

**NEW YORK STATE HOMELESS HOUSING AND ASSISTANCE CORPORATION**

**HOMELESS HOUSING AND ASSISTANCE PROGRAM  
TECHNICAL ASSISTANCE CONTRACT**

**THIS IS AN AGREEMENT**, dated as of \_\_\_\_\_ \_\_, 20\_\_, by and between **THE PEOPLE OF THE STATE OF NEW YORK** acting by and through the **NEW YORK STATE HOMELESS HOUSING AND ASSISTANCE CORPORATION**, having its principal office at 40 North Pearl Street, Albany, New York 12243 (the "Corporation") and [\_\_\_\_\_] having its principal office at [\_\_\_\_\_] (the "Contractor" and together with the Corporation, the "Parties").

**WITNESSETH:**

**WHEREAS**, Sections 41-44 of the New York State (the "State") Social Services Law established the Homeless Housing and Assistance Program ("HHAP") to provide State financial assistance to fund capital programs sponsored by not-for-profit corporations, charitable organizations and municipalities for the purpose of expanding and improving the supply of shelter and other housing arrangements for homeless persons; and

**WHEREAS**, Section 45-c of the State Private Housing Finance Law created and established the Corporation pursuant to which the Corporation is authorized to administer the HHAP;

**WHEREAS**, the Corporation is authorized by such act and the amendment thereto to enter into contracts to provide technical assistance to project sponsors;

**WHEREAS**, the Contractor has submitted a proposal in final form to the Corporation to provide such technical assistance and the Corporation has determined that such proposal meets the Corporation's criteria for the provision of technical assistance; and

**WHEREAS**, the Corporation desires to enter into a contract with the Contractor for the provision of services as set forth hereinafter;

**NOW, THEREFORE, FOR CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, IT IS MUTUALLY AGREED BETWEEN THE CORPORATION AND THE CONTRACTOR AS FOLLOWS:**

**1. Scope of Services:**

- a) The contractor shall provide technical assistance services in accordance with procedures set forth in Section 1 (b) below, to the Corporation and the non-profit corporations, charitable organizations and/or municipalities that are selected to participate in HHAP and identified to the contractor by the Corporation as requiring such services.
- b) The Contractor will be reimbursed under this AGREEMENT only for services which the Corporation has authorized. The Contractor will be authorized by the Corporation to perform services as follows:

- i. The Corporation will make an assignment in writing asking the Contractor develop a work plan (the “Work Plan”) to address a specific need. The assignment will authorize the Contractor to spend a limited amount of professional staff time preparing the Work Plan.
  - ii. The Work Plan prepared by the Contractor will provide:
    - a description of the services to be performed and the tasks to be completed;
    - a projection of the amount of professional staff time that will be required to complete the tasks;
    - an estimate of the period of time over which the work will be performed;
    - the cost for completing the assignment based upon the tasks accomplished.
  - iii. Once a Work Plan has been submitted pursuant to a request by the Corporation, the Contractor may bill the Corporation for the amount of time spent in preparing the plan, up to the daily limit established in Appendix B attached hereto and made a part hereof (“Appendix B”).
  - iv. The Corporation will review the Work Plan submitted by the Contractor to determine whether to authorize the services as proposed. If the Corporation determines that the Work Plan is acceptable, it will authorize the Contractor in writing to perform the activities outlined in the Work Plan.
- c) The Corporation may cancel an authorization at any time. Upon notification of such a cancellation, the Contractor agrees to discontinue work. Only work which has been performed before the Contractor received notice of the cancellation of the authorization will be reimbursable.
  - d) In addition to Work Plans and Progress Reports (as defined in Section 2(a) below) the Corporation may require the Contractor to provide, either periodically or at the conclusion of work, other reports regarding authorized Work Plans.
  - e) The Contractor will follow any directives that the Corporation issues regarding the authorized work to be performed or reports made. If, in the Contractor's judgment, any directive issued by the Corporation may prevent the work from being completed as originally authorized or within the agreed upon budget, the Contractor will promptly notify the Corporation.
  - f) Notwithstanding the foregoing, the Corporation may from time to time request services of such a nature that they do not necessitate the development of a formal Work Plan, including, but not limited to, the recording of legal documents, searching title records, or surveying services (an “Assignment”). In such situations, the Corporation shall make a written request to the Contractor asking them to perform the services, and the Contractor shall respond in writing that they accept such Assignment. Except as otherwise provided in this AGREEMENT, all Assignments made in this matter shall be paid in accordance with Appendix B.

