

NIFA

NASSAU COUNTY INTERIM FINANCE  
AUTHORITY

SOLICITATION FOR OFFERS

To Provide Remarketing Services In Connection with  
\$250,000,000 of Outstanding Bonds of Nassau County  
Interim Finance Authority

RFP Issue Date: December 17, 2015

Proposal Due Date: January 12, 2016

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## **I. Overview**

Nassau County Interim Finance Authority (“NIFA or the “Authority”) is soliciting offers to provide remarketing services for \$250 million of its outstanding variable rate demand bonds (the “VRDBs”), Series 2008A and 2008B. This Solicitation for Offers (the “SFO” or “RFP”) seeks to provide NIFA with a fair and competitive process for the selection of one or more remarketing agents and seeks responses from qualified firms. The Authority reserves the right to select one or more remarketing agents from those firms submitting proposals in accordance with this SFO.

Questions regarding this RFP must be sent (only in writing via e-mail) to Jeremy.Wise@nifa.ny.gov on or before December 24, 2015. Responses to any questions, which are deemed material to this RFP, will be posted on NIFA’s web site under the section containing this RFP. No other communication of questions and answers will be made. All respondents are responsible for consulting the NIFA website before submission of their proposal to see if there is additional information relevant to this process.

## **II. Background Information**

The 2008A and 2008B Bonds (collectively, the “Bonds”) each have outstanding balances of \$125 million. These balances will decline in accordance with the amortization table listed below.

The Bonds are currently in the weekly mode.

The 2008A Bonds are secured by a standby bond purchase agreement with TD Bank, N.A., that expires on May 7, 2019.

The 2008B Bonds are secured by a standby bond purchase agreement with Sumitomo Mitsui Banking Corporation that expires on November 15, 2021, its final maturity.

A remarketing agreement, substantially in the form attached, will be executed by NIFA and the winning proposer(s).

For additional background information on NIFA and its outstanding VRDBs, please refer to the Authority’s website at [www.nifa.state.ny.us](http://www.nifa.state.ny.us) and/or the Municipal Securities Rulemaking Board’s website at [www.emma.msrb.org/](http://www.emma.msrb.org/).

### III. Objective

The purpose of this SFO is to invite prospective firms to submit their qualifications to serve as remarketing agent for the Authority's outstanding 2008A, 2008B or both series of Bonds.

NIFA does not currently have any plans to refund or call the Bonds before maturity or to abandon its current use of standby letters of credit; however, we cannot guaranty that these terms may not change before the maturity of the Bonds.

#### **Scheduled Amortization/Bonds Outstanding:**

<b>NIFA Series 2008A</b>		
<b>Date</b>	<b>Principal Due</b>	<b>Outstanding Balance 2008A</b>
		\$125,000,000
11/15/2021	27,425,000	97,575,000
11/15/2022	28,475,000	69,100,000
11/15/2023	29,650,000	39,450,000
11/15/2024	30,600,000	8,850,000
11/15/2025	8,850,000	0

<b>NIFA Series 2008B</b>		
<b>Date</b>	<b>Principal Due</b>	<b>Outstanding Balance 2008B</b>
		\$125,000,000
11/15/2019	26,050,000	98,950,000
11/15/2020	75,325,000	23,625,000
11/15/2021	23,625,000	0

### IV. Proposals

To be considered, Proposals must respond to the questions listed below. Proposals should not exceed five (5) pages in no less than 12 point font, exclusive of exhibits or appendices. Please do not include any marketing information about your firm.

#### **A. *Organizational Structure.***

Provide a brief description of your firm and its organizational structure. Please provide a link to where your firm's most recent financial statements and SEC filings may be viewed electronically.

## ***B. Experience.***

- Describe your firm's ability to serve as remarketing agent for variable rate demand bonds. Quantify your firm's capabilities, including the size of your remarketing portfolio.
- Briefly describe how your firm would administer the management of remarketing the VRDBs for NIFA with respect to staffing, management, client communications and reporting. Provide brief professional backgrounds of key team members.
- Please provide the firm's Securities Data Corporation national remarketing agent rankings over the past three years.
- Describe your firm's commitment to public finance. How does your firm commit capital to public finance activities? How much capital is committed to the municipal area? How might the absolute level of capital and procedures that you use to allocate it affect your firm's willingness to purchase unsold securities and the rate your firm would charge, if any, under such circumstances. Describe circumstances in which, as remarketing agent, you have drawn upon the liquidity facility or letter of credit.
- Is your firm, or any of the professionals in your firm that would assigned to NIFA, now, or in the past three years been, the subject of any investigative proceedings by any governmental agency related to your public finance activities? If so, please describe the circumstances and provide assurance to the Authority that these investigations or proceedings will not affect your ability to complete the proposed transaction. Please summarize any reporting that your firm has made to the SEC over the past three years in connection with your public finance activities. To confirm compliance with filing requirements, please include as an attachment a copy of the most recent G-37 filed by your firm with the MSRB.
- Has your firm ever been removed from an account prior to the expiration of its contract? If so, please explain the circumstances.
- Please disclose any conflicts of interest or potential conflicts of interest that may arise as a result of your firm's being hired for this engagement.
- Firms must execute the attached certifications and affidavits, as required.

## **V. Fees (including expenses).**

The remarketing fee that you propose, must include all other fees including legal fees. Stated differently, we want only a bid for remarketing. All other fees or expenses will be paid by the entity that is selected.

