

**New York State Department of Environmental Conservation**  
**Division of Mineral Resources**  
**Bureau of Oil and Gas Regulation, 3<sup>rd</sup> Floor**  
625 Broadway, Albany, New York 12233-6500  
**Phone:** (518) 402-8056 • **FAX:** (518) 402-8060  
**Website:** www.dec.state.ny.us



August 14, 2006

Dear Contractor:

Enclosed is the Invitation for Bid for the SUNY Fredonia Oil and Gas Lease. Please read this document carefully. When preparing and submitting your Bid, please pay attention to the following items:

- Bids must be received in the Bureau of Procurement and Expenditure Services, 625 Broadway, Albany, NY 12233-5027 (Attention: Debra Haswell), by 11:00 a.m. local prevailing time on September 26, 2006 at which time all bids will be publicly opened. All bids received after that time will be returned unopened. Fax, telephone, or other electronically transmitted Bids will not be accepted.
- All bids must be signed or they will be rejected.
- Submit one original and two copies of the bid.
- Each bid must be submitted on the official Contract Bid Form and the envelope must be endorsed on the outside with the name and address of the Bidder, Project Name and Contract Number from the cover of the IFB, Bid Open date and time, and be clearly marked as a Sealed Bid.
- Documents that must be submitted with the Bid are:
  - Completed Bid Form
  - Non-Collusive Certificate, MacBride Fair Employment, State Ethics Certification (signed)
  - Bid deposit in the form of a check or money order drawn to the New York State Department of Environmental Conservation, in an amount equal to ten (10) percent of the total bonus bid. Certified checks are not required. Said check shall be returned to all unsuccessful bidders. The successful bidder shall remit the remaining ninety (90) percent of the bonus bid on receipt of a fully executed copy of the Lease.
- All questions concerning this Invitation for Bids are to be in writing and directed to:

Mr. Charles Gilchrist  
NYSDEC  
Division of Mineral Resources  
625 Broadway, 3<sup>rd</sup> Floor  
Albany, NY 12233-6500  
Fax: (518) 402-8060

No questions will be accepted after C.O.B. (4:45 p.m.) September 7, 2006.

Thank you for your interest in the State Land Oil & Gas Leasing Program.

Sincerely,

Charles Gilchrist  
Chief, Compliance/Enforcement Section

**New York State Department of Environmental Conservation**  
Division of Mineral Resources  
Bureau of Oil and Gas Regulation  
625 Broadway  
Albany, NY 12233-6500  
(518) 402-8056

**INVITATION FOR BIDS (IFB)**

**Name of Project:** *Oil and Gas Lease*

State University of New York Fredonia, 253 acres

**Contract Number:** X005378

**Bid Due Date:** September 26, 2006, 11a.m. local time

**Release Date:** August 14, 2006

## **ARTICLE 1: BACKGROUND**

The New York State Department of Environmental Conservation (Department), acting for the State University of New York Fredonia (SUNY Fredonia), is authorized by Title 11, Section 23-1101 of the Environmental Conservation Law to make leases on behalf of the State for exploration, production, and development of oil and gas on State lands other than State Parks.

## **ARTICLE 2: SCOPE OF WORK**

The State of New York (State) is considered to be the owner of 100 percent of the oil and gas rights to SUNY Fredonia, Towns of Dunkirk and Pomfret, Chautauqua County, 253 acres, hereinafter referred to as the "Property", as shown on a map of said area, (attached as Exhibit A) but makes no warranty as to its ownership thereof. The Lessee assumes all risk of proving title. Should the title search reveal that the State does not own all or part of the Mineral Rights on a portion of the subject tract, proportional restitution of the initial bonus payment shall be made.

The Lessee will be granted the exclusive right to prospect for, by geophysical and other exploratory tests, extract, pipe and remove oil and natural gas, and to occupy and use only so much of the surface of the Property, as approved by the Department, as reasonably necessary to carry on the work of prospecting for, extracting, piping and removing such oil and natural gas and also the right to use, free of cost, oil and natural gas as fuel in so far as may be necessary to the development and operation of the Property. It is understood that SUNY Fredonia grants only those rights owned by it and, by execution of this agreement, makes no warranty or guarantee to Lessee with respect to ownership of any rights under the Property described in Exhibit A. For the purpose of determining the amount of any rentals and shut-in royalties hereunder, the number of gross acres above specified shall be deemed correct, whether actually more or less.

SUNY Fredonia also will grant to Lessee the right to take, with the approval of SUNY Fredonia, a sufficient supply of water to carry on said operations on the Property by means of pipelines or otherwise. Prior to the initiation of any activity in furtherance of such taking, SUNY Fredonia or its representative shall approve the amount of water necessary for such purpose, the manner and duration of its taking, and the plans and specifications for any works required in connection therewith.

Lessee is advised that, from time to time, a subject tract may be landlocked, to wit, surrounded by lands in the possession of others and that neither SUNY Fredonia nor the Department can provide or assure access to the Property for the Lessee across these lands. The Lessee shall be solely responsible for obtaining the right of access to the proposed lease area across these lands.

No underground storage rights will be granted to the Lessee under any terms of this Lease.

Following the award of this Lease, the Lessee, its successors, heirs or assigns, prior to entry on the Property for the purpose of drilling for oil or natural gas, must:

- (1) File with the Department an Organizational Report pursuant to the requirements of 6 NYCRR § 551.1 of the regulations;
- (2) Apply for and secure for each well site proposed for the Property, prior to commencement of drilling operations, a drilling permit for each site, pursuant to 6 NYCRR § 552.1 of the regulations; and
- (3) For each well site proposed, provide in a form and amount acceptable to the Department, financial security to guarantee the performance of well plugging and abandonment obligations as required pursuant to 6 NYCRR § 551 and 555 of the regulations.

All items detailed in Articles 5, 7, and 10 in the Draft Lease Contract, attached hereto as **Attachment 1**, are to be considered part of the scope of work of this IFB and must be adhered to by the Lessee.

### **ARTICLE 3: FIRST REFUSAL PURCHASE OPTION**

SUNY Fredonia shall have a first refusal purchase option on all marketable gas produced from the Property. The price per dekatherm of gas ( $P_{dkth}$ ) purchased under this option shall be the average monthly price of natural gas which shall be the Henry Hub Swap Futures Final Price as published by NYMEX at the end of the month during which deliveries are made to SUNY Fredonia. In the event that NYMEX published Henry Hub Swap Futures Final Price shall at any time during the term of this lease be discontinued, a suitable alternative reference price shall be agreed upon by both parties.

This price will not reflect applicable New York State taxes imposed on or associated with the sale, use, delivery or distribution of natural gas to be delivered under the lease with SUNY Fredonia, which is exempt from paying any state taxes upon any of the property acquired by it or upon its activities in operation and maintenance of its facilities. The Lessee shall be responsible for payment of all applicable taxes which apply prior to delivery of gas to SUNY Fredonia or from the sale of gas to others.

In securing its natural gas energy needs, SUNY Fredonia shall give first consideration to purchase of production from Lessee's wells on the Property, utilizing all of said production or sufficient quantity to meet SUNY Fredonia's ongoing energy requirements, whichever occurs first.

If the unit price of gas produced from the Property as determined hereinabove, exceeds the price of gas available to SUNY from other sources, a lower unit price may be established with the consent, in writing, of both parties. If no such agreement is reached, SUNY may elect to purchase gas from the source providing the lowest unit price.