## 2. Payment for Services:

- a) Upon approval of a Work Plan or Assignment and in consideration for the services performed thereunder the Contractor may submit a request for reimbursement on a form to be provided by the Corporation (a “Voucher”) at specific times or upon the completion of specific tasks as outlined in the Work Plan or Assignment. Notwithstanding the foregoing, the Contractor must submit Vouchers no less frequently than every thirty (30) days following the initiation of any work performed under a Work Plan or Assignment and all Vouchers related to such Work Plan or Assignment must be submitted to the Corporation within thirty (30) days after the completion of all work performed. Each request shall be accompanied by a Progress Report that evidences the completion of the specific time period or task (the “Progress Report”).
- b) Payment shall be made in accordance with the approved Work Plan or Assignment, not to exceed the rates set forth on Appendix B or in accordance with Section 2 (c) below and upon submission of a properly executed Voucher. Vouchers shall be supported by all documentation required by the Corporation including, when appropriate, proof of payment to any subcontractors used to perform services under this AGREEMENT. Before approving any payment, the Corporation may conduct inspections, tests or reviews of activities for which payment is requested in accordance with the provisions of Section 8 of this AGREEMENT, to determine whether such activities have been properly performed,. The Corporation shall process each approved Voucher for payment, unless it notifies the Contractor of its disapproval of payment, in writing, together with a justification therefor. The Contractor agrees that no part of any submitted Voucher will have previously been paid either by the State or by other funding sources. No progress payment or payment for partial completion of work made by the Corporation shall constitute acceptance of any work not completed in accordance with this AGREEMENT and Work Plans or Assignments authorized pursuant to this AGREEMENT.
- c) The Corporation reserves the right to approve Work Plans or Assignments that may include services and fees that do not coincide with the rate schedule on Appendix B. Approval of such Work Plans or Assignments shall be at the sole discretion of the Corporation and may include services provided through subcontractors in accordance with Section 6 of this AGREEMENT. Payment for services rendered under such Work Plans or Assignments shall be made according to negotiated rates or fees identified in the Work Plan or Assignment rather than at the rates on the rate schedule on Appendix B.
- d) The Corporation reserves the right to withhold up to ten percent (10%) of the dollar amount included in any Voucher for any authorized Work Plan or Assignment as security for the full and faithful completion of services under this AGREEMENT, said amount to be paid to the Contractor upon (i) satisfactory completion of all services required by the Work Plan or Assignment as determined in the Corporation’s discretion (ii) the receipt by the Corporation of all reports required pursuant to the Work Plan or Assignment, and (iii) receipt by the Corporation of a certification by the Contractor that it has completed its obligations and duties under the Work Plan or Assignment and in accordance with this AGREEMENT .

- e) Upon the expiration or earlier termination of this AGREEMENT, the Contractor must submit all outstanding Vouchers (and accompanying documentation) for all services performed under this AGREEMENT within sixty (60) days from the date of such termination or expiration.
- f) There shall be no revisions in the rate schedule set forth in Appendix B except by amendment of this contract or as set forth in Section 2(c) above.
- g) All reimbursement for travel shall be at the Federal Government travel reimbursement rates.

**3. Time for Performance:**

The term of this AGREEMENT shall commence on July 1, 2011, and shall terminate on June 30, 2016, unless otherwise terminated in accordance with the terms of this AGREEMENT.