## **VI. Competitive Selection; Evaluation Criteria and Process**

The award will be made on the basis of the best value (the proposal which optimizes quality, cost and efficiency) to the most responsive and responsible proposer as determined in the evaluation process. The contract will not necessarily be awarded solely on the basis of lowest cost. Instead,

the award will be made to the respondent whose proposal receives the highest overall evaluation based on the following criteria:

30% Capability of offeror to provide remarketing expertise

20% Experience of professionals to be assigned to the engagement

50% Fees for services (There will not be any additional negotiation on this point, so be sure that you provide a firm and final offer.)

NIFA shall not be liable for any expenses incurred by the offerors in the preparation and presentation of the proposals and may terminate the selection process at any time without prior notice. All offers submitted pursuant to this SFO will become property of NIFA. NIFA will not pay any fees or expenses to the firm(s) selected in the event that any anticipated financing is not completed. NIFA reserves the right to waive any informality in any offer. NIFA reserves the right to negotiate all fees and expenses.

The Authority's selection of the successful Proposer(s) shall not be binding until it has been approved by the Directors of the Authority. No payment for services rendered can be made under the contract until such approval is obtained.

## **VII. Submittal Requirements**

### ***A. Timeline***

<b>EVENT</b>	<b>DATE</b>
RFP Released	December 17, 2015
Proposal Due Date	January 12, 2016

### ***B. Contact Information.***

You must direct all your communications regarding this RFP, in writing, to the "Authorized Contacts" unless the RFP specifically provides otherwise. Do not contact anyone else at NIFA or Lamont. The Authorized Contacts are:

Jeremy Wise  
General Counsel/Director of Debt Issuance  
Nassau County Interim Finance Authority  
170 Old Country Road, Suite 205  
Mineola, NY 11501  
(516) 248-2899  
E-mail: [jeremy.wise@nifa.ny.gov](mailto:jeremy.wise@nifa.ny.gov)

Laura Schneider  
Lamont Financial Services

1 Devonshire Place, Suite 1409  
Boston, MA 02109  
Phone: 973-200-8666  
Email: lschneider@lamontfin.com

***C. Submission of Proposal:***

The bid proposal and accompanying transmittal letter signed by an individual authorized to legally bind the firm must be submitted via email to the Authorized Contacts prior to **5 p.m. Eastern Time, on January 12, 2016**. Any proposals received after this deadline will be rejected. A confirming email will be sent to the proposer acknowledging receipt.

All proposals received in accordance with the terms herein will be reviewed and evaluated. Incomplete proposals and proposals that do not meet the minimum requirements will be rejected.

Proposers may be requested by NIFA to clarify the contents of their proposals.

All proposals must be irrevocable for 180 days and signed by an authorized officer of the firm.

**VIII. SDVBD, MWBE and EEO Requirements and Disabled Veterans Goal**

**New York State Service-Disabled Veteran-Owned Businesses**

Pursuant to New York State Executive Law Article 17-B the Authority recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified Service-Disabled Veteran-Owned Businesses (“SDVOB’s”). Bidders are strongly encouraged and expected to consider SDVOB’s in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers or other supporting roles.

Bidders should be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOB’s in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOB’s.

This RFP has a New York State Service-Disabled Veteran-Owned Business goal of 6%. Proposers should identify ways to assist the Authority to achieve the New York State Service-Disabled Veteran-Owned Business goal of 6%. In addition, proposers who are certified as a New York State Service-Disabled Veteran-Owned Business should include this information in their proposal. For more information and a list of registered New York State Service-Disabled Veteran-Owned Businesses, please visit the New York State Office of General Services webpage [http://www.ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf)

## **Contractor Requirements and Procedures For Business Participation Opportunities For New York State Certified Minority- And Women-Owned Business Enterprises and Equal Employment Opportunities For Minority Group Members and Women**

### **NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR 140-145 the Authority recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of the Authority's contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that the Authority establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, the Authority hereby establishes an overall goal of 30% for MWBE participation, comprised of certified minority-owned business enterprises ("MBE") participation and/or New York State certified women-owned business enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document its good faith efforts to provide

meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that the Authority may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Authority will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and the Authority may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract ("Bidder") agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Bidder may arrange to provide such evidence via a non-electronic method by contacting the Authority. Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Bidder's MWBE requirements please see Appendix V.

Additionally, a Bidder will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Authority. This form is located in Appendix V.

The Authority will review the submitted MWBE Utilization Plan and advise the Bidder of the Authority's acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Nassau County Interim Finance Authority, 170 Old Country Road, Mineola, NY, 11501, phone (516) 248-2828, fax (516) 248-4050 a written remedy in response to the notice of deficiency. If the

written remedy that is submitted is not timely or is found by the Authority to be inadequate, the Authority shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

The Authority may disqualify a Bidder as being non-responsive under the following circumstances:

- a) If a Bidder fails to submit a MWBE Utilization Plan;
- b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c) If a Bidder fails to submit a request for waiver; or
- d) If the Authority determines that the Bidder has failed to document good faith efforts.

Where applicable, the Contractor will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to the Authority, but must be made no later than prior to the submission of a request for final payment on the Contract.

Where applicable, the Contractor will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to the Authority, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix III – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Bidder will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement to the Authority with their bid or proposal. This Policy Statement is located in Appendix V.

