

Request for Grant Applications

RGA Number 0712200252

HEAL NY Phase 7 Capital Restructuring Initiatives #2

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

Key Dates:

Applications Due: **April 3, 2008**

Applicant Conferences:

Albany, February 4, 2008 2:00 - 4:00 p. m.

New York City, February 8, 2008 2:00 - to 4:00 p. m.

Questions Due: February 15, 2008

Applicant Conference Locations:

Albany: Empire State Plaza, Main Concourse, Meeting Room 3

NYC: 90 Church Street, Manhattan, Room 4-PSC

Albany directions at <http://www.ogs.state.ny.us/visiting/gettingAround/defaultParking.html>

Contact Name and Address

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New York State Department of Health Request for Grant Applications Capital Restructuring Initiatives #2

1.1 Notice of Available Funds

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 (HEAL-NY), as established pursuant to Section 2818 of the Public Health Law (PHL). Funds are available under this Request for Grant Applications (RGA) 1) to help hospitals, nursing homes (residential health care facilities, or RHCfs) and other eligible applicants to enter into shared governance agreements, service consolidations and other collaborative agreements for the purpose of eliminating excess capacity and achieving greater efficiency in services that are responsive to identified community needs; and 2) to assist these facilities in meeting the needs of patients and clients from areas formerly served by hospitals and nursing homes closed or downsized in response to the mandates of the Commission on Health Care Facilities in the Twenty-First Century ; and 3) help certified home health agencies (CHHAs), assisted living residences (ALRs), assisted living programs (ALPs), adult homes and enriched housing programs to expand their services as less restrictive and more homelike alternatives to inpatient care; and 4) to assist hospitals and nursing homes in reducing excess inpatient capacity in favor of ambulatory and community-based care. Like its predecessors, this HEAL RGA will further the transition to a more stable, efficient and higher-quality health care system, in local communities and throughout New York State.

Applications received under this announcement will be reviewed on a competitive procurement basis.

1.2 Goals of HEAL NY

The purpose of the HEAL NY program is improve the quality, stability and efficiency of health care services in New York State. The principal goals of the program are:

1. Right-sizing of the health care delivery system by assisting in the closure, consolidation and/or conversion of providers, programs and acute care and long term care beds on a regional level;

2. Elimination of duplicative health care services consistent with community need for those services, including reduction and/or conversion of excess hospital and skilled nursing home beds;
3. Promotion of ambulatory and community-based care at appropriate levels and cost, based on community needs;
4. Reducing the rate of increase of health care spending.

The funds available through HEAL NY are intended as part of a partnership between the State and the health care community to achieve these goals.

1.3 HEAL NY Capital Restructuring Initiatives #2 – Objectives

The priorities and goals of the HEAL NY program are to be consistent with the objectives and determinations of the Commission on Health Care Facilities in the Twenty-First Century (the Commission). In its report of November, 2006, the Commission issued mandates for the closure, downsizing, consolidation and reconfiguration of facilities the Commission had identified as carrying the highest levels of excess inpatient capacity and the largest number of duplicative and unnecessary services. But the Commission characterized its report as only a beginning and called for the further reconfiguration of health care facilities as a vital element in the ongoing development of a health care system more responsive to community needs. While the reduction of excess inpatient capacity remains essential to the changes called for by the Commission, the reconfiguration of hospitals and nursing homes should also involve changes in governance and foster innovation in the organization and delivery of ambulatory services and community-based long-term care services. It is also important that these new approaches be responsive to identified health care needs in individual communities. The greater efficiency in the health care system called for by the Commission and supported by HEAL NY funding must contribute directly to the delivery of appropriate, high quality care for underserved groups and ultimately for all New Yorkers.

The Commission recognized that mandated closures and bed reductions for selected hospitals and nursing homes would in many instances redirect patients and residents to other, more efficient providers. In monitoring the closure and downsizing of affected facilities to ensure continued access to care for patients and residents, the Department and DASNY have determined that support should be available to remaining providers--so-called "coverage partners"—to assist them in serving patients and clients in areas affected by Commission mandates. In aiding these providers, this support will complement that made available under the

preceding iteration of HEAL NY (Phase 4), which was reserved for facilities subject to Commission mandates.

