

**AGREEMENT FOR CUSTODIAL SERVICES AT  
NEW YORK STATE GAMING COMMISSION – DIVISION OF LOTTERY  
FISHKILL SALES OFFICE AND CUSTOMER SERVICE CENTER WITH  
THE NEW YORK STATE INDUSTRIES FOR THE DISABLED**

**CONTRACT #T160004**

THIS AGREEMENT made this 30 day of April, 2016 by and between the NEW YORK STATE GAMING COMMISSION, an executive agency of the State of New York having an office at One Broadway Center, Post Office Box 7500, Schenectady, New York 12301-7500 (the "Commission"), and New York State Industries for the Disabled, a not-for-profit corporation incorporated under the laws of New York State (hereinafter the "Contractor" or "NYSID") having an office at 11 Columbia Circle Drive, Albany, New York 12203-5156.

WHEREAS the Commission is responsible for the management and operation of the Fishkill Sales Office & Customer Service Center located at 18 Westage Business Center, Hudson Valley Towne Center, Suite 6, Fishkill, New York 12203-5156 (hereinafter "Fishkill") and in fulfilling its responsibility deems it necessary to obtain custodial services, and

WHEREAS, the Contractor can provide this custodial service through its preferred source member workshop, Rehabilitation Support Services, and

WHEREAS, Section 162 of the State Finance Law provides for the procurement of such services from certain preferred sources, and

WHEREAS, the Contractor has been selected by the Commission, pursuant to

said statute, to perform custodial services on the terms hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. Scope of Work. This is a full service contract with the Contractor providing all labor, materials, supplies, and equipment consistent with applicable health and safety codes, rules, and regulations necessary for the performance of all the work associated with this contract. Exhibit A, incorporated in this Agreement, defines the detailed duties for this contract.

2. Term. This Agreement shall commence on August 1, 2016 and end on July 31, 2019, unless sooner terminated as herein specified.

3. Compensation.

a. In full consideration for all goods and services specified under this Agreement, the Commission agrees to pay, and the Contractor agrees to accept, compensation in accordance with the rates proposed by NYSID in the Request for Price Concurrence, incorporated into this Agreement as Exhibit B.

b. The hourly wage rates under Exhibit B for years two and three of the Agreement will be adjusted by the Prevailing Wage Rate as provided in Section 4 of this Agreement.

c. The total value for the term of this Agreement shall not exceed \$44,254.05.

d. Payment for services under this agreement will be in accordance with New York State Prompt Payment Law (Article 11-A of the New York State Finance Law). Payment will be made upon submission by Contractor of monthly invoices. All invoices must be directed to the Commission Finance Office at the address contained in this Agreement. The Commission shall promptly process all payments due to Contractor that conform to the provisions of this Agreement and are approved by Commission staff.

4. Prevailing Wage Rate & Price Adjustment.

a. The services to be provided under this Agreement with NYSID shall be subject to the Prevailing Wage Rate provisions of New York Labor Law, Article 9, which provides that prevailing wages and supplements be paid under all public works Agreements. NYSID shall pay the employees providing services under this Agreement no less than the current prevailing wage rates established by the New York State Department of Labor in accordance with Prevailing Wage Case Number (PRC#) 2015900818, which is the PRC Number applicable to janitors, porters, cleaners, and elevator operators. **PRC#2015900818** is incorporated herein as Exhibit C. Overtime must be paid for individuals working more than eight hours in any one calendar day or for more than forty (40) hours in any one week. Contractor is required to post the current prevailing wage rates in a prominent and accessible place at its work site and to inform employees of the posting.

b. The labor portion of the bid rates contained in Exhibit B – Price Concurrence will be adjusted (increased or decreased) dependent upon fluctuations in

the Prevailing Wage Rate Schedule as issued by the NYS Department of Labor annually on July 1. The price adjustments to the labor portion of this Agreement will be based on the percentage difference in the Prevailing Wage Rate plus Supplemental Benefit from July to July each year of the Agreement term, and must be requested within 30 days of the publication.