To ensure compliance with this Section, the Bidder will be required to submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Appendix V) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit an Equal Employment Opportunity Workforce Employment Utilization Compliance Report identifying the workforce actually utilized on the Contract, if known, through the New York State Contract System; provided, however, that a Bidder may arrange to provide such report via a non-electronic method by contacting the Authority.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

## **IX. Disclosure of Proposal Contents/State Finance Law**

Information submitted to NIFA, including the information contained in proposals submitted in response to this RFP, may be subject to disclosure under the New York Freedom of Information Law ("FOIL") and other laws. If a vendor is submitting information that it believes is protected from disclosure under FOIL or similar laws, it should clearly identify, at the time of submission, the information at issue and the basis for non-disclosure. If NIFA receives a request for disclosure of the identified information and NIFA determines that the identified information is required by FOIL or any other law to be disclosed, NIFA will use reasonable efforts to notify the vendor prior to disclosing the information in order to enable the vendor to take such action as the vendor deems appropriate. Copies of executed contracts are not exempt from disclosure under FOIL and similar laws.

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFP. These Procurement Requirements (1) govern permissible communications between potential respondents and NIFA or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works

agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP.

Compliance with the Procurement Requirements requires that (x) all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact person listed below; (y) the completion by respondents of the Certification at Appendix IV as part of their proposal; and (z) periodic updating of such forms during the term of any contract resulting from this RFP.

The Procurement Requirements also require NIFA staff to obtain and report certain information when contacted by prospective bidders during the restricted period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. For the purpose of compliance with State Finance Law Sections 139-j, contact with Jeremy Wise at NIFA is considered permissible.

## APPENDIX I

### **NON-COLLUSIVE BIDDING CERTIFICATION**

#### **REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW**

By submission of this bid, bidder and each person signing on behalf of bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes 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.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 2015 as the act and deed of said corporation of partnership.

**IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING FOR THE PARTNERS OR PRINCIPALS THAT WOULD PARTICIPATE ON THIS ENGAGEMENT:**

**NAMES OF PARTNERS OR PRINCIPALS**

**LEGAL RESIDENCE**

_____	_____
_____	_____
_____	_____
_____	_____

**IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:**

**NAMES**

**LEGAL RESIDENCE**

_____	_____
President	
_____	_____
Secretary	
_____	_____
Treasurer	
_____	_____
President	
_____	_____
Secretary	
_____	_____
Treasurer	

**Identifying Data:**

Potential Contractor: \_\_\_\_\_

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

City, Town, etc. \_\_\_\_\_

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

\_\_\_\_\_

If applicable, Responsible Corporate Officer Name

\_\_\_\_\_

Title

\_\_\_\_\_

Signature

**Joint or combined bids by companies or firms must be certified on behalf of each participant:**

\_\_\_\_\_  
Legal name of person, firm or corporation

\_\_\_\_\_  
Legal name of person, firm or corporation

By \_\_\_\_\_  
(Name)

By \_\_\_\_\_  
(Name)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City and State

\_\_\_\_\_  
City and State

**APPENDIX II**

**NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND**

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either:

(answer yes or no to one or both of the following, as applicable),

(1) has business operations in Northern Ireland;

Yes \_\_\_\_ or, No \_\_\_\_ if yes;

(2) 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 \_\_\_\_

\_\_\_\_\_

Signature

## **APPENDIX III**

**(Often Referred to in State Documents as "Appendix A")**

### **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

#### **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless 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 \$50,000 (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 \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized

contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**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 (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**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 affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms 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) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, 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 the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, 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 the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(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, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State

contracts 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. 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 Department of Economic Development's Division 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, the terms of this Appendix 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 Section 165 of the State Finance Law, (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  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

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  
  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive

Bidders/Offerors pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**APPENDIX IV**

## ***Certification Pursuant to State Finance Law §139***

This form shall be completed and submitted with your proposal. Failure to complete and submit this form may result in a determination of non-responsiveness and disqualification of the proposal.

**I. Affirmation relating to procedures governing permissible contacts:**

(Proposer must check applicable box)

Proposer:       affirms       does not affirm

that it understands and has to date and agrees hereinafter to comply with the Authority's procedures relative to permissible contacts for this procurement as required by State Finance Law §139-j (3) and §139-j (6) (b).

**II. Disclosure of Findings of Non-Responsibility and Prior Contract Terminations or Withholdings under the 2005 Procurement Lobbying Law:**

1. Has any "governmental entity," as defined by State Finance Law §139-j and §139-k, made a finding in the last four years that the firm was not responsible?

No                       Yes

2. If yes, was the basis for any such finding(s) the intentional provision of false or incomplete information required by State Finance Law § 139-j and §139-k, and/or the failure to comply with the requirements of State Finance Law §139-j (3) relating to permissible contacts?

No                       Yes

If yes, please provide details regarding each finding of non-responsibility below. (Attach additional pages, if necessary)

Governmental Entity: \_\_\_\_\_



## APPENDIX V

# *EEO and MWBE Required Forms*



Division of Minority  
and Women's  
Business Development

## Your MWBE Utilization and Reporting Responsibilities

### Under Article 15-A

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MWBE percentage goals stated in your incentive proposal or contract documents.

The New York State Contract System ("NYSCS") is the tool that New York State uses to monitor MWBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process. Once you log onto the website, click on the **Help & Support** >> link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on all features of the NYSCS. You may also click on the

 icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the Knowledge Base through the Forum link, and submit feedback to help improve future enhancements to the system.

Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (<https://ny.newnycontracts.com>).

For more information, contact your project manager.

**A Division of Empire State Development**

**(I) Company Demographic Profile**

Categories	Number of Employees (report employees in only one category)															
	Race/Ethnicity															
	Hispanic or Latino		Non-Hispanic or Latino													Overall Totals
	Male	Female	Male						Female							
White			Black or African-American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	White	Black or African-American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races			
Executive/ Senior Level Officials and Managers																
First / Mid-Level Officials and Managers																
Professionals																
Technicians																
Sales Workers																
Administrative Support Workers																
Craft Workers																
Operatives																
Laborers and Helpers																
Service Workers																
Total																

(NOTE: proposers can also attach Employer Information Reports EEO-1 for the last 3 years)

# MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL

## EMPLOYMENT OPPORTUNITY POLICY STATEMENT

### M/WBE AND EEO POLICY STATEMENT

I, \_\_\_\_\_, the (awardee/contractor) \_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered at

---

#### **M/WBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

#### **EEO**

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

(b) This organization shall state in all solicitation 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 disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

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

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_

By \_\_\_\_\_

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

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison

(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

\_\_\_\_\_30% Minority and Women’s Business Enterprise Participation

\_\_\_\_\_ % Minority Business Enterprise Participation

\_\_\_\_\_ % Women’s Business Enterprise Participation

PLEASE NOTE THAT THIS REQUIREMENT “EEO CONTRACT GOALS” IS ONLY APPLICABLE WHERE A STATE AGENCY REQUIRES SUCH A PROVISION. NOTE: THIS LANGUAGE SHOULD BE DELETED FROM THE FINAL CONTRACT]

**EEO Contract Goals**

\_\_\_\_\_ % Minority Labor Force Participation

\_\_\_\_\_ % Female Labor Force Participation

\_\_\_\_\_

(Authorized Representative)

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

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

## M/WBE UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

**Offeror's Name:**

**Address:**

**City, State, Zip Code:**

**Telephone No.:**

**Region/Location of Work:**

**Federal Identification No.:**

**Solicitation No.:**

**Project No.:**

**M/WBE Goals in the Contract:** MBE      %    WBE      %

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/ Supplies/Services and intended performance dates of each component of the contract.
A.	<b>NYS ESD CERTIFIED</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<b>NYS ESD CERTIFIED</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

**6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (M/WBE 104).**

<p><b>PREPARED BY (Signature):</b> <b>DATE:</b></p> <p><b>NAME AND TITLE OF PREPARER (Print or Type):</b> SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p>	<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>
	<b>FOR M/WBE USE ONLY</b>	
	<b>REVIEWED BY:</b>	<b>DATE:</b>
	<p><b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p><b>Contract No.:</b> _____ <b>Project No. (if applicable):</b> _____</p> <p><b>Contract Award Date:</b> _____</p> <p><b>Estimated Date of Completion:</b> _____</p> <p><b>Amount Obligated Under the Contract:</b> _____</p> <p><b>Description of Work:</b> _____</p> <p><b>NOTICE OF DEFICIENCY ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p><b>NOTICE OF ACCEPTANCE ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p>	
<b>M/WBE 103 (Revised 11/08)</b>		

## EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

**Submit with Bid or Proposal – Instructions on page 2**

<b>Solicitation No.:</b>	<b>Reporting Entity:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
<b>Offeror's Name:</b>		<input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor <b>Subcontractor's name</b> _____

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification														
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)		
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary /Apprentices																		
Totals																		

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b> <b>EMAIL ADDRESS:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>	<b>Submit completed with bid or proposal</b>

**Nassau County Interim Finance Authority**  
**Sales Tax Secured Variable Rate Bonds**  
**\$\_\_\_\_\_ Series 2008\_-**

**REMARKETING AGREEMENT**

This Remarketing Agreement is made and entered into as of \_\_\_\_\_, 2016 by and between the Nassau County Interim Finance Authority (the "Authority") and \_\_\_\_\_, as Remarketing Agent (the "Remarketing Agent"), whereby the Remarketing Agent will act as exclusive remarketing agent with respect to the subsequent placement, if required, of \$\_\_\_\_\_ aggregate principal amount of the Authority's Sales Tax Secured Variable Rate Bonds, Series 2008\_- (the "Bonds"), issued by the Authority pursuant to the Indenture, dated as of October 1, 2000, as supplemented and amended, including as supplemented by the [Sixteenth Supplemental Indenture, dated as of May 1, 2008], each by and between the Authority and The Bank of New York Mellon, as successor trustee (the "Indenture").

The Bonds are subject to optional and mandatory tender for purchase by the Tender Agent or \_\_\_\_\_ (the "Bank"), in accordance with a Standby Bond Purchase Agreement, dated as of \_\_\_\_\_, between the Authority and the Bank with respect to the Bonds (the "Agreement"). The Agreement, together with the Indenture and the Bonds, are hereinafter collectively referred to as the "Bond Documents".

Section 1. **Definitions.** Unless a different meaning clearly appears from the context, the capitalized words and terms shall have the meanings set forth in the Indenture.

Section 2. **Appointment of Remarketing Agent.** Subject to the terms and conditions contained herein, the Remarketing Agent is appointed and the Remarketing Agent hereby accepts such appointment herein and under the Indenture as exclusive Remarketing Agent in connection with the offering and sale of the Bonds from time to time in the secondary market subsequent to the date hereof.

