

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
CONSULTANT CONTRACT  
FOR THE PROVISION OF CDBG-DR FUNDED HUNTS POINT PENINSULA  
RESILIENCY EVALUATION AND PILOT PROJECT  
NYCEDC CONTRACT NO. 61110002  
PROJECT CODE NO. 6111**

***CONSULTANT CONTRACT***

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
CONSULTANT CONTRACT  
FOR THE PROVISION OF CDBG-DR FUNDED HUNTS POINT PENINSULA  
RESILIENCY EVALUATION AND PILOT PROJECT  
NYCEDC CONTRACT NO. 61110002  
PROJECT CODE NO. 6111**

- PART I      SPECIFIC TERMS AND CONDITIONS**
- PART II     GENERAL TERMS AND CONDITIONS**
- PART III    APPENDICES**

- 4.2 **Funding Agencies:** U.S. Department of Housing and Urban Development (“HUD”)
- 4.3 **Applicable Requirements:** *See* Appendix J
- 4.4 **Applicable Agreements:** *See* Appendix K
- 4.5 **Federal Compliance:** The Consultant and all Sub-consultants under this Agreement will be subject to all relevant requirements of the funding statutes cited above and below.

#### Compliance with US Department of Housing and Development Regulations

A component of this Program may be funded in part by a Community Development Block Grant Disaster Recovery program grant (“CDBG-DR Grant”) administered by the US Department of Housing and Development (“HUD”). The Consultant shall follow all applicable CDBG-DR regulations (2 CFR 200, 24 CFR Part 570, 24 CFR Part 85, 44 CFR Part 13, 44 CFR Parts 50-59, 44 CFR Part 206, and related Federal Register Notices). A component of the CDBG-DR Grant is compliance with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

CDBG-DR grants are reimbursement grants. In order to receive reimbursement, all Program costs that will be reimbursed by CDBG-DR funds must be validated by HUD. As such, all Program costs that will be reimbursed by CDBG-DR funds must be clearly separated from other Program costs.

5. **Special Provisions** The provisions set forth below are hereby added to and made part of, or deleted from this Contract, as indicated. In the event any conflict exists between any of the General Terms and Conditions (Part II) of this Contract and these special provisions, these special provisions shall govern.

5.1 **Liquidated Damages:** As stated in Article 1, Section 1.4.1, the Services to be performed by the Consultant shall at all times be subject to the review, direction and control of the Director, whose decision shall be final and binding upon the Consultant. The Director shall have the right to determine the amount, quality, acceptability and fitness of the Services and her or his approval shall be a condition precedent to the right of the Consultant to receive any compensation under this Contract.

Upon completion of work and as stated in Article 2, Section 2.1.2, Requisitions shall be in a form reasonably acceptable to the Corporation and shall be supported by any appropriate or necessary documentation or other evidence relating to the amounts set forth in the Requisition, as the Corporation may reasonably require including, but not limited to invoices, receipts and vouchers from Subcontractors and suppliers, information related to M/WBEs required under Section 9.6 and, where applicable, the time sheets and/or certified payroll reports of the Consultant’s staff and its Principal. Failure to provide such appropriate or necessary documentation or other evidence relating to the amounts set forth in the Requisition, as the Corporation may reasonably require, will result in non-payment.

As stated in Article 2, Section 2.1.4, the Director shall review the Requisitions and the Work Product. If, in her or his judgment, the Services have been satisfactorily performed in accordance with this Contract, the Director will approve the Requisition. If in her or his judgment, the Services have not been satisfactorily performed in accordance with this Contract, the Director will not approve the Requisition and payment will not be received. All payments to the Consultant will be made in accordance with this Article 2.

In addition, per Article 2, Section 2.2.1, if the Corporation shall have reasonable grounds for believing that: (i) the Consultant will be unable to perform the Services or any Portion thereof fully and satisfactorily in accordance with any Progress Schedule, or (ii) a meritorious claim exists or will exist against the Corporation, the Consultant or the City arising out of the act, omission or negligence of the Consultant or the Consultant's breach of any provision of this Contract, then the Corporation may withhold payment of any amount otherwise due and payable to the Consultant hereunder. Any amount so withheld may be retained by the Corporation for such period as it may deem advisable to protect the Corporation and the City against any loss and may, after Notice to the Consultant, be applied in satisfaction of any claim herein described.

**5.2 CDBG-DR Section 3 Compliance:** Within 60 days of the contract start date, the Consultant must contact the Department of Small Business Services ("SBS") at [Section3@nycedc.com](mailto:Section3@nycedc.com) to coordinate review of the Consultant's hiring plan for Section 3 compliance. In addition, the Consultant will be required to submit a Section 3 progress report with every request for payment under the Contract.

**5.3 Reporting Requirements:** The Consultant shall report to NYCEDC or the City, on a monthly basis, all information reasonably requested by NYCEDC or the City that is necessary for NYCEDC or the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Consultant agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by NYCEDC or the City.

This Contract may be executed in counterparts, all of which counterparts, when taken together, shall be deemed a fully executed instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as of the Contract Date hereinabove written.

**NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION**

By: 

Name: Tom McKnight

Title: EVP

**Henningson, Durham & Richardson  
Architecture and Engineering, P.C.**

By: 

Name: Thomas McLaughlin

Title: Authorized Representative

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
CONSULTANT CONTRACT  
FOR THE PROVISION OF CDBG-DR FUNDED HUNTS POINT PENINSULA  
RESILIENCY EVALUATION AND PILOT PROJECT  
NYCEDC CONTRACT NO. 61110002  
PROJECT CODE NO. 6111**

**PART II  
GENERAL TERMS AND CONDITIONS**

ARTICLE 1 PERFORMANCE OF SERVICES .....1  
ARTICLE 2 COMPENSATION .....4  
ARTICLE 3 SUSPENSION OR TERMINATION .....5  
ARTICLE 4 PERSONNEL AND SUBCONTRACTORS .....8  
ARTICLE 5 DOCUMENTS AND MATERIALS .....10  
ARTICLE 6 INDEMNIFICATION, CLAIMS AND INSURANCE .....13  
ARTICLE 7 REPRESENTATIONS AND WARRANTIES .....17  
ARTICLE 8 APPLICABLE LAWS, RULES AND REGULATIONS .....18  
ARTICLE 9 M/WBE REQUIREMENTS .....21  
ARTICLE 10 MISCELLANEOUS .....25

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
CONSULTANT CONTRACT  
FOR THE PROVISION OF CDBG-DR FUNDED HUNTS POINT PENINSULA  
RESILIENCY EVALUATION AND PILOT PROJECT  
NYCEDC CONTRACT NO. 61110002  
PROJECT CODE NO. 6111**

**PART II  
GENERAL TERMS AND CONDITIONS**

The Corporation and the Consultant agree as follows:

**ARTICLE 1  
PERFORMANCE OF SERVICES**

1.1 **Services.** The Corporation hereby retains and engages the Consultant and the Consultant agrees to perform the Services as described in **Appendix B** (Scope of Services), attached hereto.

1.2 **Time for Performance of Services/Term/Delays and Force Majeure.**

1.2.1 The Consultant shall commence the Services upon or promptly after the Commencement Date and shall complete the Services and each phase of the Services within the time or times stated for Final Completion as set forth in **Appendix B**, and in accordance with any directive given and Progress Schedule approved by the Corporation, unless this Contract is earlier terminated pursuant to Article 3 hereof.

1.2.2 This Contract shall be for the Term as set forth in Part I, Section 1.5 unless sooner terminated pursuant to Article 3 hereof.

1.2.3 If the Consultant has been delayed and as a result will be unable to complete performance fully and satisfactorily within the time fixed therefor, the Consultant may be granted an extension of time fixed for performance equal to the period the Consultant was actually and necessarily delayed upon submission of evidence of the causes of the delay, subject to the written approval of the Director in his or her sole discretion. The decision of the Director as to the granting of the extension and its length shall be binding upon the Consultant.

1.2.4 Subject to the Corporation's determination and approval, the Corporation may extend the time or times for performance of the Services where such performance has been substantially obstructed, hindered or delayed by reason of acts of Force Majeure. The Consultant shall have no claim against the Corporation or the City for any loss or damage sustained by the Consultant nor for any extra compensation in the form of an increase in the Maximum Contract Price, or otherwise, through such delay, hindrance or obstruction.

1.3 **Complete Work and Timing and Sequence/Meetings.** It is the intent of the parties that the provisions of this Contract shall not be construed so as to limit the Services, but that the

Services shall include all acts necessary to fully and finally complete the work described in **Appendix B** hereof. The Consultant shall schedule and perform the Services in a manner so as to permit their completion diligently and expeditiously. The Principal, the Person in Charge and such other Representatives of the Consultant as may be required under the circumstances shall be available to meet with the Director or her or his designee as often as necessary to effectively perform the Services, and as often as may be specified in **Appendix B**.

#### 1.4 Authority of Director/Performance of Services.

1.4.1 The Services to be performed by the Consultant shall at all times be subject to the review, direction and control of the Director, whose decision shall be final and binding upon the Consultant. The Director shall have the right to determine the amount, quality, acceptability and fitness of the Services and her or his approval shall be a condition precedent to the right of the Consultant to receive any compensation under this Contract. The Director shall act reasonably in exercising her or his authority under this Contract. The Director and any other person or agent duly authorized to act for and on behalf of the Corporation shall not, by virtue of such authority or action, be liable in any manner to the Consultant.

1.4.2 The Consultant shall perform all of the Services in a prudent and professional manner and in accordance with standards and practices as are customary for such Services in the New York City Metropolitan Statistical Area.

#### 1.5 Changes to the Services.

1.5.1 The Consultant shall not make any changes in the Services without prior written authorization from the Director. The Consultant shall revise or correct any Work Product submitted in accordance with this Contract until accepted by the Director and accepted by all agencies whose approval is required by law, without additional compensation or time extension. Any changes to the performance of the Services or the Work Product which are necessary due to improper performance of the Services, a defect of design, unworkability of details or other fault or error of the Consultant shall be made by the Consultant, also without additional compensation or time extension.

1.5.2 The Director shall have the right to alter the Services, provided however, that if the Consultant believes that any work or services that it has been directed to perform as a result of such alteration is beyond the Scope of Services and constitutes Extra Work, the Consultant shall so Notify the Director within three (3) days of such directive. The Director shall determine whether such altered Services are (i) within the Scope of Services; or (ii) Extra Work requiring an amendment to the Scope of Services and the Contract. The Director's determination shall be final, binding and conclusive.

1.5.3 The Director reserves the right to reduce the Scope of Services under this Contract by Notice to the Consultant specifying the nature and extent of such reduction. The Consultant shall be compensated for all Services satisfactorily performed prior to the reduction and for Services satisfactorily performed thereafter. If said reduction results in a credit for the Corporation, such credit shall be immediately due and owing to Corporation, and the Consultant shall either pay such credit to the Corporation or the Corporation may withhold the credit amount

from any future payments by the Corporation to the Consultant, at the exclusive option of the Corporation.

## 1.6 Equipment.

1.6.1 The Consultant, at its own expense, shall secure all supplies, materials and equipment required to perform and complete the Services.

1.6.2 The Consultant, at its sole cost and expense, shall bear the risk of loss for any supplies, materials and equipment used to perform the Services whether such loss arises by reason of fire, theft, vandalism, negligence or any other cause whatsoever. Consultant, at its sole cost and expense, shall promptly replace or repair all such lost, stolen or damaged supplies, materials and equipment.

1.6.3 The Consultant, at its sole cost and expense, shall maintain all of its supplies, materials and equipment in good working and serviceable order so as to enable the Consultant to perform the Services in a first-class and professional manner.

1.6.4 The Consultant shall be solely responsible for the means and methods and the safety and protection of all its employees and shall assume all liability for injuries, including death, that may occur to such employees due to the act, omission, negligence, fault or default of the Consultant.

1.7 Services Subject to City Contract, Indemnification and Third Party Beneficiary. This Contract is a subcontract under the City Contract. The Consultant acknowledges that it has reviewed the City Contract and agrees to comply with the City Contract with respect to the Services and not to violate, or through its acts or failure to act cause the Corporation to violate, the City Contract. The Consultant agrees to defend, indemnify and hold harmless the Corporation from any claim, liability or judgment to which the Corporation may be subject because of any such action or failure to act. The City shall be a third party beneficiary of this Contract and shall have a direct cause of action against the Consultant in the event that any claim be made or any cause of action be brought against the Corporation or City or if the Consultant breaches this Contract.

1.8 Acts to be Performed by the Corporation. The Corporation shall perform the following acts in connection with this Contract:

1.8.1 The Corporation shall make available to the Consultant all relevant technical data (subject to the provisions of Part II, Section 5.3 herein) in regard to the Contract which is in the possession of the Corporation.

1.8.2 The Corporation shall designate a Project Manager to serve as a liaison between the Corporation and the Consultant.

## **ARTICLE 2**

### **COMPENSATION**

#### **2.1 Payments.**

2.1.1 Subject to, and in accordance with this Article 2, the Corporation shall pay to the Consultant, and the Consultant agrees to accept, in full consideration for the Services, and for all expenses of the Consultant in connection therewith, including Subcontractors' Costs and Allowable Additional Costs, an amount not to exceed the Maximum Contract Price, payable as provided for in this Section 2.1 and in Appendix C.

2.1.2 Requisitions shall be in a form reasonably acceptable to the Corporation and shall be supported by any appropriate or necessary documentation or other evidence relating to the amounts set forth in the Requisition, as the Corporation may reasonably require including, but not limited to invoices, receipts and vouchers from Subcontractors and suppliers, information related to M/WBEs required under Section 9.6 and, where applicable, the time sheets and/or certified payroll reports of the Consultant's staff and its Principal.

2.1.3 Each Requisition submitted to the Corporation by the Consultant shall constitute a representation that, except as specifically set forth in the Requisition, as of the date of the Requisition, all representations and warranties made by the Consultant in Article 7 are true, complete and accurate as if made as of the date of the submission of the Requisition.

2.1.4 The Director shall review the Requisitions and the Work Product. If, in her or his judgment, the Services have been satisfactorily performed in accordance with this Contract, the Director will approve the Requisition. All payments to the Consultant will be made in accordance with this Article 2.