**4. Personnel:**

- a) The Contractor agrees to be solely responsible for the recruitment and hiring, the provision of employment benefits, the payment of salaries and the management of its personnel.
- b) The Contractor specifically agrees that its relationship with the Corporation and the State of New York is that of an independent contractor and that neither the Contractor nor any of its employees or agents shall make any representation that an employment relationship exists with either the Corporation or the State of New York.
- c) The Contractor shall identify, in writing, and for prior approval of the Corporation, the person(s) who will be responsible for performing the work to be done under this AGREEMENT, in general, and each Work Plan or Assignment, specifically. No change or substitution of such responsible person(s) will be made without prior approval of the Corporation.

**5. Project Officer:**

The President of the Corporation or his/her designee shall act as the project officer ("Project Officer") to communicate to the Contractor the Corporation's directives relating to the Contractor's performance of its obligations under this AGREEMENT. All project reports, Vouchers, and questions or issues of interpretation or direction relating to this AGREEMENT shall be directed to the Project Officer, or to such persons who may be designated to assist the Project Officer.

**6. Subcontracts:**

- a) The Contractor agrees not to enter into any subcontracts for the performance of the obligations entered into herein without the prior written approval of the Corporation. All agreements between the Contractor and subcontractors shall be by written contract. All such subcontracts shall contain provisions specifying that: (i) the work performed by the subcontractors must be in accordance with the terms of this

AGREEMENT; (ii) nothing contained in the subcontract, or under this AGREEMENT, shall create any contractual relationship between any subcontractor and the Corporation; (iii) the Contractor shall be fully responsible to the Corporation for the acts and omissions of its subcontractors, the subcontractor's agents, and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by the Contractor; (iv) nothing contained in the subcontract shall impair the rights of the Corporation under this AGREEMENT; (v) the subcontract shall be subject to the approval of the Corporation and the continued availability of State funding; (vi) payment pursuant to the subcontract is contingent upon the contractor submitting Vouchers for the services performed by the subcontractor to the Corporation and obtaining the approval of the Corporation for said Vouchers, and (vii) the subcontractor will comply with all applicable State laws, including, but not limited to, State Executive Law §§ 310–318 and the associated reporting requirements as described in Section 16 of this AGREEMENT and Appendix Z attached hereto. The Contractor shall comply with any Corporation directive regarding the form or substance of proposed subcontracts pursuant to this AGREEMENT.

- b) The Corporation may, upon good cause shown, require the Contractor to terminate any subcontract.

## **7. Records:**

- a) The Contractor shall keep accurate records, in the manner and form required by the Corporation, of all activities and contracts related to this AGREEMENT (the "Records"). All costs charged under this AGREEMENT shall be supported by properly executed claims, contracts, payrolls, or time records, evidencing in detail satisfactory to the Corporation, the nature and propriety of the charges. All Records shall be kept in a manner which will distinguish activities, contracts and expenditures undertaken pursuant to this AGREEMENT from all other activities, contracts and expenditures of the Contractor.
- b) All Records shall be retained by the Contractor for a period of at least seven (7) years from the date of expiration or earlier termination of this AGREEMENT. The Records shall be retained at the Contractor's offices or at such other place as shall be readily accessible to duly authorized representatives of the Corporation. The State Comptroller, United States Department of the Treasury, the Office of the State Attorney General and any other person or entity authorized to conduct an examination, as well as the Corporation, 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 of New York 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 (for the purposes of this Section, the "Statute") provided that: (i) the contractor shall timely inform the Corporation, 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 of New York's right to discovery in any pending or future litigation.

**8. Audit and Inspection:**

- a) The Contractor shall permit, and shall require its subcontractors to permit, duly authorized representatives of the Corporation, the Office of the State Comptroller, the United States Department of the Treasury or the Office of the State Attorney General, to inspect all work, materials, Records, and other relevant data and to audit the books, Records and accounts of the Contractor and its subcontractors pertaining to the services being performed during the term of this AGREEMENT and for a period of seven (7) years after the termination of this AGREEMENT.
- b) If an audit or inspection shows that any item of work for which a disbursement has been made was not carried out in full compliance with this AGREEMENT, the Contractor shall, upon demand, repay such disbursement to the Corporation, and/or complete or correct such defective work without any additional charge to the Corporation.