This RGA, then, is issued both to assist in the strengthening of providers in the delivery of appropriate care to their current clients and to those in areas affected by Commission mandates and to support the further rightsizing of the health care system. Specifically, funds available under this announcement are intended to:

1. Enable hospitals and nursing homes to enter into shared governance arrangements and other collaborative agreements with other facilities for the purpose of eliminating excess capacity and achieving greater efficiency in services that are responsive to identified community needs.
2. Help hospitals and nursing homes add or improve services to meet the needs of patients and clients in areas formerly served by facilities closed or downsized in response to Commission mandates.
3. Assist CHHA's, ALP's, ALR's, adult homes and enriched housing programs to expand their services as less restrictive and more homelike alternatives to inpatient care. This expansion can be in response to identified needs in the community at large or to accommodate clients from areas affected by the closure or downsizing of facilities subject to Commission mandates.
4. Help hospitals and nursing homes to eliminate excess beds, in favor of ambulatory and community-oriented services.

Collaborative activities between providers must be cognizant of the need to preserve competition. Applicants proposing to undertake activities that may otherwise be unlawful because of an adverse effect on competition should include in their proposals a process by which the DOH would actively supervise the activities to ensure that the following State health policy goals were met:

1. Improvement in the quality and stability of health care in local communities;
2. Promotion of greater efficiency in the delivery of health care services in local communities;
3. Furtherance of the goals and recommendations of the Commission 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 and as set forth in the Commission's report of November, 2006;
4. Reduction of duplicative services and associated health care costs in local communities.

Activities eligible for funding under this RGA include, but are not limited to¹:

1. Construction, renovation, equipment and information technology costs, and planning, legal and consultant fees, for the consolidation of services between facilities, including but not limited to mergers, shared governance agreements, shared services arrangements and other collaborative activities designed to promote efficiency, eliminate duplication of beds and services, and/or enhance access to care.
2. Construction, renovation, equipment and information technology costs to support the conversion of hospital inpatient space to outpatient and ambulatory services.
4. Construction, renovation, equipment and information technology costs to enable nursing homes with excess capacity to decertify unneeded beds and, where appropriate, convert vacant space for use as enhanced common living areas and services for the remaining residents, and to provide alternatives to RHCf care, such as Assisted Living Programs, and Adult Day Health Care programs and hospice care.
5. Construction, renovation, equipment, and information technology costs, and planning, legal and consultant fees, for the establishment, restructuring and/or expansion of CHHA, ALR, ALP, adult home and enriched housing services, consistent with applicable need methodologies.
6. Construction, renovation, equipment and information technology costs necessary for the conversion of challenged, but needed hospitals, to levels of care more consistent with community needs. This may include, but is not limited to, conversion to Critical Access Hospital (CAH) status.
7. Costs necessary to support functions and activities that will enable applicants to implement a closure or downsizing plan to either decommission or downsize hospital and nursing home buildings in order to take beds out of service in particular geographic areas. The objective of such projects should be to cover operational and closing costs that would otherwise impede efforts to downsize or close. For closures, grant support will be made available for periods of no longer than twelve months while a facility operation or service is phased-down and its billable services may no longer be sufficient to support the orderly separation of staff, safeguard the physical infrastructure, or comply with applicable state and federal statutes and regulations.

¹Grants for these purposes will be eligible for funding from Bond Proceeds only to the extent that the proposed project contains a capital component eligible to be financed with the proceeds of state supported debt (see RGA Section 1.6).

All applications must demonstrate that public need continues to be met after any downsizing, conversion, restructuring or closure.

