

Request for Grant Applications

RGA Number: 0712200320

***HEAL NY Phase 8:
Residential Health Care Facility (RHCF)
Rightsizing Demonstration Program***

Issued by the
New York State Department of Health
and the
Dormitory Authority of the State of New York

Key Dates:

Questions Due: March 3rd, 2008
Applications Due: Applications will be accepted on a rolling basis
beginning March 17th, 2008 through June 2nd, 2008

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Section 1: Introduction

1.1 The HEAL NY Program

In order to effectively reform and reconfigure New York State's health care delivery system and encourage improvements and efficiency in operations, the New York State Department of Health ("DOH") and the Dormitory Authority of the State of New York ("DASNY") announce the availability of funds under the Health Care Efficiency and Affordability Law for New Yorkers Capital Grant Program (the "HEAL NY Program"), as established pursuant to Section 2818 of the Public Health Law ("PHL").

The HEAL NY Program is being administered in phases, using multiple Requests for Grant Applications ("RGAs") issued over several years, with RGAs being targeted at Capital Restructuring for Hospitals and Nursing Homes, Implementation of Health Information Technology Initiatives or the RHCF Rightsizing Demonstration Program. This RGA targets to the RHCF Rightsizing Demonstration Program.

It is anticipated that the State of New York will invest up to \$1 billion in the HEAL NY Program through appropriations and bonding authorization over four State Fiscal Years. State grant funds will be available from two different sources, DASNY bond proceeds and state appropriations. Additional matching funds will be available through the Federal-State Health Reform Partnership (F-SHRP).

1.2 HEAL NY Residential Health Care Facility Rightsizing Objectives:

DOH and DASNY are currently requesting applications from Eligible Applicants (see Section 1.4) within New York State for grants to fund projects that will assist nursing home rightsizing.

The primary goal in this HEAL NY Phase is to assist facilities to achieve a reduction in certified inpatient bed capacity. Consideration relied upon in determining the allocation and distribution of these funds shall include, but not be limited to, the following:

- (a) The existing and projected need for inpatient nursing home beds and community based long-term care services in the area in which a facility applying for such funds is located;
- (b) The quality of the care being provided by the facility;
- (c) The ability of the facility to access, in a timely manner, alternative sources of funding, including other sources of government funding; and
- (d) Whether additional funding would permit the facility to achieve greater stability and efficiency in the delivery of needed health care services.

1.3 HEAL NY RHCF Rightsizing Projects

The infrastructure of buildings and equipment is the cornerstone of health care service delivery. In many cases these facilities pre-date the current state of health care technology and managed care concepts, both of which have contributed to increasing excess capacity and outmoded capital plants. These conditions are exacerbated by population shifts, economic conditions in the State's major cities, continuing challenges in rural areas, and a more consumer-like attitude which has encouraged state residents seeking, and providers soliciting, medical care regardless of state borders.

Improvements to the health care delivery system may include, but are not limited to, reconfiguration of the State's nursing home bed supply to more appropriately align bed supply with regional needs through measures which may include resizing, consolidation, conversion or restructuring such facilities. Any project to "right-size" the system must consider the provision of services in light of these social and economic factors, as well as the cost effectiveness of capital investment to reconfigure existing structures to accommodate more appropriate functioning as compared to other more costly alternatives such as new or replacement construction.

To support the effective restructuring of New York State's nursing home infrastructure, examples of projects that will be funded under HEAL NY are:

1. Acquisition, construction, reconstruction, equipment and information technology costs necessary for the conversion of challenged, but needed facilities to levels of care more consistent with community needs.
2. Acquisition, construction, reconstruction, equipment and information technology costs necessary to consolidate nursing homes, completely or partially as a result of a merger or affiliation with another nearby facility to avoid unnecessary and inefficient duplication of services.
3. Acquisition, construction, reconstruction, equipment and information technology costs necessary to allow nursing homes with excess capacity to permanently decertify unneeded beds and, where appropriate, convert vacant space for use as enhanced common living areas and services for the remaining residents, or to alternative levels of long term care, such as Assisted Living Programs and Adult Day Health Care programs.
4. Costs necessary to support functions and activities that will enable applicants to orderly and systematically implement a closure or downsizing plan to either decommission or downsize nursing home buildings to take beds out of service in particular geographic areas. The objective of such projects should be to remove operational and closing cost expense barriers, which may otherwise impede efforts to downsize.

Receipt of grant funds shall be conditioned on the Eligible Applicant meeting all regulatory requirements, including Certificate of Need ("CON") requirements and federal and state standards of care.

All applications must demonstrate that public need continues to be met after rightsizing and/or restructuring.

Contracts awarded to eligible applicants shall require that work performed thereunder shall be deemed “public work” and subject to and performed in accordance with articles eight, nine and ten of the labor law, if applicable, and the contractors performing such work shall also be deemed state agencies for the purpose of Article 15-A of the Executive Law.

1.4 Eligible Applicants – Nursing Homes

The Eligible Applicant is the entity that will enter into a Grant Disbursement Agreement (GDA) with the Department. The Eligible Applicant will be responsible for ensuring that grant funds are distributed in accordance with the GDA to best further the goals of the HEAL NY Program.

An Eligible Applicant shall be an entity that is a legally existing organization, capable of entering into a binding contract that is either

- 1) A nursing home as defined in PHL Section 2801(2); or,
- 2) A corporation established as active member of a nursing home.

Applications may be multi-provider proposals to promote regional level right-sizing, restructuring, and/or consolidation of health care services. One provider, however, must be designated as the lead grant applicant responsible of ensuring compliance with this RGA and, if selected, the prime contractor. Multi-provider applications need to include the Multiple Provider / Participant Consent Form (Attachment 8).

1.5 Project Timeframes

It is expected that the term of GDAs under the HEAL NY Phase 8: RHCF Rightsizing Demonstration Program will begin on or about August 2008 and run for a period of up to two years, with a one year extension available only on pre-approval of the NYS Department of Health and the Office of the State Comptroller.

Grants for Projects solely involving closing a facility will be limited to a twelve month period. All reimbursable and matching costs must be incurred within the period of the Grant Disbursement Agreement.

1.6 Bonded Funds – Capital Costs

The bonds authorized to be issued by DASNY pursuant to section 1680-j of the PAL (“HEAL Bonds”) will constitute “state-supported debt” for purposes of the State Finance Law. The State Finance Law provides that state-supported debt may only be incurred

for a “capital work or purpose” which is defined to mean any project involving:

“(i) the acquisition, construction, demolition, or replacement of a fixed asset or assets;

(ii) the major repair or renovation of a fixed asset, or assets which materially extends its useful life or materially improves or increases its capacity; or

(iii) the planning or design of the acquisition, construction, demolition, replacement, major repair or renovation of a fixed asset or assets, including the preparation and review of plans and specifications including engineering and other services, field surveys and sub-surface investigations incidental thereto.”

Therefore, only those components of a Project that constitutes a “capital work or purpose,” as defined above, will be eligible to be financed with the proceeds of HEAL Bonds.

1.7 Application Evaluation and Award Criteria

DOH and DASNY are allocating \$30,000,000 in grant funds for eligible projects under this RGA.

1.7.1 Grant Size

The size of individual grants will be determined based upon:

- 1) An evaluation of the scope of work presented,
- 2) The need for the Project within the community,
- 3) The degree to which the Project meets the goals and priorities of the HEAL NY program,
- 4) The appropriateness of expenses to the project; and,
- 5) Whether the Project is an appropriate use of bonded funds.

Please note -- Award amounts may be less than the amount requested.

1.7.2 Evaluation Criteria

Phase 8 Grant applications will use the following criteria in determining final awards:

- 1) The potential for improved quality of care and quality of life for

- consumers;
- 2) The likelihood that the proposal would result in cost savings to the Medicaid program;
 - 3) Residential health care facility capacity and estimated public need in the planning area in which the applicant is located;
 - 4) The availability of less restrictive and less institutional long-term care programs and services; and
 - 5) The potential for improving the financial viability of the Applicant facility or facilities.

1.8 Allowable Costs

It is anticipated that Grants will be made from both State appropriations and DASNY bond proceeds. All Grant Funds derived from Bond Proceeds must be utilized for capital purposes, as defined by State Law and if the Bonds are issued in a tax-exempt basis must be consistent with applicable Federal tax law. All costs to be reimbursed with grant funds must be incurred within the term of the GDA.