The Authority and the Remarketing Agent acknowledge and agree that (i) the transactions contemplated by this Remarketing Agreement are arm's-length commercial transactions between the Authority and the Remarketing Agent, (ii) in connection with each such transaction, the Remarketing Agent is acting solely as a principal or agent, as applicable, and not as a municipal advisor, financial advisory or fiduciary to the Authority, (iii) the Remarketing Agent has not assumed any advisory or fiduciary responsibility to the Authority with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Remarketing Agent or its affiliates have provided other services to the Authority on other matters) or other contractual, advisory or fiduciary obligations to the Authority related to this Remarketing Agreement except the contractual obligations expressly as set forth in this Remarketing Agreement, (iv) the Remarketing Agent has financial and other interests that differ from those of the Authority and (v) the Authority has consulted with its own legal and financial advisors to the extent it has deemed appropriate.

Section 3. **Interest Rate Periods; Remarketing of Bonds; Principal Office.**

(a) In accordance with the Indenture, the Remarketing Agent shall offer for sale and use its best efforts to sell Bonds which have been put (including Bank Bonds) at a price and with an interest rate as provided in the Indenture, at rates up to and including the maximum rate permitted under the Indenture and hereunder without regard to the Bank Rate.

Notwithstanding the forgoing provisions of this paragraph (a), the Remarketing Agent may suspend its remarketing efforts immediately upon the occurrence of any of the following events, which suspension will continue so long as the situation continues to exist:

1. suspension or material limitation in trading in securities generally on the New York Stock Exchange;

2. a general moratorium on commercial banking activities in New York is declared by either federal or New York State authorities;

3. the engagement by the United States in hostilities if the effect of such engagement, in the Remarketing Agent's reasonable judgment, makes it impractical or inadvisable to proceed with the solicitation of offers to purchase the Bonds;

4. legislation shall be favorably reported by committee, by amendment or otherwise, in, or be enacted by, the House of Representatives or the Senate of the Congress of the United States, or a decision by a court of the United States shall be rendered, or a stop order, ruling, regulation or official statement by, or on behalf of, the United States Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made, to the effect that the offering or sale of obligations of the general character of the Bonds, as contemplated hereby, is or would be in violation of any provision of the Securities Act of 1933, as amended (the "Securities Act") and as then in effect, or the Securities Exchange Act of 1934, as amended (the "Exchange Act") and as then in effect, or the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act") and as then in effect, or with the purpose or effect of otherwise prohibiting the offering or sale of obligations of the general character of the Bonds, or the Bonds, as contemplated hereby;

5. any event shall occur or information shall become known, which, in the Remarketing Agent's reasonable opinion, makes untrue, incorrect or misleading in any material respect any statement or information contained in the disclosure documents provided to the Remarketing Agent in connection with the performance of its duties hereunder, whether provided pursuant to Section 5 or otherwise, or causes such documents to omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading;

6. any governmental authority shall impose, as to the Bonds, or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force;

7. any of the representations and warranties of the Authority made hereunder shall not have been true and correct in a material respect on the date made;

8. the Authority fails in a material respect to observe any of the covenants or agreements made herein; or

9. an actual or imminent default or a moratorium in respect of payment of any U.S. Treasury bills, bonds or notes the effect of which in the Remarketing Agent's reasonable judgment makes it impractical to market the Bonds or to enforce contracts for the sale of the Bonds.

(b) The Remarketing Agent shall keep such books and records with respect to the remarketing of the Bonds as shall be consistent with prudent industry practice and shall make such books and records available for inspection by the Authority at all reasonable times.

(c) The Remarketing Agent hereby designates its principal office as the address listed in Section 14 hereof.

(d) The Remarketing Agent shall take all actions and do all things as the Remarketing Agent is required or permitted under the terms of the Certificate.

**Section 4. Exclusive Agent; Resignation and Removal of Remarketing Agent.**

Unless this Remarketing Agreement has been previously terminated pursuant to the terms hereof, the Remarketing Agent shall act as exclusive Remarketing Agent for the Authority with respect to the Bonds on the terms and conditions herein contained at all times. The Remarketing Agent may at any time resign and be discharged of its duties and obligations with respect to all or any subseries of the Bonds by giving at least 30 days' prior written notice to the Authority, the Bank providing the liquidity support for such Bonds, the Tender Agent and the Trustee, provided that such resignation shall not take effect prior to the 90<sup>th</sup> day following the receipt of such notice unless a successor remarketing agent has been appointed or the Authority has failed to make the payments required in Section 11 hereof. The Authority may remove the Remarketing Agent with respect to the Bonds at any time upon 7 days' notice to the Remarketing Agent, the Bank providing the liquidity support for the Bonds and the Tender Agent, provided that such 7-day notice period may be shortened if the Authority, after consideration of all the facts, determines in good faith that removal of the Remarketing Agent on such shorter notice is in the best interests of the Authority. The Authority shall use its best efforts to appoint a successor remarketing agent in the event the Remarketing Agent has provided notice of its intent to resign, such best efforts include, if necessary, the payment of fees and expenses in excess of those set forth in this Remarketing Agreement.