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 Applicant

The Eligible Applicant is the entity that will enter into a Grant Disbursement Agreement (GDA) with DOH and DASNY. 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 any one of the following:

- a general hospital as defined in Public Health Law (PHL) Section 2801(10);
- a nursing home as defined in PHL Section 2801(2);
- an established Article 28 network as defined in 10 NYCRR Part 401;
- a certified home health agency as defined in PHL Section 3602(3);
- an assisted living program as defined in Section 461-I of the Social Services Law
- an assisted living residence as defined in PHL Section 46-B
- an adult home as defined in subdivision 25 of Section 2 of the Social Services Law;
- an enriched housing program as defined in subdivision 28 of Section 2 of the Social Services Law;
- an entity established under the Public Health Law as an active parent or co-operator of a hospital, nursing home, or CHHA.

Applications may be multi-provider proposals. One provider, however, must be designated as the lead grant applicant responsible for ensuring compliance with this RGA and, if selected, will enter into the resultant grant disbursement agreement (GDA).

Applicants that apply for funds to meet the needs of patients and clients formerly served by facilities closed or downsized in response to Commission mandates must demonstrate that their facilities have been directly affected by these closures and reductions; for example, in the form of increased visits to emergency rooms or

outpatient clinics, or by a rising inpatient census. Applicants must be able to show that the patients and clients accounting for these increases in service volume or occupancy rates are from areas formerly served by facilities closed or downsized by the Commission. Anecdotal information and generalized statements will not suffice to demonstrate this effect. Facilities unable to document a direct Commission-related impact on demand for their services will not be considered eligible for funding under this component of the RGA.

1.5 Project Timeframes

It is expected that the term of GDAs under the HEAL NY Phase 2: Capital Restructuring Initiatives #2 program will begin on or about July 15, 2008 and run for a period of up to 24 months, with a one-year, no-cost extension available only on pre-approval of the DOH, DASNY 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 costs must be incurred within the period of the Grant Disbursement Agreement.

1.6 Bond Proceeds

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.

As a general rule, expenditures that are eligible to be capitalized for accounting or tax purposes will be eligible to be reimbursed from the proceeds of HEAL Bonds. On the other hand, amounts incurred for operational purposes, such as ordinary or recurring operating expenses or personal services, cannot be paid from bond proceeds. Thus, the proceeds of HEAL Bonds will not be available to directly assist grantees in paying the operational costs likely to be incurred in connection with the downsizing or closure of an institution. Nor will such Bond proceeds be directly available for the purpose of helping grantees manage their long and short term capital debt obligations (see RGA Section 1.8).

1.7 Funding Allocation

DOH and DASNY are allocating up to \$150 million in grant funds for eligible projects under this RGA. Available grant funds have been allocated to the six regions as shown below. DOH and DASNY reserve the right to reallocate funds between regions to meet the objectives of the HEAL NY program. Applicants must clearly indicate the geographic region in which their project is located. Grant requests within this category may not exceed \$20 million.

- New York City, consisting of the five boroughs, Bronx, New York (Manhattan), Queens, Kings, Richmond (Staten Island): \$63,300,000
- Long Island, consisting of Nassau and Suffolk counties: \$21,750,000
- Hudson Valley, consisting of Delaware, Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester counties: \$17,550,000
- Northern, consisting of Albany, Clinton, Columbia, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington counties: \$11,100,000
- Central, consisting of Broome, Cayuga, Chemung, Chenango, Cortland, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Oneida, Onondaga, Ontario, Oswego, Schuyler, Seneca, St. Lawrence, Steuben, Tioga, Tompkins, Wayne, Yates counties: \$23,700,000

- Western, consisting of Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming counties: \$12,600,000

Awards will be based on a score (see Section 3.4 of this RGA), which will be based on factors such as the scope of work presented, the need for the project within the community, the degree to which the project meets the goals and priorities of the HEAL NY program, the appropriateness of expenses to the project, and, if applicable, whether the project is an appropriate use of bond proceeds. Award amounts may be less than the amount requested if specific proposed costs are deemed inappropriate.