1.8.1 Allowed Expenditure Types

Subject to the requirements of Section 1.6 above, examples of the types of expenditures for which grant funds or matching funds may be used include:

Closure Costs

- a. Closing costs, net of all funds available to the eligible applicant, for no longer than a twelve-month period beginning no earlier than the date of approval to close;
- b. Discharge of existing long term debt or mortgage associated with a facility being closed;
- c. Payment of debt;
- d. Security contract for abandoned building/equipment;
- e. Modifications to close building/wing;
- f. Appropriate employee related expenses during the closure process;
- g. Demolition of buildings;
- h. Medical Records storage and transfer;
- i. Building insurance during the closure process; and
- j. Medical Malpractice Insurance during closure.

Restructuring, Reconfiguration, Debt Restructuring

- a. Capital costs to reconfigure infrastructure of nursing homes;

- b. Equipment expense; and
- c. Capital acquisition cost associated with system downsizing.

Applications must include a justification for all costs included in the project budget along with a discussion of how the expense relates to the project and whether the applicant believes the expense to be a bondable capital expense.

1.8.2 Grant Funding

Funds will be awarded in relation to the costs of the Project activities for the applicant facility with consideration of the facility's available resources. Award decisions will be governed by the following principles used in other HEAL NY Programs:

- Public funds for the Project implementation must be used judiciously and in the most prudent possible manner;
- Insofar as facilities are capable of funding their own closure, conversion, affiliation, or rightsizing, they should do so; and
- The costs of implementation activities should be shared among all interested parties, and the State may only contribute a portion of these costs.

Using these principles, DOH and DASNY will review applications to determine the appropriate level of public investment needed for the proposed project. This approach will provide the basis for negotiation, as needed, of changes in costs and activities proposed by the applicant facility to implement the proposed Project. In some instances, DOH and DASNY may determine that no public funds are needed for an applicant to successfully implement their activities.

Section 2. APPLICATION REQUIREMENTS

2.1 General Application Format

- 2.1.1** Applications should be concise, single-spaced, and use at least a 12 point type, including timeline and budget.
- 2.1.2** Applications may be presented as a complete package, following the formats shown in Attachments 5 and 6.

Part 1: Technical Component

Part 2: Financial Component

- 2.1.3** Include all sections described in Attachments 4, 5, and 6. Be complete and specific when responding. A panel, convened by the DOH and DASNY, will review and score the applications from Eligible Applicants.

2.2 Vendor Responsibility Questionnaire

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are 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 www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at 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 or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Applicants must also complete and submit the Vendor Responsibility Attestation (Attachment 10).

SECTION 3.

ADMINISTRATIVE PROCESS AND REQUIREMENTS

3.1 Question and Answer Phase

All substantive questions must be submitted in writing to:

Robert G. Schmidt

Director, HEAL NY Implementation Team

New York State Department of Health

Division of Health Facilities Planning

433 River Street , 6th Floor

Troy, New York 12180

518-408-0845

e-mail: healnynrightsizing@health.state.ny.us

To the degree possible, each inquiry should cite the RGA section and paragraph to which it refers. Written questions will be accepted through the date shown on the cover page of this RGA.

Questions of a technical nature can be addressed in writing or via telephone by calling the HEAL NY office at 518-408-0845. Questions are of a technical nature if they are limited to how to prepare the application (e.g., formatting) rather than relating to the substance of the application.

Prospective applicants should note that all clarifications and exceptions, including those relating to the terms and conditions of the GDA, are to be raised prior to or on the date shown on the cover page of this RGA.

Within 7 business days from the date shown on the cover page of this RGA, written answers to all questions raised will be posted on the DOH website at <http://www.health.state.ny.us/>. DOH and DASNY may elect to respond to questions in one or more sets, therefore applicants are encouraged to monitor the website regularly. Applicants wishing to receive an e-mail notification of the posting should submit a request, including the applicant's e-mail address, to healnynrightsizing@health.state.ny.us.

3.2 Filing An Application

Applications will be accepted on a rolling basis beginning March 17th, 2008 through June 2nd, 2008 at 3:00 PM.

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Eligible Applicants shall submit two complete original and signed applications, along with three complete copies.

Two electronic PDF copies of the technical and financial components along with all the attachments and supporting documents should also be submitted on two separate flash drives or CDs. These should be exact copies of the signed paper originals.

Applications will be accepted on a rolling basis. **The final deadline for submissions is June 2, 2008 at 3:00 PM.** Applications will also be reviewed on a rolling basis.

Application packages should be clearly labeled with the name and number of the RGA as listed on the cover of this RGA document. Applications **WILL NOT** be accepted via fax or e-mail. Late applications due to delay by the courier or not received in the Department's mailroom in time for timely transmission will not be considered.

Application narrative should be no longer than 10 pages.

3.3 Selection Review Process

Applications received in response to this RGA will be evaluated as follows:

Stage 1: Each application will be reviewed for completeness. Applications missing material elements may be eliminated from further review. Applicants will be contacted by the Department if additional information is needed.

Stage 2: Each application will be reviewed to confirm the eligibility of the Eligible Applicant.

Stage 3: Applications passing the first two stages will be forwarded to technical and financial review teams. The technical team will evaluate the following components:

1. The extent to which the Application meets all of the requirements outlined in this RGA;
2. Ability of Eligible Applicant to complete the Project;
3. Viability of the Project; and
4. Application is in format described in RGA.

The Finance team will assess the following components:

1. Overall cost;
2. Reasonableness of the Project's budget;
3. Financial viability of the Project; and
4. The extent to which the application meets all requirements outlined in the RGA.

In addition to information provided in the grant application, DOH and DASNY may use information obtained from other sources, such as information obtained as a part of their normal regulatory responsibilities.

3.4 THE DEPARTMENT OF HEALTH AND THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK RESERVE THE RIGHT TO:

1. Reject any or all applications received in response to this RGA.
2. Award more than one GDA resulting from this RGA.
3. Reserve the right to award additional funds pursuant to this RGA should they become available.
4. Waive or modify minor irregularities in applications received after prior notification to the applicant.
5. Adjust or correct cost figures with the concurrence of the applicant if errors exist and can be documented to the satisfaction of DOH, DASNY and the State Comptroller.
6. Negotiate with awardees within the requirements of the HEAL NY Program to serve the best interests of the State.
7. Modify the detailed specifications should an insufficient number of applications be received that meet all these requirements.
8. If DOH and DASNY are unsuccessful in negotiating a GDA with one or more awardees within an acceptable time frame, they may award the funds to the next most qualified applicant(s) in order to serve and realize the best interests of the State.
9. DOH and DASNY reserve the right to award grants based on geographic or regional considerations to serve the best interests of the State.

10. Reject any application submitted by an Eligible Applicant which is not in compliance with all state and federal requirements.

3.5 Award Letter

After DOH and DASNY have selected awardees, DOH and DASNY will issue an award letter to the awardees. The award letter is not a commitment to provide funds, but may assist awardees in finalizing other sources of financing as required to secure the full Project cost. The award letter will expire 90 days after issuance and, upon the termination of the award letter, DOH and DASNY may reallocate the funds to one or more other Eligible Applicants.

3.6 Term of GDA

Any GDA resulting from this RGA will be effective only upon approval by the New York State Office of the Comptroller. It is expected that GDAs resulting from this RGA will begin on or about August, 2008.

3.7 Payment Requirements

Payments under the resulting GDAs will be processed by DOH. The Grantee shall submit information of the type set forth below pursuant to the requirements to be set forth in the GDA.

1. Payment of such invoices by the State (NYS DOH) shall be made in accordance with Article XI-A of the New York State Finance Law. Payment terms will be based on completion of specific milestones to be outlined in the Project work plan and must be within the specific GDA budget.
2. Prior to the disbursement of HEAL NY grant funds, the Grantee must provide DOH with documentation evidencing that a segregated account has been established by the Grantee into which Grant funds will be deposited. Eligible Expenses incurred in connection with the Project to be financed with Grant funds will be paid out of this account. The funds in such account shall not be used for any other purpose.
3. DOH shall make payment to the Grantee, no more frequently than quarterly, based upon eligible expenses actually incurred by the Grantee, upon presentation to DOH of a Standard Voucher Form, together with such supporting documentation as DOH may require, in the forms to be set forth in the GDA or as otherwise determined by DOH.
4. The Grantee must provide proof of disbursement of Grant funds, in a form acceptable to DOH, within sixty (60) days of the date that Grant funds are disbursed to the Grantee to pay for such costs. In the event acceptable proof of payment is not provided within that time frame, then DOH will not make any

additional disbursements from Grant funds until such time as such proof of payment is provided.