Gas delivered to SUNY Fredonia shall be clean and commercially free from dust, objectionable odors or other solid, gaseous or liquid matter which may interfere with its

merchantability or cause injury to or interference with proper operation of SUNY Fredonia's pipelines, regulators, meters or other equipment through which the gas flows or is consumed and shall conform to quality specifications required by the interstate transporters in the area.

The Lessee represents and warrants that the gas purchased by SUNY Fredonia hereunder shall not contain more than:

- (A) seven (7) pounds of water (H<sub>2</sub>O) in vapor state per million cubic feet of gas;
- (B) three tenths (0.3) of a grain of hydrogen sulfide (H<sub>2</sub>S) per one hundred (100) cubic feet of gas;
- (C) twenty (20) grains of total sulphur (S) per one hundred (100) cubic feet of gas;
- (D) four percent (4%) by volume of a combined total of carbon dioxide (CO<sub>2</sub>) and nitrogen (N<sub>2</sub>) components, provided, however, that the total carbon dioxide (CO<sub>2</sub>) content shall not exceed two percent (2%) by volume; and
- (E) two-tenths of one percent (0.2%) by volume of oxygen. Lessee further agrees to make every effort to keep the gas completely free of oxygen.

Lessee further agrees to represent and warrant that the minimum heat content of gas purchased by SUNY Fredonia shall be one thousand British Thermal Units (1,000 BTU) per cubic foot (saturated).

SUNY Fredonia, at its option, may refuse to accept delivery of any gas not meeting the quality specifications set forth above.

#### **ARTICLE 4: MANDATORY REQUIREMENTS**

Failure of the prospective bidder to meet all mandatory requirements may result in the bid being judged non-responsive.

- a)** Bids must be accompanied by a deposit of 10% of the bid amount in the form of a check or money order drawn to the New York State Department of Environmental Conservation. Said check shall be returned to all unsuccessful bidders.
- b)** All bidders must complete, sign, and return the bid form, which is attached and incorporated herein as Form #1. Failure to use the attached form may result in a bid being judged non-responsive. Bidders shall bid on the basis of a bonus per acre, which amount shall pay the first year's rental; however, no bonus which is less than \$15.00 per acre will be accepted.
- c)** All bidders must submit the following form, which is attached to this IFB, for a bid to

be judged responsive:

- 1) MacBride Fair Employment Principles/Non-Collusion Requirements/State Ethics Law Provision form.

#### **ARTICLE 5: METHOD/RESPONSE TO IFB INQUIRIES**

All requests for information pertinent to the preparation and submission of the bid and this procurement process are to be made in writing to Charles Gilchrist, Department of Environmental Conservation, Chief, Compliance Enforcement Section, 625 Broadway-3rd Floor, Albany, NY 12233-6500, no later than September 7, 2006. No other Department employee is to be contacted regarding this procurement process. Written responses will be provided by mail or facsimile by c.o.b. September 14, 2006, to all potential bidders who requested an IFB from the Department.

The Department is responsible for providing addenda or responding to questions only from those persons or firms having obtained the IFB documents from the Department. Persons or firms obtaining the IFB from sources other than the Department bear the sole responsibility for obtaining any addenda issued or responses to questions about the project. If it is necessary to revise this IFB before the due date for bids, revisions will be provided only to firms who have requested the IFB documents from the Department.

#### **ARTICLE 6: BID SUBMITTALS**

Bids are to be submitted to the Department in Albany, New York. Bids must be clearly labeled on the outside of the envelope or package with the following statement:

**Bid: Oil and Gas Lease, State University of New York Fredonia, 253 acres**  
**Contract No: X005378**  
**Bid Opening Date and Time: September 26, 2006, 11 a.m.**  
**BID - DO NOT OPEN**

One original and two copies of the bid must be delivered no later than **11 a.m.**, local prevailing time, on **September 26, 2006** to the following:

Bureau of Procurement and Expenditures  
New York State Department of Environmental Conservation  
625 Broadway, 10<sup>th</sup> Floor  
Albany, New York 12233-5027  
Attention: Debra Haswell

Please note that the above deadline is for receipt of the bid at the Department's Bureau of Procurement and Expenditures in Albany, New York, not for mailing or entrusting to a delivery service. Late bids will be returned unopened. Faxed or electronically transmitted bids will not be accepted.

Bid submissions should include:

- a. Completed Bid Form (Form # 1);
- b. MacBride Fair Employment Principles/Non-Collusion Requirements/State Ethics Law Provision form;
- c. Bid deposit in the form of a check or money order drawn to the New York State Department of Environmental Conservation, in an amount equal to ten (10) percent of the total bonus bid. Any earnest money on deposit with the Department shall be applied to this guarantee. Said check shall be returned to all unsuccessful bidders;
- d. All items as required in Mandatory Requirements as stated in Article 4.

#### **ARTICLE 7: SUBSEQUENT SUBMITTALS**

Upon notice of potential award, the responsive bidder may be required to submit, within 10 business days of receipt of the notice, any or all of the following items:

- a. Vendor Responsibility Questionnaire
- b. New York State Tax Law § 5-A Contractor Certification Form (ST-220)
- c. Executed Lease

The requested items are to be returned, with original signatures, to the individual listed in Article 5: Method/Response to IFB Inquiries, at the address provided.

#### **ARTICLE 8: TERM**

The Primary Term of this Lease is for a period of two (2) years, with the option to amend and/or extend for a maximum of one (1) additional one-year period upon the mutual written consent of both parties and the approval of the Office of the State Comptroller. This Lease shall provide for a Secondary Term as defined in Article 3 of the Draft Lease Contract (See **Attachment 1**). The expected start date of this Lease is November 8, 2006.

#### **ARTICLE 9: BID CONDITIONS**

**Responsive:** Bidders are advised that failure to use the attached forms, and to adhere to the bid requirements, instructions, conditions and timetable may result in a bid being judged non-responsive.

**Offer firm for 60 days:** The offer is firm and not revocable for a period of sixty days from the bid opening date. Subsequent to the expiration of the sixtieth day, the offer may be withdrawn in writing.

**Non-Committal Clause:** This Invitation for Bid does not commit the Department to award a contract, pay any costs incurred in the preparation of a bid in response to this IFB, or to procure or contract for services or supplies. The Department reserves the right to accept or reject any or all bids received as a result of this request, to negotiate with all qualified sources, or to cancel, in part, or in its entirety, this IFB if it is in the best interest

of the Department to do so.

**Standard Contract Clauses:** The successful bidder will be required to comply with all of the mandatory New York State and Department contracting provisions contained in the following two attached documents:

Appendix A - Standard Clauses for All New York State Contracts;  
Appendix B - Standard Clauses for All NYSDEC Contracts.

**MacBride Fair Employment Principles/Non Collusion Requirements/State Ethics Law Provision Form:** All offerors are required to complete the combined “Non-Collusion/Nondiscrimination in Employment in Northern Ireland: MacBride Fair Employment Principles/State Ethics Law Provision” form attached to this IFB and to submit it as part of your bid.