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 on a tax-exempt basis must be consistent with applicable Federal tax law (see RGA Section 1.6). Funds available from state capital appropriations have less stringent requirements than bond allocations. Those capital appropriations may be used for most closure related expenses as well as some types of debt restructuring costs. 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 RGA Section 1.6 above, examples of the types of expenditures for which grant funds may be used include:

Restructuring, Reconfiguration, Debt Restructuring

- a. Capital costs to reconfigure infrastructure of hospitals and nursing homes;
- b. Equipment expense and capital acquisition costs associated with downsizing.

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;
- j. Medical Malpractice Insurance during closure.

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.

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 must be presented in two separate and distinct parts, following the formats shown in RGA Attachments 4 and 5.

Part 1: Technical Application

Part 2: Financial Application

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

IMPORTANT

- **No project cost information should be included in the Technical Application. Failure to adhere to this requirement may result in disqualification of your application**
- **Each cover page must be signed by an individual authorized to bind the Eligible Applicant to any GDA resulting from the application.**

SECTION 3. ADMINISTRATIVE PROCESS AND REQUIREMENTS

3.1 Question and Answer Phase

The Department will respond to questions until the due date shown on the cover of this document. All questions of a substantive nature must be submitted in writing. Questions of a technical nature may be submitted in writing (see below) or via telephone by calling (518) 408-0845. Questions are of a technical nature if they bear on how to prepare the application (e.g., formatting) rather than the substance of the application. All substantive questions, and any technical questions to be submitted in writing, are to be sent to:

Robert G. Schmidt
Director, HEAL NY Implementation Team
New York State Department of Health
Division of Health Facility Planning
433 River Street, 6th floor
Troy, NY 12180
e-mail: healnyphase7@health.state.ny.us

To the extent 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.

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. Questions will not be answered after that date.

Within two weeks of the Questions Due date (as indicated on the cover page of this RGA), written answers to all questions raised will be posted on the DOH Web site at <http://www.health.state.ny.us/funding/>. DOH and DASNY may elect to respond to questions in one or more sets; therefore, applicants are encouraged to monitor the Web site regularly. Applicants wishing to receive an e-mail notification of the posting should submit a request, including the applicant's e-mail address, to healnyphase7@health.state.ny.us.

3.2 Applicant Conferences

Applicant conferences will be held at the locations and times shown on the cover page of this RGA. DOH requests that potential applicants register for these conferences by sending an e-mail to healnyphase7@health.state.ny.us to ensure that adequate accommodations are made for the number of prospective attendees. Please provide a list of individuals expected to attend. A maximum of two representatives from each prospective applicant will be permitted to attend an applicant conference. Failure to attend a conference will not preclude the submission of an application.

Transcripts of the applicant conferences will be available on the Department of Health Web site subsequent to the meetings. These transcripts may be accompanied by statements from DOH and DASNY to clarify or correct statements made at the conferences.

3.3 How to File an Application

Applications must be **received** at the following address **by 3:00 PM** on the date shown on the cover page of this RGA.

Robert G. Schmidt
Director, HEAL NY Implementation Team
New York State Department of Health
Division of Health Facility Planning
433 River Street, 6th floor
Troy, NY 12180

Late applications will not be accepted.² Applications ***WILL NOT*** be accepted via FAX or e-mail.

Eligible applicants must submit two complete original and signed Technical Applications, along with four hard copies of the application and six copies on separate compact discs (CD's). Applicants must also submit two complete original and signed Financial Applications, along with four hard copies of the application and six copies on separate compact discs (CD's). These electronically readable CD's must include a complete copy of the application, readable in Adobe's .pdf format. Application packages should be clearly

² It is the applicant's responsibility to see that applications are delivered to the address above prior to the date and time specified. Late applications due to a documentable delay by the carrier may be considered at the Department of Health's discretion.

labeled with the name and number of the RGA as listed on the cover of this RGA document.

Applications should be concise, single-spaced, and use at least a 12-point type.