5. In no event will DOH make any payment which would cause the aggregate disbursements to exceed the Grant amount.
6. All costs for which reimbursement is sought must have been incurred by the Grantee.

3.8 Reporting Requirements

During the development and implementation phase, the grantee shall submit a quarterly report to DOH which, at a minimum, includes:

1. Discussion of milestones achieved and evaluation of Project status;
2. Discussion of any delays or other issues encountered;
3. Plan of action for addressing any delays or other issues encountered;
4. Objectives for the next reporting period;
5. Objectives for the remaining Project period;
6. Discussion of any quality control monitoring performed; and
7. Financial report of Project expenses and revenues.

Post implementation reports are required annually for three years.

3.9 General Specifications

1. By signing the "Application Form" each signatory attests to their express authority to sign on behalf of the Eligible Applicant.
2. The Eligible Applicant will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this GDA will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
3. Submission of an application indicates the Eligible Applicant's acceptance of all conditions and terms contained in this RGA. If an Eligible Applicant does not accept a certain condition or term, this must be clearly noted in an attachment to the application cover letter.
4. An Eligible Applicant may be disqualified from receiving awards if such Eligible Applicant or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its employ, has previously failed to perform satisfactorily in connection with public bidding or other State contracts or has failed to meet all regulatory requirements relating to CON and federal and state standards of care.

5. Contracts awarded to eligible applicants shall require that work performed thereunder shall be deemed “public work” and subject to and performed in accordance with articles eight, nine and ten of the labor law, if applicable, and the contractors performing such work shall also be deemed state agencies for the purpose of ARTICLE 15 -A of the executive law.

3.10 Provisions Upon Default

1. The services to be performed by the Applicant shall be at all times subject to the direction and control of the State as to all matters arising in connection with or relating to the GDA resulting from this RGA.
2. In the event that the Eligible Applicant, through any cause, fails to perform any of the terms, covenants or promises of any GDA resulting from this RGA, DOH and DASNY shall thereupon have the right to terminate the GDA by giving notice in writing of the fact and date of such termination to the Applicant and the right to recoup grant funds paid.
3. If, in the judgment of DOH and DASNY, the Applicant acts in such a way which is likely to or does impair or prejudice the interests of the State, DOH and DASNY shall thereupon have the right to terminate any GDA resulting from this RGA by giving notice in writing of the fact and date of such termination to the Eligible Applicant. In such case the Eligible Applicant shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the Eligible Applicant up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the Eligible Applicant was engaged in at the time of such termination, subject to audit by the State Comptroller.

3.11 GDA Appendices

The following will be incorporated as appendices into any GDA(s) resulting from this Request for Application:

1. APPENDIX A: Standard Clauses for All New York State GDAs
2. APPENDIX A-1: Agency Specific Clauses
3. APPENDIX B: Budget
4. APPENDIX C : Payment and Reporting Schedule
5. APPENDIX D : Work plan
6. APPENDIX E : Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the

CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:

Workers' Compensation, for which one of the following is incorporated into this contract as **Appendix E-1**:

- **WC/DB-100**, Affidavit For New York Entities With No Employees And Certain Out Of State Entities, That New York State Workers' Compensation And/Or Disabilities Benefits Insurance Coverage is Not Required; OR
- **C-105.2** -- Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
- **SI-12** -- Certificate of Workers' Compensation Self-Insurance, OR **GSI-105.2** -- Certificate of Participation in Workers' Compensation Group Self-Insurance

Disability Benefits coverage, for which one of the following is incorporated into this contract as **Appendix E-2**:

- **WC/DB-100**, Affidavit For New York Entities With No Employees And Certain Out Of State Entities, That New York State Workers' Compensation And/Or Disabilities Benefits Insurance Coverage is Not Required; OR
- **DB-120.1** -- Certificate of Disability Benefits Insurance OR
- **DB-155** -- Certificate of Disability Benefits Self-Insurance

NOTE: Do not include the Workers' Compensation and Disability Benefits forms with your application.

These documents will be requested as a part of the contracting process should you receive an award.

7. APPENIDIX F: Project/Contract Contingencies

SECTION 4. ATTACHMENTS

1. Public Health Law Section 2818
2. Public Authorities Law Section 1680-j
3. Public Health Law Section 2801-e
4. Application Checklist/Format
5. Technical Component
6. Financial Component
7. Eligible Applicant Certification
8. Multiple Provider / Participant Consent Form
9. Grant Disbursement Agreement (GDA)
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HEAL NY Legislation (PHL 2818)

§ 2818. Health care efficiency and affordability law for New Yorkers (HEAL NY) capital grant program.

1. The commissioner and the director of the dormitory authority of the state of New York shall enter into an agreement, subject to the approval of the director of the budget, for the purpose of administering the funds available to the health care efficiency and affordability law for New Yorkers (HEAL NY) capital grant program as authorized under section sixteen hundred eighty-j of the public authorities law, in a manner that will encourage improvements in the operation and efficiency of the health care delivery system within the state. A copy of such agreement, and any amendments thereto, shall be provided to the chair of the senate finance committee, the director of the division of budget and the chair of the assembly ways and means committee.

Such agreement shall include criteria, to be developed by the commissioner and the director of the authority, to be considered in their evaluation of applications and determination of awards, including, but not limited to:

- (a) determination of eligible applicants, provided that such eligible applicants shall include entities representative of any part of the health care delivery system;
- (b) consideration of statewide geographic distribution of funds;
- (c) minimum and maximum amounts of funding to be awarded under the program;
- (d) the relationship between the project proposed by an applicant and identified community need; and
- (e) the extent to which the applicant has access to alternative financing.

Such agreement shall be provided to the chair of the senate finance committee, the director of the division of budget and the chair of the assembly ways and means committee no later than thirty days prior to the scheduled approval of the first bond issuance for the program by the public authorities control board. The authority shall also report quarterly to such chairpersons on the awards made through the program, including the name of the applicant, a description of the project and the amount of the award.

The commissioner and the director of the authority shall award grants to eligible applicants after due public notice of the availability of funds and through a process which ensures to the maximum extent practicable and where appropriate, competition among such applicants, consistent with the following requirements: the commissioner and the director of the authority shall publish the priorities and goals that are to be achieved through grant funding, and regularly provide public notice of the availability of funding. These priorities and goals shall be consistent with the objectives and determinations of the Commission on Health Care Facilities in the Twenty-First Century established pursuant to a chapter of the laws of two thousand five, provided, however, that nothing shall prohibit the commissioner and the director for the authority from awarding grants prior to a final report to the commission. For each project that will be recommended for approval, the commissioner and the director of the authority shall report to the chair of the senate finance committee, the director of the division of budget and the chair of the assembly ways and means committee how the project meets the priorities, goals and criteria established pursuant to this section.

Contracts awarded to eligible applicants shall require that work performed thereunder shall be deemed “public work” and subject to and performed in accordance with articles eight, nine and ten of the labor law and the contractors performing such work shall also be deemed a state

agency for the purpose of article fifteen-A of the executive law and subject to the provisions of such article.