2.1.5 Subject to Section 3.5, Final Payment will be due only upon Final Completion.

2.1.6 The Consultant, with the Director's prior approval, may exceed the Maximum Payment allocated to a particular Portion of the Services if the Consultant by Notice determines that the Maximum Payment initially allocated to the Portion is insufficient to adequately perform the Portion of the Services and if the Consultant demonstrates to the Director a savings with respect to another Portion of the Services which is at least equal to the amount of such excess. However, notwithstanding the above, in no event shall the Corporation pay the Consultant more than the Maximum Contract Price.

2.1.7 All Requisitions must be submitted to the Corporation's Accounts Payable Department.

#### **2.2 Miscellaneous Payment Provisions.**

2.2.1 In addition to its rights under Section 9.10, if the Corporation shall have reasonable grounds for believing that:

(i) the Consultant will be unable to perform the Services or any Portion thereof fully and satisfactorily in accordance with any Progress Schedule, or

(ii) a meritorious claim exists or will exist against the Corporation, the Consultant or the City arising out of the act, omission or negligence of the Consultant or the Consultant's breach of any provision of this Contract,

then the Corporation may withhold payment of any amount otherwise due and payable to the Consultant hereunder. Any amount so withheld may be retained by the Corporation for such period as it may deem advisable to protect the Corporation and the City against any loss and may, after Notice to the Consultant, be applied in satisfaction of any claim herein described.

2.2.2 The Corporation shall not be deemed to have released the Consultant from any claim or liability, or to have waived any cause of action arising from any breach of this Contract by virtue of making payments to the Consultant.

2.2.3 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to this Contract, the Consultant agrees that it shall be deemed to have fully released the Corporation and the City from any and all claims, demands and causes of action whatsoever which the Consultant has or may have against the Corporation or the City in connection with this Contract and, upon the request of the Corporation, shall execute a release to such effect.

2.2.4 All payments to the Consultant under this Contract shall be subject to all applicable Legal Requirements.

2.3 Electronic Funds Transfers. All payments due under this Contract in excess of \$100,000 shall be made by Electronic Funds Transfer ("EFT"). Upon execution of this Contract, and in no event later than its submission of its first Requisition, the Consultant shall complete and submit to the Corporation the "EFT Vendor Payment Enrollment Form" annexed to Appendix C. The Consultant shall update such information to the extent necessary for EFT payments to be made. The Corporation shall not be obligated to make any payment in excess of \$100,000 unless such information is provided and shall be entitled to rely solely on the information provided by the Consultant. Payments to the Corporation shall be made by check unless the Corporation Notifies the Consultant to make payments by EFT.

### **ARTICLE 3**

#### **SUSPENSION OR TERMINATION**

#### 3.1 Delay, Postponement or Suspension of Work.

3.1.1 The Corporation shall have the right to delay, postpone or suspend the Services, or any Portion thereof, immediately or upon a specified date, for a period of not more than ninety (90) days, upon Notice to the Consultant, for any reason deemed by the Corporation to be in its interest. The Consultant and all of its Subcontractors and Representatives shall cease all Services, or any specified Portion thereof, immediately or as of the date specified in the Notice.

3.1.2 Any such delay, postponement or suspension shall not give rise to any cause of action for damages against the Corporation or the City, but the Term specified in Part I of this Contract and the Consultant's time for performance of the Services shall be extended for the period of the delay, postponement or suspension.

3.1.3 In the event of any delays, postponements or suspensions, the Consultant shall resume the Services upon the date specified in the Notice or upon such other date as the Corporation may thereafter specify by Notice.

3.2 Termination for Convenience. The Corporation shall have the right to terminate the Services, or any Portion thereof, immediately or upon a specified date, upon Notice to the Consultant and for any reason deemed by the Corporation to be in its interest.

3.3 Defaults and Termination for Cause.

3.3.1 In addition to any other right that the Corporation may have, upon the occurrence of an Event of Default, the Corporation shall have the right to declare the Consultant in default and terminate this Contract, in whole or in part, for cause, by giving Notice to the Consultant of the cause and the date of such termination.

3.3.2 An Event of Default shall be deemed to have occurred if any of the following events has occurred, each an "Event of Default":

- (i) The Consultant fails to assign workers, order materials or enter into subcontracts in a manner sufficient to permit completion of the Services, or any Portion thereof, within the time limits of the Progress Schedule or in accordance with any Progress Schedule approved by the Corporation;
  - (ii) The Consultant fails to complete the Services, or any Portion thereof, within the time limits provided in this Contract or any Progress Schedule approved by the Corporation;
  - (iii) The Consultant materially violates any term, covenant or provision of this Contract;
  - (iv) The Consultant materially fails to comply with any Applicable Requirements or any Applicable Agreements;
  - (v) Any representation or warranty made by the Consultant in Article 7 or in any other Article in this Contract shall prove to be untrue or be breached;
  - (vi) The Consultant becomes insolvent, files for bankruptcy or is adjudged a debtor in possession;
  - (vii) The Consultant voluntarily, or by operation of law, assigns, transfers, conveys or otherwise disposes of its interest in this Contract or its right to receive funds hereunder without the prior written consent of the Corporation;
  - (viii) The Consultant fails to comply with the M/WBE Requirements in Article 9;
- or
- (ix) The Consultant or any of its officers, directors, partners, members, five (5%) percent shareholders, principals or other persons substantially involved in its activities, commits any of the acts or omissions specified as the grounds for debarment in the City's *Procurement Policy Board Rules*.

3.4 Effects of Termination for Convenience or for Cause.

3.4.1 The Contract, or such portion of the Contract described in the Notice of termination, shall terminate as of the termination date set forth in the Notice given pursuant to Section 3.3.1, or immediately if no date is specified.

3.4.2 Upon receipt of a Notice of termination for cause or for convenience, the Consultant shall cease any or all Services, immediately or on the date specified, in accordance with the terms of the Notice.

3.4.3 Termination, whether for convenience or for cause, shall not give rise to any cause of action for damages against the Corporation or the City.

3.4.4 Within ten (10) days after the effective date of termination, the Consultant shall surrender and turn over to the Corporation all Work Product and any other materials related to this Contract requested by the Corporation including, without limitation, all materials, equipment and supplies purchased by the Consultant on behalf of the Corporation in connection with this Contract.

### 3.5 Payment Upon Termination.

3.5.1 Upon termination with or without cause, the Consultant shall promptly present to the Corporation a verified statement of all costs actually incurred prior to the date of termination, together with all documents in the Consultant's possession related thereto that the Corporation may demand in order to verify such statement of costs including, without limitation, canceled checks, subcontracts, and paid receipts and bills from Subcontractors. The Corporation will review the statement of costs and review or audit any supporting documentation provided by or in the Consultant's possession. The Corporation will Notify the Consultant of the results of such review or audit and the amount approved for payment.

3.5.2 If the termination was without cause, the Consultant shall receive such equitable compensation for such Services as shall, in the judgment of Director, have been satisfactorily performed by the Consultant up to the date of the termination, such compensation to be fixed by the Corporation after consultation with the Consultant, subject to any rights of audit provided herein. Such payment will be processed by the Corporation after Consultant provides all information and documentation required hereunder. Such payment shall constitute full and Final Payment to the Consultant.

3.5.3 If the termination was for cause, the Consultant shall receive such equitable compensation for such Services as shall, in the judgment of Director, have been satisfactorily performed by the Consultant up to the date of the termination, such compensation to be fixed by the Corporation, subject to any rights of audit provided herein, and subject to set-off by the Corporation for any additional expenses the Corporation incurs to complete the Project satisfactorily, including the expenses of engaging another consultant and the costs set forth in Section 9.10(ii). The sum of (i) such additional expenses incurred to the Corporation for the completion of the Project, and (ii) payments made to the Consultant prior to the termination of the Contract shall hereafter be referred to as the "Contract Completion Costs".

- (i) If the Contract Completion Costs exceed the Maximum Contract Price, Consultant shall pay such difference to the Corporation, as described in Section 3.5.4 below.
- (ii) If the Contract Completion Costs are less than the Maximum Contract Price, provided that the Consultant has provided all information and documentation required by this Section, the Corporation will pay to the Consultant, an amount equal to the lesser of (a) the

difference between the Maximum Contract Price and the Contract Completion Costs, or (b) such amount, when added to sums previously paid to Consultant, equitably compensates Consultant for Services satisfactorily performed up to the date of termination. Such payment will be made as further described in Section 3.5.4 below.

3.5.4 If the termination was for cause, the Corporation will, upon full completion of the Project, deliver a written notice to the Consultant advising the Consultant that the Project has been completed and setting forth the Contract Completion Costs. If the Contract Completion Costs exceed the Maximum Contract Price, the Consultant shall promptly pay such difference to the Corporation upon receipt of such notice. If the Contract Completion Costs are less than the Maximum Contract Price, then, subject to (i) the Consultant's providing to the Corporation all information and documentation required by this Section, and (ii) any other applicable provisions of this Contract including, without limitation, Sections 3.5.5 and 3.5.6 hereof, the Corporation will pay the Consultant the amount described in Section 3.5.3(ii). Such payment shall constitute full and Final Payment to the Consultant.

3.5.5 The Corporation need not wait until the completion of the Services to seek the enforcement of its rights against the Consultant if there has been a termination for cause, but no monies shall be due or payable to the Consultant terminated for cause until the Services are completed.

3.5.6 The provisions of this Section 3.5 shall be in addition to any other rights the Corporation may have under this Contract, any Applicable Requirement, any Applicable Agreement, or otherwise, in law or in equity.

3.6 No Release. Termination of this Contract, whether by expiration of its Term or otherwise, shall not release the Consultant from any liability to the Corporation or from the Consultant's indemnification and other obligations under this Contract that have not been specifically terminated pursuant to this Article of the Contract.

#### **ARTICLE 4**

#### **PERSONNEL AND SUBCONTRACTORS**

##### 4.1 Personnel.

4.1.1 The Consultant shall employ at its own expense all personnel and retain all Subcontractors as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the performance of this Contract. The personnel of the Consultant and any Subcontractor shall cooperate fully with the personnel of the Corporation including, without limitation, the Director, and, in the event any personnel of the Consultant or any Subcontractor fails to cooperate, the Consultant shall relieve them of their duties of performance under this Contract.

4.1.2 The Consultant shall submit to the Director, prior to performance of Services by such personnel, resumes of the Consultant's personnel and those of its Subcontractors' personnel who will perform the Services. The experience and training of such personnel is a material inducement for the Corporation to enter into this Contract and make payment for the Services.

The Consultant and its Subcontractors are expected to use such personnel to perform the Services. If the Consultant or a Subcontractor proposes to substitute any other personnel for those heretofore identified, it shall assign persons with equivalent or better experience and training and shall submit the resumes of such proposed substitute personnel to the Director and obtain the Director's prior approval of the substitution. Notwithstanding anything contained herein to the contrary, all personnel furnished by the Consultant as required under this Contract shall be employees of the Consultant or approved Subcontractors of the Consultant and not employees or subcontractors of the Corporation or the City.

#### 4.2 Subcontractors.

4.2.1 The Consultant is authorized to enter into subcontracts for specialized professional services as required for performance of the Services subject to the prior written approval of the Director as to the Subcontractor, the scope of services, compensation, and the Principal or other member(s) of the Consultant's staff responsible for supervising the performance of the Subcontractor's activities. The Consultant, and not the Corporation, is responsible for the Subcontractor's work, acts and omissions.

4.2.2 The Consultant shall pay any Subcontractors approved by the Corporation for work that has been satisfactorily performed no later than thirty (30) days from the date of Consultant's receipt of payments from the Corporation.

4.2.3 The Consultant is solely responsible for the payments to the Subcontractors. Upon receipt of evidence of Consultant default hereunder with respect to its obligations to make payments to its Subcontractors, the Corporation reserves the right, after three (3) calendar days prior Notice, to retain any money due the Consultant and pay directly for labor, materials, equipment, Services and all other obligations of the Consultant and to deduct the amount of any such direct payments from any payments or amounts then due or thereafter to become due to the Consultant.

4.2.4 The Consultant shall inform all Subcontractors fully of the terms and conditions of this Contract. All subcontracts shall provide that:

- (i) there is no privity of contract between the Subcontractor and the Corporation or the City;
- (ii) neither the Corporation nor the City will incur any liability by virtue of any act, omission, negligence, or obligation of the Subcontractor or the Consultant;
- (iii) the Subcontractor shall indemnify, defend and hold harmless the Corporation and the City, their agents, employees, members, directors, officials and officers against any and all claims, judgments or liabilities to which they may be subject (including, without limitation, any and all claims for injuries to persons (including death) and damage to property) because of any negligence or any fault or default of the Subcontractor, its agents, employees or subcontractors or the breach of the Subcontractor's obligations under the subcontract;
- (iv) the Subcontractor's Requisitions shall conform to the same requirements and include the representations, warranties and agreements set forth in Sections 2.1.2 and 2.1 3;
- (v) the "Events of Default" set forth in Section 3.3.2 as grounds for termination for cause shall be "Events of Default" and grounds for termination of the Subcontractor for cause;

(vi) the subcontract may be assigned without the written consent of the Subcontractor to the City, NYCEDC or any other corporation, agency or instrumentality having authority to accept the assignment; and

(vii) all work and services performed under the subcontract shall strictly comply with the requirements of this Contract.

If the Consultant fails to include the provisions set forth in this Section 4.2.4 in any subcontract, the Consultant hereby agrees to indemnify, defend and hold harmless the Corporation and the City and their Representatives against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon the Corporation and the City and their Representatives, including reasonable fees, as a result of said failure.

4.2.5 The Consultant shall provide the Corporation with a list of all Subcontractors employed for the performance of the Services whose subcontract amount totals \$25,000 or more. The Consultant will furnish each such Subcontractor whose Subcontract amount totals less than \$100,000 with the Corporation's internal qualification and background investigation forms. The Consultant will furnish each such subcontractor whose subcontract amount totals \$100,000 or more with the Mayor's Office of Contracts Investigations Forms. These forms will be provided by the Corporation to the Consultant. The Consultant shall cause each such Subcontractor to fill out and complete the forms in a timely fashion but in no event later than the commencement of the Services performed by such Subcontractor pursuant to its subcontract.

4.3 Person in Charge. The Consultant has designated a Person-in-Charge who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services. Substitution of said person shall be made only with the prior written approval of the Director. Failure to make such person(s) available to the extent necessary to perform the Services skillfully and promptly shall be a material violation of the terms of this Contract.