5. Background Checks. Background checks will be required for all employees performing services under this Agreement.

6. Approvals Required. This Agreement shall be effective upon the signature of the Commission and NYSID.

7. Delegation and/or Assignment. Delegation and/or assignment of any duties under this contract to another entity shall not be binding upon the State until the Commission has given written consent to such delegation; nor shall assignments of rights to moneys due or to become due under this contract be permitted to any entity other than Contractor, except by express written consent of the Commission.

8. Mutual Cooperation. The objective of this Agreement is to provide cleaning and maintenance services at the Fishkill Office. The parties agree to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish that objective.

9. Equal Employment Opportunity. By entering into this Agreement, the Contractor agrees with all of the terms and conditions of Clause 12 of Appendix A – Equal Employment Opportunities for Minorities and Women. It is the policy of New York State to maximize the opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as offerors, subcontractors and suppliers for its procurement contracts. Information on the availability of New York State subcontractors and suppliers can be found in the Directory of Certified Minority and Women-Owned Business Enterprises available from the New York State Department of Economic Development, [http://www.empire.state.ny.us/Small\\_and\\_Growing\\_Businesses/mwbe.asp](http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp).

10. Insurance Requirements Prior to the start of work the Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of the Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York (Admitted Carriers). The Commission may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the Commission to accept insurance placed with a non-authorized carrier under any circumstances. The Contractor shall deliver to the Commission evidence of such policies in a form acceptable to the Commission. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

- General Conditions

Prior to the start of work the Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of the Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York (Admitted Carriers). The Commission may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the Commission to accept insurance placed with a non-authorized carrier under any circumstances. The Contractor shall deliver to the Commission evidence of such policies in a form acceptable to the Commission.

All required insurance must be written by company rating of "A-" or better rated by A.M. Best & Co., have a record of successful continuous operation, are licensed, admitted, and authorized to do business in the State of New York, and are approved by the Commission. Required coverage and limits must be put into effect as of the effective date of the Contract and must remain in effect throughout the term of the Contract, as determined by the Commission. The successful bidder must submit copies of each required insurance Contract, and any renewals thereof, to the Commission upon the Commission's request. The insurance policies must provide thirty (30) days' advance written notice to the Commission of cancellation or termination and as soon as practicable as to failure to renew any policy.

**A. Conditions Applicable to Insurance.** All policies of insurance required by this agreement must meet the following requirements:

1. *Coverage Types and Policy Limits.* The types of coverage and policy limits required from the Contractor are specified in Paragraph B below – Specific Coverages and Limits.

2. *Policy Forms.* Policies must be written on an *occurrence* basis, except as may be otherwise specifically provided herein, or agreed in writing by the Commission. Under certain circumstances, the Commission may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Contract. If the policy is cancelled or not renewed during that time, the Contractor must purchase at its sole expense Discovery Clause coverage sufficient to complete the 3-year period after completion of the Contract. Written proof of this extended reporting period must be provided to the Commission prior to the expiration or cancellation of the policy.

3. *Certificates of Insurance/Notices.* Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commission, before commencing any work under this Contract. Certificates shall be mailed using the contact information provided in Part 1 of this RFP.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed

without at least thirty (30) days prior written notice except for non-payment as required by law to the Commission.

Certificates of Insurance shall:

- Be in the form approved by the Commission.
- Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Contract.
- Specify the Additional Insureds and Named Insureds as required herein.
- When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit, and be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance, Supplemental Insurance Certificates, and other attachments) will be accepted.

*4. Primary Coverage.* All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to the Commission for any claim arising from the Contractor's Work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by the Commission shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance clause contained in the Commission's own policy of insurance.

*5. Policy Renewal/Expiration.* At least two weeks prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Commission than the expiring policies shall be delivered to the Commission in the manner required for service of notice in Paragraph A.3 above. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required

herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to the Commission, the Contractor shall immediately cease work on the project. The Contractor shall not resume work on the project until authorized to do so by the Commission. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to the Commission, shall not give rise to a delay claim or any other claim against the Commission. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided to the Commission, the Commission may withhold further Contract payments, treat such failure as a breach or default of the Contract, and/or, after providing written notice to the Contractor, require the Surety if, any, to secure appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchase to the Contractor.

6. *Self-Insured Retention/Deductibles.* Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Additional surety/security may be required in certain circumstances. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

7. *Subcontractors.* Should the Contractor engage a Sub-contractor, the Contractor shall endeavor to impose the insurance requirements of this document on the Sub-contractor, as applicable. Required insurance limits

should be determined commensurate with the work of the Sub-contractor. Proof thereof shall be supplied to the Commission.