**Draft Lease Contract:** The successful bidder will be required to sign a lease containing the same or similar provisions that are contained in the Draft Lease Contract. (see **Attachment 1**)

## **ARTICLE 10: STATE’S RESERVED RIGHTS**

The State reserves the right to:

- a) Define requirements to meet agency needs and to modify, correct, and clarify requirements at any time during the process provided the changes are justified and maintain fairness in contracting with the business community;
- b) Disqualify bids that fail to meet mandatory requirements;
- c) Establish terms and conditions which must be met by all offerors and/or, where permitted by the solicitation, eliminate mandatory requirements that are not met by any offerors;
- d) Award Leases for any and all parts of the IFB in accordance with the Method of Award;
- e) Require clarification from bidders for the purpose of assuring a full and complete understanding of the solicitation requirements;
- f) Consider every offer as firm and not revocable for a period of up to sixty days from the bid opening or such other period of time specified in the solicitation. Subsequent to such sixty day or other specified period, an offer may be withdrawn in writing;
- g) Have the option to require a bond or other guarantee of performance, and to approve the amount, form and sufficiency thereof.

## **ARTICLE 11: FINANCIAL TERMS**

No payment other than the bid deposit, which is equal to ten (10) percent of the first year's bonus payment, will be accepted at this time. The successful bidder shall remit the remaining ninety (90) percent of the first year's rental payment upon receipt of an approved copy of the Lease.

The rental rate during the second year of the Primary Term of the Lease, in the absence of commercial production, shall be fifteen dollars (\$15.00) per acre of the Property. This same rental rate shall apply to the third year of the Primary Term of the Lease, if the Lessee exercises the option to extend the Primary Term for one additional one-year period, as detailed in Article 8.

The Lease shall enter the Secondary Term if/when production is established. Production royalties will be a sum equal to the value of one-eighth (1/8) of all hydrocarbons produced from the Lease without deduction for exploration, production, operation or other costs of Lessee, as defined in Article 5 of the Draft Lease Contract (See **Attachment 1**).

Financial Security will be required for surface entry activities which require a permit from the Department, pursuant to 6 NYCRR § 551 and 555 of the regulations. The amount will be based on the projected cost of restoration or repair of State property.

All monetary references are in U.S. dollars.

## **ARTICLE 12: CONTRACT TERMS**

### **Insurance Considerations:**

The Lessee agrees to procure and maintain at its own expense and without expense to the Department for the entire term of this Lease and any extensions thereof, insurance of the kinds and amounts hereinafter provided by insurance companies licensed to do business in the State of New York, covering all operations under this Lease. Upon execution of this Lease, the Lessee shall furnish to the Department a certificate or certificates, in form satisfactory to the Department, showing that it has complied with this Article, which certificate or certificates shall provide that the policies shall not be changed or canceled until thirty (30) days written notice has been given to the Department. The certificate should list the Department and the State of New York as additional insured. The kinds and amounts of insurance required are as follows:

- a) Policy covering the obligations of the Lessee in accordance with the provisions of the Worker's Compensation Law, Employers Liability, and Disability Benefits. This Lease shall be void and of no effect unless the Lessee procures the Worker's Compensation policy and maintains it until acceptance of the work.

- b) Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence. Such insurance shall cover liability arising from premises operations, independent Contractors products-completed operations, broad form property damage, personal and advertising injury, cross liability assumed in a Contract (including tort liability of another assumed in a Contract).
- c) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
- d) The Lessee shall require that any subcontractors hired carry insurance with the same limits and provisions as provided herein.
- e) The Lessee shall require that any assignee comply with these provisions.

#### **Tax Law § 5-A**

Tax Law § 5-a, is effective with all solicitations to purchase issued by covered agencies on or after January 1, 2005. It applies to contracts where (1) the total amount of such persons' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates, subcontractors, or affiliates of subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and (2) the contracts or agreements with state agencies or public authorities for the sale of commodities or services have a value in excess of \$15,000. This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, its subcontractors and affiliates of the subcontractors are required to register to collect state sales and compensating use tax. Where required to register, the contractor must also certify that it is, in fact, registered with the New York State Department of Taxation and Finance (DTF). The law prohibits the Comptroller, or other approving agency, from approving a contract awarded to a vendor meeting the registration requirements but who is not so registered in accordance with the law.

Upon notice of potential award, the responsive bidder may be required to submit, within 10 business days of receipt of the notice, the New York State Tax Law § 5-A Contractor Certification Forms (ST-220). Failure to respond may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms to ensure compliance with the law.

Vendors may call the DTF at 1-800- 972-1233 for any and all questions relating to Tax Law § 5-a and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: [http://www.nystax.gov/sbc/nys\\_contractors.htm](http://www.nystax.gov/sbc/nys_contractors.htm) .

## **Provision for Termination and Default**

- a) This Lease may be canceled or terminated by the Department, and all moneys due or to become due hereunder may be required to be paid immediately if the Lessee shall employ thereon either directly or indirectly, in any capacity, any person who at the time of such employment is also an employee of the State. No notice is required for this clause to take effect.
- b) If the Department determines that the Lessee has breached a material term of this Lease, it shall issue a notice to cure, providing the Lessee with 30 days to cure the default. If the Lessee fails to cure the defect within this time period, or fails to make a good faith effort to do so, as determined by the Department, the Department may terminate this Lease for cause.
- c) The Department shall have the right to postpone, suspend, abandon, or terminate this Lease, and such actions shall in no event be deemed a breach of Contract. In any of these events, the Department shall make settlement with the Lessee upon an equitable basis as determined by the Department, which shall fix the value of the work which was performed by the Lessee prior to the postponement, suspension, abandonment, or termination of the Lease.
- d) The Department reserves the right to terminate this Lease in the event it is found that the certification filed by the Lessee in accordance with § 5-a of the Tax Law is not timely filed during the term of the Lease or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Lessee.

**Freedom of Information Law Requirements:** The Lessee must provide to the Department all information, records, and other written material it produces, possesses, or relies upon if such material is the object of a legitimate request to the Department pursuant to the Freedom of Information Law.

**Indemnification Clause:** The Lessee shall be responsible for all damage to life and property due to activities of the Lessee, its assignees, agents, or employees, in connection with its services under this Lease. This obligation is in no way limited by the enumeration of insurance coverages hereunder. Further, it is expressly understood that the Lessee shall indemnify and save harmless the Department, its officers, employees, agents, and assigns in accordance with the provisions of Appendix B, Clause II.

Nothing in this Article or in this Lease shall create or give to third parties any claim or right of action against the Lessee or the State of New York such as may legally exist irrespective of this Article or this Lease.

### **Article 13: Method of Award**

The Department will award this Lease to the highest responsive, responsible bidder whose bid meets all of the terms and conditions of this IFB. In cases where two or more responsible bidders submit identical high bids, the first bid received in the Bureau of Expenditures in Albany, NY will be selected. The Department may also reject all bids, waive any technicality or informality in bidding or disallow any bid if the bidder, upon request, fails to furnish satisfactory evidence of responsibility and thereafter readvertise for new bids at its discretion. The basis for determining the award shall be documented in the Procurement Record. The response to this IFB shall be firm and not revocable for a period of sixty (60) days.

# FORM # 1

Contract # X005378

## BID FORM

Bids on State University of New York Fredonia , Towns of Dunkirk and Pomfret, Chautauqua County, New York which totals approximately 253 acres shall be entered below:

BONUS PER ACRE \_\_\_\_\_

TOTAL BONUS \_\_\_\_\_

By submission of this bid, the Bidder stipulates and agrees that he/she has carefully examined the Oil and Gas Lease, area map and applicable Rules and Regulations and that the bid is made in reliance upon said documents.