## **ARTICLE 5**

### **DOCUMENTS AND MATERIALS**

5.1 Approval. All Work Product to be prepared or furnished by the Consultant pursuant to this Contract or publicizing the work of the Consultant hereunder must be:

- (i) approved in writing by the Director before any Work Product or publication as to the work of the Consultant shall be considered accepted and before any distribution;
- (ii) revised by the Consultant in accordance with the directions of the Director prior to approval; and
- (iii) prepared so as not to violate any provisions of law including, without limitation, the City Charter and the Administrative Code of the City.

5.2 Work Product.

5.2.1 All Work Product is the exclusive property of the Corporation. The Corporation may use any Work Product prepared by the Consultant in such manner, for such purposes, and as often as the Corporation may deem advisable, in whole, in part or in modified form, in all

formats now known or hereafter to become known, without further employment of or additional compensation to the Consultant.

5.2.2 The Consultant shall not use, transmit, display, publish or otherwise license such Work Product without the Corporation's prior written consent.

5.2.3 The Work Product shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the Corporation is the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Work Product does not qualify as a "work-made-for-hire", the Consultant hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Work Product to the Corporation, free and clear of any liens, claims or other encumbrances. The Consultant shall retain no copyright or other intellectual property interest in the Work Product.

5.2.4 To the extent that the Work Product does not qualify as a "work-made-for-hire", Consultant acknowledges the existence, if any, of its statutory moral rights as those rights are described in 17 U.S.C. § 106A(a), and knowingly executes this Contract on the following terms: (i) this waiver applies to the Work Product and to any promotional materials connected with the Work Product; (ii) the Consultant hereby expressly and forever waives any and all rights under 17 U.S.C. § 106A, and any rights arising under U.S. federal or state law or under the laws of any other country that conveys rights of the same nature as those conveyed by 17 U.S.C. § 106A, or any other type of moral right or *droit moral*.

5.2.5 The Consultant represents and warrants that, except for material which is in the public domain and non-original material that meets the requirements of §5.2.6, the Work Product

- (i) shall be wholly original material not published elsewhere;
- (ii) shall not violate any copyright, trademark or other applicable law; and
- (iii) shall not, to the best of Consultant's knowledge, constitute a defamation or invasion of the right of privacy or publicity, or an infringement of any kind, of any rights of any third party.

5.2.6 The Consultant represents and warrants that to the extent that the Work Product incorporates non-original material, the Consultant shall obtain and provide the Corporation with copies of all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract. Since some licenses for materials may be for a limited duration, the Consultant shall provide and/or specify the following to the Corporation with respect to all non-original materials included in its Work Product:

- (i) all information as to any durational limitations on use;
- (ii) any requirement that a notice be displayed in connection with display, including the specific owner of the rights to be credited, and any limitation on the use under the Consultant's license; and
- (iii) a statement certified by the Principal verifying the foregoing in the form annexed hereto as Appendix D.

Consultant will update the foregoing information and promptly provide such updates to the Corporation during the Contract Term.

5.2.7 The Consultant acknowledges that the Corporation or the City may, in their sole discretion, register copyright in the Work Product with the U.S. Copyright Office or any other government agency authorized to grant registrations to copyright. The Consultant will cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this.

5.2.8 The Consultant agrees that the Corporation and the City may use the Consultant's name and the names, biographies and likenesses of its members, in advertising and promotion related to the Work Product, and in any and all ancillary products related to the Services regardless of the format in which such use occurs.

5.2.9 Prior to acceptance of any Work Product by the Director, upon the Director's request and within a reasonable time following delivery of the Work Product, the Consultant shall submit revised Work Product incorporating any revisions, changes or alterations reasonably requested by the Director. If the original Work Product or the revised Work Product is not acceptable to the Director, the Corporation shall have the right to use the Work Product, to prepare or finalize the Work Product or to commission a third party to do so without further employment of or compensation to the Consultant.

5.2.10 The Consultant acknowledges that the decision to accept the Work Product for use, incorporation, transmission, display or publication is within the sole discretion of the Director.

5.2.11 Consultant agrees that it will cooperate in providing any other documentation necessary to effectuate the intent of this Section of the Contract.

5.2.12 The Consultant shall not make any unauthorized use of copyrighted, trademarked or other protected materials or intellectual property and agrees to defend, indemnify and hold harmless the Corporation and the City and their respective officers, officials, agents, members, directors, and employees against any damage or liability arising out of the Consultant's infringement or unauthorized use of any such material or property.

### 5.3 Confidential Information.

5.3.1 The Consultant shall hold all Confidential Information provided by the Corporation in the strictest confidence. Consultant agrees to:

- (i) use the Confidential Information solely for evaluation and the performance of the Services under this Contract;
- (ii) not disclose the Confidential Information outside of its Subcontractors who have agreed in advance in writing to be bound by the terms of this Section 5.3 and its employees and to limit dissemination to only those Subcontractors and employees who have a need to know it in order to accomplish the Services;
- (iii) execute any confidentiality agreements required by any governmental or other entities or individuals which provide any information, records, data, materials, documents or electronic files to Consultant for use in performance of the Services; and

(iv) not disclose the Confidential Information for three (3) years following Final Completion.

5.3.2 Consultant represents that it has adequate safeguards and procedures to protect the confidentiality of records and information and to limit dissemination only to authorized employees as necessary for the performance of the Services. All Confidential Information provided to Consultant shall remain the property of the Corporation.

5.3.3 Consultant agrees that money damages would not be a sufficient remedy in the event of any breach of this Section 5.3 and that, in addition to all other remedies which may be available, the Corporation shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Consultant shall defend, hold harmless and indemnify the Corporation for any and all claims, losses, expenses and/or damages arising out of breach of this Section 5.3 or unauthorized use of the Confidential Information.

## **ARTICLE 6**

### **INDEMNIFICATION, CLAIMS AND INSURANCE**

#### **6.1 Indemnification of the Corporation and the City.**

6.1.1 The Consultant shall indemnify, defend and hold harmless the Corporation and the City, their agents and employees from any and all claims, judgments or liabilities to which they may be subject because of any negligence or any fault or default of the Consultant, its agents, employees or subcontractors or the breach of the Consultant's obligations under the Contract.

6.1.2 The Consultant shall be solely responsible for all injuries to persons, including death, or damage to property sustained during its operations and work under this Contract resulting from any negligence, fault or default of the Consultant or of its employees, authorized agents, servants, independent contractors or subcontractors retained by the Consultant pursuant to this Contract. The Consultant agrees to indemnify, defend and hold the Corporation and the City harmless from any liability upon any and all claims for injuries to persons (including death) and damage to property on account of negligence, fault or default of the Consultant, its employees, authorized agents, servants, independent contractors and subcontractors retained by the Consultant.

#### **6.2 Claims or Actions Against the Corporation.**

6.2.1 The Consultant shall look solely to the funds appropriated by the Corporation for this Contract for the satisfaction of any claim or cause of action the Consultant may have against the Corporation in connection with this Contract or the failure of the Corporation to perform any of its obligations hereunder. In no event shall the Corporation's aggregate liability hereunder in connection herewith or related to the performance of the Services exceed the Maximum Contract Price.

6.2.2 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to this Contract, the Consultant agrees that it shall be deemed to have released the Corporation from

any and all claims, causes of action, and liability to the Consultant, its Representatives, successors and assigns, in connection with this Contract or the performance of the Services.

6.2.3 No member, director, employee, servant, officer, agent or other person authorized to act on behalf of the Corporation shall have any personal liability in connection with this Contract or any failure of the Corporation to perform its obligations hereunder.

6.2.4 No person or entity shall have any right against the Director or any member, director, employee, servant or officer, agent of the City or the Corporation or other person authorized to act on their behalf or any claim against the City or the Corporation by reason of the failure or refusal to withhold money pursuant to Section 2.2.1 hereof.

6.2.5 The Consultant agrees that no cause of action against the Corporation in connection with this Contract or the Services shall lie or be maintained by the Consultant, its successors or assigns unless such action is commenced within six months after (i) the termination of this Contract, or (ii) the accrual of the cause of action, whichever is earlier.

6.2.6 If any claim is made or any action brought relating to this Contract or the Services, whether or not the Consultant is a party, the Consultant shall diligently render to the Corporation any and all assistance that the Corporation may require of the Consultant, without compensation.

6.2.7 The provisions of this Section shall not waive, limit or in any way prejudice any other right of the Corporation or the City.

### 6.3 Insurance.

6.3.1 At all times during the performance of the work or Services in connection with this Contract or for such other time periods as the Corporation may require, the Consultant, at its sole cost and expense, shall purchase and maintain the insurance described in this Section 6.3 and the annexed Appendix E, as may be applicable and as may be required by the Corporation.

6.3.2 Consultant shall purchase and maintain insurance with insurance companies that:

- (i) are acceptable to the Corporation;
- (ii) are rated A:X or better by A.M. Best Company; and
- (iii) are licensed to issue such insurance by the New York State Department of

Insurance.

6.3.3 The insurance policies purchased and maintained by the Consultant shall:

- (i) be in form and substance satisfactory to the Corporation;
- (ii) be in the minimum face policy amounts set forth in Appendix E;
- (iii) list all individuals and entities identified in Appendix E as Additional Insureds except in the case of any workers' compensation, automobile liability and professional liability policies required to be maintained hereunder; and
- (iv) contain the provisions set forth in Appendix E.

6.3.4 Coverage for the individuals and entities identified in Appendix E as Additional Insureds shall be written into those policies set forth in Section 6.3.3 above as an endorsement at least as broad as ISO Form CG 20 10 (07/04 ed.).

6.3.5 The Consultant shall make and maintain timely premium payments for all policies required hereunder.

6.3.6 The Consultant shall require that each of its Subcontractors, prior to the commencement of their work, purchase and maintain, or be covered by, at no cost or expense to the Corporation or the City, the same types and amounts of insurance and meet all of the same requirements as required of the Consultant as set forth in this Article 6 and Appendix E. The Consultant hereby covenants and warrants that its Subcontractors shall purchase and maintain the policies required by this Section in the amounts and for the periods required by this Section.

6.3.7 Prior to the commencement of the Services the Consultant shall forward to the Corporation's Contract Administration and Procurement Department at least three (3) original certificates of insurance for each policy required for compliance with this Contract, for itself and its Subcontractors substantially as set forth in Appendix E. The Consultant shall also provide an original certificate of insurance to each of the Additional Insureds.

6.3.8 The Consultant shall provide the Corporation and the Additional Insureds written confirmation of the renewal of any policy required hereunder no less than five (5) days prior to the expiration of any such policy.

6.3.9 Unless otherwise agreed to in writing by the Corporation, the types of insurance to be purchased and maintained by the Consultant and its Subcontractors are as follows:

(i) Workers' Compensation, Disability Benefits, and Employer's Liability Insurance. The Consultant shall purchase and maintain and shall require each of its Subcontractors to purchase and maintain workers' compensation, disability benefits insurance in statutory amounts, and employer's liability insurance in the amounts set forth in Appendix E, for all of its employees engaged in the Services. The failure of the Consultant to comply with this Section 6.3.9(i) shall make this Contract voidable at the option of the Corporation.

(ii) Commercial General Liability. The Consultant shall purchase and maintain commercial general liability insurance to protect the Corporation, the City and the Additional Insureds, the Consultant and its Subcontractors against any and all claims for property damage, personal injury and death arising out of the Services performed by the Consultant and its Subcontractors, and any work incidental thereto. The commercial general liability insurance policy must also include products and completed operations coverage, which shall include a provision that coverage will extend for a period of at least twelve (12) months from the date of final completion and acceptance by the Corporation of all of the Services. The certificate of insurance must indicate that such insurance is on a "per occurrence" and an aggregate basis. The commercial general liability policy shall be in a form at least as broad in coverage as the most current ISO Form CG 00 01. The additional insured protection must be as broad as coverage that would be afforded through use of ISO Forms CG 20 26, CG 20 33 and CG 20 37. The liability policy(ies) certificate of insurance must indicate cross-liability coverage providing severability of interests so that, except with respect to the limits of insurance, and any rights or duties specifically

assigned to the first named insured, coverage will respond as if separate policies were in force for each insured. If at any time the commercial general liability policy should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Consultant shall suspend performance of the Services if the Corporation shall so direct. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not suspended, whether or not because of omission of the Corporation to order suspension, then the Corporation may, at its sole option, obtain insurance affording coverage equal to that required hereunder, the cost of such insurance to be payable by the Consultant to the Corporation.

(iii) Automobile Liability Insurance. The Consultant shall purchase and maintain automobile liability insurance covering all automobiles used in connection with the work or Services under this Contract whether owned, non-owned and/or hired automobiles.

(iv) Umbrella/Excess Liability Coverage. If the Consultant purchases or maintains umbrella/excess liability insurance, such insurance should specifically list the Consultant's commercial general liability, comprehensive automobile liability and employer's liability as primary coverages, to protect the Corporation, the City, the Additional Insureds, the Consultant and its Subcontractors from any and all claims in excess of the underlying policy limits for such primary coverages. The certificate of insurance must indicate that such insurance afforded by this Section 6.3.9(iv) is on a "per occurrence" basis and an aggregate basis.

(v) If applicable, any additional policies as may be described in Appendix E.

6.3.10 As a condition precedent to payment of any amounts owing to the Consultant by the Corporation, the Consultant shall, unless otherwise expressly agreed to in writing by the Corporation, provide to the Corporation the original certificates of insurance required under this Contract and shall on demand provide true copies of policies and endorsements to policies showing compliance with the insurance requirements set forth in this Article 6 and Appendix E.

6.3.11 The policies to be maintained by the Consultant hereunder that are subject to the Additional Insured requirements set forth in Section 6.3.3 (iii) above shall constitute the primary coverage for claims arising out of this Contract, and shall state that insurance, if any, carried by the Corporation, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Consultant's insurer. The Consultant shall comply with the provisions of all policies required pursuant to this Contract, and shall give the insurer, the Corporation, the City and the Additional Insureds due and timely Notice of all claims, accidents and losses promptly upon its acquiring knowledge of the same.

6.3.12 The insurance provisions of this Article 6 shall be in addition to any rights that the Corporation, the City and the Additional Insureds may have under any hold harmless and indemnification provisions of this Contract and any other right provided by this Contract or by law. The Consultant shall not violate or permit to be violated any term or condition of the policies.