2. Notwithstanding the provisions of subdivision one of this section, the commissioner and the director of the dormitory authority may award, in an amount not to exceed twenty-five percent of the health care system improvement capital grant program allocation in any given fiscal year, grants to eligible applicants without the process set forth in subdivision one of this section. With respect to the process for the awarding of such funds without the process set forth in subdivision one of this section, the commissioner and the director of the dormitory authority shall determine eligible awardees based solely on an applicant's ability to meet the following criteria:

- (i) Have a loss from operations for each of the three consecutive preceding years as evidenced by audited financial statements; and
 - (ii) Have a negative fund balance or negative equity position in each of the three preceding years as evidenced by audited financial statements; and
 - (iii) Have a current ratio of less than 1:1 for each of three consecutive preceding years; or
 - (iv) Be deemed to the satisfaction of the commissioner to be a provider that fulfills an unmet health care need for the community as determined by the department through consideration of the volume of Medicaid and medically indigent patients served; the service volume and case mix, including but not limited to maternity, pediatrics, trauma, behavioral and neurobehavioral, ventilator, and emergency room volume; and, the significance of the institution in ensuring health care service access as measured by market share within the region.
- (c) Prior to an award being granted to an eligible applicant without a competitive bid or request for proposal process, the commissioner and the director of the dormitory authority shall notify the chair of the senate finance committee, the chair of the assembly ways and means committee and the director of the division of budget of the intent to grant such an award. Such notice shall include information regarding how the eligible applicant meets criteria established pursuant to this section

HEAL NY Legislation (PAL 1680-j)**§1680-j. Authorization for the issuance of bonds for the health care efficiency and affordability law for New Yorkers (HEAL NY) capital grant program**

Notwithstanding any other provision of law to the contrary, the dormitory authority of the state of New York is hereby authorized to issue bonds or notes in one or more series in an aggregate principal amount not to exceed seven hundred fifty million dollars excluding bonds issued to fund one or more debt service reserve funds, to pay costs of issuance of such bonds, and bonds or notes issued to refund or otherwise repay such bonds or notes previously issued, for the purposes of financing project costs authorized under section twenty-eight hundred eighteen of the public health law. Of such seven hundred fifty million dollars, ten million dollars shall be made available to the community health centers capital program established pursuant to section twenty-eight hundred seventeen of the public health law.

1. Such bonds and notes of the dormitory authority shall not be a debt of the state and the state shall not be liable thereon, nor shall they be payable out of any funds other than those appropriated by the state to the authority for debt service and related expenses pursuant to any service contract executed pursuant to subdivision two of this section, and such bonds and notes shall contain on the face thereof a statement to such effect. Except for purposes of complying with the internal revenue code, any interest income earned on bond proceeds shall only be used to pay debt service on such bonds. All of the provisions of the dormitory authority act relating to bonds and notes which are not inconsistent with the provisions of this section shall apply to obligations authorized by this section, including but not limited to the power to establish adequate reserves therefore and to issue renewal notes or refunding bonds thereof. The issuance of any bonds or notes hereunder shall further be subject to the approval of the director of the division of the budget, and any projects funded through the issuance of bonds or notes hereunder shall be approved by the New York state public authorities control board, as required under section fifty-one of this chapter.

2. Notwithstanding any other law, rule or regulation to the contrary, in order to assist the dormitory authority in undertaking the administration and financing of projects authorized under this section, the director of the budget is hereby authorized to enter into one or more service contracts with the dormitory authority, none of which shall exceed more than thirty years in duration, upon such terms and conditions as the director of the budget and the dormitory authority agree, so as to annually provide to the dormitory authority, in the aggregate, a sum not to exceed the annual debt service payments and related expenses required for the bonds and notes issued pursuant to this section. Any service contract entered into pursuant to this subdivision shall provide that the obligation of the state to pay the amount therein provided shall not constitute a debt of the state within the meaning of any constitutional or statutory provision and shall be deemed executory only to the extent of monies available and that no liability shall be incurred by the state beyond the monies available for such purposes, subject to annual appropriation by the legislature. Any such contract or any payments made or to be made thereunder may be assigned or pledged by the dormitory authority as security for its bonds and notes, as authorized by this section.

3. Notwithstanding any law in the contrary, and in accordance with section four of the state finance law, the comptroller is hereby authorized and directed to transfer from the health care reform act (HCRA) resources fund (061) to the general fund, upon the request of the director of

the budget, up to \$6,500,000 on or before March 31, 2006, and the comptroller is further hereby authorized and directed to transfer from the healthcare reform act (HCRA); resources fund (061) to the capital projects fund, upon the request of the director of budget, up to \$139,000,000 for the period April 1, 2006 through March 31, 2007, up to \$170,976,000 for the period April 1, 2007 through March 31, 2008, and up to \$198,408,000 for the period April 1, 2008 through March 31, 2009.

Public Health**§ 2801-e. Voluntary residential health care facility rightsizing demonstration program.**

1. The voluntary residential health care facility rightsizing demonstration program is intended to be a flexible and innovative approach to dealing with excess capacity in residential health care facilities due to changes in care delivery and other factors. The demonstration is designed to promote the development of less restrictive and less institutional long-term care programs and services; discourage inappropriate nursing home placements; generate Medicaid savings to the state and localities; and assist residential health care facilities with the financial implications of declining occupancies.

2. Notwithstanding any inconsistent provision of law or regulation to the contrary, a residential health care facility, as defined in section twenty-eight hundred one of this article, may apply to temporarily decertify or permanently convert a portion of its existing certified beds to another type of program or service under the voluntary residential health care facility rightsizing demonstration program. The Commissioner may approve temporary decertifications and permanent conversions of beds totaling no more than two thousand five hundred residential health care facility beds on a statewide basis under this program. Such approvals shall reflect, to the extent practicable, participation by a variety of residential health care facilities based on geography, size and other pertinent factors.

3. For this purpose, a residential health care facility may submit, in a format and within timeframes specified by the commissioner, an application to temporarily decertify beds, or to permanently convert beds under this demonstration. Each such application shall include an estimate of the cost savings to the Medicaid program that would result from the proposal within the applicant facility. The commissioner shall begin soliciting applications within one hundred eighty days of the effective date of this section, provided however that multiple solicitations for proposals may be issued. In considering such applications, the commissioner shall take into account:

- (a) the potential for improved quality of care and quality of life for consumers;
- (b) the likelihood that the proposal would result in cost savings to the Medicaid program;
- (c) residential health care facility capacity and estimated public need in the planning area in which the applicant is located;
- (d) the availability of less restrictive and less institutional long-term care programs and services, as defined in this section, in the planning area; and
- (e) the potential for improving the financial viability of the applicant facility or facilities.

4. Any reductions in the number of operational residential health care facility beds resulting from this demonstration shall not be considered to create additional public need for residential health care facility beds under this article.

5. (a) Subject to the approval of the commissioner and the director of the budget, a residential health care facility may temporarily decertify beds for up to five years. Such beds will remain on the facility's license during and after the five-year period. Temporarily decertified beds may, with the prior approval of the commissioner and the director of the budget be reactivated in whole or in part at any time on or after one year after the effective date of temporary decertification by the facility and may be reactivated with the prior approval of the commissioner and the director of the budget after the five-year period has ended. A residential health care facility that reactivates temporarily decertified beds may not temporarily decertify such beds again during the demonstration. The commissioner may require the immediate

reactivation of such beds if necessary to respond to emergency situations and/or facility closures. In the event the commissioner requires such reactivation, the prohibition on temporarily decertifying beds after a reactivation of beds shall not apply.

(b) Notwithstanding any inconsistent provision of law or regulation to the contrary, for purposes of determining medical assistance payments by government agencies for residential health care facility services provided pursuant to title eleven of article five of the social services law for facilities that have temporarily decertified beds:

- (i) the facility's capital cost reimbursement shall be adjusted to appropriately take into account the new bed capacity of the facility;
- (ii) the facility's peer group assignment for indirect cost reimbursement shall be based on its total certified beds less the number of beds that have been temporarily decertified; and
- (iii) the facility's vacancy rate shall be calculated on the basis of its total certified beds less the number of beds that have been temporarily decertified for purposes of determining eligibility for payments for reserved bed days for residents of residential health care facilities, provided, however, that such payments for reserved bed days for facilities that have temporarily decertified beds shall be in an amount that is fifty percent of the otherwise applicable payment amount for such beds.

6. (a) Subject to the approval of the commissioner, a residential health care facility may permanently convert beds to less restrictive and less institutional long-term care beds, units or slots, including, but not limited to, assisted living program, adult care facility, adult day health care, long-term home health care program and managed long-term care demonstration beds, units or slots. For this purpose, residential health care facility beds may be converted to beds, units or slots in the selected program or service on a one-to-one or other ratio or basis. A residential health care facility that permanently converts beds under this subdivision relinquishes its license for the converted beds.