**9. Publications and Copyrights:**

- a) The results of any activity arising under this AGREEMENT may not be published without prior written approval of the Corporation. Any publication of such results: (1) shall acknowledge the support of the Corporation and the State of New York and (2) shall state that the opinions, results, findings and/or interpretation of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the Corporation or the State of New York.
- b) The Corporation agrees that the Contractor may obtain copyright to any form, document, publication or report which may be produced as the result of support given or of work completed under this AGREEMENT. However, the Corporation and the State of New York expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this AGREEMENT or activity arising under this AGREEMENT. All publications of the Contractor developed pursuant to its activities under this AGREEMENT shall expressly acknowledge the Corporation's right to such license.

**10. Delays and Problems:**

The Contractor agrees to notify the Corporation, in writing, within three days of the occurrence of any problem which may threaten to delay, delay or threaten the completion of any work authorized under this AGREEMENT and shall submit therewith recommendations for a solution to such problem.

**11. Termination:**

This AGREEMENT shall be subject to the following termination provisions:

- a) This AGREEMENT may be terminated at any time upon mutual written agreement Parties.

- b) This AGREEMENT may be terminated by the Corporation at any time upon the failure of the Contractor to satisfactorily comply with the terms and conditions of the AGREEMENT in the Corporation's sole discretion; *provided that* the Corporation shall give the Contractor written notice of the Corporation's intent to terminate this AGREEMENT specifying the Contractor's failure and ten (10) days to cure such failure or such longer period as may be specified by the Corporation in the notice. Termination shall be effective immediately upon the failure of the Contractor to effect a cure acceptable to the Corporation in its sole discretion within ten (10) days or such longer period as may be specified by the Corporation in said notice. The Contractor agrees to incur no new obligations or to claim for any expenses made after the effective date of termination.
- c) This AGREEMENT may be terminated if the Corporation deems in its sole discretion that termination would be in the best interest of the State; *provided that* the Corporation shall give written notice to the Contractor not less than ten (10) days prior to the date upon which such termination shall become effective. In the case of termination under this subparagraph, the Corporation agrees to pay the Contractor for those allowable, reasonable and appropriate expenses incurred in good faith pursuant to any outstanding approved Work Plans or Assignments. The Contractor agrees to incur no new obligations after receipt of notification of termination and to cancel as many outstanding obligations as possible. Said termination shall be immediate and complete, without termination costs or further obligations by the Corporation to the Contractor, except that the Contractor will be reimbursed for services performed before Contractor's receipt of the termination notice. The Corporation shall not be liable in any circumstances for damages due to lost profits by the Contractor or any subcontractor.
- d) This AGREEMENT shall be deemed terminated immediately should State funds for this AGREEMENT become unavailable. Said termination shall be immediate and complete, without termination costs or further obligation by the Corporation to the Contractor. The Corporation agrees to promptly notify the Contractor of any such unavailability of funds or any creditable notice that funds may not be available beyond a certain date. The Contractor shall be relieved of any obligation to continue providing services beyond the period for which funds shall have actually been allocated.

**12. Hold Harmless:**

The Contractor agrees to indemnify the Corporation for any loss the Corporation or the State of New York may suffer when such loss results from claims of any person or organization (excepting only the Corporation) injured by the negligent or willful acts or omissions of the Contractor, its officers and/or employees or subcontractors. Furthermore, the Contractor agrees to indemnify, defend and hold harmless the State of New York, the Corporation, and its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of the contract, and against any liability, including cost and expenses, for violation of proprietary rights, copyright, or rights of privacy, arising out of the

publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this AGREEMENT, or based on any obligation or other unlawful matter contained in such data or written materials in any form produced pursuant to this AGREEMENT.

**13. Insurance:**

During any period in which services are being performed under this AGREEMENT, the Contractor shall purchase and maintain the types and amounts of insurance satisfactory to the Corporation and necessary to insure against any and all claims, suits, demands or judgment arising out of the Contractor's performance under this AGREEMENT. The Corporation shall be named an additional insured party on all related insurance.