3.4 Selection Review Process

In assessing whether the Project described in the grant application will achieve the objectives of the HEAL NY Capital Restructuring Initiatives #2 program, DOH and DASNY will consider the following factors:

1. Demonstration of reduction in excess health system cost or usage;
2. Demonstration that public health care need continues to be met and is improved after implementation of the Project;
3. Demonstration of collaborative activity that promotes efficiency and improves access to care responsive to identified community needs.
4. Demonstration of the qualifications, competence and ability of the Eligible Applicant and others involved in the Project to achieve Project goals;
5. Ability of the Eligible Applicant to fund its share of the Project; and,
6. Responsiveness and completeness of the Grant Application.

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.

Stage 2: Each application will be reviewed to confirm the eligibility of the Eligible Applicant. The budget section of the application will be reviewed to confirm that at least 50% of Project funds come from sources other than the Grant. Applications not meeting these criteria will be eliminated from further review.

Stage 3: Applications passing the first two stages will be forwarded to technical and financial review teams for scoring.

The Technical score will comprise of 75% of the overall score and will be based on the following components:

1. The extent to which the Application meets all of the requirements outlined in Section 2 and Attachment 4 of 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 Financial score will comprise 25% of the overall score and will be based on the overall cost, reasonableness of the Project's budget, the effectiveness of the project in reducing health care costs, the extent to which the application meet all requirements outlined in Section 2 and Attachment 5 of this RGA, and other factors.

3.5 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 in amounts based on regional considerations to serve the best interests of the State.

10. Reject any application that is not in compliance with all state and federal requirements.

3.6 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.

3.7 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 ***July 15, 2008***.

3.8 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 monthly, 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 and paid for by the Grantee.

3.9 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;
7. Financial report of Project expenses and revenues.

Post implementation reports are required annually for three years.

3.10 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.

3.11 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 take any action as they deem appropriate, including terminating 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.

3.12 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
(See RGA Attachment 8)
2. APPENDIX A-1: Agency Specific Clauses
(See RGA Attachment 9)
3. APPENDIX B: Budget (based on Application)
4. APPENDIX C : Payment and Reporting Schedule
(See RGA Attachment 10)
5. APPENDIX D : Work plan (based on Application)
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 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. APPENDIX F : Project/Contract Contingencies
(See RGA Attachment 11)

SECTION 4. ATTACHMENTS

1. Public Health Law Section 2818
2. Public Authorities Law Section 1680-j
3. Applicant Checklist/Format
4. Technical Application Format
5. Financial Application Format
6. Eligible Applicant Certification
7. SEQR – Short Environmental Assessment Form
8. GDA Appendix A: Standard Clauses for all NYS Contracts
9. GDA Appendix A-1: Agency Specific Clauses
10. GDA Appendix C: Payment and Reporting Schedule
11. GDA Appendix F: Project/Contract Contingencies
12. Vendor Responsibility Questionnaire

Attachment 1

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.

APPLICATION CHECKLIST/FORMAT

1. **Technical Application**
 - _____ Technical Application Cover Page
 - _____ Eligible Applicant Certification
 - _____ SEQR - Short Environmental Assessment Form
 - _____ Table of Contents
 - _____ Executive Summary
 - _____ Eligible Applicant
 - _____ Project Description
 - _____ Project Monitoring Plan

2. **Financial Application**
 - _____ Financial Application Cover Page
 - _____ Table of Contents
 - _____ Executive Summary
 - _____ Project Budget
 - _____ Project Expenses and Justification
 - _____ Project Fund Sources
 - _____ Cost Effectiveness
 - _____ Project Financial Viability
 - _____ Eligible Applicant Financial Stability
 - _____ General Corporate Information

3. **Packaging the Application**
 - _____ Ensure no cost information is included in the Technical Application.
 - _____ The package contains:
 - _____ Two original, signed, Applications
 - _____ Four copies of the Application
 - _____ Six CD's of the Application
 - _____ Application is scheduled to be delivered by 3:00 PM on the date shown on the RGA cover page.
 - _____ Application package is labeled:
 - HEAL NY Phase 7: Capital Restructuring Initiatives #2
 - RGA #0712200252