In the event the Remarketing Agent shall resign or be removed or be dissolved, or if its property or affairs shall be taken under the control of any state or Federal court or administrative body because of bankruptcy or insolvency, or for any other reason, the Authority shall appoint a successor remarketing agent in accordance with the terms of the Agreement and meeting the requirements set forth herein. The Authority agrees to use reasonable efforts to appoint a successor remarketing agent upon receipt of notice of the Remarketing Agent's intent to resign.

Section 5. **Furnishing of Offering Materials.**

(a) For the limited purpose of providing the Remarketing Agent with information concerning the terms and conditions of the Bonds, the Authority agrees to furnish the Remarketing Agent with as many copies as the Remarketing Agent may reasonably request of the Reoffering Circular dated \_\_\_\_\_ with respect to the Bonds, as it shall be amended or supplemented from time to time (together with any documents incorporated therein, the “Reoffering Circular”).

(b) For so long as the Remarketing Agent acts as such pursuant to this Remarketing Agreement, the Authority agrees to furnish the Remarketing Agent with as many copies of the Authority’s most recent offering circular and each offering circular prepared in connection with the issuance of the Authority’s bonds or notes subsequent to the date hereof as the Remarketing Agent may reasonably request.

(c) The Authority will cooperate with the Remarketing Agent in the preparation of, and shall furnish to the Remarketing Agent at the Authority’s expense, any additional offering circulars or other disclosure materials that the Remarketing Agent and the Authority determine are required by Rule 15c2-12 under Exchange Act, Rule 10b-5 under the Exchange Act and the rules of the Municipal Securities Rulemaking Board or by subsequent changes of law or rules pertaining to registration of the Bonds, disclosure with respect to the Bonds, or delivery of disclosure materials to purchasers of the Bonds or which the Remarketing Agent with the concurrence of the Authority determine should be provided to owners of the Bonds.

Section 6. **Limits of Liability.** The Remarketing Agent shall not be liable for any error in judgment made in good faith, or otherwise be liable in connection with the performance of its duties hereunder or under the Indenture except to the extent it is adjudicated in a final judgment by a court to have acted with willful misconduct, gross negligence, or bad faith. It is expressly understood and agreed that any liabilities and obligations which are based on or related to acts or omissions of the remarketing agent under any remarketing agreement with respect to the Bonds prior to the date hereof (the “Prior Remarketing Agreements”) or following the date hereof, shall be deemed to have arisen from any act or omission of any party to such Prior Remarketing Agreements, and shall remain the responsibilities of those parties who were parties to such Prior Remarketing Agreements.

Section 7. **Term and Termination of Remarketing Agreement.** This Remarketing Agreement shall become effective as of \_\_\_\_\_, 2016, upon execution by the Remarketing Agent and the Authority and shall continue in full force and effect until the payment in full of the Bonds, subject to the right of the Remarketing Agent or the Authority to terminate this Remarketing Agreement, as provided herein.

Section 8. **Representations, Warranties, Covenants and Agreements of the Authority.** The Authority represents, warrants, covenants and agrees with the Remarketing Agent as follows:

(a) The Authority is validly existing as a corporate governmental agency and instrumentality of the State of New York (the “State”) constituting a public benefit corporation under the laws of the State, including the State constitution, with full right and power to issue the Bonds and to execute, deliver and perform its obligations under this Remarketing Agreement and each Bond Document.

(b) The execution, delivery and performance by the Authority of this Remarketing Agreement and each Bond Document are or were within the Authority’s powers, have been duly authorized by all necessary action, require no action by or in respect of, or filing with, any governmental body, agency or official and do not violate or contravene, or constitute a default under, any provision of applicable law, charter, ordinance or regulation or of any material agreement, judgment, injunction, order, decree or other instrument binding upon the Authority or result in the creation or imposition of any lien or encumbrance on any asset of the Authority.

(c) This Remarketing Agreement and each Bond Document constitute a valid and binding agreement of the Authority enforceable against it in accordance with their respective terms, except as the binding effect and enforceability thereof may be limited by applicable laws in effect from time to time affecting the rights of creditors generally and except that the enforceability thereof may be limited by the application of general principles of equity.

(d) The Authority hereby makes to the Remarketing Agent the same representations and warranties as are set forth in the Contract of Purchase, dated \_\_\_\_\_, between the Authority and the underwriters name therein (the “Contract of Purchase,” which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety, provided, however, that references to the Offering Circular in such representations and warranties shall be deemed to refer to the Reoffering Circular). No amendment to such representations and warranties or defined terms made pursuant to the Contract of Purchase shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the consent of the Remarketing Agent.

(e) The Authority agrees that, so long as the Remarketing Agent continues to serve as the Remarketing Agent hereunder the Authority will deliver to the Remarketing Agent:

(i) forthwith upon the occurrence of any Event of Default under the Bond Documents, a certificate of the Executive Director of the Authority setting forth the details thereof and the action which the Authority is taking or proposes to take with respect thereto; and

(ii) from time to time such additional information regarding the financial position, results of operations, business or prospects of the Authority as the Remarketing Agent may reasonably request including, without limitation, copies of all offering circulars or other offering materials with respect to the sale of the Bonds of the Authority.

(f) The Authority agrees that it will perform and comply with each and every covenant and agreement required to be performed or served by it in the Indenture, which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety.