**14. 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 required to be covered by the provisions of the State Workers' Compensation Law.

**15. Equal Employment Opportunity and Affirmative Action:**

State Executive Law §§ 310–318, (Article 15-A: Participation by Minority Group Members and Women with Respect To State Contracts –for the purposes of this Section, the “Statute”), was enacted to promote equality of employment and economic opportunities for minority group members and women in State contracting activities. The Corporation and the State Office of Temporary and Disability Assistance (“OTDA”) fully support the efforts of the State of New York to promote Equal Employment Opportunity (as defined in the Regulations (defined below)) for all persons and to promote equality of economic opportunity for minority group members and women who own business enterprises.

In accordance with Section 312 of the Statute, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby the Corporation is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Corporation; or (ii) a written agreement in excess of \$100,000.00 whereby the Corporation is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 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, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

- (b) At the request of the Corporation, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Corporation obligations herein; and
- (c) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the Corporation/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 subsections “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 of the Statute 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 Corporation 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 Corporation 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 Corporation/OTDA shall waive the applicability of Section 312 of the Statute 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.

OTDA has developed compliance requirements, forms and procedures to ensure that (i) Contractors with whom the Corporation/OTDA enters into State Contracts (as defined in the Statute), as well as proposed or actual “Subcontractors”, comply with requirements to ensure Equal Employment Opportunities for minority group members and women, and (ii) there are meaningful participation opportunities for certified minority or women-owned business enterprises (“M/WBEs”) in the Corporation/OTDA procurement process. Contractors participating in and/or selected for procurement opportunities with the Corporation/OTDA shall fulfill their obligations to comply with applicable federal, State and local requirements concerning Equal Employment Opportunity and opportunities for M/WBEs, including but not limited to the Statute and its implementing regulations as promulgated by the New York Division of Minority and Women's Business Development and set forth at 5 NYCRR Parts 140-144 (the “Regulations”), as well as Appendix Z, which is attached hereto and incorporated herein by reference.

**16. Confidentiality:**

The Contractor acknowledges that, in the course of performing its duties under this AGREEMENT, it may be required to review or obtain information that is confidential under Federal or State law. To the extent possible, the Work Plan prepared by the Contractor shall identify any confidential information necessary for the Contractor to fulfill its duties, and present a plan for limiting its use and disclosure. The Contractor shall safeguard the confidentiality of information acquired pursuant to or in the course of its performance under this AGREEMENT, including information relating to individuals who may receive services or housing at a homeless project, and shall maintain the confidentiality of all such information and any records it maintains in conformity with the provisions of applicable law, regulations and/or any directives from the Corporation. The Contractor shall insure that its employees and any subcontractors abide by the provisions of this paragraph. Any breach of confidentiality by the Contractor, its agents, subcontractors or representatives may be cause for immediate termination of this AGREEMENT.

**17. Identifying Information and Privacy Notification:**

**a) Federal Employer Identification Number and/or Federal Social Security Number**

All invoices or vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Corporation must include the payee's 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 his invoice or 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 of New York is mandatory. The principal purpose for which the information is collected is to enable the State of New York to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.
2. The personal information is requested by the Corporation to purchase the goods or services or lease the real or personal property covered by this AGREEMENT. The information is maintained in State Central Accounting System by the Director of State Accounts, Office of the State Comptroller, 110 State Street, Albany, New York 12243.

**18. Notice to be Written:**

All notices required to be sent by either party under this AGREEMENT shall be in writing, and shall be sent via certified or registered mail, return receipt requested or shall be delivered by hand, receiving receipt thereof. Notices to be sent to the Corporation shall, unless the Corporation notifies the Contractor otherwise in writing, be sent to Director, Bureau of Housing Services, 40 North Pearl Street 10<sup>th</sup> Floor, Albany, NY 12243. Notices to be sent to the Contractor shall, unless the Contractor notifies the Corporation otherwise in writing, be sent to the address in the introductory paragraph of this AGREEMENT.