**B. Specific Coverages and Limits.** The types of insurance and minimum policy limits shall be as provided below.

1. *General Liability.* Commercial General Liability Insurance (CGL), covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this Contract. The limits under such policy shall not be less than the following:

- Each Occurrence limit: \$1,000,000
- General Aggregate: \$2,000,000
- Products/Completed Operations should equal the General Aggregate limit
- Personal Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Medical Expense \$5,000

Coverage shall include, but not be limited to, the following: premises liability; independent contractors; blanket contractual liability, including tort liability of another assumed in a Contract; defense and/or indemnification obligations, including obligations assumed under this Contract; cross liability for additional insured's; products/completed operations for a term of no less than three years, commencing upon acceptance of the work, as required by the Contract; explosion, collapse, and underground hazards; contractor means and methods; liability resulting from Section 240 or Section 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the policy:

- CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
- CG 20 10 11 85, or, an equivalent- Additional Insured-Owner, Lessees or Contractors (Form B)

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

Policies shall name the Commission as Additional Insureds, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy, and any umbrella/excess policies used to meet the “Each Occurrence” limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such polic(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Commission. Any other insurance maintained by the Commission shall be in excess of and shall not contribute with the Contractor’s or Subcontractor’s insurance, regardless of the “Other Insurance” clause contained in either party’s policy of insurance.

*2. Workers’ Compensation.* For work to be performed in New York State, 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 NYS Workers’ Compensation Law.

(a) Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the

Commissioner of the Workers' Compensation Board:

- (1) C-105.2 (September 2007, or most current version) – Certificate of Workers' Compensation Insurance. Bidder must request its carrier to send this form to the Commission; or
- (2) U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund. Bidder must request that the State Insurance Fund send this form to the Commission; or
- (3) GSI-105/SI-12 – Certificate of Workers' Compensation Self Insurance.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier. (ACORD forms are NOT acceptable proof of Workers' Compensation coverage.)

**All forms must name THE NEW YORK STATE GAMING COMMISSION as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

(b) If the Contractor is legally exempt from obtaining Workers'

Compensation insurance coverage, Contractor must provide: Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us)).

(c) If the Contractor is self-insured, Contractor must provide: Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance

Office; or Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

3. *Disability Benefits*. For work to be performed in New York State, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law.

(a) Evidence of Disability Benefits coverage must be provided on: Form DB-120.1 (May 2006 or most current version), *Certificate of Insurance Coverage under the NYS Disability Benefits Law*. Vendor must request its business insurance carrier to send this form to the Commission.

- (b) If the Contractor is legally exempt from obtaining Workers' Compensation Disability insurance, Contractor must provide: Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us)).

- (c) If the Contractor is self-insured, Contractor must provide: Form DB-155, *Certificate of Disability Benefits Self-Insurance*.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier.

**All forms must name THE NEW YORK STATE GAMING COMMISSION as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

11. Termination.

(a) The Commission shall have the right to terminate this Agreement for convenience or for any of the following causes:

(i) a material breach by the Contractor of any of the provisions of this Agreement;

(ii) a determination by a court of competent jurisdiction that the Contractor is bankrupt or insolvent;

(iii) a good faith determination by the Commission that continuation of the contract could place the integrity of the Commission in jeopardy; or

(iv) a conviction of the Contractor or any of its directors, officers, or employees of any criminal offense connected to the Contractor's business which, in the sole reasonable opinion of the Executive Director of the Commission, would be

prejudicial to public confidence in the Lottery or the Commission.

(b) In the event that the Commission decides to exercise the right to terminate this Agreement for cause, the Commission shall give the Contractor advance written Notice of Intention to Terminate for Cause ("Notice"). Such Notice shall state clearly and specifically the cause for which termination is sought, and the Contractor shall be entitled to a period of thirty (30) days from receipt of such Notice to correct or cure the cause so described to the reasonable satisfaction of the Commission in which case

such Notice shall be deemed withdrawn and a nullity. If termination is sought because of a criminal conviction as described in subparagraph (iv) of Paragraph (a) of this section 6, the cause for termination shall be deemed to be cured if the Contractor causes or obtains the dismissal, resignation, retirement, or other removal of the person convicted of such offense during such thirty (30) day period.

