division of Minority and Women's Business Development to promote employment and business opportunities on state contracts for minorities and women. This law supersedes any other provision in state law authorizing or requiring an equal employment opportunity program or a program for securing participation by minority and women-owned business enterprises. Under this statute, State agencies are charged with establishing business participation goals for minorities and women. The Department of State administers a Minority and Women-owned Business Enterprises (MWBE) Program as mandated by Article 15-A.

1. General Provisions

- a. The Department of State is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR") for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- b. The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department of State (the "Agency"), to fully comply and cooperate with the Agency in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State-certified minority and women-owned business enterprises ("MWBEs"). The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") and other applicable federal, state, and local laws. Contractor agrees that the terms "MWBE," "MBE" and "WBE" as used herein, shall mean those MBE or WBE firms certified as such by the State pursuant to NY Executive Law Article 15-A and listed in the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>.
- c. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section M(7) of this Attachment and such other remedies as are available to the Agency pursuant to the Contract and applicable law.

2. Contract Goals

- a. The Department's New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") utilization goal is 30%. For purposes of this Contract, the specific overall MWBE goal and the breakdown between the Minority-owned Business Enterprise ("MBE") and the Women-owned Business Enterprise ("WBE") utilization goals, are set forth in the Attachment B "Budget", based on the current availability of MBEs and WBEs.
- b. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section 2(a) hereof, the Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- c. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the broker's contract.

**FOR CONSTRUCTION CONTRACTS** – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the supplier's contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

- d. The Contractor must document "good faith efforts," pursuant to 5 NYCRR §142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
  - (1) Evidence of outreach to MWBEs;
  - (2) Any responses by MWBEs to the Contractor's outreach;
  - (3) Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
  - (4) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Agency with MWBEs; and,
  - (5) Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

3. Equal Employment Opportunity ("EEO")

a. The provisions of Article 15-A §312 of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.

b. In performing the Contract, the Contractor shall:

(1) Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(2) The Contractor shall submit an EEO policy statement to the Agency within seventy two (72) hours after the date of the notice by Agency to award the Contract to the Contractor.

(3) If the Contractor, or any of the subcontractors does not have an existing EEO policy statement, the Agency may require the Contractor or subcontractor to adopt a model statement (see Form A - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).

(4) The Contractor's EEO policy statement shall include the following language:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

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

(c) 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.

(d) The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "e" of this section 3, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

c. Form B - Staffing Plan

If the total expenditure of this contract is in excess of \$250,000, the following provision shall apply: The Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the Staffing plan form and submit it as part of their proposal or within a reasonable time, as directed by the Department of State.

d. Form C - Workforce Utilization Report

- (1) The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the Agency on a monthly basis for construction contracts, and on a quarterly basis for all other contracts, during the term of the Contract.
- (2) Separate forms shall be completed by the Contractor and any subcontractors performing work on the Contract.

- e. The Contractor shall comply with the provisions of the Human Rights Law, as well as all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

4. MWBE Utilization Plan

- a. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan or shall submit an MWBE Utilization Plan at such time as shall be required by the Department of State through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to the Department of State, either prior to, or at the time of, the execution of the contract.
- b. The Contractor agrees to adhere to such MWBE Utilization Plan for the performance of the Contract.
- c. The Contractor further agrees that a failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Agency shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

5. Waivers

- a. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the Agency (use Form E - Waiver Request). Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the Agency shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- b. If the Agency, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section 6, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Agency may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

**6. Quarterly MWBE Contractor Compliance Report**

The Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form F) to the Agency by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

The Agency may require the Contractor to use the NYSCS to submit utilization plans, record payments to subcontractors and otherwise report compliance with the provisions of Article 15-A of the Executive Law and regulations. Technical assistance can be obtained through the NYSCS website at <https://ny.newnycontracts.com> by clicking on the "Contact Us & Support" link.

Questions regarding this program should be directed to the Department's Minority and Women-owned Business Program by calling (518) 473-3401. Potential contractors can access the NYS Directory of Certified Minority and Women-owned Business Enterprises on-line through the Empire State Development website at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>. The Department makes no representation with respect to the availability or capability of any business listed in the Directory.