**19. Contract Modifications; Waivers:**

No modification, amendment, extension, discharge, termination or waiver of any provision of this AGREEMENT nor any consent to any departure therefrom shall be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Contractor shall entitle Contractor to any other or future notice or demand in the same, similar or other circumstances. Any failure by the Corporation to declare a breach or to insist upon the strict performance by the Contractor of any covenant, term or provision of this AGREEMENT shall not be deemed to be a waiver of any of the covenants, terms and provisions of this AGREEMENT, and the Corporation, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Contractor of any and all the covenants, terms and provisions of this AGREEMENT to be performed by the Contractor.

**20. Non-Assignment Clause:**

This AGREEMENT may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the prior written consent of the Corporation. Any attempt to assign this Agreement or the rights or obligations hereunder without the Corporation's prior written consent is null and void.

**21. Governing Law:**

This contract shall be governed by the laws of the State except where the Federal supremacy clause requires otherwise.

**22. Actions; Disputes; Service of Process:**

No action shall lie or be maintained against the State or the Corporation for any claim based upon or arising out of this Agreement unless that action is commenced within six (6) months from the termination of this Agreement or one year from the accrual of the cause of action, whichever is the earlier. Disputes involving this AGREEMENT, 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. In addition to the methods of service allowed by the State Civil Practice Law & Rules, the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Contractor's actual receipt of process or upon the Corporation's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the Corporation, in writing, of each and every change of address to which service of process can be made. Service by the Corporation to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**23. Entirety of the AGREEMENT:**

This AGREEMENT contains all the terms and conditions agreed upon by the Parties. All items incorporated by reference are to be attached. No other understanding, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any of the parties hereto.

**24. The Corporation's Discretion:**

Whenever this AGREEMENT provides for a decision or consent to be subject to the Corporation's discretion, or for any deliverable to be acceptable to the Corporation, such matter shall be subject to the sole and absolute discretion of the Corporation unless expressly provided to the contrary herein.

**25. Counterparts:**

This AGREEMENT may be executed by facsimile or pdf signatures, and in any number of identical counterparts, each of which shall be deemed to be an original, and all of which shall collectively constitute a single agreement, fully binding upon and enforceable against the parties hereto.

**26. Captions and Titles:**

All titles or captions of paragraphs contained in this AGREEMENT are for convenience only and shall not be deemed part of the context of this AGREEMENT. Such titles and captions in no way define, limit, extend or describe either the scope of this AGREEMENT nor the intent of any provision hereof.

**27. Gender and Number:**

Concerning the words used in this AGREEMENT, the singular form shall include the plural form, the masculine gender shall include the feminine or neuter gender, and vice versa, as the context requires, and the word "person" shall include any natural person, partnership, corporation, association, trust, estate or other legal entity.

**28. Severability:**

In the event that any provision of this AGREEMENT is held to be invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this AGREEMENT are declared severable.

**29. Executory Clause:**

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

**30. Additional Provisions:**

- a) The Corporation will only pay for services that are authorized pursuant to Section 1(b) of this AGREEMENT. Except for such authorizations, which may or may not be made by the Corporation in its sole discretion, the Corporation has no obligation to utilize the Contractor's services or make any payment to the Contractor under this AGREEMENT.
- b) The Contractor agrees that any funds received from other sources for specific services already paid for by the Corporation under this AGREEMENT shall be reimbursed to the Corporation.
- c) The Contractor warrants that it is not in arrears to the Corporation or the State upon any debt or contract, and is not a defaulter as surety, contractor or otherwise on any obligations to the Corporation or the State.

**IN WITNESS WHEREOF**, the parties hereto have caused this AGREEMENT to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**CORPORATION:**

**NEW YORK STATE HOMELESS HOUSING AND ASSISTANCE CORPORATION**, a New York Public Benefit Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or then person upon behalf of which the individual acted, executed the instrument and that he signed his name thereto by like order.

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

My Commission Expires: \_\_\_\_\_