In witness whereof the bidder has executed this bid, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Bidder Sign Here: \_\_\_\_\_

Firm Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

Phone # \_\_\_\_\_

Fax # \_\_\_\_\_

Contract No.:  X005378

**BIDDER'S/PROPOSER'S CERTIFICATION**

NON-COLLUSIVE BIDDING  
AND  
NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND  
MACBRIDE FAIR EMPLOYMENT PRINCIPLES  
AND  
STATE ETHICS LAW PROVISION

**BY SUBMISSION OF THIS BID AND BY SIGNING HEREUNDER THE BIDDER/PROPOSER, AND EACH PERSON SIGNING ON BEHALF OF SUCH PARTY CERTIFIES, AND IN THE CASE OF A JOINT BID/PROPOSAL, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:**

**A. NON-COLLUSION State Finance Law §139-d**

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

**B. MACBRIDE FAIR EMPLOYMENT PRINCIPLES State Finance Law §165(5)**

1. it or any individual or legal entity in which the bidder/proposer holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder/proposer, either: (answer yes or no to one or both of the following, as applicable).

2. has business operations in Northern Ireland;

Yes \_\_\_\_\_ or No \_\_\_\_\_ (check answer) **IF YES, COMPLETE #3**

3. shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes \_\_\_\_\_ or No \_\_\_\_\_ (check answer)

**C. STATE ETHICS LAW PROVISION**

By submittal of this bid/proposal, the undersigned hereby certifies, for and on behalf of the bidder/proposer, that he is familiar with the following provisions of the State Ethics Law provisions applicable to post employment restrictions affecting former state employees: POL §73(8)(a)(i) the two year bar, and §73(8)(a)(ii), the life-time bar, and that submittal of this bid/proposal is not in violation of either provision, and that no violation will occur by entering into a contract or in performance of the contractual services, and further that the bidder/proposer recognizes that the Department may rely upon this certification

Except as follows: (attach information if needed)

(Proposer is to make full disclosure of any circumstances which could affect its ability to perform in complete compliance with the cited laws. Any questions as to the applicability of these provisions should be addressed to the New York State Ethics Commission, 39 Columbia Street, Albany, N.Y. 12207: telephone #1-800-87-ETHICS.)

**NOTE: All references to "bid" "bidder" shall be deemed to include "proposer" "proposal".**

Date: \_\_\_\_\_ Print Name and Title \_\_\_\_\_

Signature \_\_\_\_\_

*Attachment 1 - Draft Lease Contract*

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
Revenue Competitive Contract - Oil and Gas Lease  
CONTRACT X005378**

This Lease entered into between the NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (hereinafter referred to as the Department), acting on behalf of the State University of New York Fredonia (SUNY Fredonia), with offices at 625 Broadway-3rd Floor, Albany, New York 12233, and (Name of Contractor) (hereinafter referred to as the Lessee), with offices at (Address of Contractor)

**WITNESSTH:**

**WHEREAS** the Department has jurisdiction over and is responsible for the protection of the environmental resources of the State; and

**WHEREAS** the need for this Lease has been identified and falls under the jurisdiction of the Department;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

**ARTICLE 1:** The scope of this Lease is as defined in ARTICLE 2: SCOPE OF WORK of the Invitation for Bid (IFB).

**ARTICLE 2:** The total Lease amount for the first year of the Primary Term is \$ \_\_\_\_\_ as stated in Schedule 2, the Bid Form, submitted by the Lessee. The schedule for further payments is defined in Schedule 1, the IFB and Article 5 of this Lease. The Lessee shall make checks payable to the New York State Department of Environmental Conservation and forward the checks to the Department's contact person named in ARTICLE 6 of this Lease.

The Department, for and in consideration of the bonus payment of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) which represents \_\_\_\_\_ dollars (\$ \_\_\_\_\_) per acre, the sums, royalties, covenants, stipulations and conditions hereinafter contained and hereby agreed to be paid, observed and performed by the Lessee, does hereby demise, grant, lease and let unto the Lessee all the oil deposits and natural gas, in or under all that tract or parcel of the following described land situate in Chautauqua County, Towns of Dunkirk and Pomfret, to wit:

State University of New York Fredonia

containing two hundred and fifty-three (253) acres more or less, hereinafter referred to as the "Property".

***Attachment 1 - Draft Lease Contract***

All sums due the Department under this Lease shall be a first lien on the implements, tools, and movable machinery or personal chattels used in operating the Property, and also upon all the unsold Oil and/or Gas obtained from the Property as security for the payment of said sums.

**ARTICLE 3:** The term of this Lease shall be for a period of two (2) years, from month, date, year to month, date, year, hereinafter referred to as the Primary Term, and subject to the other provisions herein contained, shall be effective upon approval by the Office of the State Comptroller, if the Lease amount exceeds \$10,000. The Primary Term of the Lease may be amended and/or extended for a maximum of one additional one-year period, upon the mutual written consent of both parties and upon approval by the Office of the State Comptroller, if the Lease amount exceeds \$10,000.

The Lease shall enter an additional term upon production of oil and/or natural gas from the Property, hereinafter referred to as the Secondary Term. The Secondary Term of the Lease shall continue thereafter for as long as oil and/or natural gas is or can be produced from the Property in commercially paying quantities.

**ARTICLE 4:** This Lease consists of the following documents in the following order of precedence:

1. Appendix A
2. Appendix B
3. The Lease (including schedules, attachments, and performance bond, if applicable)
4. The Bid
5. The Invitation for Bid

**ARTICLE 5:**

**A.** The Lessee covenants and agrees that:

During the Primary Term of the Lease:

1. Lessee shall pay to the Department an Annual Delay Rental in accordance with the provisions detailed in Article 5B of the Lease. The bonus payment is the first year's Annual Delay Rental payment.

During the Secondary Term of the Lease:

1. Lessee shall pay to the Department, as royalty, a sum equal to the value, at the field price per barrel, of one-eighth (1/8) part of all oil, distillate, condensate, natural gasoline or other liquid hydrocarbons, hereinafter referred to as "Oil", measured at the wellhead, produced from the Property and delivered into the pipeline or storage tanks to which the well is connected, without deduction for

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exploration, production, operation or other costs of Lessee, the field price being that which prevails in that area on the day the Oil is delivered into the pipeline or storage tanks. Payments or royalty for oil marketed during any calendar month are to be made on or about the 30th day of the following month.

2. Lessee shall pay to the Department, as royalty, a sum equal to one-eighth (1/8) of the Lease price of all natural gas, casinghead gas or other gaseous substance, hereinafter referred to as "Gas", produced from the Property, measured at the wellhead on the date delivered to the purchaser of the Gas or sold or used off the Property or used in the manufacturing of gasoline or other products therefrom, without deduction for exploration, production, operation or other costs of Lessee. Payments or royalty for gas marketed during any calendar month are to be made on or about the 30th day of the following month.

3. Where the royalties payable under subparagraphs (a) and (b) above do not in any year equal or exceed the sum of five dollars (\$5.00) per acre of the Property per year, Lessee shall pay to the Department with respect to such year an amount equal to such sum.

These payments shall be remitted not less frequently than once per year nor more frequently than once per month and shall be accompanied by a sworn statement of the Lessee, its manager or other authorized agent in such form as may be prescribed by the Department which shall provide an itemized accounting of Oil and/or Gas produced from each well, the gross amounts of Oil and/or Gas produced since the last report, the market value of Oil on the applicable delivery dates and the Lease price of Gas during the applicable Lease periods. The schedule for these payments shall be established at the applicable time and shall be subject to annual revision. Copies of current and applicable gas sales contracts shall be provided to Department for its files as they are entered into.

For each producing well completed on the Property, Lessee shall install and properly maintain, at its expense, adequate and correct meters for the purpose of measuring, recording and reporting all hydrocarbons produced from the Property.