6.3.13 The Commercial General Liability and Umbrella Excess Liability Coverage policies must be endorsed to show that these primary and/or excess policies are to be considered primary and non-contributory. In addition, the Commercial General Liability and Umbrella/Excess Liability Coverage policies must provide that (i) the Additional Insured protection afforded under the Consultant's policies shall be primary and not on an excess or contributing basis with any policies which may be available to the Corporation, and (ii) that the

Consultant's policies, primary and excess, must be exhausted before implicating any Corporation policy available.

6.3.14 In order to ensure vertical erosion of liability limits provided by the Consultant under this Contract, the Consultant agrees to permit the Corporation's staff and/or the Corporation's insurance consultants to review the Consultant's liability policy language for all liability policies and to endorse those policies to clarify the hierarchy of policies in the event of a claim.

## **ARTICLE 7**

### **REPRESENTATIONS AND WARRANTIES**

The Consultant represents and warrants that:

7.1 The Consultant is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has all requisite power and authority to authorize, execute, deliver and perform this Contract in accordance with its terms. The Consultant is authorized to do business in the City of New York.

7.2 The authorization, execution and delivery of this Contract, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Consultant is bound, or, to the knowledge of the Consultant, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Consultant or any of its activities or properties.

7.3 The Consultant has not been asked to pay, and has neither offered to pay, nor paid, any illegal consideration, whether monetary or otherwise, in connection with the procurement of this Contract.

7.4 The Consultant has not employed any person to solicit or procure this Contract, and has not made and shall not make, except to full-time employees of the Consultant, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of this Contract.

7.5 The Consultant has not acquired nor will it acquire any interest of any nature, direct or indirect (including any interest in land in an area related to the Services or any interest in any corporation, partnership, or other entity with any such interest), which would conflict in any manner or degree with the performance of the Services. The Consultant further represents and covenants that in the performance of this Contract no person having any such conflicting interest shall be employed by the Consultant.

7.6 The Consultant is not in arrears to the City upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of the Consultant to receive public contracts. The Consultant represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

7.7 All questionnaires and/or disclosure forms delivered by the Consultant and its Representatives to the Corporation to date are, to the best of the Consultant's knowledge, true and correct in all material respects; no material change has occurred in the circumstances of the Consultant, or any of its principals or affiliated persons or entities since the respective dates upon which such disclosure forms were executed that would otherwise require disclosure on such forms; and such disclosure forms do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make any statement contained in such form not misleading.

## **ARTICLE 8**

### **APPLICABLE LAWS, RULES AND REGULATIONS**

8.1 New York Law Governs; New York Courts. The Contract shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the Corporation arising under this Contract or related hereto shall be heard and determined either in the Federal Courts, located in the City or in the New York State Courts located in the City and County of New York. To effect this agreement and intent, the Consultant agrees as follows:

8.1.1 If the Corporation initiates any action against the Consultant in Federal Court or in New York State Court, service of process may be made on the Consultant in person, wherever the Consultant may be found, or by registered mail addressed to the Consultant at its address as set forth in this Contract, or to such other address as the Consultant shall have provided to the Corporation in writing.

8.1.2 With respect to any action between the Corporation and the Consultant in New York State Court, the Consultant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, and (ii) to move for a change of venue to a New York State Court outside New York County.

8.1.3 With respect to any action between the Corporation and the Consultant in Federal Court located in the City, the Consultant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City.

8.1.4 If the Consultant commences any action against the Corporation in a court located other than in the City and State of New York, then, upon request of the Corporation, the Consultant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is pending will not or cannot transfer the action, the Consultant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City.

8.2 Modification Required by Law. The parties agree that each and every provision of federal or state or local law, rule, regulation or order, required to be inserted in this Contract, is deemed by this reference to be so inserted in its correct form, and upon the application of either party, this Contract shall be amended by the express insertion of any such provision not so inserted or so inserted incorrectly so as to comply strictly with the law, without prejudice to the rights of either party.

8.3 Compliance with the Law. The Consultant agrees that all acts to be performed by it in connection with this Contract shall be performed in strict conformity with all Legal Requirements, including without limitation, Applicable Requirements and Applicable Agreements. Failure by the Consultant to abide by such Legal Requirements shall be a material default under this Contract.

8.4 Equal Employment Opportunity/Employment Reports.

8.4.1 The Consultant shall comply with the applicable provisions of the Equal Employment and Affirmative Action Compliance for Non-Construction Contracts Addendum (the "Executive Order No. 50 (1980) Supply and Service Rider" or "E.O. 50") attached hereto as Appendix F and made a part hereof. Appendix F shall be attached to and made a part of any subcontract entered into by the Consultant pursuant to this Contract that exceeds \$100,000.

8.4.2 The Consultant covenants that it shall complete and submit and shall require all Subcontractors to complete and submit Employment Reports (as required by E.O. 50) to the Corporation which can be found at [www.nycedc.com](http://www.nycedc.com) in the section identified in Appendix G. If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

8.4.3 The Consultant and any subcontractor that provide any on-site construction activity shall complete and submit the Payroll Report to the Corporation in the form annexed to this Contract as Appendix C.

8.4.4 The Consultant shall give consideration to employing City residents who are economically disadvantaged or are eligible under any applicable Legal Requirements including, without limitation, the Workforce Investment Act of 1998, and who have qualifications and skills commensurate with the requirements for the position available. To the greatest extent feasible, the Consultant shall give opportunities for training and employment to lower income persons in the Project area.

8.4.5 The provisions of this Section 8.4 shall be deemed supplementary to, and not in lieu of, or in substitution for, the applicable provisions of the New York State Labor Law relating to non-discrimination, and other applicable Legal Requirements.

8.5 Minimum Wages. Except for any employees whose prevailing wage is required to be fixed pursuant to Section 220, et seq. and Section 230, et seq. of the New York State Labor Law, which employees shall be paid such prevailing wage, all persons employed by the Consultant or any subcontractor in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor or services, used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law, unless a higher amount is required pursuant to any other provision of this Contract.

8.6 No Tropical Hardwoods. Tropical hardwoods, as defined in Section 165 of the New York State Finance Law, shall not be used in the performance of this Contract except as expressly permitted by the foregoing provision of law.

## 8.7 Sales and Use Tax.

8.7.1 The Consultant acknowledges that the Corporation and the City are exempt from sales and use taxes imposed by Article 28 of the New York State Tax Law for purchases of tangible personal property, to the extent that such property is used to alter, maintain or improve, and becomes an integral component part of real property. This exemption does not apply to tools, machinery, equipment or other property leased by the Corporation's contractors and subcontractors or to supplies, materials or other property that are consumed in the construction or for any reason not incorporated into real property.

8.7.2 The Consultant shall inform its Subcontractors of this exemption and shall advise its Subcontractors to exclude sales and use taxes from their bids, as applicable.

## 8.8 Whistleblowers.

8.8.1 In accordance with Section 12-113 of the New York City Administrative Code (the "Administrative Code"),

8.8.1.1 The Consultant shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee of the Consultant or any of its Subcontractors to (i) the Corporation, (ii) the City's Department of Investigation, (iii) a member of the New York City Council, the City's Public Advocate or the Comptroller, or (iv) the City Chief Procurement Officer, DSBS Chief Contracting Officer ("DSBS ACCO") or DSBS Commissioner.

8.8.1.2 If any of the Consultant's officers or employees believes that s/he or has been the subject of an adverse personnel action in violation of paragraph 8.8.1.1 above, s/he shall be entitled to bring a cause of action against the Consultant to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees. An officer or employee described in this paragraph may bring an action in any court of competent jurisdiction for such relief. An officer or employee who brings a cause of action pursuant to this paragraph shall notify the DSBS ACCO or DSBS Commissioner of such action; provided, however, that failure to provide such notice shall not be a jurisdictional defect, and shall not be a defense to an action brought pursuant to this paragraph. This paragraph shall not be deemed to create a right of action against the City, any public agency or other public entity, or the Corporation, nor shall any such public agency, entity or corporation be made a party to an action brought pursuant to this subdivision.

8.8.2 In accordance with Section 6-132 of the Administrative Code, the Consultant shall post a notice in the form annexed hereto at Exhibit L

8.8.3 For purposes of this Section, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

8.9 MacBride Principles. The Consultant stipulates and agrees to comply with the MacBride Principles.

8.10 Iran Divestment Act. The Contractor shall comply with Section 165-a of the New York State Finance Law.

8.11 Doing Business Data Form Requirements.

8.11.1 Local Law No. 34 of 2007 amended the City’s Campaign Finance Law and required the City to establish a database containing the names of any “person” that has “business with the city”, as such terms are defined in LL 34. The Consultant shall comply with all requirements of LL 34 applicable to this Contract.

8.11.2 The Consultant shall complete and submit a Doing Business Data Form which can be found at [www.nycedc.com](http://www.nycedc.com). If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

8.11.3 The Consultant’s failure to complete and submit a Doing Business Data Form and/or its submission of a form that is not accurate or complete may result in appropriate sanctions.

## **ARTICLE 9**

### **M/WBE REQUIREMENTS**

9.1 M/WBE Program. Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter “Section 6-129”). Section 6-129 establishes a program for participation in City procurement by minority-owned business enterprises (“MBEs”) and women-owned business enterprises (“WBEs”, together with “MBEs” collectively referred to as “M/WBEs”), certified in accordance with Section 1304 of the City Charter. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City’s procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business and lowering contract costs. The Corporation endorses these goals and has adopted an M/WBE Program to further participation by MBEs and WBEs in the provision of the Services. All Consultants shall comply with all requirements of the Corporation’s M/WBE Program applicable to this Contract.

9.2 Minority and Women -Owned Business Enterprises. M/WBE firms must be certified by Empire State Development’s Division of Minority and Women’s Business Development (DMWBD) to credit such firms’ participation toward attainment of the Participation Goals. Such certification must occur prior to the firms’ commencement of work. A list of M/WBE firms may be obtained from the ESD website at [www.ny.newnycontracts.com](http://www.ny.newnycontracts.com).

### 9.3 Participation Goal.

9.3.1 The Participation Goal for this Contract is set forth in Part I, Section 1.12. The Participation Goal represents a percentage of the total dollar value of the Contract that may be achieved by awarding subcontracts to firms certified with DMWBD as MBEs or WBEs, and/or by crediting the participation of the Consultant.

9.3.2 The Participation Goal is a material term of the Contract and the Consultant shall be subject to the Participation Goal.

9.3.3 A consultant that is an M/WBE shall be permitted to count its own participation toward fulfillment of the Participation Goal, provided that the value of the Consultant's participation shall be determined by subtracting from the total value of the Contract any amounts that the Consultant pays to direct Subcontractors. A Consultant may not subcontract more than 50% of the total value of the Contract unless it working under a retainer contract or a construction management contract. The value of an M/WBE Consultant's participation shall be determined by subtracting from the total value of the Contract any amounts that the respondent will pay to direct Subcontractors. If the Consultant is not an M/WBE, it must meet the Participation Goal through the awarding of subcontracts to firms certified with DMWBD as MBEs or WBEs.

9.3.4 A Consultant that is a Qualified Joint Venture shall be permitted to count a percentage of its own M/WBE participation toward fulfillment of the Participation Goal. The value of the Qualified Joint Venture's participation shall be determined by first subtracting from the total value of the Contract, any amounts that the Qualified Joint Venture will pay to direct Subcontractors. Thereafter, the M/WBE percentage of the Qualified Joint Venture shall be applied to the remaining value of the Contract to determine the overall Participation Goal.

### 9.4 Subcontractors Participation Plan.

9.4.1 The Subcontractors Participation Plan for this Contract is annexed hereto as Appendix H.

9.4.2 In the event that the Corporation does not approve a Subcontractor proposed by the Consultant, the Consultant shall have a reasonable time to propose alternate Subcontractors.

### 9.5 M/WBE Compliance Reports.

9.5.1 The Consultant shall provide the Corporation with written statements ("M/WBE Compliance Reports"), certified under penalty of perjury, reporting the status of the Consultant's compliance with its M/WBE Subcontractor Participation Plan as set forth in this Section 9.5.

9.5.2 The Consultant shall submit a M/WBE Compliance Report to the Corporation:

- (i) with each Requisition for payment; and/or
- (ii) on a periodic basis as the Corporation may require.

9.5.3 Each M/WBE Compliance Report shall set forth the following for the period covered by the report:

- (i) the total amount paid to Subcontractors (including Subcontractors that are not MBEs or WBEs);
- (ii) the names, addresses and contact numbers of each MBE or WBE hired as a Subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE or WBE.

9.5.4 In addition to the foregoing, the Consultant shall submit a final, cumulative M/WBE Compliance Report to the Corporation with its Requisition for Final Payment. The Consultant shall set forth in such final report the information required by Section 9.5.3 in connection with all Services rendered by the Consultant and its Subcontractors during the entire Contract Term.

9.6 Change Orders. If the Consultant requests a change order having a value that exceeds ten percent (10%) of the Contract, the Corporation will establish an M/WBE participation goal for the work to be performed pursuant to the change order.

9.7 Modification of the Consultant's Subcontractors Participation Plan.

9.7.1 The Consultant may request modification of its Subcontractors Participation Plan after the award of the Contract. The Corporation may grant such request if it determines that the Consultant has established, with appropriate documentary and other evidence, that the Consultant has made all reasonable, good faith efforts to meet the Participation Goal set for the Contract.

9.7.2 Good Faith Efforts. Good faith efforts should be documented by Consultant requesting a modification and such documentation provided to the Corporation upon the Corporation's request. In determining whether the Consultant has made all reasonable good faith efforts to meet the Participation Goal, the Corporation will consider, along with any other relevant factors, evidence submitted by the Consultant showing that the Consultant has, without limitation, conducted the following:

9.7.2.1 Direct Outreach. The Consultant provided timely notice to M/WBEs of specific opportunities to participate in the Contract;

9.7.2.2 NYCEDC Assistance. The Consultant submitted timely requests for assistance to the Corporation's M/WBE liaison officer and provides the Corporation with a description of how the Corporation's recommendations were acted upon and an explanation of how action upon such recommendations did not lead to the desired level of participation of M/WBEs;

9.7.2.3 Advertised Opportunities. The Consultant advertised opportunities to participate in the Contract in general circulation media, trade and professional association publications, small business media and publications of M/WBE organizations;

9.7.2.4 Follow Up with M/WBEs. The Consultant sent timely written notices to advise M/WBEs that their interest in the Contract was solicited;

9.7.2.5 Substitution of Work. The Consultant made efforts to identify portions of the Contract Work that could be substituted for portions originally designated for the participation by M/WBEs in the M/WBE Subcontractors Participation Plan and for which the Consultant claims an inability to retain M/WBEs;

9.7.2.6 Meeting with M/WBEs. The Consultant held meetings with M/WBEs prior to the date their proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their proposals were solicited;

9.7.2.7 Negotiated with M/WBEs. The Consultant made efforts to negotiate with M/WBEs as relevant to perform specific subcontracts, or acts as suppliers or service providers; and

9.7.2.8 Interested Subcontractor List. The Consultant made efforts to contact interested M/WBEs listed on the Website's Interested Subcontractor list.