**HEAL NY Phase 7: Capital Restructuring Initiatives #2
Format for Part One: the Technical Application**

***Part One: Technical Application
Cover Page***

Project Name _____

Eligible Applicant Name _____

Applicant's Category: (*Circle one category*)

Hospital Nursing Home CHHA ALP ALR Adult Home Enriched Housing

Applicant's Address _____

Select One Region

New York City
Long Island
Hudson Valley

Northern
Central
Western

IMPORTANT: The Technical Application, including this cover page, must NOT contain ANY information regarding the Project cost. Information relative to Project cost is to be included in only the Financial Application. Eligible Applicants failing to comply may be eliminated from further review.

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 signatory is different from contact person _____

Part One: Technical Application

Project Name _____

Eligible Applicant Name _____

INSERT
Eligible Applicant Certification
(See Attachment 6)

INSERT
SEQR –Short Environmental Assessment Form
(See Attachment 7)

Part One: Technical Application

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 Application

Project Name: _____

Eligible Applicant Name: _____

Executive Summary

This part of the Technical Application must briefly describe:

- The overall Project.
- How the Project meets HEAL NY Capital Restructuring Initiatives #2 objectives (see RGA Sections 1.2 and 1.3).
- How the Eligible Applicant meets the eligibility criteria (see RGA Section 1.4).

A. Eligible Applicant

In this section, provide basic organizational information on the Eligible Applicant. Complete the Eligible Applicant Certification (see RGA Attachment 6). This should include information such as the Eligible Applicant's exact corporate name, history, mission, board composition, ownership and affiliations, staffing, services provided, and any other relevant information. Also provide information that will allow DOH and DASNY to understand how the Eligible Applicant is prepared to proceed with the Project. Provide any experience the Eligible Applicant has with Projects of this type, how the Eligible Applicant fits within the public health community, and evidence that the Eligible Applicant will be able to implement the Project.

B. Project Description

1. Overview: Provide a general description of the Project, its goals and objectives. Describe how the goals and objectives of the Project are consistent with those outlined by the HEAL NY Program, as well as the goals and criteria set forth in this RGA.
2. Community Need: Describe how the Project will relate to identified health needs in the community. This must be based on documented information, such as health status indicators, demographics, insurance status of the population, and data on service volume, occupancy, and discharges by existing providers. Identify areas of overcapacity and/or under-capacity. Generalized statements and anecdotal information will not be viewed favorably.
3. Project Activities : Describe the project objectives to be attained and the activities to achieve each. Objectives may be process objectives or outcome objectives.

Process objectives involve an action or set of actions; for example, renovation of a building or development of a governance agreement. Outcome objectives address a measurable change or impact; for example an increase in number of patients served or a decrease in average length of inpatient stay. Objectives are attained through implementation of an accompanying set of activities (or subobjectives), usually occurring in sequence. Objectives should be verifiable through measurable indicators wherever possible.

4. Project Timeline: Provide a timeline for the Project up through the date of implementation, including identification of major milestones and the person or 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:

- Timeframes for any architectural and engineering design and construction necessary to accomplish each phase.
- Scheduled milestones for the preparation and processing of any application, as required by CON regulations (10 NYCRR Part 710), necessary to secure DOH approval for service revisions, relocations, or capital construction that rises to the level of CON review.

5. Continuation: Describe how the services and activities established or enhanced by the project will continue after its completion.

6. Project Team: Provide resumes and references for each key staff member of the Project team. 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 contractors that the Eligible Applicant will contract with to facilitate the implementation of 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.

**HEAL NY Phase 7: Capital Restructuring Initiatives #2
Format for Part Two: the Financial Application**

***Part Two: Financial Application
Cover Page***

Project Name _____

Eligible Applicant Name _____

Applicant's Category: *(Circle one category)*

Hospital Nursing Home CHHA ALP ALR Adult Home Enriched Housing

Applicant's Address _____

Select One Region

**New York City
Long Island
Hudson Valley**

**Northern
Central
Western**

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 signatory is different from contact person _____

Part Two: Financial Application

Project Name: _____

Eligible Applicant Name: _____

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

Table of Contents

Executive Summary

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

Part Two: Financial Application

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 Restructuring Initiatives #2 objectives (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

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. **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.