(b) If the facility seeks to permanently convert beds and neither the facility nor its sponsoring organization is licensed to provide the program or service, it must obtain the written approval of the public health council, if required, pursuant to section twenty-eight hundred one-a of this article or article thirty-six of this chapter to initiate the new program or service.

(c) The commissioner may, as necessary, waive existing methodologies for determining public need under this article, article thirty-six of this chapter and article seven of the social services law, as well as enrollment limitations under section forty-four hundred three-f of this chapter, to accommodate permanent conversions of beds to other programs or services on the basis that any such increases in capacity are linked to commensurate reductions in the number of residential health care facility beds.

(d) For purposes of adjusting the capital component of residential health care facility rates of payment determined pursuant to this article for facilities that have permanently converted beds, the commissioner shall appropriately take into account the new bed capacity of the facility. 7. No later than January first, two thousand seven, the commissioner shall provide the governor, the majority leader of the senate and the speaker of the assembly with a written evaluation of the program. Such evaluation shall address the overall effectiveness of the program in reducing costs, encouraging placements in appropriate long-term care settings and enhancing the availability of less restrictive and less institutional long-term care programs and services, and contain recommendations relative to extending and/or expanding the program.

APPLICATION CHECKLIST/FORMAT

1. Application – Technical Component

- Technical Component Cover Page
- Eligible Applicant Certification
- Table of Contents
- Executive Summary
- Eligible Applicant
- Project Description
- Project Monitoring Plan

2. Application – Financial Component

- Financial Component Cover Page
- Table of Contents
- Executive Summary
- Project Budget
- Project Expenses and Justification
- Funding Sources
- Cost Effectiveness
- Project Financial Viability
- Eligible Applicant Financial Stability
- General Corporate Information

3. Packaging the Application

- The package contains:
 - Two (2) original, signed, complete applications
 - Three (3) copies of the complete application
 - Two (2) clearly labeled CDs or USB/flash drives that each contain a full PDF copy of the complete application. The definition of a complete application includes the technical components, financial components and all attachments.
- Application package is labeled: HEAL NY Phase 8: RHCF Rightsizing Demonstration Program, RGA #0712200320

HEAL NY Phase 8: RHCFC Rightsizing Demonstration Program
Format for Part One: the Technical Component

**Part One: Technical Component
Cover Page**

Project Name _____

Eligible Applicant Name _____

Applicant's Category *Select one of the three categories described in Section 1.4.*
Nursing Home Active Parent Corporation

Applicant's Address _____

Provide the following Contact Information

Name _____ Title _____

Phone _____ Fax _____

E-mail _____

Signature of an individual who will be authorized to bind the Eligible Applicant to any GDA resulting from this application:

Signature _____

Title, if signator is different from contact person _____

Part One: Technical Component

Project Name _____

Eligible Applicant Name _____

INSERT
Eligible Applicant Certification
(See Attachment 7)

Part One: Technical Component

Project Name: _____

Eligible Applicant Name: _____

Applicants must follow the format below, using the titles in bold.

Table of Contents

Executive Summary

A. Eligible Applicant

B. Project Description

C. Project Monitoring Plan

Part One: Technical Component

Project Name: _____

Eligible Applicant Name: _____

Executive Summary

This part of the technical component must briefly describe:

- The overall Project.
- How the Project meets HEAL NY Residential Health Care Facility Rightsizing Demonstration objectives and requirements (see Sections 1.2 and 1.3 of this RGA).
- How the Eligible Applicant meets the eligibility criteria (see Section 1.4).
- Entire narrative should not exceed Ten (10) pages.

A. Eligible Applicant

In this section, provide basic organizational information relative to the Eligible Applicant. This should include information such as the Eligible Applicant's history, mission, board composition, ownership and affiliations, staffing, services provided, and any other relevant information.

B. Project Description

1. Overview: Provide an overview of the Project, Project goals and objectives, and the overall timetable for Project implementation. Describe how the goals and objectives of the Project are consistent with those outlined by the HEAL NY Program and the impact on the community and region, as well as the goals and criteria set forth in this RGA. Each Project must demonstrate that need in the service area will continue to be met. Demonstration of collaborative support from other providers will be considered favorably in this regard. Describe how the Project meets the requirements of RGA Section 1.3. Provide an evaluation of community need by service. Identify areas of overcapacity and/or under capacity.
2. HEAL NY Project Outcomes: Describe anticipated Project outcomes. Describe how the Project will result in improved quality, stability and efficiency of the health care delivery system in New York State. The Project must describe the impact on the community relating to quality of care and cost savings and must specifically address each of the objectives set forth in Section 1.2 of this RGA. The application must address the factors specified in Section 1.7.2.

Rightsizing Outcomes: Also describe in detail how its Project is consistent with HEAL NY Program by demonstrating how the Project will address the existing and projected need for inpatient nursing home beds and community based long-term care services in the area in which a facility applying for such funds is located.

3. Project Timeline: Provide a timeline for the proposal up through the date of implementation, including identification of major milestones and the person/entity accountable for each milestone. If applicable, the Eligible Applicant must describe in detail the phasing plan anticipated to achieve implementation. This phasing plan must identify specific milestones and dates of completion for each milestone. If applicable, the application and phasing plan must also address:
 - a. Time-frames for any architectural and engineering design and construction necessary to accomplish each phase.
 - b. Timeframes for implementation of closure of a facility.
 - c. Scheduled milestones for preparation and processing of any closure plan, including obtaining DOH approval.
4. Project Team: Provide resumes and references for each key staff member of the Project team, including staff of stakeholder organizations. Describe how this team has the expertise and experience necessary to successfully complete the Project within the timeframes outlined and achieve the goals and objectives set forth in the application. Provide information on any key vendors that the Eligible Applicant will contract with to facilitate the Project.

C. Project Monitoring Plan

Describe the methodology that will be used to track progress within the Project, including any quality assurance testing that will be performed. Describe how the monitoring plan will include identification of barriers and strategies to resolve issues. Confirm that reporting requirements outlined in RGA Section 3.8 will be met. All funded applicants will provide regular progress reports to DOH/DASNY.

**HEAL NY Phase 8: RHCFC Rightsizing Demonstration Program
Format for Part Two: the Financial Component**

***Part Two: Financial Component
Cover Page***

Project Name _____

Eligible Applicant Name _____

Applicant's Category *Circle one of the three categories described in Section 1.4.*
Nursing Home **Active Parent Corporation**

Applicant's Address _____

Provide the following information for a contact person.

Name _____ Title _____

Phone _____ Fax _____

E-mail _____

Provide the name and phone number of the person responsible for preparing the applicant's financial statements.

Name _____ Phone _____

Provide the name and phone number of the applicant's director of internal audit. If there is none, provide the name and phone number of the board member responsible for overseeing financial matters.

Name _____ Phone _____

Signature of an individual who would be authorized to bind the Eligible Applicant to any GDA resulting from this application:

Signature _____

Title, if signator is different from contact person _____

Part Two: Financial Component

Project Name: _____

Eligible Applicant Name: _____

Applicants must follow the format below, using the titles in bold.

Table of Contents

Executive Summary

- A. Project Budget**
- B. Project Expenses and Justification**
- C. Funding Sources**
- D. Cost Effectiveness**
- E. Project Financial Viability**
- F. Eligible Applicant Financial Stability**
- G. General Corporate Information**

Part Two: Financial Component

Project Name: _____

Eligible Applicant Name: _____

Executive Summary

This part of the financial application must briefly describe:

- The overall Project.
- How the Project meets HEAL NY Capital Related Initiative objectives and requirements. (See Sections 1.2 and 1.3 of this RGA).
- How the Eligible Applicant meets the eligibility criteria (see Section 1.4).

A. Project Budget

Using the formats included in the instructions for the Financial Application, provide a Project Budget that includes all components of the application, including those that will be funded with sources other than HEAL NY grant funds. Show the amount of each budget line that will be funded with HEAL NY grant funds.

B. Project Expenses and Justification

Provide a detailed discussion of the reasonableness of each budgeted item. These budget justifications should be specific enough to show what the Eligible Applicant means by each request and how the request supports the overall Project.

C. Funding Sources

Identify and describe all private or other sources of funding sources for the Project, including governmental agencies or other grant funds and evidence of the commitment from or availability of these funding sources and evidence of in-kind contributions. Applicants must provide evidence that this other funding will be forthcoming, including providing written documentation of commitments from each funding source. A commitment that is contingent upon receipt of the Grant is acceptable.