9.7.3 The Corporation's M/WBE Director and Chief Contracting Officer will provide written notice to the Consultant of the determination on whether the Consultant has made all reasonable good faith efforts to meet the Participation Goal.

9.8 Compliance Audits. This Contract may be audited by the Corporation, DSBS and the City Comptroller to determine the Consultant's compliance with the requirements of the Corporation's M/WBE Program and the Consultant's M/WBE Subcontractors Participation Plan.

9.9 Enforcement. In the event the Corporation determines that the Consultant or its Subcontractors have violated the requirements of the Corporation's M/WBE Program or the M/WBE Subcontractors Participation Plan including, without limitation, a determination that the Consultant has made payments to or awarded work to M/WBE Subcontractors in amounts less than the amounts specified in the Consultant's M/WBE Subcontractor Participation Plan (unless the Corporation has permitted the Consultant to modify the Consultant's M/WBE Subcontractors Participation Plan in accordance with Section 9.7), the Corporation may:

- (i) terminate the Contract;
- (ii) assess actual and consequential damages for and/or exercise its right to set off any additional expenses the Corporation incurs to complete the Project satisfactorily in accordance with the Corporation's M/WBE Program and in order to meet the Participation Goal including, without limitation, the actual and administrative costs of:
  - (a) meeting the Participation Goal through additional procurements;
  - (b) payments made to any other consultant retained to complete the Services; and
  - (c) investigation and enforcement; or
- (iii) assert any other right or remedy it has under the Contract.

9.10 Liquidated Damages for Failure to Fulfill Approved Participation Goals. If the Consultant fails to fulfill its Participation Goals set forth in its Subcontractors Participation Plan or the Participation Goals as modified by the Corporation pursuant to Section 9.7, the Corporation may assess liquidated damages in the amount of ten percent (10%) of the difference

between the dollar amount of work required to be awarded to M/WBEs to meet the Participation Goal and the dollar amount the Consultant actually awarded and paid to M/WBEs. In view of the difficulty of accurately ascertaining the loss which the Corporation will suffer by reason of the Consultant's failure to meet the Participation Goals, the foregoing amount is hereby fixed and agreed as the liquidated damages that the Corporation will suffer by reason of such failure, and not as a penalty. The Corporation may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of the liquidated damages suffered by the Corporation, the Consultant shall be liable to pay the difference.

9.11 Statements. Statements made in any instrument submitted to the Corporation in connection with the Corporation's M/WBE Program shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury.

9.12 Evaluations. The Consultant's record in implementing its M/WBE Subcontractor Participation Plan shall be a factor in the evaluation of its performance.

## **ARTICLE 10** **MISCELLANEOUS**

10.1 Consultant as Independent Contractor. Notwithstanding anything contained herein to the contrary including, without limitation, the provisions of Section 5.2 hereof, it is specifically understood and agreed that in the performance of the terms, covenants and conditions of this Contract, the Consultant and its Representatives shall not be deemed to be acting as agents, servants or employees of the Corporation or the City by virtue of this Contract or by virtue of any approval, permit, license, grant, right, or other authorization given by the City or the Corporation or any of their Representatives in connection with this Contract, but shall be deemed to be independent contractors performing work or professional services for the Corporation, and shall be deemed solely responsible for all acts taken by them pursuant to this Contract.

10.2 Assignment. This Contract is intended to secure the Services of the Consultant or a competent Representative or Representatives of the Consultant approved by the Director. The Consultant shall not assign, convey, subcontract, or transfer this Contract or the Consultant's rights hereunder without the written consent of the Director, which consent shall be manifested by Notice. The Corporation shall have the right to assign, convey, subcontract or transfer this Contract or the Corporation's rights hereunder without the written consent of the Consultant to the City or any other corporation, agency or instrumentality having authority to accept the assignment.

10.3 Right to Inspect. The Corporation, the City Comptroller, the Inspectors and any other individual or entity authorized under any Legal Requirement shall have the right on reasonable Notice to inspect the operations and records of the Consultant and its Subcontractors relating to this Contract.

10.4 Maintenance of Records. In order to facilitate any audit provided herein, the Consultant agrees to maintain accurate, readily auditable records and accounts with supporting documentation in accordance with generally accepted accounting principles of the Services performed by it, its employees, and its Subcontractors under this Contract and of all financial accounts and transactions maintained or undertaken in connection with this Contract, including, but not limited to, time cards and records reflecting the nature of the work performed and time consumed, bank statements, cancelled checks, bills and receipts, Requisitions, and deposit slips, and to make such records available for inspection and audit in the City by the Corporation, the City, the Inspectors and any other individual or entity authorized under any Applicable Statute or Applicable Agreement upon reasonable Notice. Said records shall be maintained for a period of six (6) years after termination of this Contract.

10.5 Modification in Writing. No modification, amendment, waiver or release of any provision of this Contract or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose unless in writing and duly executed by the party against whom the same is asserted.

10.6 Captions. The tables of contents and captions of this Contract are for convenience of reference only and in no way define, limit or describe the scope or intent of the Contract or in any way affect this Contract.

10.7 Completeness. This Contract contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either of the parties hereto.

10.8 Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

10.9 Notices.

10.9.1 Each Notice, demand, request or other communication in connection with this Contract shall be either: (i) served in person, with delivery of service acknowledged in writing by the party receiving the same; (ii) sent by nationally known overnight delivery service or telefax; or (iii) deposited in the U.S. mails, first class mail, postage prepaid, and addressed to the respective address herein set forth in Part I, Section 3 or to such other address as may be specified by Notice sent in accordance herewith.

10.9.2 Every Notice hereunder shall be deemed to have been given: (i) at the date of receipt by the respective party in the case of personal delivery, overnight delivery or telefax and (ii) five (5) business days after the date of deposit in the first class U.S. mails.

10.10 Non-Waiver. Failure of the Corporation or its Representatives to enforce or otherwise require the performance of any of the terms and conditions of this Contract, at the time or in the manner that said terms and conditions are set forth herein, shall not be deemed a waiver of any such terms or conditions by the Corporation and the same may be selectively enforced or raised as a basis of a claim or cause of action at the option of the Corporation.

## 10.11 Refusal to Testify.

10.11.1 The Consultant agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City governmental agency or authority that is empowered, directly or by designation, to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

10.11.2 If:

(i) any person who has been advised that her or his statement, and any information from such statement, will not be used against her or him in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the PANYNJ, or the Corporation, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or

(ii) any person refuses to testify for a reason other than the assertion of her or his privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof, or the Corporation, or any local development corporation within the City,

then the commissioner or agency head (each of which is hereinafter referred to as the "Commissioner") whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license involved in such investigation, audit or inquiry shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

10.11.3 If any non-governmental party to the hearing requests an adjournment, the Commissioner who convened the hearing or the Corporation may, upon the Commissioner granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to subsection 10.11.5 below without the City or the Corporation incurring any penalty or damages for delay or otherwise.

10.11.4 The Corporation or the City may impose the following penalties after a final determination by the Commissioner that penalties should attach for the failure of a person to testify:

(i) the disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person, or any entity of which such person was a member at

the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City or the Corporation, as the case may be; and/or

(ii) the cancellation or termination of any and all such existing City or Corporation contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or the Corporation incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City or the Corporation, as the case may be.

10.11.5 The Commissioner shall consider and address, in reaching her or his determination, and the Corporation and the Commissioner shall consider and address, in assessing an appropriate penalty, the factors in subparagraphs (i) and (ii) below. The Commissioner and the Corporation may also consider, if relevant and appropriate, the criteria established in subparagraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

(i) The entity's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including, but not limited to, the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(ii) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(iii) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City or the Corporation.

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity (subject to penalties under subsection 10.11.4 above), provided that the party or entity has given actual notice to the Commissioner upon the acquisition of the interest, or at the hearing called for in subsection 10.11.2(2) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

10.11.6 The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

10.11.7 The term "entity" as used herein shall mean any firm, partnership, corporation, association, joint venture or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

10.11.8 The term "member" as used herein shall mean any person associated with another person or entity as a partner, director, officer, principal or employee.

10.11.9 The term "person" as used herein shall mean any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

10.12 No Political Activity. The Consultant agrees that there shall be no political activity or any activity to further the election or defeat of any candidate for public, political or party office as a part of or in connection with this Contract, nor shall any of the funds provided under this Contract be used for such purposes.

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
CONSULTANT CONTRACT  
FOR THE PROVISION OF CDBG-DR FUNDED HUNTS POINT PENINSULA  
RESILIENCY EVALUATION AND PILOT PROJECT  
NYCEDC CONTRACT NO. 61110002  
PROJECT CODE NO. 6111**

**PART III  
APPENDICES**

<b>APPENDIX A</b>	<b>DEFINITIONS</b>
<b>APPENDIX B</b>	<b>SCOPE OF SERVICES</b>
<b>APPENDIX C</b>	<b>PAYMENTS</b>
<b>APPENDIX D</b>	<b>FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL MATERIALS</b>
<b>APPENDIX E</b>	<b>INSURANCE REQUIREMENTS</b>
<b>APPENDIX F</b>	<b>EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION COMPLIANCE FOR NON-CONSTRUCTION CONTRACTS ADDENDUM</b>
<b>APPENDIX G</b>	<b>E.O. 50 EMPLOYMENT REPORT FORM</b>
<b>APPENDIX H</b>	<b>SUBCONTRACTORS PARTICIPATION PLAN</b>
<b>APPENDIX I</b>	<b>OUTSIDE FUNDING SOURCES</b>
<b>APPENDIX J</b>	<b>APPLICABLE CERTIFICATIONS AND SECTION 3 CLAUSE</b>
<b>APPENDIX K</b>	<b>APPLICABLE REQUIREMENTS</b>
<b>APPENDIX L</b>	<b>WHISTLEBLOWER POSTER</b>
<b>APPENDIX M</b>	<b>RESERVED</b>

**APPENDIX A**  
**DEFINITIONS**

**APPENDIX A****DEFINITIONS**

The defined terms listed below shall have the following corresponding meanings in the annexed Contract (as defined herein) unless otherwise defined or the context otherwise requires. The singular shall include the plural and vice versa as the context may dictate. The gender used in the annexed Contract shall be deemed to refer to the masculine, feminine, or neuter gender, as the context or the identity of the persons being referred to may require.

Additional Insured	All individuals and entities listed in Appendix E
Allowable Additional Costs	As defined in Appendix B Scope of Services
Applicable Agreements	Various governing agreements related to the Funds, the Project and/or this Contract, including, without limitation, any specific "Applicable Agreements" identified in Part I, and any other governing agreement or MOU with the City, State and/or federal governments, or any agency thereof
Applicable Requirements	Any and all federal, state and local laws, statutes, rules, regulations and orders applicable to this Contract, the Funds or the Project, including, without limitation, any specific "Applicable Requirements" identified in Part I
Borough	The City borough where the Project is located
City	The City of New York
City Contract	The Amended and Restated Contract between the City and the Corporation, dated as of June 30, 2013 and the Amended and Restated Maritime Contract between the City and the Corporation, dated as of June 30, 2013, as applicable, as each may be amended, restated and/or revised from time to time
City Comptroller	Comptroller of the City or his or her designee
Commencement Date	The date upon which the Consultant shall commence the Services as stated in Part I, Section 1.4
Comptroller General	The United States Comptroller General

Confidential Information	Any and all information, records, data, materials, documents, electronic files or Work Product provided by NYCEDC and/or the City or any of its agencies to the Consultant except that which (i) shall have otherwise become publicly available through no fault of Consultant or its Representatives; (ii) becomes available to the Consultant on a nonconfidential basis from a source other than NYCEDC, the City or any of its agencies; or (iii) is known by the Consultant prior to its receipt from NYCEDC, the City or any of its agencies without any obligations of confidentiality with respect thereto
Consultant	The entity or person contracted by the Corporation to perform the Services pursuant to this Contract, as identified in Part I, Section 2.3
Consultant's Underlying Intellectual Property	The Consultant's analytical concepts, approaches, methodologies, or formats developed by the Consultant's staff, and to other materials not prepared for delivery to the Corporation and also including any derivatives, improvements, enhancements or extensions of the Consultant's Underlying Intellectual Property conceived, reduced to practice, or developed during the term of this Contract that are not uniquely applicable to the Corporation
Contract	The Contract between the Consultant and the Corporation to which this Appendix A is annexed, as defined in Part I, Section 1.1
Contract Completion Costs	As defined in Section 3.5.3
Contract Date	The date of this Contract, as stated in Part I, Section 1.3
Corporation	New York City Economic Development Corporation, a not-for-profit corporation organized pursuant to laws of the State of New York
CPL	Contractor Pollution Liability Insurance
DBEs	Disadvantaged Business Enterprises
Director	The person set forth in Part I, Section 2.2, or such other person as may be subsequently designated by the Corporation
Disability Benefit	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for

	all of its employees engaged in the Services
DCAS	New York City Department of Citywide Administrative Services
DCP	New York City Department of City Planning
DEP	New York City Department of Environmental Protection
Division	Division of Labor Services of DSBS
DMWBD	Empire State Development's Division of Minority and Women's Business Development
DOB	New York City Department of Buildings
Doing Business Data Form	The form available at <a href="http://www.nycedc.com">www.nycedc.com</a> to be completed by the Consultant and submitted to the Corporation pursuant to LL 34
DOT	New York City Department of Transportation
DPR	New York City Department of Parks and Recreation
DSBS	New York City Department of Small Business Services
DSNY	New York City Department of Sanitation
Electronic Funds Transfer (EFT)	Any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorized a financial institution to debit or credit an account
E.O. 50	Executive Order No. 50 (1980), as amended or revised from time to time
Employment Report(s)	The reports described in Appendix G and available at <a href="http://www.nycedc.com">www.nycedc.com</a> to be completed and submitted to the Corporation pursuant to Executive Order 50
Event of Default	As described in Part II, Section 3.3.2
Extra Work	A significant alteration to the work or Services that the Consultant has been directed to perform by the Director as described in Part II, Section 1.5.2
FDNY	New York City Fire Department