(g) The Authority will cooperate with the Remarketing Agent in the qualification of the Bonds (together with the obligations of the Bank) for offering and sale and the determination of the eligibility of the Bonds (together with the obligations of the Bank) for investment under the laws of such jurisdictions as the Remarketing Agent shall designate and will use its best efforts to continue any such qualification in effect so long as required for the distribution of the Bonds by the Remarketing Agent, provided that the Authority shall not be required to qualify to do business in any jurisdiction where it is not now so subject or be required to consent to the service of process in any jurisdiction where it has not previously consented.

(h) The information contained in the Reoffering Circular with respect to the description of the terms and conditions of the Bonds did not as of its respective date, and the information contained in any subsequent offering circular or other disclosure materials delivered pursuant to Section 5 hereof to the Remarketing Agent will not, contain any untrue statement of material fact and the information contained in the Reoffering Circular did not as of its respective date, and the information contained in any subsequent offering circular or other disclosure materials delivered to the Remarketing Agent will not, omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they are made, not misleading, subject to the qualifications set forth in Section 7(D) of the Contract of Purchase. No representation is made in this paragraph, however, with respect to any information furnished in writing by the Bank, the Remarketing Agent or any remarketing agent specifically for inclusion in the Reoffering Circular or in any subsequent offering circular or other disclosure materials delivered to the Remarketing Agent.

(i) The Authority agrees to use its best efforts to cause the Trustee and Tender Agent to send promptly to the Remarketing Agent copies of all notifications sent to holders of the Bonds.

(j) The Authority agrees to provide the Remarketing Agent notice of any termination, amendment or extension or replacement of the Agreement and such other documents or information as may be necessary to permit the Remarketing Agent to comply on a timely basis with Municipal Securities Rulemaking Board Rule G-34(c) ("Rule G-34(c)"). The Authority agrees that the Remarketing Agent will have no obligation to redact any confidential information in those filing

(k) Within two business days of the effective date of this Remarketing Agreement and within two business days following any substitution or executed amendment, renewal, supplement or replacement under any Liquidity Facility, the Authority shall make available to the Remarketing Agent a copy of such executed Liquidity Facility in a form suitable for filing by the Remarketing Agent in compliance with the requirements of Rule G-34(c).

(l) The Authority (i) agrees to provide the Remarketing Agent with a copy of the execution version of any document that the Remarketing Agent determines is required to be filed with the Municipal Securities Rulemaking Board pursuant to its rules, including, but not limited to, Rule G-34(c) in such format and at such time as to permit the Remarketing Agent to comply with such rules, and (ii) authorizes the Remarketing Agent to submit such documents to the Municipal Securities Rulemaking Board in accordance with Rule G-34(c) and other applicable rules and regulations. If the Authority determines that redaction of information in any such document is required to maintain the confidentiality or proprietary nature of such information (such information to include, but not be limited to, fees, staff names and contact information, and bank routing or account numbers), the Authority shall identify such information to the Remarketing Agent in writing and request the Remarketing Agent accept delivery of the applicable documents with such redactions. The Remarketing Agent agrees to comply with any such request to the extent permitted by Rule G-34(c) and such other applicable rules and regulations.

**Section 9. Representations, Warranties, Covenants and Agreements of the Remarketing Agent.** The Remarketing Agent, by its acceptance hereof, represents, warrants and covenants to and with the Authority as follows:

(a) That it is a [corporation] duly organized and in good standing under the laws of the State of \_\_\_\_\_, is authorized by law to perform all duties imposed upon it by the Certificate and this Remarketing Agreement and is a member of the Financial Industry Regulatory Authority.

(b) That the execution and delivery of this Remarketing Agreement and the consummation of the transactions contemplated herein and in the Certificate will not conflict with or constitute on the part of the Remarketing Agent a breach of or a default under its charter documents, its By-Laws, or any statute, indenture, mortgage, deed of trust, lease, note agreement or other agreement or instrument to which the Remarketing Agent is a party or by which it or its properties are bound, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Remarketing Agent or any of its activities or properties.

(c) That this Remarketing Agreement has been duly authorized, executed and delivered by the Remarketing Agent and constitutes the legal, valid and binding obligation of the Remarketing Agent enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights.

(d) The Remarketing Agent is and shall at all times be registered as a dealer of municipal securities under the Exchange Act, and the Remarketing Agent shall have net capital of at least \$50,000,000.

**Section 10. Conditions to Remarketing Agent's Obligations.** The obligations of the Remarketing Agent under this Remarketing Agreement have been undertaken in reliance on, and shall be subject to, the due performance by the Authority of its obligations and agreements to be performed hereunder and to the accuracy of and compliance with the representations, warranties, covenants and agreements contained herein, on and as of the date on

which Bonds are to be offered and sold pursuant to this Remarketing Agreement. The obligations of the Remarketing Agent hereunder with respect to each date on which Bonds are to be offered and sold pursuant to this Remarketing Agreement are also subject, in the discretion of the Remarketing Agent, to the following further conditions:

(a) Each of the Bond Documents shall be in full force and effect and shall not have been amended, modified or supplemented in any way which would materially and adversely affect the Bonds or the rights and obligations of the Remarketing Agent, except as may have been agreed to in writing by the Remarketing Agent, and there shall be in full force and effect such additional resolutions, agreements, certificates (including such certificates as may be required by the Internal Revenue Service or Bond Counsel to the Authority in order to establish the tax-exempt character of interest on the Bonds) and such opinions (as set forth in the Certificate) necessary to effect a secondary remarketing of the Bonds in the manner contemplated by this Remarketing Agreement, which resolutions, agreements, certificates and opinions shall be satisfactory in form and substance to the Remarketing Agent;