D. Cost Effectiveness

Describe why the project is a cost effective investment as compared to other alternatives. Describe any savings to the health care system relative to the project costs. Include a discussion of any means by which projected savings can be verified after the project is complete.

E. Project Financial Viability

Provide a detailed discussion showing how the project will enable the institution to become financially viable upon completion. If appropriate, provide a feasibility plan for paying or retiring capital debt. Include supporting documents such as a

Project Balance Sheet, cash flows, etc. for the Project start through three years after project completion.

F. Eligible Applicant Financial Stability

Provide evidence of the financial stability of the Eligible Applicant. This would include a copy of the prior two annual audited financial statements and any other evidence of this stability. Entities whose financial statements have not been subjected to an audit must include any additional information available to satisfy this test and appropriate certifications.

G. General Corporate Information

- Provide a list of vendors who can be contacted regarding the applicant's business practices.
- Provide a list of grants applied for in the last three years and whether the grants were awarded or declined. Also include any grants applied for where awards have not been determined.
- Provide the name of any parent, sibling, or subsidiary corporation of the applicant.
- Include with the application a copy of Form 990 or evidence of an up-to-date filing with the Attorney General of New York State.

**HEAL NY Phase 8: RHCF Rightsizing Demonstration Program
Budget Forms Required**

Two budget forms are included in this RGA:

- Project Fund Sources
- Project Expenses and Justification

The two forms must be completed to show all fund sources and expenses associated with the proposed project.

Total fund sources should equal total expenses. If fund sources exceed expenses, please write a detailed explanation.

The budget forms should include the name, phone number, and e-mail address of the person responsible preparing for the budget.

**HEAL NY Phase 8: RHCf Rightsizing Demonstration Program
Project Fund Sources**

Project Name: _____

Eligible Applicant Name: _____

	Committed	Anticipated	Total	
HEAL NY	\$	\$	\$	
Other Funds	\$	\$	\$	A
Total	\$	\$	\$	B

Other Funds' Components

Applicant Direct Funds	\$	\$	\$
Program Income	\$	\$	\$
Federal Government	\$	\$	\$
Foundations	\$	\$	\$
Corporations	\$	\$	\$
Bonds	\$	\$	\$
Loans	\$	\$	\$
Board/Individual Contributions	\$	\$	\$
Other (describe)	\$	\$	\$
Total	\$	\$	\$

Name, phone number, and e-mail address of the person responsible preparing for the budget:

Name _____

Phone _____ E-mail _____

HEAL NY Phase 8: RHCf Rightsizing Demonstration Program Project Expenses and Justification

Project Name: _____

Eligible Applicant Name: _____

Each category of expenses (left column) must be accompanied by a written justification (right column). Each justification must include a discussion of how the expense will support the project, and state whether the expense is an eligible capitalizable expense.

Cost Category EXAMPLES ONLY	Total	Capitalizable Expense		Justification
		Choose YES or NO for each line.		
<u>Fees</u>	\$	YES	NO	
Architectural Design	\$	YES	NO	
Engineering	\$	YES	NO	
Legal	\$	YES	NO	
Installation	\$	YES	NO	
Construction Management	\$	YES	NO	
<u>Acquisition</u>	\$	YES	NO	
Land Costs	\$	YES	NO	
Building Costs	\$	YES	NO	
<u>Closure</u>	\$	YES	NO	
Closing Costs	\$	YES	NO	
Discharge of LT Debt	\$	YES	NO	
Payment of Debt	\$	YES	NO	
Security Contract	\$	YES	NO	
Modifications	\$	YES	NO	
Employee Expenses	\$	YES	NO	
Demolition of Building	\$	YES	NO	
Medical Records Storage	\$	YES	NO	
Building Insurance	\$	YES	NO	
Medical Malpractice	\$	YES	NO	
<u>Construction</u>	\$	YES	NO	
Capital Costs	\$	YES	NO	
Equipment	\$	YES	NO	
Restructuring	\$	YES	NO	
Reconfiguration	\$	YES	NO	
Debt Restructuring	\$	YES	NO	
Renovation	\$	YES	NO	
Other Categories (specify)	\$	YES	NO	
-	\$	YES	NO	
-	\$	YES	NO	
-	\$	YES	NO	
TOTAL	\$	YES	NO	

Name, phone number, and e-mail address of the person responsible preparing for the budget:

Name _____

Phone _____ E-mail _____

ELIGIBLE APPLICANT CERTIFICATION

CERTIFICATION FOR HEALTH CARE EFFICIENCY AND AFFORDABILITY LAW (HEAL NY) GRANTS

I hereby warrant and represent to the New York State Department of Health (“DOH”) and the Dormitory Authority of the State of New York (“the Authority”) that:

- Applicant will make every effort to ensure that the project described in this application is consistent with the objectives and determinations of the Commission on Health Care Facilities in the Twenty-First Century, as established pursuant to Section 31 of Part E of Chapter 63 of the Laws of 2005.
- All contracts entered into by the Grantee in connection with the Project shall (A) provide that the work covered by such contract shall be deemed “public work” subject to and in accordance with Articles 8, 9 and 10 of the Labor Law; and (B) shall provide that the contractors performing work under such contract shall be deemed a "state agencies" for the purposes of Article 15A of the Executive Law
- If awarded a HEAL NY grant, the funds will be expended solely for the project purposes described in this RGA and in the GDA and for no other purpose.
- I understand that in the event that the project funded with the proceeds of a HEAL NY grant ceases to meet one or more of the criteria set forth above, then DOH and/or the Dormitory Authority shall be authorized to seek recoupment of all HEAL NY grant funds paid to the Grantee and to withhold any grant funds not yet disbursed.

Applicant Name _____

Project Name _____

Signature _____ Date _____

Name (Please Print) _____

Title (Please Print) _____

Please note that in accordance with Part 86-2.6 of the Commissioner’s Administrative Rules and Regulations, **ONLY** the following individuals may sign the attestation form:

- Proprietary Sponsorship – Operator/Owner
- Voluntary Sponsorship – Officer (President, Vice President, Secretary or Treasurer), Chief Executive Officer, Chief Financial Officer or any Member of the Board of Directors
- Public Sponsorship – Public Official Responsible for Operation of the Facility

Attachment 8

MULTIPLE PROVIDER / PARTICIPANT CONSENT FORM

REQUIRED FOR APPLICATIONS WITH MULTIPLE PARTICIPANTS IN GRANT APPLICATION

Lead Applicant in Grant Application

- Lead Applicant has requested and received consent from the participants listed below to fully participate and assist in the implementation of all aspects of the Project submitted. Lead Applicant understands that it will be asked to sign a Grant Disbursement Agreement relating to the entire project should the application lead to an award.

Lead Applicant Name: _____
(please type)

Lead Applicant Authorized Signature: _____

Date: _____

Participants in Grant Application (Please list all participants)

- Participant understands all aspects of the Project described in the grant application submitted by the Lead Applicant (above) and consents to its inclusion therein.
- If the grant is awarded, Participant agrees to fully cooperate in the implementation of the Project described in the grant application and consents to Lead Applicant executing a Grant Disbursement Agreement in connection therewith.
- Participant understands that they are still responsible for all Project activities for their specific facility and all reporting requirements as identified in the Grant Disbursement Agreement.

Participant Name: _____
(please type)

Participant Authorized Signature: _____

Date: _____

Participant Name: _____
(please type)

Participant Authorized Signature: _____

Date: _____

Grant Disbursement Agreement

APPENDIX A: STANDARD CLAUSES FOR ALL NYS CONTRACTS

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1. **Executory Clause**
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10. **Records**
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15. **Late Payment**
16. **No Arbitration**
17. **Service of Process**
18. **Prohibition on Purchase of Tropical Hardwoods**
19. **MacBride Fair Employment Principles**
20. **Omnibus Procurement Act of 1992**
21. **Reciprocity and Sanctions Provisions**

STANDARD CLAUSES FOR NYS CONTRACTS

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

- 1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
- 2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
- 3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).
- 4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
- 5. NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
- 6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
- 7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.
- 8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).
- 9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under

this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

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

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

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

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, AESOB, Albany, New York 12236.