Federal Courts	United States Federal Courts located in New York City
FHWA	United States Federal Highway Administration
Final Completion	The performance of all Services contemplated in this Contract to the satisfaction of the Director
Final Payment	The last payment by the Corporation to the Consultant under the Contract upon Final Completion or as provided in Part II, Sections 3.5.2 and 3.5.4
Force Majeure	Any of the following acts and events that occur without the negligence or fault, and beyond the reasonable control, of Consultant and that of any of its successors, heirs, assigns, and/or Representatives and of which Consultant has given the Corporation express written notice within three (3) days after the commencement of the alleged cause of the delay, hindrance, or obstruction: governmental preemption in connection with a national emergency, war or act of war, insurrection, riot, act of public enemy, terrorist acts, labor disputes, accidents, mechanical failure and acts of God (including fire, flood or abnormal adverse weather conditions not reasonably anticipatable)
FTA	United States Federal Transit Administration
Funding Agencies	All federal, State or local agencies or entities that are the source of the Funds including, without limitation, any specific "Funding Agencies" identified in Part I
Funds	All funds from the federal, State or local sources to be applied to payments for Services under this Contract including, without limitation, any specific "Funds" identified in Part I
IDA	New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized pursuant to Article 18-A of the General Municipal Law of the State of New York
Inspectors	All individuals or entities specifically identified as "Inspectors" in Part I, if any
Insurer	Any insurance company retained by the Consultant pursuant to Part II, Section 6.3.2

Joint Venture	An association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits of the venture in reasonable proportion to the economic value of its contribution.
Landmarks Preservation Commission (LPC)	The City of New York Landmarks Preservation Commission
Legal Requirements	All applicable laws, rules, regulations, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over and which affect the work and/or Services under this Contract including, without limitation, all Applicable Agreements and all Applicable Requirements
Local Law 34 (LL 34)	Local Law No. 34 of 2007, as it may be amended or superseded
MacBride Principles	Those principles relating to nondiscrimination in employment and freedom of workplace opportunities that requires employers doing business in Northern Ireland to comply with specific terms set forth in Section 6-115.1 of the City's Administrative Code
Maximum Contract Price	The maximum amount that may be paid for the Services under the Contract, as stated in Part I, Section 1.6
Maximum Payment	The maximum amount payable for each Portion of the Services during a billing period
MBEs	Minority-owned Business Enterprises
M/WBE Compliance Reports	As described in Part II, Section 9.6
M/WBEs	MBEs and WBEs, collectively
M/WBE Subcontractors Participation Plan	As described in Part II, Section 9.5
MOU	Memorandum of Understanding
New York State Courts	Courts of the State of New York in the City and County of New York
Notice	Any written notice, demand, request, instruction, advice, directive or other communication in connection with this

Contract to be delivered to a party designated in Part I, Section 3, for the receipt of notice in the manner set forth in Part II, Section 10.9.1

Notice to Proceed	Written Notice from the Corporation to the Consultant to proceed with the Services or any portion thereof
Notify	To give a Notice pursuant to Part II, Section 10.9.1
NYCEDC	The Corporation
NYCTA	New York City Transit Authority
NYPD	New York City Police Department
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
NYSDOS	New York State Department of State
NYSDOT	New York State Department of Transportation
OMB	New York City Office of Management and Budget
OPRHP	New York State Office of Parks, Recreation and Historic Preservation
PANYNJ	The Port Authority of New York and New Jersey
Participation Goal	The Corporation's goal for M/WBE participation related to the Contract, as defined in Part II, Section 9.3.
Payment Schedule	Schedule listing Maximum Payment for each Portion of the Services, appended to Appendix C when payment for Services or a Portion of the Services is on a Tasks completed basis
Payroll Report	Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete
Percentage of Completion	An amount equal to the percentage of completion of each Portion of the Services
Person In Charge	As identified in Part I, Section 2.5, the member(s) of the Consultant's professional staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services

PLL	Pollution Legal Liability Insurance Policy
Portion	Each portion, task or phase of the Services as described in Appendix B and/or Appendix C
Principal	The Consultant's most senior officer of the Consultant's staff responsible for the performance of Services as identified in Part I, Section 2.4
Progress Reports	Reports which Consultant is obligated to prepare that show the status of the Services in accordance with the Progress Schedule
Progress Schedule	Any schedule issued or approved by the Corporation for the performance of the Services, including, without limitation, Project or Services milestones, deadlines or delivery dates
Project	As identified in Part I, Section 1.7, and described in detail in Appendix B
Project Manager	A person designated by the Corporation to serve as a liaison between the Corporation and the Consultant
Project Site	The location of the Project as identified in Part I, Section 1.8 and described in detail in Appendix B
Public Design Commission ("PDC")	Public Design Commission of the New York City (f/k/a The Art Commission)
Qualified Joint Venture ("QJV")	A Joint Venture between one or more MBEs and/or WBEs and another person, in which the percentage of profit to which the certified firm or firms is entitled for participation in the Contract, as set forth in the joint venture agreement, is at least 25% of the total profit.
RAP	Remedial action plan
Representatives	The employees, agents, servants, officers, directors, members, independent contractors and subcontractors of a person or entity
Requisition	A request for payment, to be submitted by Consultant not more than once per month, setting forth in detail, for the billing period for which partial payment is requested, the amount requested and Services performed during the billing period
Retainage	Any sum withheld from any payment to the Consultant including, without limitation, those set forth in Part II,

	Sections 1.5.3, 2.2.1 and 4.2.3
Retainage Payment Date	The date by which any Retainage identified in Part I, Section 1.10 will be paid to the Consultant, as identified in Part I, Section 1.11, subject to the provisions of Part II, Article 2 and Part III, Appendix C
Scope of Services	The Services to be provided by the Consultant in connection with this Contract, as set forth in Appendix B
Services	All of the services to be provided to the Corporation by the Consultant pursuant to the Contract, as described in greater detail in Appendix B
SHPO	State Historic Preservation Officer
Specific Terms and Conditions	Part I of this Contract
Fee and Cost Schedule	Schedule listing names of Consultant's staff, hourly rates and estimated number of days to be spent providing Services, appended to Appendix C when payment for Services or a Portion of the Services is on an hourly rate basis
State	State of New York
Subcontractor	Any person or entity including, without limitation, contractors, consultants, subconsultants, vendors and subcontractors of such persons or entities, employed or retained by the Consultant in accordance with the Contract to provide any services, work, materials, equipment or supplies in connection with the Services
Subcontractors' Costs	The compensation payable by the Consultant to any subcontractor(s) of the Consultant pursuant to a contract(s) entered into pursuant to Part II, Section 4.2
Term	The duration of this Contract, as stated in Part I, Section 1.5
USACOE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
UST	Underground storage tanks
WBEs	Women-owned Business Enterprises
Worker's Compensation	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for

all of its employees engaged in the Services

Work-Made-For-Hire

As defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101

Work Product

All reports, plans, studies, surveys, data, databases, programs, processes, systems, drawings, tracings, blueprints, photographs, computer drawings, schematics, specifications, log books, correspondence, models, studies, permits approvals, designs, deliverables, samples, presentation materials, analyses, punch lists, submissions, filings, applications, schedules, documents and materials, including, without limitation, those related to inspections, tests and test results, in all formats now known or hereinafter known, prepared or furnished by the Consultant pursuant to this Contract, provided however that Work Product shall not include any Consultant's Underlying Intellectual Property

**APPENDIX B**  
**SCOPE OF SERVICES**

## **APPENDIX B**

### **SCOPE OF SERVICES**

#### **DEFINITIONS**

All definitions set forth in the Contract to which this Appendix B (Scope of Services) is attached shall have the same meaning herein unless otherwise defined or the context otherwise requires. Except as otherwise expressly provided herein, the rules of interpretation set forth in Appendix A of the Contract shall apply to this Appendix B.

#### **BACKGROUND**

##### **Overview**

This study will advance efforts to make the Hunts Point Peninsula (“Hunts Point”) more resilient by building on recommendations from the *Hunts Point Lifelines Rebuild by Design* proposal, *A Stronger More Resilient New York*, the *Hunts Point Vision Plan*, *OneNYC: The Plan for a Strong and Just City*, and other community-based and government efforts around resiliency in the peninsula.

The New York City Economic Development Corporation (NYCEDC) seeks a Consultant (the “Consultant”) for engineering, planning, feasibility and economic analysis, environmental planning, design, cost estimating and public engagement services.

##### **Hunts Point**

Hunts Point has an area of approximately 1.65 square miles (~1,050 acres). The upland northwestern portion of the peninsula contains a residential community of approximately 12,500. The eastern portion of the peninsula is occupied by the 329-acre, City-owned Hunts Point Food Distribution Center (“FDC”). A portion of the FDC lies within FEMA’s 100 or 500 year floodplains, as does the New York City Department of Environmental Protection’s (DEP) Bronx Wastewater Treatment Plant. Much of the rest of the industrial portion of the peninsula is a diverse mix of food, manufacturing, construction, utility, municipal, auto-related and waste-related uses. (Further information on Hunts Point’s land use, demographics, and the FDC are provided in the Study Area description below.)

##### **Regional/Local Importance and Vulnerabilities**

Over 22 million people in the region consume food distributed through the FDC each day. Preventing and minimizing interruptions to the operations of FDC tenants is thus critical to the resiliency of the region’s food supply chain. Sustained interruptions to the operations of FDC

tenants are likely to have far-reaching impacts on citizens' ability to access food of both sufficient quantity and quality.

Beyond the critical importance of the FDC to the region's food supply chain, the campus is an important employment hub, supporting more than 8,400 direct jobs. And though the peninsula's residential community is situated upland, outside of the FEMA flood plains, it is vulnerable to power outages, transportation network failures, and any failures of critical services.

When Hurricane Sandy hit New York City on October 29, 2012, it brought these vulnerabilities into stark relief. Following the storm, the "NYC Special Initiative for Rebuilding and Resiliency" ("SIRR") was established by the Mayor of the City of New York (the "City"). In June 2013, the City released *A Stronger, More Resilient New York*.<sup>1</sup>

As *A Stronger, More Resilient New York* notes, Sandy's arrival during high tide at the southernmost areas of the city caused unprecedented damage. However, the timing of the storm's arrival coincided almost exactly with low tide around western Long Island Sound.

"As a consequence, parts of the Bronx, Northern Queens, and East Harlem were not as affected as they could have been. In fact, the same storm, arriving at a slightly different time, likely would have had significant effects on New York's northernmost neighborhoods.

According to modeling undertaken by the storm surge research team at the Stevens Institute of Technology, if Sandy had arrived earlier— near high tide in western Long Island Sound, rather than in New York Harbor and along the Atlantic Ocean—the peak water level in the western Sound, measured at the King's Point gauge, which hit more than 14 feet above Mean Lower Low Water, or MLLW (over 10 feet above datumNAVD88) during Sandy, instead could have reached almost 18 feet above MLLW (almost 14 feet above NAVD88).

The result would have been devastating for infrastructure providing critical services to the rest of the city. Flooding could have overwhelmed parts of the Hunts Point Food Distribution Center in the Bronx, thereby threatening facilities that are responsible for handling as much as 60 percent of the city's produce."

Hurricane Sandy highlighted the FDC's vulnerability to flood waters overwhelming the FDC, potentially damaging inventory and infrastructure. Further, the storm highlighted the risks of

---

<sup>1</sup> As of the date of this contract, the SIRR Report is available online at: <http://www.nyc.gov/html/sirr/html/report/report.shtml>

power outages at the FDC, other Hunts Point businesses, and within the residential community, which could be caused by not only storm surge and sea level rise, but also extreme heat events, extreme precipitation events, and system and local energy production and distribution infrastructure failures.

*Rebuild by Design and Hunts Point Resiliency Implementation Advisory Working Group*

In June 2014, U.S. Department of Housing and Urban Development (HUD) announced Community Development Block Grant - Disaster Recovery (CDBG-DR) funding awards for implementation of selected Rebuild by Design<sup>2</sup> proposals. A \$20 million award was granted to the City for the *Hunts Point Lifelines*<sup>3</sup> proposal to advance “continued robust planning and study related to the future of the food market and a small pilot/demonstration project (to be selected/identified by the City).”<sup>4</sup> In an amendment to the City’s CDBG-DR Action Plan in April 2015, the City supplemented this award with the allocation of an additional \$25 million of CDBG-DR funds, bringing the total investment towards the first stage of resiliency project implementation in Hunts Point to \$45 million.

In consultation with local elected officials, community and civic groups and business interests, NYCEDC and the Mayor’s Office of Recovery and Resiliency (ORR) formed an Advisory Working Group (the “Working Group” or “AWG”) to further develop resiliency priorities and recommendations that build upon the ideas presented in the *Hunts Point Lifelines* proposal and other ongoing resiliency and planning initiatives in Hunts Point. The Interaction Institute for Social Change (IISC) was procured by the City to design and facilitate the working group process.

Over the course of June to September 2015, the AWG convened for five meetings plus two larger public meetings, discussing and working through exercises to better understand Hunts Point’s vulnerabilities, develop selection criteria for identifying priority resiliency categories, recommend priority resiliency categories, and recommend principles to be pursued in the implementation of any resiliency projects. The AWG’s recommendations document was submitted to the City in September 2015.

The *key selection criteria* developed by the AWG are that a selected pilot project:

---

<sup>2</sup> The HUD-launched Rebuild by Design competition had multi-disciplinary professional teams engage in community-based outreach-intensive processes of identifying opportunities for significant and innovative interventions in vulnerable coastal communities in the Sandy-affected region. More information about the competition can be found at <http://www.rebuildbydesign.org/>.

<sup>3</sup> The *Hunts Point Lifelines* proposal was led by the PennDesign/OLIN partnership and included a broad coalition of local and community partners. As of the date of this contract, the *Hunts Point Lifelines* proposal is available online at: [http://www.rebuildbydesign.org/wordpress/wp-content/uploads/briefing/Penn\\_IP\\_Briefing\\_Book.pdf](http://www.rebuildbydesign.org/wordpress/wp-content/uploads/briefing/Penn_IP_Briefing_Book.pdf)

<sup>4</sup> [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2014/HUDNo\\_14-063](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-063)

- Protects infrastructure that has city-wide implications (i.e. food supply system, wastewater treatment)
- Addresses critical vulnerabilities for both community and industry
- Protects businesses and jobs in the food supply and/or maritime sectors
- Supports asset building within the community, where assets include financial holdings, natural resources, social bonds, education, employment skills and access to opportunities
- Utilizes sustainable, ecologically-sensitive infrastructure (soft infrastructure over hard infrastructure where possible, renewable energy, etc.)