- B.** If operations for drilling are not commenced on the Property on or before one year after the effective date of this lease, this Lease shall then terminate as to both parties, unless on or before that date Lessee shall pay to Department the sum of fifteen dollars (\$15.00) per acre of the Property for the second year and for each remaining year of the Primary Term, hereinafter referred to as the "Annual Delay Rental", which shall permit the operator to defer commencement of drilling operations for successive periods of twelve (12) months each during the life of the Primary Term. The payment of Annual Delay Rental shall be mailed or delivered to Department on or before one year after the effective date of this lease or any anniversary thereof, hereinafter referred to as the "Annual Delay Rental payment date." Drilling operations herein shall be deemed to be commenced when a new well is "spudded in" or an existing well is re-entered for workover, deepening or plugging back in a continuous effort to reestablish production or obtain new production of oil or gas. Lessee may, at any time, upon 30 days written notice to Department and

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subject to Department's approval, execute and deliver to Department a release or releases covering any portion or portions of the Property and thereby surrender this Lease as to such portion or portions and be relieved of all obligations as to the acreage surrendered, and thereafter, if such surrender be within the Primary Term, the Annual Delay Rentals payable hereunder shall be reduced in the proportion that the acreage covered hereby is reduced by said release or releases.

- C.** If, after operations have commenced but prior to discovery of Oil or Gas on the Property, Lessee drills a dry hole thereon or if, after discovery of Oil or Gas, the production thereof ceases for any reason, other than from one or more of the causes set forth in Appendix B XVI, this Lease shall terminate as to both parties unless Lessee commences additional drilling or reworking operations within ninety (90) days after completion of such dry hole or cessation of production or commences or resumes the payment of Annual Delay Rental on the next succeeding Annual Delay Rental payment date.
- D.** If, at the expiration of the Primary Term, Oil or Gas is not being produced on the Property, this Lease shall terminate, but if Lessee is then engaged in maintenance drilling or redrilling operations thereon, this Lease shall remain in effect so long as any drilling or redrilling operations are prosecuted on the Property, with no interval of more than ninety (90) consecutive days during which no drilling or redrilling operations are conducted on the Property and, if such operations result in the continued production of Oil or Gas, so long thereafter as Oil or Gas in commercially paying quantities is produced from the Property.
- E.** All tools, derricks, boilers, boiler houses, buildings, pipelines, pumping and drilling equipment, tanks, engines and machinery, and the casing of all dry or exhausted wells, shall remain the property of the Lessee, and shall be removed at any time prior to or within ninety (90) days after termination of the Lease. Lessee shall not permit any nuisance to be maintained on the Property. Lessee shall not use the Property for any purpose other than those authorized in the Lease, and before abandoning any well, Lessee shall securely plug the same in accordance with the rules and regulations of the Department.
- F.** The Lessee agrees not to assign, transfer or convey, sublet or otherwise dispose of this Lease or any of its contents or of its rights, title or interest therein or of its power to execute the Lease to any other person, company or corporation without the previous consent in writing of the Department. With the written consent of the Department, the rights of Lessee hereunder may be assigned in whole or in part and the provisions hereof shall extend to the heirs, successors and assigns of Lessee, but no change or divisions in ownership of the Property, rentals or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of Lessee. Should Lessee assign this Lease in whole or in part with the approval of Department, Department may, as to the part assigned, look solely to the assignee for the performance of all duties and obligations hereunder, whether express or implied.

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**ARTICLE 6:** Wherever it is provided in this Lease that notice shall be given or other communications sent to the Department or the Lessee, such notices or communications shall be delivered or sent by first class mail to:

DEPARTMENT:  
Charles Gilchrist  
Chief, Enforcement Section  
Department of Environmental Conservation  
Division of Mineral Resources  
625 Broadway, 3<sup>rd</sup> Floor  
Albany, NY 12233-6500

LESSEE:  
*Name & Address*

**ARTICLE 7:**

**A.** After the occurrence of either of the following events on the Property:

- the siting, drilling, completion or abandonment of three wells on the Property by the Lessee, its successors, heirs or assigns; or
- the discovery on the Property of producible Oil or Gas, and

prior to the siting of any additional well locations on the Property, Lessee shall develop a well siting plan to be approved by the Department in writing. In discharging this obligation, Lessee shall plan and conduct its operations in such a manner as will minimize surface disturbance of the Property; prevent waste; and fully protect the correlative rights of all owners and the rights of all persons, including landowners and the general public. Well spacing shall be consistent with the statutory requirements of Article 23 of the Environmental Conservation Law and its attendant regulations or any lawful spacing order issued thereunder by the Department.

**B.** Lessee, at its option, and upon complete disclosure to and approval thereof by the Department of the joint agreement and plan, is hereby granted the right to unitize the acreage or any portion thereof covered by this Lease as to Oil and Gas, or either of them, contiguously with other land, lease or leases in the immediate vicinity thereof to the extent hereinafter provided, when in Lessee's judgment it is necessary or advisable to do so in order to properly prospect, develop and operate the Property in compliance with the spacing rules of Department or when to do so would, in the judgment of Lessee, promote the conservation of Oil and Gas or either of them. Lessee under the provisions hereof may unitize acreage or any portion thereof covered by this Lease as above provided as to Oil in any one or more strata and as to Gas in any one or more strata. Units formed as to different strata need not conform in size or boundaries. The creation of units in one or more instances shall not exhaust the rights of the Lessee hereunder to unitize this Lease

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or portions thereof into other units. Lessee shall execute and deliver to Department and file or record an instrument describing and designating the unit. Operations for drilling on or production of Oil or Gas from any part of a unit embracing all or part of the Property, regardless of whether such operations for drilling were commenced or such production was secured before or after the execution of the instrument designating the unit, shall be considered as operations from drilling on or production of Oil or Gas from the Property irrespective of whether the well or wells be located on the Property, and the entire acreage constituting such unit or units, as to Oil and/or Gas as herein provided, shall be treated for all purposes, except the payment of rentals and the payment of royalties on production from the unit, as if the same were included in this Lease. For the purpose of computing all royalties payable hereunder on Oil and/or Gas produced and saved from the unit, there shall be allocated to the Property and included in said unit a fractional portion of the Oil and/or Gas produced and saved from the unit after deducting that used for operations on the unit, such fraction to have as its numerator the number of surface acres constituting the Property and included in said unit and as its denominator the number of surface acres included in the unit. Royalties hereunder shall be computed on the portion of such production, whether it be Oil and/or Gas, so allocated to the Property and included in the unit, just as though such production were from the Property. The creation of a unit or units shall not have the effect of changing the ownership of the Property or the amount of rental which may become payable under this Lease. A unit may be dissolved by Lessee at any time when there is not a unit well thereon producing or capable of producing Oil and/or Gas in paying quantities.

**ARTICLE 8:** The Lessee shall carry on the development and operations in a professional manner, commit no waste on the Property and suffer none to be committed thereon, exercise proper care of the Property, and promptly surrender and return the Property upon termination of this Lease to the Department in a condition that in so far as possible is the same as at the commencement of this Lease, excepting natural changes.

**ARTICLE 9:** The Lessee shall keep an accurate account of all drilling operations. Accurate and reliable information concerning all wells and their production, operation, and management shall be furnished to Department upon demand. The said Lessee shall also keep an accurate account showing the sales, prices, dates, purchases and whole amount of Oil and/or Gas produced. The Department and the Comptroller of the State of New York or any of their duly authorized representatives shall have access to any of the Lessee's books, documents, papers and records directly pertinent to the subject matter of this Lease for the purpose of making audits, examination, excerpts or transcripts.

