

ATTACHMENT A

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO
STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

I. General Provisions

- A. OMH is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OMH (the “AGENCY”), to fully comply and cooperate with OMH in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Attachment or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, OMH hereby establishes the following MWBE Goals:

Minority and Women-Owned Business Enterprises (“MWBE”) participation:
_____%

The _____% total participation is comprised of:

Minority-Owned Business Enterprises (“MBE”) participation: _____%

Women-Owned Business Enterprises (“WBE”) participation: _____%

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/mwbe.html>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

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- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OMH for liquidated or other appropriate damages, as set forth herein.

III. MWBE Utilization Plan-Exhibit 1

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan in Exhibit 1 either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Attachment.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OMH shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

IV. Waivers – Exhibit 2 and Exhibit 2-a

- A. For Waiver Requests Contractor should use Exhibit 2 –Request for Waiver of MWBE Goals.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts (GFE) by the Contractor to meet such goals. In addition to the Waiver form, Contractor should also complete a Certification of GFE (Exhibit 2-a) If the documentation included with the waiver request is complete, the OMH shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the OMH, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the OMH may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

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V. Quarterly MWBE Contractor Compliance Report – Exhibit 3

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Exhibit 3) to the OMH by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VI. Liquidated Damages - MWBE Participation

- A. Where OMH determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the OMH liquidated damages.

- B. 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.

- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the OMH, Contractor shall pay such liquidated damages to the OMH within sixty (60) days after they are assessed by the OMH unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the OMH.