B. Project Fund Sources

Identify and describe all private or other sources of funding, if any, for the Project, including governmental agencies or other grant funds.

C. 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 all means by which projected savings can be verified after the project is complete.

D. 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.

E. 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

1. Provide a list of vendors or contractors who can be contacted regarding the applicant's business practices.
2. Provide a list of grants applied for in the last three years and whether the grants were awarded or declined.
3. Provide the name of any parent, sibling, or subsidiary corporation of the applicant.
4. 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.

Budget Forms Required

Two budget forms are included in this RGA:

- Project Expenses and Justification
- Project Fund Sources

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 7: Capital Restructuring Initiatives #2 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 applicant believes the expense is capitalizable.

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

HEAL NY Phase 7: Capital Restructuring Initiatives #2

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

Name_____

Phone_____

E-mail_____

**HEAL NY Phase 7: Capital Restructuring Initiatives #2
Project Fund Sources**

Project Name: _____

Eligible Applicant Name: _____

	Currently 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	\$	\$	\$

- Calculate the Other Funds as a Percent of Total Funds.

A / B = _____

- Any program income realized during the project must be applied to project costs.

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

Name _____
 Phone _____
 E-mail _____

Attachment 6

**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 will be consistent with the goals and recommendations 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, and with the goals and recommendations set forth in the Commission’s report of November, 2006.
- 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

Grant Disbursement Agreement

APPENDIX A: STANDARD CLAUSES FOR ALL NYS CONTRACTS

TABLE OF CONTENTS

1. **Executory Clause**
2. **Non-Assignment Clause**
3. **Comptroller's Approval**
4. **Workers' Compensation Benefits**
5. **Non-Discrimination Requirements**
6. **Wage and Hours Provisions**
7. **Non-Collusive Bidding Certification**
8. **International Boycott Prohibition**
9. **Set-Off Rights**
10. **Records**
11. **Identifying Information and Privacy Notification**
12. **Equal Employment Opportunities for Minorities and Women**
13. **Conflicting Terms**
14. **Governing Law**
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

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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>

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: AGENCY SPECIFIC CLAUSES

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 certified 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 Education 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 and 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 \$300,000 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 \$300,000, 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 whether 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 \$1,000 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 an 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 transactions, 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 Transactions," 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 a 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. 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.
12. 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
 - a. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
 - Certificate of Workers' Compensation Insurance, on the Workers' Compensation Board form C-105.2 or the State Insurance Fund Form U-26.3 (naming the Department of Health, Corning Tower, Room 1315, Albany, 12237-0016), or

- Affidavit Certifying That Compensation Has Been Secured, form SI-12 or form GSI 105.2, or
 - Statement That Applicant Does Not Require Workers' Compensation or Disability Benefits Coverage, form 105.21, completed for workers' compensation; and
- b. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
- Certificate of Disability Benefits Insurance, form DB-120.1, or
 - Notice of Qualification as Self Insurer Under Disability Benefits Law, form DB-155, or
 - Statement That Applicant Does Not Require Workers' Compensation or Disability Benefits Coverage, form 105.21, completed for disability benefits insurance.
13. 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.

Attachment 11

APPENDIX F: PROJECT/CONTRACT CONTINGENCIES

This GDA appendix will incorporate any contingencies specific to a project. Examples might include:

- Contingent upon DOH Certificate of Need approval
- Contingent upon maintenance of required insurance
- Contingent upon meeting relevant NYS Labor Law requirements
- SEQRA compliance and/or CEQR compliance if located in New York City
- PACB approval of Project Bonds
- Compliance with local land use or zoning laws, as may be applicable.

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 11).