**7. Liquidated Damages - MWBE Participation**

- a. Where the Agency determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the Agency liquidated damages.
- b. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - i) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - ii) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- c. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Agency, the Contractor shall pay such liquidated damages to the Agency within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

**O. Service-Disabled Veteran-Owned Businesses Participation**

Article 17-B of the Executive Law, enacted in 2014, authorized the creation of the Division of Service-Disabled Veterans' Business Development to promote participation of Service-Disabled Veteran-Owned Businesses (SDVOBs) in New York State contracting. The Service-Disabled Veteran-Owned Business Act recognizes the veterans' service to and sacrifice for our nation, declares that it is New York State's public policy to promote and encourage the continuing economic development of service-disabled veteran-owned businesses, and allows eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business (SDVOB), in order to increase their participation in New York State's contracting opportunities. To this effect, the Department of State (DOS) has implemented a Veteran-Owned Businesses (SDVOB) Program, as mandated by Article 17-B.

To comply with the SDVOB Program goals of 6%, the Department of State strongly encourages grantees to make every effort, to the maximum extent possible, to engage certified SDVOBs in the purchasing of commodities, services and technology in the performance of their contracts with the Department. If SDVOB utilization is obtained, a quarterly SDVOB utilization report should be submitted to the Department with information of the

utilization percentage achieved during that quarter. Contractor Reporting Forms are found at:  
<https://ogs.ny.gov/Veterans/>

The Division of Service-Disabled Veterans' Business Development (DSDVBD) is housed within the New York State Office of General Services (OGS), and maintains a directory of the NYS Certified SDVOBs. For assistance with engaging SDVOB vendors in your contracts, please contact the Division of Service-Disabled Veterans' Business Development at the following email address: [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov), or the DOS Division of Affirmative Action Programs – SDVOB Program at [Catherine.Traina@dos.ny.gov](mailto:Catherine.Traina@dos.ny.gov) or [Api.Ohouo@dos.ny.gov](mailto:Api.Ohouo@dos.ny.gov). The directory of certified SDVOB vendors can be found at:  
[https://ogs.ny.gov/Veterans/Docs/CertifiedNYS\\_SDVOB.pdf](https://ogs.ny.gov/Veterans/Docs/CertifiedNYS_SDVOB.pdf)

- P. The New York State Independent Redistricting Commission (IRC), as established and authorized by New York State Constitution, Article III, §5-b and New York State Legislative Law §§ 93 and 94, is solely responsible for preparing a redistricting plan to establish Senate, Assembly and Congressional districts and is solely responsible for conducting public hearings, disposition of public comment, and preparing and submitting or re-submitting the redistricting plan and drafting implementing legislation pursuant to NYS Legislative Law § 93, and for the defense of any claims arising therefrom.

## ATTACHMENT B BUDGET

### B-1 Budget Summary Sheet: C1001844 SUNY Research Foundation

Budget Category	Budget Amount			MWBE Applicable
A. Salaries, Wages and Fringe	\$621,000			N/A
B. Travel	\$ 7,500			N/A
C. Supplies/Materials	\$ 1,090			\$1,090
D. Equipment	\$ 10,000			\$10,000
E. Contractual Services	\$269,500			\$269,500
F. Other (Indirect 10%)	\$ 90,910			N/A
Contract Budget Total	\$1,000,000			\$280,590
MWBE Utilization Goal	MBE % 15%	WBE % 15%	Total % 30%	Total Goal \$84,177

The total of the budget above must equal the amount of the allocation as shown on the contract face page.

The budget is intended to show the items of expense which will be funded under this contract. Please do not show the entire cost of the project if it exceeds the amount of funding provided by this contract.

Contracts totaling \$25,000.01 or more must calculate MWBE utilization when purchasing goods, commodities and contractual services, prior to contract execution.

Contracts totaling \$25,000.00 or less are not subject to an MWBE Goal. Grantees are encouraged to include MWBE firms in all purchasing.



**Program Workplan****Contract: C1001844**

Recipient Organization Name: SUNY Research Foundation

Type: Leg Grant

**Scope of Work:**

This agreement is executed with The Research Foundation for the State University of New York on behalf of the State University of New York (SUNY), serving as the fiscal and staffing agent for SUNY Rockefeller Institute's academic support of the New York State Independent Redistricting Commission (IRC), as established and authorized by New York State Constitution, Article III, §5-b and New York State Legislative Law sections 93 and 94. Consistent with applicable policies of SUNY and the Research Foundation for SUNY, staff assigned by the Research Foundation will conduct research and gather and analyze data at the direction of IRC to support the IRC in preparing a redistricting plan to establish Senate, Assembly and Congressional districts including:

1. Conducting research on the responsibilities of New York State's IRC;
2. Gathering data across NYS communities to aid in the analysis of 2020 Census data for NYS through surveys and public meetings to include unrepresented and minority populations in all areas of the State;
3. Analysis of the 2020 Census data in relation to establishment of districts for the NYS Senate and Assembly and the U.S. Congress;
4. Conducting research and analysis to enable the IRC to develop, prepare and publish redistricting plans pursuant to NYS Legislative Law §93, and all applicable laws for submission on or before January 15, 2022;
5. Conducting research and analysis to enable the IRC to develop, prepare and submit any necessary draft implementing legislation for the aforementioned plans;
6. Conducting research and analysis to enable the IRC to gather, review, and make relevant data widely available to the public using the best available technology; and

The IRC remains solely responsible for conducting public hearings, disposition of public comment, and preparation and submission of the redistricting plan and draft implementing legislation pursuant to NYS Legislative Law §§ 93 and 94. If the redistricting plan requires resubmission pursuant to § 93, the IRC remains solely responsible for revision and resubmission of the redistricting plan.

The Research Foundation does not employ Commissioners appointed pursuant to New York State Legislative Law § 93.

**ATTACHMENT D  
PAYMENT AND REPORTING SCHEDULE**

**I. PAYMENT PROVISIONS**

In full consideration of contract services to be performed the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

**A. Advance Payment, Initial Payment and Recoupment Language (if applicable):**

1. The State Agency will make an advance payment to the Contractor, during the initial period, in the amount of percent (25%) the budget as set forth in the most recently approved applicable Attachment B form (Budget).
2. The State Agency will make an initial payment to the Contractor in the amount of NA percent (   %) of the annual budget as set forth in the most recently approved applicable Attached B form (Budget). This payment will be no later than    days from the beginning of the budget period.
3. Scheduled advance payments shall be due in accordance with an approved payment schedule as follows:

Period: \_\_\_\_\_ Amount: \_\_\_\_\_ Due Date: \_\_\_\_\_

Period: \_\_\_\_\_ Amount: \_\_\_\_\_ Due Date: \_\_\_\_\_

Period: \_\_\_\_\_ Amount: \_\_\_\_\_ Due Date: \_\_\_\_\_

Period: \_\_\_\_\_ Amount: \_\_\_\_\_ Due Date: \_\_\_\_\_

4. Recoupment of any advance payment(s) or initial payment(s) shall be recovered by crediting twenty-five (25%) of the advance from subsequent claims and such claims will be reduced until the advance is fully recovered within the contract period.

**B. Interim and/or Final Claims for Reimbursement**

Claiming Schedule (*select applicable frequency*):

Quarterly Reimbursement

Due date \_\_\_\_\_

Monthly Reimbursement

Due date Thirty days after the end of the month

- Biannual Reimbursement  
Due date \_\_\_\_\_
- Fee for Service Reimbursement  
Due date \_\_\_\_\_
- Rate Based Reimbursement  
Due date \_\_\_\_\_
- Fifth Quarter Reimbursement  
Due date \_\_\_\_\_
- Milestone/Performance Reimbursement  
Due date/Frequency \_\_\_\_\_
- Scheduled Reimbursement  
Due date/Frequency \_\_\_\_\_
- Interim Reimbursement as Requested by Contractor NA

## II. REPORTING PROVISIONS

### A. Expenditure-Based Reports (select the applicable report type):

Narrative/Qualitative Report

The Contractor will submit, on a quarterly basis, not later than \_\_\_ days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of the Master Contract

Statistical/Quantitative Report

The Contractor will submit, on a quarterly basis, not later than \_\_\_ days from the end of the quarter, the report described in Section III(G)(2)(a)(ii) of the Master Contract.

Expenditure Report

The Contractor will submit, on a quarterly basis, not later than \_\_\_ days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.

Final Report

The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than \_\_\_ days after the end of the contract period.

Consolidated Fiscal Report (CFR)<sup>1</sup>

<sup>1</sup>The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in

The Contractor will submit the CFR on an annual basis, in accordance with the time frames designated in the CFR manual. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

## **B. Progress-Based Reports**

### **1. Progress Reports**

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the format provided by the State Agency, summarizing the work performed during the contract period.

### **2. Final Progress Report**

Final scheduled payment will not be due until 30 days after completion of agency's audit of the final expenditures report/documentation showing total grant expenses submitted by vendor with its final invoice. Deadline for submission of the final report is 45 days after completion of the scope of work. The agency shall complete its audit and notify vendor of the results no later than 30 days after receipt of acceptable financial reports and project deliverables. The Contractor shall submit the report not later than          days from the end of the contract.

---

different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document