**ARTICLE 10:** This Lease is not, in and of itself, an authorization to drill. Issuance of drilling permits for specific locations are subject to separate application to and approval by the Department of Environmental Conservation pursuant to the policies and provisions of the Environmental Conservation Law.

**A.** In all activities of exploration, prospecting, extraction, piping, removal and other occupation and use of the Property, the Lessee shall be subject to the direction and control of the Department in so far as may be necessary to achieve compliance with the policies and provisions

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of the Environmental Conservation Law, as from time to time may be in effect, and rules and regulations issued thereunder. All work associated with prospecting for oil and gas, the drilling of wells and the laying of pipes shall be approved by the Department in writing in order to minimize damage to the natural resources contained in the Property. Prior to the drilling of any well by Lessee, the Department and SUNY Fredonia or their representatives shall, upon application of the Lessee, designate the location of such well, the area to be occupied surrounding the well location and the rights-of-way necessary for ingress and egress to such well and for pipes necessary to be used for the purpose of conveying Oil and/or Gas from such location and for conducting water necessary in the operation of such well. Access to the property may be limited or restricted by the Department during periods of wet weather and muddy conditions. SUNY Fredonia shall similarly designate such rights-of-way as may be necessary to convey Oil and/or Gas across the Property from land adjacent thereto owned by or leased by the Lessee. Such rights-of-way, to be used by the Lessee during the life of the Lease only, and no longer, shall be maintained, to the satisfaction of the SUNY Fredonia, in good operable condition.

- B.** Notwithstanding forfeiture, termination or expiration of this lease, the Lessee shall be responsible for restoration of damaged areas in a manner approved by the Department and SUNY Fredonia. The Lessee shall also be liable to the SUNY Fredonia for all damage or loss to the Department in the remainder of the Property including, but not limited to, the improvements thereupon and the appurtenances and hereditament hereunto belonging, by reason of the Oil and/or Gas drilling operations hereunder, including all damages that may be caused SUNY Fredonia by fires on the Property, if started by the Lessee or its agents or employees whether the same be done willfully or carelessly or accidentally. The Lessee further agrees to pay for all such damage within ten (10) days after the amount thereof is determined by SUNY Fredonia. The Lessee covenants and agrees to take such precautions against setting fire to the Property as SUNY Fredonia may require, and shall prevent the contamination of water in any manner whatsoever. The Department shall be the sole judge as to whether any such contamination is occurring or adequate precautions are being taken.
- C.** In furtherance of the obligations of Lessee under this Lease, but not by way of limitation of such obligations, Lessee hereby agrees to observe the following conditions incident to any planned exploration, drilling or extraction activities on the Property:
1. The Lessee shall notify the Department and SUNY Fredonia at least thirty (30) days prior to entry upon the Property and shall obtain written permission before such entry unless the Lessee can demonstrate that such thirty-day period creates an undue hardship, but under no conditions shall the Lessee enter the Property without prior approval by the Department and SUNY Fredonia.
  2. Lessee shall, prior to making any disturbance to the Property, apply for and obtain from Department a permit which may prescribe certain specific conditions required to protect the Property, including fish, wildlife, plant, land, air, water and recreational resources, and which may limit access to or disturbance of certain areas of the Property which, in the judgement of Department, should not be disturbed. In

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furtherance of this objective, Lessee shall maintain a copy of this Lease on each drill site at all times for reference and use by its employees, and shall further provide a copy of this contract to each of its subcontractors and advise them of their obligations under its terms. The application for the permit shall be accompanied by such plans, maps or other information as the Department may require.

3. When it is deemed necessary in the judgment of Department and SUNY Fredonia, prior to any ground disturbing activities and approval for drilling, Lessee will conduct a Stage 1 archaeological survey on the proposed disturbed area(s). After the survey is completed, conditions of approval will be formulated, if necessary, to mitigate any adverse impacts upon archaeological resources.
4. Prior to the approval of drilling, an examination will be performed by the Lessee to determine if any State or Federal listed threatened or endangered species are present. After the survey is completed, conditions of approval will be formulated, if necessary, to mitigate any adverse impacts upon threatened or endangered species.
5. All access roads to drilling sites and all pipelines shall be constructed and subsequently maintained on routes selected and designated by the Department and SUNY Fredonia and in a manner approved by the Department and SUNY Fredonia.
6. No trees shall be cut on the Property without the express prior approval of SUNY Fredonia. All trees, brush and vegetation cut during the clearing operations shall be cut as close to the ground as practicable, but not higher than three (3) inches above the ground. All marketable forest products over four (4) inches in diameter resulting from the clearing operations shall be cut to specified lengths of not less than eight (8) feet and shall be transported to and piled at points designated by SUNY Fredonia. All unmarketable woody material resulting from the clearing operation shall be toplogged, chipped or buried or removed from the Property, as SUNY Fredonia may direct. The Lessee shall reimburse SUNY Fredonia for the fair market value based on appraisals prepared by SUNY Fredonia for all marketable forest products removed in the clearing operations but not delivered to SUNY Fredonia and for any other damage to the Property by the actions of the Lessee.
7. Lessee shall not damage existing boundary line or property corner markers; in the event that any such damage does occur, the Lessee shall bear the full cost of resurvey and marking.
8. No occupancy or other surface disturbance will be allowed within 250 feet of any waterbody (streams, lakes, etc.). This distance may be modified when specifically approved in writing by an authorized officer of the Department.
9. No occupancy or other surface disturbance is allowed in any wetlands without written approval from the authorized officer of the Department.
10. No occupancy or surface disturbance on slopes exceeding 15 percent is allowed without specific approval of the authorized officer of the Department.
11. Erosion control devices shall be constructed where necessary in the judgment of Department and SUNY Fredonia to prevent soil erosion, and shall be constructed and/or installed to the satisfaction of the Department and SUNY Fredonia.
12. The Department and SUNY Fredonia may inspect any works, structures, operations, equipment, materials or other possessions or activities of Lessee at any time.
13. At all times, Lessee shall maintain the property in a neat and orderly condition and

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shall not permit surplus equipment, material or debris to be stored or to accumulate on the property.

14. For areas in which unproductive test wells have been drilled or in which producing wells have been taken out of production, all access roads thereto shall be returned as nearly as possible to their original condition. At the conclusion of drilling and/or production operations, all nonessential equipment, material and debris shall be removed from the site and the site shall be restored according to a plan approved in advance by the Department and SUNY Fredonia.
15. The Department or SUNY Fredonia may require, or, upon application of Lessee, may approve the installation of Department approved gates on access roads of Lessee when and where they are deemed necessary.
16. Any and all storage tanks installed on the property shall be diked to 150 percent of their capacity. Lessee shall be responsible for prompt removal of any and all fluid accumulations.
17. Approvals under this paragraph shall be secured from the Department's Regional Supervisor of Natural Resources or his/her designated agent in the Region in which the Property is located and the designated representative of SUNY Fredonia.

**ARTICLE 11:** This Lease shall be subject to the Constitution and laws of the State of New York and the applicable rules and regulations of the Department now or hereafter in force all of which are made a part and condition of this Lease; provided however, that no rules or regulations made after the execution of this Lease affecting either the length of the term hereof or the rate or royalty, or payment hereunder, shall operate to affect the terms and conditions of this Lease pertaining to the term hereof or royalties or other payments hereunder.