Understanding that only one pilot project would be advanced through implementation with the available \$45M CDBG-DR funding, but that additional resiliency categories could be concurrently advanced through the feasibility study phase, the AWG reached consensus on two priority categories—both to be advanced with further planning and feasibility analysis, and one to be advanced through implementation of a pilot project. The two resiliency categories identified for further study by the AWG were “Power/Energy” and “Coastal Protection,” which, for the purposes of clarity, are referred to going forward as “**Resilient Energy**” and “**Flood Risk Protection**” respectively.

The AWG also proposed *implementation principles* to guide the planning, implementation and ongoing operation of the eventual pilot project. Many of these principles are embedded in various ways throughout this document.

The City has incorporated the Working Group’s recommendations into this feasibility study in two overarching ways:

- **Pilot Project Category Decision** – The City has chosen Resilient Energy as the category from which the pilot project will be determined. This decision was made beginning with the Advisory Working Group’s consensus reached around resilient energy and flood risk protection as the two priority resiliency categories. In choosing between those two categories, close consideration was given to the AWG’s *key selection criteria*. When considering the potential for implementation of a pilot project with the amount of money available (\$45M), resilient energy scored higher than flood risk reduction in its likelihood of meeting these criteria and against additional benchmarks that included HUD requirements, City resiliency priorities, and *OneNYC* goals.
- **Implementation Principles** – Some of these principles are explicitly reflected in the scope of services described herein, such as ongoing stakeholder participation, clear and comprehensible communication, and project scalability. Some of the principles will be pursued through complementary projects lead by partners in the community and in government, such as leadership development and emergency preparedness. Additionally,

the scope of services aligns with principles concerning local procurement and local hiring and training, as the project will be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C 1701), which requires to the greatest extent feasible:

- Opportunities for training and employment of low- and very low-income individuals of the metropolitan area (Section 3 residents); and
- Contracts for work in connection with the project be awarded to Section 3 businesses.

The project will also be subject to HireNYC, NYCEDC's workforce development program for connecting businesses to locally-sourced talent for permanent jobs.

Other implementation principles will be considered by the Consultant in assessing potential projects, as referenced in Task 3.1, and also may be reflected in future phases of resiliency work in Hunts Point, including, but not limited to, the design, construction and operation of the pilot project resulting from this study.

### **STUDY OBJECTIVE**

The City, through internal technical, legal and financial consultation and policy considerations, including the application of goals from *One New York: The Plan for a Strong and Just City*<sup>5</sup>, has determined that **Resilient Energy** will be the category for which a pilot project (the "Pilot Project") will be identified, designed and implemented; concurrently, potential additional long-term resilient energy and potential flood risk protection projects will be advanced and evaluated through the feasibility study phase. The City intends to work toward identifying and securing funding to advance a comprehensive approach to Hunts Point resiliency, including additional phases of resilient energy and flood risk protection.

The Consultant will build upon planning efforts to-date (as described above) to identify and evaluate potential project concepts addressing resilient energy and flood risk protection for technical, regulatory and financial feasibility.

Building upon that feasibility analysis (as further described in Task 5 below), the Consultant will then identify one or more preferred, feasible resilient energy project(s), as necessary for any required environmental review. Subject to NYCEDC choosing to execute Optional Task 6, the Consultant will deliver a resilient energy pilot project concept design to the level appropriate for determining potential impacts and defining mitigation measures per City, State, and federal environmental review requirements. Further subject to NYCEDC choosing to execute Optional

---

<sup>5</sup> <http://www.nyc.gov/html/onencyc/downloads/pdf/publications/OneNYC.pdf>

Task 7, the Consultant will usher the pilot project through City, State and federal environmental review processes.

It is anticipated that the study will proceed in two to three phases (subject to election by NYCEDC at its sole discretion to advance the third phase under this consultant contract), with ongoing stakeholder engagement occurring throughout all phases, as appropriate.

- *Phase 1* will consist of Tasks 1 and 2—existing conditions and risk vulnerability assessments to inform both the resilient energy and flood risk protection analyses.
- *Phase 2* will consist of Tasks 3, 4 and 5—identification and preliminary evaluation of project options, feasibility assessment and analysis, and selection of a preferred resilient energy pilot project(s). It is anticipated that Tasks 3 and 4 of this phase will be conducted by two separate expert sub-teams within the Consultant team—one each respectively for resilient energy and flood risk protection—working in a coordinated manner to leverage the assessment conducted in Phase 1 and to identify and incorporate into the analysis potential synergies across projects within the two categories.

Based on expertise, the Consultant will identify initial project options to be studied for addressing resilient energy and flood risk protection within the Study Area defined below. Preliminary lists of potential project options in both categories are listed below in the detailed description of Task 3 in the Specific Services section of this scope of services.

Project options that pass a preliminary screening in Task 3.3 will then be analyzed in Task 4 for advanced technical, financial and regulatory feasibility analysis. For the Pilot Project only, of particular importance during the feasibility assessment will be projects' ability to be implemented according to requirements and expectations associated with the HUD CDBG-DR funding allocated for implementation, including, among others, the ability to be implemented within the available funding, the ability to be implemented within the prescribed timeline, and projects' abilities to achieve independent utility, and as further described in the October 16, 2014 Federal Register.<sup>6</sup>

- *Phase 3* will consist of Optional Tasks 6 and 7—conceptual design and environmental review preparation, and environmental review for the recommended resilient energy pilot project(s). The scope of this phase is likely to differ based on the nature of the recommended resilient energy pilot project(s), as further discussed in Task 3. Each of the

---

<sup>6</sup> <https://www.federalregister.gov/articles/2014/10/16/2014-24662/third-allocation-waivers-and-alternative-requirements-for-grantees-receiving-community-development>

two tasks in this phase will be subject to NYCEDC's decision, at its sole discretion, to pursue them under the contract generated by this procurement.

In addition to the formal stakeholder engagement for which the Consultant will develop and execute a plan, the study will also require ongoing coordination and collaboration with multiple stakeholder agencies, utilities, and other stakeholders, as necessary.

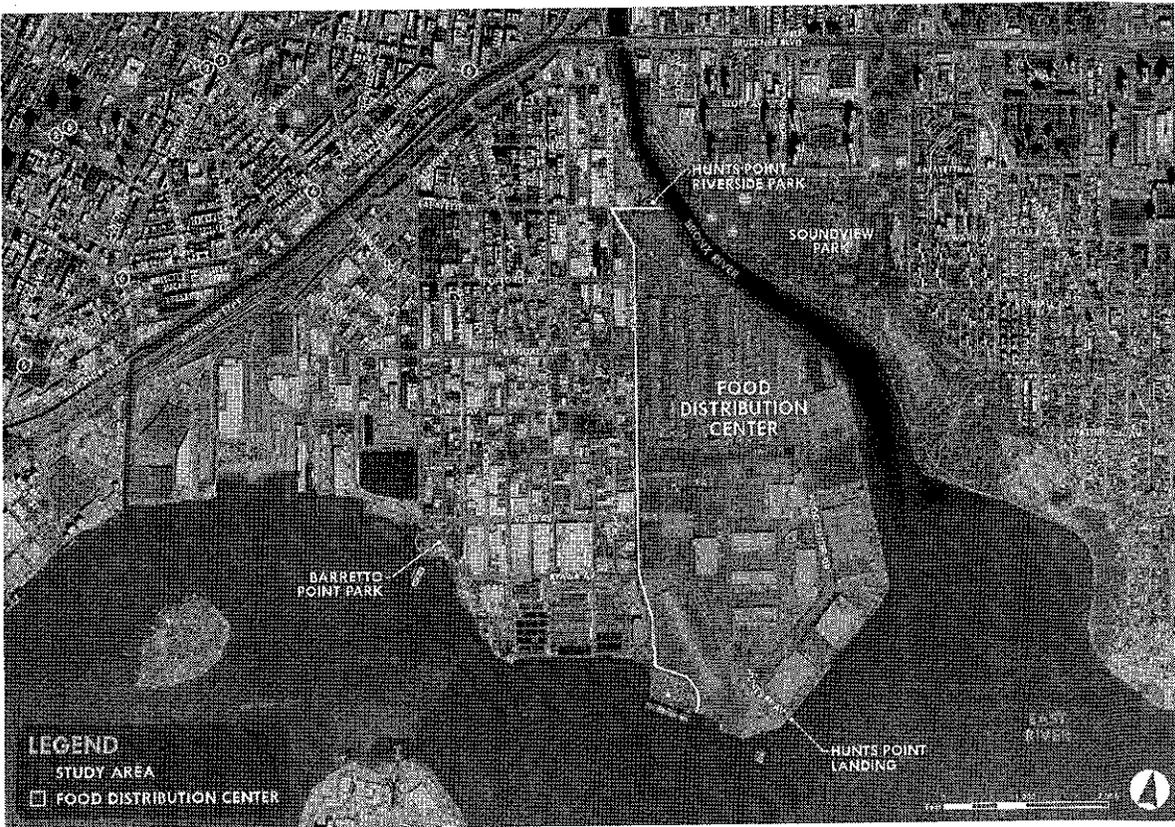
### **STUDY AREA**

The study will focus on the area (the "Study Area") generally referred to as the Hunts Point Peninsula and generally bounded by:

- E. 149<sup>th</sup> St. and the Bruckner Expressway (I-278) to the west
- The Bronx River to the north
- The East River to the east and south

The entire Study Area may not be applicable to all study elements.

Modifications to the boundaries of the Study Area may be proposed and/or redefined by the Consultant in their proposal for the purposes of identifying opportunities for independent utility, to highlight unique site constraints or design treatments, or in consideration of additional site infrastructure or topographical characteristics. In addition to the defined Study Area, additional considerations may be necessary for any other areas that are a part of the same drainage areas (i.e existing storm and sewer infrastructure draining from upland areas, direct drainage areas to waterways, and wastewater treatment plant drainage areas) or part of other relevant utility or transportation networks.



### Hunts Point

The Hunts Point Peninsula (“Hunts Point”) is located at the confluence of the Bronx River, the East River and the Long Island Sound. Surrounded by water on three sides, the fourth side is roughly bounded by the Bruckner Expressway and the CSX/Amtrak rail corridor. The Bruckner Expressway connects Hunts Point to Interstate-95 and the New York State thruway (I-87), providing access to the rest of New York City, the Northeast, the Midwest and the farther domestic and international points via the ports of New York and New Jersey.

Hunts Point has an area of approximately 1.65 square miles (~1,050 acres), a large portion of which is occupied by the 329-acre, City-owned Food Distribution Center (“FDC”). A portion of the FDC lies within FEMA’s 100 or 500 year floodplains, as does the New York City Department of Environmental Protection’s (DEP) Bronx Wastewater Treatment Plant. Much of the rest of the industrial portion of the peninsula is a diverse mix of food, manufacturing, construction, utility, municipal, auto-related and waste-related uses.

The upland northwestern portion of the peninsula contains a residential community of approximately 12,500 residents, 76% of who are below the age of 45. This community has a

median household income of less than half that of the city as a whole, with an 18% unemployment rate and 42% of households living below the poverty level<sup>7</sup>. Neighborhood residents and community-based organizations are highly engaged in promoting social and environmental justice, local hiring and workforce development efforts.

#### Hunts Point Food Distribution Center

The City-owned FDC campus is home to the New York City region's primary wholesale markets for produce, meat and fish, which combined occupy 191 of the campus' 329 acres. 22 million people in the region consume food distributed through the markets each day.

Five other food distribution facilities comprise the campus, tenanted by: Baldor Specialty Foods, Dairyland/Chef's Warehouse, Anheuser Busch, Sultana, Citarella and Krasdale.

Altogether, The Hunts Point Food Distribution Center is comprised of over 115 businesses. The Hunts Point Terminal Produce Market, the Cooperative Meat Market, and the New Fulton Fish Market combined generate more than \$3 billion in sales annually.

#### **Hunts Point Terminal Produce Market**

Opened in 1967, the Terminal Produce Market occupies 105 acres, and consists of four primary warehouse structures, two adjunct warehouses, and various administrative and maintenance structures, making it the largest produce market in the country. The market is home to 39 merchants ranging from small firms with three employees to large firms with approximately 400 employees for an aggregate total of roughly 3,000 direct employees. The market captures an estimated \$2 to \$2.3 billion in revenue per year, or 22% of regional wholesale produce sales, equivalent to approximately 60% of the produce sales within New York City.

#### **Hunts Point Cooperative Meat Market**

Opened in 1974, the Cooperative Meat Market occupies roughly 40 acres and consists of six large refrigerated, freezer buildings, including a refrigeration plant; the total refrigerated space is approximately 1,000,000 square feet. The market is home to over 30 merchants and approximately 2,400 employees and is governed by the U.S. Department of Agriculture, which inspects and supervises the processing facilities daily. The Cooperative Meat Market supplies meat and meat products to the tristate area and has distribution channels nationwide.

#### **The New Fulton Fish Market**

Opened in 1807, the New Fulton Fish Market relocated to Hunts Point in 2005 from Lower Manhattan, making it the oldest and largest wholesale fish market in the country with over 25 wholesalers employing an estimated 650 employees. The market consists of a 430,000-square

---

<sup>7</sup> 2013 American Community Survey 5-Year Estimates

foot facility with 19 bays and 8 separate entrances. The market captures an estimated \$1 billion in revenue per year.

#### *Hunts Point Vision Plan (2005)*

The Hunts Point Vision Plan Task Force was formed in Spring 2003 to provide a forum for addressing critical issues facing the Hunts Point Peninsula. In Spring 2005, the Hunts Point Vision Plan<sup>8</sup> was released, focusing on four categories of goals that were prioritized by the Task Force—optimizing land use, implementing workforce solutions, creating connections, and improving traffic safety and efficiency—and outlining a series of recommendations to meet those goals.