(c) The Commission reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Commission may exercise its termination right by providing written notice to the Contractor in accordance with the written notice terms of this Agreement.

(d) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Commission officials or staff, the Contract may be terminated by the Executive Director or his or her designee at the Contractor's expense where the Contractor is determined by the Executive Director or his or her designee to be non-responsible. In such event, the Executive Director or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

12. Records Retention. Records required by this Agreement to be retained by the Contractor shall be retained for the periods specified in Appendix A, attached hereto. Such records may be retained in their original form, or in any other reliable and readily retrievable format, at the option of the Contractor.

13. Liability and Indemnification. The Contractor shall be responsible for all damages to life and property due to activities of the Contractor, as well as the subcontractors (if any), agents or employees of the Contractor in connection with performance of services under this agreement. The Contractor shall indemnify, defend, and save harmless the Commission, the State of New York, and their officers, employees, agents, assigns and retailers from and against any and all third party claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of:

- a. The Contractor, its officers, employees, agents, successors and assigns, and/or
- b. A Subcontractor, its officers, employees, agents, successors and assigns.

14. Relationship. The relationship of the Contractor to the Commission arising out of this Agreement shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Commission or the State by reason hereof, and that it will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the Commission or the State, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. All personnel of the Contractor shall be within the employ of the Contractor only or shall be duly contracted subcontractors of the Contractor, which alone shall be responsible for their work, the

direction thereof, and their compensation. Nothing in this Agreement shall impose any liability or duty on the Commission or the State, on account of any acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, for taxes of any nature, including, but not limited to, unemployment insurance and workers' compensation, and the Contractor hereby agrees to indemnify and hold harmless the Commission and the State against any such liabilities.

15. Warranties, Representations, and Limitations. The Contractor warrants and represents that it possesses the professional experience and expertise necessary to perform its obligations pursuant to this Agreement and that it will exert its best efforts to provide a high standard of professional service. Notwithstanding the foregoing, the Contractor disclaims any warranty or guarantee, expressed or implied, including without limitation, warranties of fitness for a particular purpose or merchantability, for any report, design, item, service, or other result delivered or deliverable under this Agreement. The Commission assumes all responsibility for its use, misuse, or inability to use the results generated by the Contractor pursuant to this Agreement. The Contractor shall have no liability for damages, including, but not limited to, any indirect, incidental, or consequential damages, arising from or in connection with this Agreement, unless such damages are attributable to a negligent act or omission of the Contractor. The Commission and the Contractor agree that each party assumes any and all risks of personal injury or property damage by any of their own employees occurring during the

performance of activities pursuant to this Agreement and directly attributable to their negligence.

16. Documents Incorporated. Appendix A, "Standard Clauses for all New York State Contracts", dated January, 2014; Exhibit A, Statement of Work; Exhibit B, Price Concurrence; Exhibit C, Prevailing Wage Schedule (PRC#2015900818), are hereby incorporated herein to the same force and effect as if set forth at length hereat.

17. Order of Precedence. In the event of a conflict in any of the provisions of this Agreement and the documents incorporated herein, such conflict shall be resolved by giving precedence in interpretation to the document in the following order: Appendix A; Any amendments to the Agreement; and the Agreement.

18. Miscellaneous Provisions.

a. A waiver of enforcement of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement nor shall it preclude the affected party from subsequently enforcing such provision.

b. This instrument and the documents incorporated herein represent the entire agreement between the Commission and the Contractor, and no modification thereof shall be binding unless the same is in writing and signed by the respective parties.

c. The headings contained in this Agreement are intended for ease of reference only and shall not be interpreted to limit or modify any of the provisions of this Agreement.

d. The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Executive Director of the Commission or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

e. The Executive Director of the Commission or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Executive Director of the Commission or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

NEW YORK STATE INDUSTRIES  
FOR THE DISABLED, Inc.

By:   
Title: VP Contract Administration  
Date: 4/20/16

NEW YORK STATE  
GAMING COMMISSION

By:   
Title: Supv. of Contract Admin.  
Date: 5/26/16