**ARTICLE 12:** In the event that Lessee fails to comply with any provision of this Lease, notwithstanding the provisions of Appendix B, paragraph I thereof, the Department may terminate this Lease at any time upon fifteen (15) days written notice. In the event of termination, Lessee shall cease work upon the expiration of such fifteen (15) day period, or such other period as the Department shall specify. The Lessee may at any time hereafter surrender and wholly terminate this Lease upon payment of any sums due hereunder, and may exercise such right by executing and delivering to Department a release covering the above-described premises.

IF THIS LEASE BECOMES FORFEITED, TERMINATED OR EXPIRES, THE LESSEE, OR IF THE LEASE HAS BEEN ASSIGNED, THE ASSIGNEE, IS REQUIRED TO PROVIDE A DOCUMENT CANCELING THE LEASE AS OF RECORD, AT NO COST TO THE CURRENT LANDOWNER. IF THE LESSEE OR ASSIGNEE FAILS TO CANCEL THE LEASE, THE CURRENT LANDOWNER MAY COMPEL A CANCELLATION PURSUANT TO SECTION 15-304 OF THE GENERAL OBLIGATIONS LAW.

**ARTICLE 13:** SUNY Fredonia shall continue to have the full right to administer, control, manage, protect, maintain, develop and utilize the Property, and the natural resources thereof other than Oil and Gas, as though this Lease had not been made; but in so doing will, in so far as

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practicable, avoid doing any damage to any of the structures or equipment of the Lessee.

**ARTICLE 14:** It is hereby fully and mutually understood and agreed that no rights are granted in this Lease which shall be in any way so construed as to impair the powers or duties of the Department or its representatives in the execution of the Environmental Conservation Law of the State of New York.

**ARTICLE 15:** SPECIAL CONDITIONS (If none adopted, enter NONE).

NONE

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Department Contact:

Charles Gilchrist  
NYS Department of Environmental Conservation  
Division of Mineral Resources  
625 Broadway, 3<sup>rd</sup> Floor  
Albany, New York 12233-6500

SUNY Contact:

Elliot Easton  
Energy Procurement Manager  
The State University of New York  
State University Plaza  
Albany, New York 12246

Lessee:

Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

Federal Identification No. \_\_\_\_\_

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SIGNATURE PAGE

Contract X005378

Agency Certification:

"In addition to the acceptance of this Lease, I also certify that original copies of this signature page will be attached to all other exact copies of this Lease."

LESSEE SIGNATURE:

AGENCY SIGNATURE:

\_\_\_\_\_

NYSDEC: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

SUNY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATED: \_\_\_\_\_

ATTORNEY GENERAL'S  
SIGNATURE:

COMPTROLLER'S SIGNATURE:

\_\_\_\_\_

\_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

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**ACKNOWLEDGMENT FORM**

**(PERSONAL ACKNOWLEDGMENT)**

State of New York     )  
  ) s.s.:  
County of                )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year two thousand \_\_\_\_\_, before me personally came \_\_\_\_\_ to me personally known, and known to me to be the individual described in, and who executed the foregoing instrument, and (s)he duly acknowledged to me that (s)he executed the same.

\_\_\_\_\_ Notary Public

**(CO-PARTNERSHIP ACKNOWLEDGMENT)**

State of New York     )  
  ) s.s.:  
County of                )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year two thousand \_\_\_\_\_, before me personally came \_\_\_\_\_ to me known, and known to be a member of \_\_\_\_\_, the firm described in and which executed the foregoing instrument, and (s)he acknowledged to me that (s)he subscribed the name of said firm thereto on behalf of said firm for the purpose therein mentioned.

\_\_\_\_\_ Notary Public

**(CORPORATE ACKNOWLEDGMENT WITH SEAL)**

State of New York     )  
  ) s.s.:  
County of                )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year two thousand \_\_\_\_\_, before me personally came \_\_\_\_\_ to me known, who duly being sworn, did depose and say that (s)he resides in \_\_\_\_\_; that (s)he is \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and which executed the above instrument; that (s)he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that (s)he signed his (her) name thereto by like order.

\_\_\_\_\_ Notary Public

**(CORPORATE ACKNOWLEDGMENT WITHOUT SEAL)**

State of New York     )  
  ) s.s.:  
County of                )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year two thousand \_\_\_\_\_, before me personally came \_\_\_\_\_ to me known, who duly being sworn, did depose and say that (s)he resides in \_\_\_\_\_; that (s)he is an officer of \_\_\_\_\_; namely, the \_\_\_\_\_ of \_\_\_\_\_; that (s)he is authorized by the governing body of said corporation to sign contracts; and that (s)he did sign the foregoing instrument on behalf of, and with authority to bind said corporation.

\_\_\_\_\_ Notary Public

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STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF ALBANY    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the subscriber personally appeared \_\_\_\_\_ to me known to be a \_\_\_\_\_ of the Department of Environmental Conservation of the State of New York and he duly acknowledged that he executed the same as such for and in behalf of The People of the State of New York.

\_\_\_\_\_  
NOTARY PUBLIC

**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the 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.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the

performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor

within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

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

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment,

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> 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.

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

## APPENDIX B

### Standard Clauses for All New York State Department of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, 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 to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

**I. Postponement, suspension, abandonment or termination by the Department:** The Department shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall immediately stop work, take steps to incur no additional obligations, and to limit further expenditures. Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

**II. Indemnification and Holdharmless** The Contractor agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractors in the performance of this contract. The Department and the State of New York may retain such monies from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the Department and/or the State of New York.

**III. Conflict of Interest (a) Organizational Conflict of Interest.** To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or

that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) Personal Conflict of Interest: The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual, or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor

of the appropriate action to be taken.

(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) **Remedies** - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions

of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

**If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.**

(f) Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

(1) The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

(2) The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

**IV. Requests for Payment** All requests for payment by the Contractor must be submitted on forms supplied and approved by the Department. Each payment request must contain such items of information and supporting documentation as are required by the Department, and shall be all-inclusive for the period of time covered by the payment request.

**V. Compliance with Federal requirements** To the extent that federal funds are

provided to the Contractor or used in paying the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause.

**VI. Independent Contractor** The Contractor shall have the status of an independent contractor. Accordingly, the Contractor agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the Department by reason of this contract. It further agrees that it will not make any claim, demand or application to the Department for any right or privilege applicable to an officer or employee of the Department, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

**VII. Article 15-A Requirements** The terms contained in this clause shall have the definitions as given in, and shall be construed according to the intent of Article 15-A of the Executive Law, 5 NYCRR Part 140, et. seq., Article 52 of the Environmental Conservation Law and 6 NYCRR Part 615, et. seq., as applicable, and any goals established by this clause are subject to the intent of such laws and regulations.

(a) If the maximum contract price herein equals or exceeds \$25,000, and this contract is for labor, services, supplies, equipment, or materials; or

(b) If the maximum contract price herein equals or exceeds \$100,000 and this contract is for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; then

(c) The affirmative action provisions and equal employment opportunity provisions contained in this paragraph and paragraphs (d) and (e) of this clause shall be applicable within the limitations established by Executive Law §§312 and 313 and the applicable regulations.

(1) The Contractor is required to make good faith efforts to subcontract at least   0   % of the dollar value of this contract to Minority Owned Business Enterprises (MBEs) and at least   0   % of such value to Women Owned Business Enterprises (WBEs).

(2) The Contractor is required to make good faith efforts to employ or contractually require any Subcontractor with

whom it contracts to make good faith efforts to employ minority group members for at least   0   % of, and women for at least   0   % of, the workforce hours required to perform the work under this contract.