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

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work")

except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
<http://www.empire.state.ny.us>

HEAL NY Phase 8: RHCF Rightsizing Demonstration Program

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

APPENDIX A-1
(REV 1/08)

AGENCY SPECIFIC CLAUSES FOR ALL
DEPARTMENT OF HEALTH CONTRACTS

1. If the CONTRACTOR is a charitable organization required to be registered with the New York State Attorney General pursuant to Article 7-A of the New York State Executive Law, the CONTRACTOR shall furnish to the STATE such proof of registration (a copy of Receipt form) at the time of the execution of this AGREEMENT. The annual report form 497 is not required. If the CONTRACTOR is a business corporation or not-for-profit corporation, the CONTRACTOR shall also furnish a copy of its Certificate of Incorporation, as filed with the New York Department of State, to the Department of Health at the time of the execution of this AGREEMENT.
2. The CONTRACTOR certifies that all revenue earned during the budget period as a result of services and related activities performed pursuant to this contract shall be used either to expand those program services funded by this AGREEMENT or to offset expenditures submitted to the STATE for reimbursement.
3. Administrative Rules and Audits:
 - a. If this contract is funded in whole or in part from federal funds, the CONTRACTOR shall comply with the following federal grant requirements regarding administration and allowable costs.
 - i. For a local or Indian tribal government, use the principles in the common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments".
 - ii. For a nonprofit organization other than
 - ◆ an institution of higher education,
 - ◆ a hospital, or
 - ◆ an organization named in OMB Circular A-122, "Cost Principles for Non-profit Organizations", as not subject to that circular,use the principles in OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations," and OMB Circular A-122.
 - iii. For an Educational Institution, use the principles in OMB Circular A-110 and OMB Circular A-21, "Cost Principles for Educational Institutions".
 - iv. For a hospital, use the principles in OMB Circular A-110, Department of Health and Human Services, 45 CFR 74, Appendix E, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals" and, if not covered for audit purposes by OMB Circular A-133, "Audits of States Local Governments

and Non-profit Organizations”, then subject to program specific audit requirements following Government Auditing Standards for financial audits.

- b. If this contract is funded entirely from STATE funds, and if there are no specific administration and allowable costs requirements applicable, CONTRACTOR shall adhere to the applicable principles in “a” above.
 - c. The CONTRACTOR shall comply with the following grant requirements regarding audits.
 - i. If the contract is funded from federal funds, and the CONTRACTOR spends more than \$500,000 in federal funds in their fiscal year, an audit report must be submitted in accordance with OMB Circular A-133.
 - ii. If this contract is funded from other than federal funds or if the contract is funded from a combination of STATE and federal funds but federal funds are less than \$500,000, and if the CONTRACTOR receives \$300,000 or more in total annual payments from the STATE, the CONTRACTOR shall submit to the STATE after the end of the CONTRACTOR's fiscal year an audit report. The audit report shall be submitted to the STATE within thirty days after its completion but no later than nine months after the end of the audit period. The audit report shall summarize the business and financial transactions of the CONTRACTOR. The report shall be prepared and certified by an independent accounting firm or other accounting entity, which is demonstrably independent of the administration of the program being audited. Audits performed of the CONTRACTOR's records shall be conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States covering financial audits. This audit requirement may be met through entity-wide audits, coincident with the CONTRACTOR's fiscal year, as described in OMB Circular A-133. Reports, disclosures, comments and opinions required under these publications should be so noted in the audit report.
 - d. For audit reports due on or after April 1, 2003, that are not received by the dates due, the following steps shall be taken:
 - i. If the audit report is one or more days late, voucher payments shall be held until a compliant audit report is received.
 - ii. If the audit report is 91 or more days late, the STATE shall recover payments for all STATE funded contracts for periods for which compliant audit reports are not received.
 - iii. If the audit report is 180 days or more late, the STATE shall terminate all active contracts, prohibit renewal of those contracts and prohibit the execution of future contracts until all outstanding compliant audit reports have been submitted.
4. The CONTRACTOR shall accept responsibility for compensating the STATE for any exceptions which are revealed on an audit and sustained after completion of the normal

audit procedure.

5. FEDERAL CERTIFICATIONS: This section shall be applicable to this AGREEMENT only if any of the funds made available to the CONTRACTOR under this AGREEMENT are federal funds.

- a. LOBBYING CERTIFICATION

- 1) If the CONTRACTOR is a tax-exempt organization under Section 501 (c)(4) of the Internal Revenue Code, the CONTRACTOR certifies that it will not engage in lobbying activities of any kind regardless of how funded.
- 2) The CONTRACTOR acknowledges that as a recipient of federal appropriated funds, it is subject to the limitations on the use of such funds to influence certain Federal contracting and financial transactions, as specified in Public Law 101-121, section 319, and codified in section 1352 of Title 31 of the United States Code. In accordance with P.L. 101-121, section 319, 31 U.S.C. 1352 and implementing regulations, the CONTRACTOR affirmatively acknowledges and represents that it is prohibited and shall refrain from using Federal funds received under this AGREEMENT for the purposes of lobbying; provided, however, that such prohibition does not apply in the case of a payment of reasonable compensation made to an officer or employee of the CONTRACTOR to the extent that the payment is for agency and legislative liaison activities not directly related to the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. Nor does such prohibition prohibit any reasonable payment to a person in connection with, or any payment of reasonable compensation to an officer or employee of the CONTRACTOR if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal, or application for a Federal contract, grant, loan, or cooperative agreement, or an extension, continuation, renewal, amendment, or modification thereof, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan or cooperative agreement.
- 3) This section shall be applicable to this AGREEMENT only if federal funds allotted exceed \$100,000.
 - a) The CONTRACTOR certifies, to the best of his or her knowledge and belief, that:
 - ◆ No federal appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal amendment or modification of any federal contract, grant, loan, or cooperative agreement.
 - ◆ If any funds other than federal appropriated funds have been paid

or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

- b) The CONTRACTOR shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - c) The CONTRACTOR shall disclose specified information on any agreement with lobbyists whom the CONTRACTOR will pay with other Federal appropriated funds by completion and submission to the STATE of the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. This form may be obtained by contacting either the Office of Management and Budget Fax Information Line at (202) 395-9068 or the Bureau of Accounts Management at (518) 474-1208. Completed forms should be submitted to the New York State Department of Health, Bureau of Accounts Management, Empire State Plaza, Corning Tower Building, Room 1315, Albany, 12237-0016.
 - d) The CONTRACTOR shall file quarterly updates on the use of lobbyists if material changes occur, using the same standard disclosure form identified in (c) above to report such updated information.
- 4) The reporting requirements enumerated in subsection (3) of this paragraph shall not apply to the CONTRACTOR with respect to:
- a) Payments of reasonable compensation made to its regularly employed officers or employees;
 - b) A request for or receipt of a contract (other than a contract referred to in clause (c) below), grant, cooperative agreement, subcontract (other than a subcontract referred to in clause (c) below), or subgrant that does not exceed \$100,000; and
 - c) A request for or receipt of a loan, or a commitment providing for the United States to insure or guarantee a loan, that does not exceed \$150,000, including a contract or subcontract to carry out any purpose for which such a loan is made.

b. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE:

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through State or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a monetary penalty of up to \$1000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this AGREEMENT, the CONTRACTOR certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The CONTRACTOR agrees that it will require that the language of this certification be included in any subawards which contain provisions for children's services and that all subrecipients shall certify accordingly.

c. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

Pursuant to the above-cited regulations, the New York State Department of Health (as a participant in a primary covered transaction) may not knowingly do business with a person who is debarred, suspended, proposed for debarment, or subject to other government-wide exclusion (including any exclusion from Medicare and State health care program participation on or after August 25, 1995), and the Department of Health must require its prospective contractors, as prospective lower tier participants, to provide the certification in Appendix B to Part 76 of Title 45 CFR, as set forth below:

1) APPENDIX B TO 45 CFR PART 76-CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY

EXCLUSION-LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

- a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d) The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
- g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded From Federal Procurement and Non-procurement Programs.
- h) Nothing contained in the foregoing shall be construed to require

establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- i) Except for transactions authorized under paragraph "e" of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2) *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions*

- a) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department agency.
- b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an *explanation to this proposal*.