(b) No Event of Default or an event that gives rise to an Event of Default that would constitute a suspension event or an immediate termination event, if any, under the a Liquidity Facility shall have occurred and be continuing;

(c) At or prior to the date hereof, the Remarketing Agent shall have received all documents required by, and delivered pursuant to, this Remarketing Agreement;

(d) The Authority shall be in compliance with its obligations under Section 5 hereof;

(e) In the event that the Bonds shall be or become subject to registration under the Securities Act of 1933, as amended, there shall be in full force and effect all such registration statements, offering materials, opinions and other filings or documents as may be necessary in the reasonable opinion of the Remarketing Agent to effect a secondary remarketing of the Bonds in the manner contemplated by this Remarketing Agreement: and

(f) No litigation or proceedings have been commenced or are pending with respect to the legal validity or tax-exempt status of the Bonds.

#### **Section 11. Payment of Fees and Expenses.**

(a) The Authority agrees to pay to the Remarketing Agent a fee computed as set forth in Exhibit A hereto.

To the extent permitted by law, a late charge calculated at an annual rate of 9% shall be charged for statements not paid within 90 days.

(b) All reasonable expenses and costs of the Remarketing Agent including, but not limited to, expenses, mailing, overnight delivery or faxes, counsel expenses (as agreed to by the parties hereto) or other expenses incurred in the administration of the program after the initial delivery of the Bonds shall be paid by the Authority quarterly in arrears.

Section 12. **Dealing in Bonds by the Remarketing Agent.** The Remarketing Agent, in its individual capacity, may, in good faith, buy, sell, own, hold and deal in any of the Bonds offered and sold by it pursuant to this Remarketing Agreement, and may join in any action which any Bondholder may be entitled to take with like effect as if it did not act in any capacity hereunder. The Remarketing Agent, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Authority, and may act as depository trustee, or agent for any committee or body of owners of Bonds secured hereby or other obligations of the Authority as freely as if it did not act in any capacity hereunder. Nothing in this Remarketing Agreement shall be deemed to constitute the Remarketing Agent an underwriter of the Bonds for the purposes of this Remarketing Agreement, or to obligate the Remarketing Agent to purchase any Bonds at any time for its own account.

Section 13. **Intention of Parties.** It is the express intention of the parties hereto that any purchase, sale or transfer of any Bonds, as herein provided, shall not constitute or be construed to be the extinguishment of any Bonds or the indebtedness represented thereby or the reissuance of any Bonds.

Section 14. **Miscellaneous.**

(a) Except as otherwise specifically provided in this Remarketing Agreement, all notices, demands and formal actions under this Remarketing Agreement shall be in writing and mailed, telegraphed or delivered to the Remarketing Agent and the Authority at their respective addresses set forth below. The Remarketing Agent and the Authority may, by notice given under this Remarketing Agreement, designate other addresses to which subsequent notices, requests, reports or other communications shall be directed.

The Remarketing Agent:

Attention:  
Email:

The Authority:

Nassau County Interim Finance Authority  
170 Old Country Road, Suite 205  
Mineola, New York 11501  
Telephone: (516) 248-2292

Attention: Evan Cohen, Executive Director  
Email: Evan.Cohen@nifa.ny.gov

In addition, the Remarketing Agent shall provide such reports of trading activity, the rate of interest and puts with respect to the Bonds to the Authority as the Authority reasonably requests.

(b) This Remarketing Agreement will inure to the benefit of and be binding upon the Remarketing Agent and the Authority and their respective successors and assigns. The terms “successors” and “assigns” shall not include any purchaser of any of the Bonds solely because of such purchase.

(c) This Remarketing Agreement and each provision hereof may be amended, changed, waived, discharged and terminated only by an instrument in writing signed by the parties hereto (with a copy of any such amendment sent by registered mail to the parties at the addresses listed in Section 14(a) above).

(d) Section headings have been inserted in this Remarketing Agreement only as a matter of convenience of reference, and it is agreed that such section headings are not a part of this Remarketing Agreement and will not be used in the interpretation of any provisions of this Remarketing Agreement.

(e) If any provision of this Remarketing Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule of public policy or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Remarketing Agreement invalid, inoperative or unenforceable to any extent whatever.

(f) This Remarketing Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same instrument.

(g) This Remarketing Agreement shall be interpreted and construed under the provisions of the laws of New York.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have caused this Remarketing Agreement to be duly executed as of the date first written above.

NASSAU COUNTY INTERIM FINANCE  
AUTHORITY

By: \_\_\_\_\_  
Authorized Signatory

By: \_\_\_\_\_  
Executive Director

## EXHIBIT A

### Remarketing Fee Computation Schedule

The following table lists remarketing fees for the Daily Rate, Weekly Rate and Money Market Municipal Rate periods. The remarketing fees for all other interest rate periods are subject to negotiation at the time of conversion. All calculations will be done on an actual day over 365- or 366-day basis, as the case may be.

<u>Adjustable Rate Period</u>	<u>Remarketing Fee</u>
Daily Rate, Weekly Rate and Money Market Municipal Rate	___ % on the average daily amount of bonds outstanding, payable quarterly in arrears

The remarketing fee will be payable quarterly in arrears on each January 1, April 1, July 1 and October 1, commencing April 1, 2016, until maturity or conversion.