(3) The Contractor is required to make good faith efforts to solicit the meaningful participation by enterprises identified in the NYS Directory of Certified Businesses provided by:

Empire State Development Corp.  
Div. Minority & Women's Business Development  
30 South Pearl Street  
Albany, New York 12245  
Phone: (518) 292-5250  
Fax: (518) 292-5803  
and  
Empire State Development Corp.  
633 Third Avenue  
New York, NY 10017  
Phone: (212) 803-2414  
Fax: (212) 803-3223

internet: [www.empire.state.ny.us/esd.htm](http://www.empire.state.ny.us/esd.htm)

(d) The Contractor agrees to include the provisions set forth in paragraphs (a), (b) and (c) above and paragraphs (a), (b), and (c) of clause 12 of Appendix A in every subcontract in such a manner that the provisions will be binding upon each Subcontractor as to work under such subcontract. For the purpose of this paragraph, a "subcontract" shall mean an agreement providing for a total expenditure in excess of \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon in which a portion of the Contractor's obligation under a State contract is undertaken or assumed.

(e) The Contractor is required to make good faith efforts to utilize the MBE/WBEs identified in the utilization plan to the extent indicated in such plan, and otherwise to implement it according to its terms. The Contractor is requested to report on such implementation periodically as provided by the contract, or annually, whichever is more frequent.

**VIII. Compliance with applicable laws**

(a) Prior to the commencement of any work under this contract, the Contractor is required to meet all legal requirements necessary in the performance of the contract. This includes but is not limited to compliance with all applicable federal, state and local laws and regulations promulgated thereunder. It is the Contractor's responsibility to obtain any necessary permits, or other authorizations. By signing this

contract, the Contractor affirmatively represents that it has complied with said laws, unless it advises the Department otherwise, in writing. The Department signs this contract in reliance upon this representation.

(b) During the term of this contract, and any extensions thereof, the Contractor must remain in compliance with said laws. A failure to notify the Department of noncompliance of which the Contractor was or should have been aware, may be considered a material breach of this contract.

**IX. Dispute Resolution** The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

(a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.

(1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.

(2) The decision of the designated individual shall be the final agency determination, unless the Contractor files a written appeal of that decision with the designated appeal individual ("DAI") within twenty days of receipt of that decision.

(b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.

(1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or

(2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or

(3) Make a determination on the record as it exists.

(c) The decision of the DAI shall be the final agency decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee ("CRC") within twenty days of receipt of that decision.

The designated individual to hear disputes is:

Jack Dahl, Director, Bureau of Oil & Gas Regulation,  
NYSDEC, Division of Mineral Resources  
625 Broadway, 3<sup>rd</sup> Floor, Albany, NY 12233-6500

Phone: (518) 402-8056

The designated appeal individual to review decisions is:

John C. Harmon, Assistant Director  
NYSDEC, Division of Mineral Resources  
625 Broadway, 3<sup>rd</sup> Floor, Albany, NY 12233-6500

Phone: (518) 402-8075

The Chair of the Contract Review Committee is:

Department of Environmental Conservation  
Nancy W. Lussier, Chair  
Contract Review Committee  
625 Broadway, 10<sup>th</sup> Floor  
Albany, NY 12233-5010  
Telephone: (518) 402-9228

(d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.

(1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or

(2) Adopt the decision of the DAI; or

(3) Consider the matter for review by the CRC in accordance with its procedures.

(e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.

(f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Assistant Commissioner for Administration who shall render the final agency determination.

(g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS

will not be binding on either party.

(h) Final agency determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.

(i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.

(j) (1) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

(2) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

#### X. Labor Law Provisions

(a) When applicable, the Contractor shall post, in a location designated by the Department, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this project, a copy of all re-determinations of such schedules for the project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the site, the Department of Labor notice that this project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for their occupation, and all other notices which the Department directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the Department. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. Contractor shall post such notices before commencing any work on the site and shall maintain such notices until all work on the site is complete.

(b) When appropriate, contractor shall distribute to each worker for this Contract a notice, in a form provided by the Department, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation

at which he or she is working. Worker includes employees of Contractor and all Subcontractors and all employees of suppliers entering the site. Such notice shall be distributed to each worker before they start performing any work of this contract. At the time of distribution, Contractor shall have each worker sign a statement, in a form provided by the Department, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by the following paragraph (c).

(c) Contractor shall maintain on the site the original certified payrolls or certified transcripts thereof which Contractor and all of its Subcontractors are required to maintain pursuant to the New York Labor Law Section 220. Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to paragraph (b).

(d) Within thirty days of issuance of the first payroll, and every thirty days thereafter, the Contractor and every subcontractor must submit a transcript of the original payroll to the Department, which transcript must be subscribed and affirmed as true under penalty of perjury.

XI. **Offset** In accordance with State Law, the Department has the authority to administratively offset any monies due it from the Contractor, from payments due to the Contractor under this contract. The Department may also (a) assess interest or late payment charges, and collection fees, if applicable; (b) charge a fee for any dishonored check; (c) refuse to renew certain licenses and permits.

XII. **Tax Exemption** Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

XIII. **Litigation Support** In the event that the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation will be negotiated and based on rates established in the contract, or as may otherwise be provided in the contract.

XIV. **Equipment** Any equipment purchased with funds provided under this contract, shall remain the property of the Department, unless otherwise

provided in the contract. The Contractor shall be liable for all costs for maintaining the property in good, usable condition. It shall be returned to the Department upon completion of the contract, in such condition, unless the Department elects to sell the equipment to the Contractor, upon mutually agreeable terms.

**XV. Inventions or Discoveries** Any invention or discovery first made in performance of this Contract shall be the property of the Department, unless otherwise provided in the contract. The Contractor agrees to provide the Department with any and all materials related to this property. At the Department's option, the Contractor may be granted a non-exclusive license.

**XVI. Patent and Copyright Protection** If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

(a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

(1) prompt written notice of any action, claim or threat of infringement suit, or other suit, and

(2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and

(3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.

The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

(b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:

(1) procure for the Department the right to continue using the same item or parts thereof;

(2) modify the same so that it becomes non-infringing and of at least the same quality and performance;

(3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;

(4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

(c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.

(d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of: (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items; (2) alterations of the items by the Department; (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement; (4) use of items in combination with apparatus or devices not delivered by the Contractor; (5) use of items in a manner for which the same were neither designed nor contemplated; or (6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

(e) The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

**XVII. Force Majeure** The term Force Majeure shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war rebellion, sabotage or the like. If a failure of or delay in performance by either party results from the occurrence of a Force Majeure event, the delay shall be excused and the time for performance extended by a period equivalent to the time lost because of the Force majeure event, if and to the extent that:

(a) The delay or failure was beyond the control of the party affected and not due to its fault or negligence; and

(b) The delay or failure was not extended because of the affected party's failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome; and

(c) The affected party provides notice within (5) days of the onset of the event, that it is invoking the protection of this provision.

**XVIII. Freedom of Information Requests**

The Contractor agrees to provide the Department with any records which must be released in order to comply with a request pursuant to the Freedom of Information Law. The Department will provide the contractor with an opportunity to identify material which may be protected from release and to support its position.

**XIX. Precedence** In the event of a conflict between the terms of this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B, and the terms of Appendix A, the terms of Appendix A shall control.

# Exhibit A

## State University of New York at Fredonia Towns of Dunkirk and Pomfret Approximately 253 Acres