6. *The STATE, its employees, representatives and designees, shall have the right at any time during normal business hours to inspect the sites where services are performed and observe the services being performed by the CONTRACTOR. The CONTRACTOR shall render all assistance and cooperation to the STATE in making such inspections. The surveyors shall have the responsibility for determining contract compliance as well as the quality of service being rendered.*

7. The CONTRACTOR will not discriminate in the terms, conditions and privileges of employment, against any employee, or against any applicant for employment because of race, creed, color, sex, national origin, age, disability, sexual orientation or marital status. The CONTRACTOR has an affirmative duty to take prompt, effective, investigative and remedial action where it has actual or constructive notice of discrimination in the terms, conditions or privileges of employment against (including harassment of) any of its employees by any of its other employees, including managerial personnel, based on any of the factors listed above.

8. The CONTRACTOR shall not discriminate on the basis of race, creed, color, sex, national origin, age, disability, sexual orientation or marital status against any person seeking services for which the CONTRACTOR may receive reimbursement or payment under this AGREEMENT.

9. The CONTRACTOR shall comply with all applicable federal, State and local civil rights and human rights laws with reference to equal employment opportunities and the provision of services.

10. The STATE may cancel this AGREEMENT at any time by giving the CONTRACTOR not less than thirty (30) days written notice that on or after a date therein specified, this AGREEMENT shall be deemed terminated and cancelled.

11. Where the STATE does not provide notice to the NOT-FOR-PROFIT CONTRACTOR of its intent to not renew this contract by the date by which such notice is required by Section 179-t(1) of the State Finance Law, then this contract shall be deemed continued until the date that the agency provides the notice required by Section 179-t, and the expenses incurred during such extension shall be reimbursable under the terms of this contract.

12. Other Modifications

- a. Modifications of this AGREEMENT as specified below may be made within an existing PERIOD by mutual written agreement of both parties:
 - ◆ Appendix B - Budget line interchanges;
 - ◆ Appendix C - Section 11, Progress and Final Reports;
 - ◆ Appendix D - Program Workplan.
- b. To make any other modification of this AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s), and a Modification Agreement (Appendix X is the blank form to be used), which shall be effective only upon approval by the Office of the State Comptroller.

13. Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for

Workers' Compensation, for which one of the following is incorporated into this contract as **Appendix E-1**:

- **WC/DB-100**, Affidavit For New York Entities With No Employees And Certain Out Of State Entities, That New York State Workers' Compensation And/Or Disabilities Benefits Insurance Coverage is Not Required; OR
- **C-105.2** -- Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
- **SI-12** -- Certificate of Workers' Compensation Self-Insurance, OR **GSI-105.2** -- Certificate of Participation in Workers' Compensation Group Self-Insurance

Disability Benefits coverage, for which one of the following is incorporated into this contract as **Appendix E-2**:

- **WC/DB-100**, Affidavit For New York Entities With No Employees And Certain Out Of State Entities, That New York State Workers' Compensation And/Or Disabilities Benefits Insurance Coverage is Not Required; OR
- **DB-120.1** -- Certificate of Disability Benefits Insurance OR
- **DB-155** -- Certificate of Disability Benefits Self-Insurance

14. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.
15. All products supplied pursuant to this agreement shall meet local, state and federal regulations, guidelines and action levels for lead as they exist at the time of the State's acceptance of this contract.
16. Additional clauses as may be required under this AGREEMENT are annexed hereto as appendices and are made a part hereof if so indicated on the face page of this AGREEMENT.

APPENDIX C: PAYMENT AND REPORTING SCHEDULE

1. Payment and Reporting Terms and Conditions

A. The STATE may, at its discretion, make an advance payment to the CONTRACTOR, during the initial or any subsequent PERIOD, in an amount to be determined by the STATE but not to exceed _____ percent of the maximum amount indicated in the budget as set forth in the most recently approved Appendix B. If this payment is to be made, it will be due thirty calendar days, excluding legal holidays, after the later of either:

- the first day of the contract term specified in the Initial Contract Period identified on the face page of the AGREEMENT or if renewed, in the PERIOD identified in the Appendix X, OR
- if this contract is wholly or partially supported by Federal funds, availability of the federal funds;

provided, however, that a STATE has not determined otherwise in a written notification to the CONTRACTOR suspending a Written Directive associated with this AGREEMENT, and that a proper voucher for such advance has been received in the STATE's designated payment office. If no advance payment is to be made, the initial payment under this AGREEMENT shall be due thirty calendar days, excluding legal holidays, after the later of either:

- the end of the first monthly/quarterly period of this AGREEMENT; or
- if this contract is wholly or partially supported by federal funds, availability of the federal funds:

provided, however, that the proper voucher for this payment has been received in the STATE's designated payment office.

B. No payment under this AGREEMENT, other than advances as authorized herein, will be made by the STATE to the CONTRACTOR unless proof of performance of required services or accomplishments is provided. If the CONTRACTOR fails to perform the services required under this AGREEMENT the STATE shall, in addition to any remedies available by law or equity, recoup payments made but not earned, by set-off against any other public funds owed to CONTRACTOR.

C. Any optional advance payment(s) shall be applied by the STATE to future payments due to the CONTRACTOR for services provided during initial or

subsequent PERIODS. Should funds for subsequent PERIODS not be appropriated or budgeted by the STATE for the purpose herein specified, the STATE shall, in accordance with Section 41 of the State Finance Law, have no liability under this AGREEMENT to the CONTRACTOR, and this AGREEMENT shall be considered terminated and cancelled.

- D. The CONTRACTOR will be entitled to receive payments for work, projects, and services rendered as detailed and described in the program workplan, Appendix D. All payments shall be in conformance with the rules and regulations of the Office of the State Comptroller.
- E. The CONTRACTOR will provide the STATE with the reports of progress or other specific work products pursuant to this AGREEMENT as described in this Appendix below. In addition, a final report must be submitted by the CONTRACTOR no later than ____ days after the end of this AGREEMENT. All required reports or other work products developed under this AGREEMENT must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the STATE in order for the CONTRACTOR to be eligible for payment.
- F. The CONTRACTOR shall submit to the STATE monthly/quarterly voucher claims and reports of expenditures on such forms and in such detail as the STATE shall require. The CONTRACTOR shall submit vouchers to the State's designated payment office located in the _____.

All vouchers submitted by the CONTRACTOR pursuant to this AGREEMENT shall be submitted to the STATE no later than _____ days after the end date of the period for which reimbursement is being claimed. In no event shall the amount received by the CONTRACTOR exceed the budget amount approved by the STATE, and, if actual expenditures by the CONTRACTOR are less than such sum, the amount payable by the STATE to the CONTRACTOR shall not exceed the amount of actual expenditures. All contract advances in excess of actual expenditures will be recouped by the STATE prior to the end of the applicable budget period.

II. Progress and Final Reports

Organization Name: _____

Report Type:

- A. Narrative/Qualitative Report
_____ (Organization Name) _____
will submit, on a quarterly basis, not later than _____ days from the end of the quarter, a report, in narrative form, summarizing the services rendered during the quarter. This report will detail how the _____ (Organization Name) _____ has progressed toward attaining the qualitative goals enumerated in the

Program Workplan (Appendix D).

(Note: This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.)

B. Statistical/Quantitative Report

_____ (Organization Name) _____
will submit, on a quarterly basis, not later than _____ days from the end of the quarter, 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.)

C. Expenditure Report

_____ (Organization Name) _____
will submit, on a quarterly basis, not later than _____ days after the end date for which reimbursement is being claimed, a detailed expenditure report, by object of expense. This report will accompany the voucher submitted for such period.

D. Final Report

_____ (Organization Name) _____
will submit a final report, as required by the contract, reporting on all aspects of the program, detailing how the use of grant funds were utilized in achieving the goals set forth in the program Workplan.

Vendor Responsibility Attestation

To comply with the Vendor Responsibility Requirements outlined in Section 2.2, Application Requirements, Vendor Responsibility Questionnaire, I hereby certify:

Choose one:

- An on-line Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://portal.osc.state.ny.us> within the last six months.

- A hard copy Vendor Responsibility Questionnaire is included with this application and is dated within the last six months.

- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: _____

Print/type Name: _____

Title: _____

Organization: _____

Date Signed: _____