The City continues to work with stakeholders toward the Vision Plan's goals. Accomplishments completed or substantially progressed include: an area rezoning; creation of a permanent Hunts Point Workforce Career Center; development and ongoing implementation of the South Bronx Greenway plan; and the implementation of new truck routes and signage, among other efforts to strengthen the food cluster and job diversity in the neighborhood.

The City and the Task Force continue to meet on a semiannual basis to discuss Vision Plan progress. The Task Force is made up of community leaders, business owners, local constituents, elected officials, and government agencies.

#### *Hunts Point Food Distribution Center Ongoing Strategic Planning*

The City's strategic plan for the FDC envisions a Food Distribution Center comprised of modern, resilient facilities and diverse, job-intensive food uses. Critical goals for the future of the FDC include:

- 1) Fostering innovation and entrepreneurship within the center
- 2) Anchoring a world-class industrial food cluster in the broader Hunts Point Peninsula
- 3) Maximizing economic development spillover effects in the South Bronx
- 4) Supporting a robust food distribution system for retailers, wholesalers, institutions and other food manufacturers citywide

Announced in March 2015, the City has committed \$150 million in its Ten-Year Capital Plan to support these goals. Modernization efforts may present opportunities for synergies with the projects being evaluated through this study, the resultant pilot project, and other resiliency efforts. Note that the \$150M in City Capital is separate and apart from the \$45M of CDBG-DR funding available for the pilot project; only the \$45M of CDBG-DR is available for work related to the resiliency feasibility studies and pilot project.

---

<sup>8</sup> <http://www.nycedc.com/project/hunts-point-peninsula>

### Other Resiliency Planning

There are concurrent efforts being conducted by public and private partners towards related resiliency goals, including goals articulated by the Advisory Working Group that may not be addressed directly by the Pilot Project. To the extent practicable, this feasibility study should consider how new resiliency projects could integrate with and/or complement these related efforts.

- **NY Prize:** Level Infrastructure was awarded funding to complete a Stage 1 microgrid feasibility study through the New York State Energy Research and Development Authority's (NYSERDA) NY Prize program. That feasibility study is currently in progress.

Per Level's ongoing work, the proposed microgrid could include combined heat and power, steam absorption chillers for cooling, rooftop solar, and/or a smart grid of intelligent meters and switchgear. The team will also explore the opportunity to expand the microgrid to include nearby businesses, such as the Hunts Point Wastewater Treatment Plant, community refuge facilities, and other locations in the residential area.

NYCEDC is coordinating with Level Infrastructure, and analysis and findings from the Stage 1 study are expected to be available to inform this study.

NY Prize Stage 2, for which NYSERDA will be issuing a competitive RFP in 2016, will involve audit-grade engineering design and business planning for the microgrid proposed under Stage 1. The City and NYCEDC are currently considering options for pursuing this stage of the program. Should Stage 2 be pursued, it is assumed that it would be coordinated with this study.

Detailed information on the NY Prize program can be found at: <http://www.nyseda.ny.gov/All-Programs/Programs/NY-Prize>

- **The New York City Department of Environmental Protection (DEP)** operates a wastewater treatment plant along the southern shoreline of the Hunts Point Peninsula and adjacent to the FDC. DEP is currently developing a suite of resiliency initiatives for prospective deployment at facilities citywide and evaluating where to implement initiatives based on available funding and facility vulnerability. Further detail is anticipated to be available mid-2016.
- **NYC Emergency Management (NYCEM)** is actively working to promote awareness of existing emergency preparedness plans for the Hunts Point community through its Ready New York program. Additionally, NYCEM is working with the United States Department of Homeland Security to assess the resiliency and capacity of critical commodity supply chain

infrastructure citywide in order to better prepare for the movement of emergency supplies and equipment before, during and after an emergency event.

- **South Bronx Community Resiliency Agenda:** The Point CDC, with funding assistance from The Kresge Foundation, is engaging local communities through the South Bronx Community Resiliency Agenda to create a comprehensive climate resiliency agenda that will strengthen the physical and social resiliency of the South Bronx Significant Maritime and Industrial Area (SMIA) They are currently working to secure additional funds to expand resiliency efforts to all South Bronx communities including Hunts Point, Mott Haven, Port Morris, and Soundview by creating a Community Resiliency Planning Board, creating neighborhood-specific community preparedness and evacuation plans, and creating a South Bronx Community Resiliency Institute.

## **SERVICES**

The Consultant is not guaranteed full performance of the scope. Task 6 (conceptual design and environmental review preparation), Task 7 (environmental review) and Task 8 (Additional Services) are subject to the outcome(s) of all prior tasks, and otherwise NYCEDC's sole discretion.

### **I. General**

- Up to two project management representatives of the Consultant will attend bi-weekly in person project coordination and status meetings with the City over six months during Tasks 1-5. Agenda items will be identified in advance and discussed at each meeting to track the overall progress of the project. During Optional Tasks 6 and 7, the Consultant anticipates this schedule shifting to monthly meetings.
- In addition, NYCEDC's project manager and the Consultant's project manager and deputy project manager will have the opportunity to consult via phone or e-mail on an as-needed basis, which could be on a daily or weekly frequency.
- All coordination directly with other City and state agencies and scheduling of necessary related meetings will be performed by NYCEDC.
- The Consultant will submit a Project Management Plan (PMP) to NYCEDC that includes the detailed scope of services and objectives of the project, project milestones and deliverables, documentation and data management systems, and that establishes project procedures and protocols for communication and information exchange.
- The Consultant will provide a Microsoft Project schedule for tracking the status of specific tasks and activities with the City.

- Task deliverables will be provided to NYCEDC for review and comment. The Consultant will finalize deliverables based on the City’s review and one set of consolidated review comments provided by EDC.
- The Consultant will invoice on a monthly basis and will submit a HUD § 3 report with each invoice based on a report template provided by NYCEDC.

## II. Specific Services

The specific Services for each Task are as follows:

### **Task 0: Ongoing Stakeholder Engagement**

The Consultant will lead a robust stakeholder engagement process in consultation with NYCEDC. The Consultant will develop and articulate a detailed proposed strategy for this process in a preliminary Stakeholder Engagement Plan document. The Stakeholder Engagement Plan should address strategies for disseminating information to stakeholders and the incorporation of stakeholder input and feedback through ongoing two-way communication.

Stakeholder engagement will include report backs throughout the study process to stakeholders potentially including the Advisory Working Group or a similar group established for this next phase of work, and to the broader community. The timing, frequency and structure of the report backs should be considered such that they serve for the Consultant to disseminate information to stakeholders and to engage in two-way communication, soliciting stakeholder feedback and incorporating that feedback into subsequent study tasks, phases, and findings.

The Consultant will communicate with stakeholders in a clear and comprehensible way, at a minimum:

- Technical concepts related to energy production, distribution and consumption;
- Technical concepts related to flooding risk and associated protective interventions;
- Legal and regulatory processes;
- Financial trade-offs and feasibility;
- Study findings from each task, and their function in the larger study.

In connection with Task 5 – Preferred Resilient Energy Pilot Project(s), the Consultant should develop communication strategies around coordination with community-led leadership training, workforce development and hiring opportunities, local procurement opportunities, and ongoing engagement with the operational project and potential future phases. This may include outreach to community groups, civic organizations, business organizations, and/or individual local businesses.

- **Task 0.1: Development of Stakeholder Engagement Plan (the “Stakeholder Engagement Plan”)**

- In consultation with NYCEDC, the Consultant will identify project stakeholders.
- The Consultant should identify major stakeholder touchpoints that align with milestones in the study described below, as well as strategies for continuous and ongoing contact throughout the study process.
- The Consultant should develop a strategy for engaging stakeholders on technical aspects of the project options, understanding that stakeholders have varying levels of pre-existing knowledge of these concepts.
- The Consultant should develop innovative strategies for soliciting and incorporating stakeholder input and feedback.
- The Consultant should identify a process/tool for timely and regular information sharing with stakeholders.

- **Task 0.1 Deliverable:**

- The Stakeholder Engagement Plan will consist of a clear concise document of up to 20 pages in length.
- Community outreach efforts will be documented, in addition to meeting notes.

- **Task 0.2: Perform and Document Stakeholder Engagement**

- Key staff for this task will consist of up to six Consultant team representatives: the Consultant’s project manager and/or deputy project manager, an Interaction Institute for Social Change (“IISC”) lead facilitator, one additional IISC facilitator for Advisory Work Group (“AWG”) meetings, an IISC content manager, and an IISC engagement coach.
- Up to two additional technical team members for resilient energy and up to two technical team members for flood risk reduction will participate in up to four stakeholder engagement meetings to inform Task 3: Identification and Preliminary Evaluation of Project Options and Task 4: Feasibility Assessment and Analysis
- The proposed Stakeholder Engagement Plan for Tasks 1 through 5 will consist of the following meetings extending through the six-month schedule for these tasks, and attended by up to six Consultant representatives:
  - 5 AWG meetings
  - 4 meetings with a subcommittee of the AWG (the “Engagement Team”)
  - 4 public meetings
  - 1 public event
- Neighborhood outreach support: The fee includes up to \$14,000 in stipends for 10 local community members to assist the Consultant with outreach (the “Neighborhood Outreach Team”). It is the Consultant’s expectation that members of the Neighborhood Outreach Team will be present at meetings, which will average about four hours per month, and will spend a total of approximately four hours of time outside of meetings in training,

meeting preparation or community outreach on average per month during Tasks 1-5 (or up to six months). Stipend recipients will not be temporary employees of the Consultant, its subcontractors, or NYCEDC. Rather, it is anticipated that such funds will be disbursed through a community-based organization ("CBO"), and that the Consultant would work with the CBO to develop the candidate profiles and fill the positions, using wherever possible SBS Workforce1 centers.

- Up to 16 hours of training for the Engagement Team is included.
- Fee includes \$1,000 per meeting for venue cost and reasonable refreshments, locally-sourced if possible, for 14 meetings for a total of \$14,000.
- Fee includes translation services up to \$500 per meeting.
- NYCEDC will perform all activities necessary to secure location, required audio visual equipment, advertise meeting notices and direct outreach to meeting participants to encourage attendance.
- Public and AWG meetings will be approximately 2-3 hours in length.
- Following each meeting, the Consultant will prepare meeting summaries including overview of the information provided and recommendations and action items that resulted during each meeting. The Consultant will have a dedicated content manager who will summarize the proceedings, will do a "group memory" exercise at the end of each meeting, and will incorporate those items into meeting notes. Meeting summaries will be a maximum of 3 pages each and all summaries will be incorporated into the final Stakeholder Engagement Report.

➤ Task 0.2 Deliverable:

- The final Stakeholder Engagement Report submitted to the City for review and comment will consist of a clear concise document of up to 20 pages suitable for public view with finalized meeting summaries attached as appendices. It will address HUD § 3 community outreach requirements and documentation.

**Task 1: Existing Conditions**

The Consultant is expected to be familiar with academic and professional literature regarding best practices in resilient energy, flood risk protection, and climate change resiliency generally. Additionally, the Consultant should be familiar with federal, state, city and neighborhood reports, studies, plans, and other background documents concerning resiliency and development guidelines. Relevant city and neighborhood documents include, but are not limited to: *A Stronger, More Resilient New York, OneNYC: The Plan for a Strong and Just City*, and associated background research by the NYC Special Initiative for Rebuilding and Resiliency (SIRR); NYC Panel on Climate Change (NPCC) reports; the *Hunts Point Lifelines Rebuild By Design* proposal; the Hunts Point Resiliency Implementation Advisory Working Group Recommendations; NYC Waterfront Vision and Enhancement Strategy (WAVES), including

*Vision 2020: Comprehensive Waterfront Plan* and NYC Waterfront Action Agenda; DCP Urban Waterfront Adaptive Strategies; DCP Active Design Guidelines; DCP Waterfront Revitalization Program (2013); New York State *Reforming the Energy Vision (REV)*, DEP NYC Green Infrastructure Plan; DEP NYC Wastewater Resiliency Plan; and the Hunts Point Vision Plan.

• **Task 1.1: Study Area Conditions**

- Identify and review current and planned future publicly-sponsored and other relevant capital projects in the Study Area.
- Identify any existing conditions, which may include but are not limited to the below, needed to inform the analysis to be completed in the study tasks.
  - Land ownership/control;
  - Utility surveys, identifying the location and condition of utilities, easements, and public infrastructure;
  - Building typologies, including age construction type, basements, and uses below the Baseline Flood Elevation (BFE);
  - National Flood Insurance Program Elevation Certificates for FDC buildings;
  - Topography of FDC parcels;
  - Shoreline configuration and conditions, including location of the shoreline, or stabilized natural shore (Matrix is performing a City Wide Shoreline Assessment for NYCEDC under a separate contact, which the Consultant believes is sufficient to perform the feasibility studies contemplated in this task.);
  - Natural and geological features;
  - Baseline marine environmental surveys, as necessary, potentially including:
    - Hydrographic and hydraulic surveys, including: water sources, water depths, currents, wave heights and directions, and tidal cycles,
    - Wetland delineation, if any;
    - Biological resources survey that identifies and maps habitat types and vegetative communities;
  - Hydrologic modelling for surface water and groundwater drainage configurations;
  - Inundation and inland flood data and flood damage assessments from Hurricanes Sandy and Irene, and other coastal flooding and high-precipitation events, such as nor'easters and blizzards;
  - Environmental contamination and hazardous material issues, both in-water and in upland locations (Based on the extensive data available regarding contamination issues on the Hunts Point Peninsula, there is no Phase I Environmental Site Assessments (ASTM) E1527-13 proposed for the study area);
  - Historic and cultural resources.

It may not be necessary for the Consultant to examine the above conditions across the entire Study Area. The Consultant shall describe their rationale for examining the above elements at any extent less than the full Study Area.

Data to define existing conditions will be based on past projects undertaken by the Consultant, published reports and investigations that can be readily secured. Depending on owners of past projects, the Consultant may need to request approval for release of data and it is assumed that NYCEDC will assist in data release requests.

- Included in the Consultant's fee for this task are:
  - A site reconnaissance visit to identify constraints and opportunities, and collect additional visual data and photo-documentation, anticipated to occur over two days.
  - A one-day waterside site reconnaissance that provides space for 6-8 passengers at a time on an HDR vessel.
  - Survey work to develop elevation certificates for certain FDC buildings identified by EDC, including:
    - Produce Market Building 1
    - Produce Market Building 2
    - Produce Market Building 3
    - Chef's Warehouse Building
    - Krasdale Building 6
    - Anheuser Bush Building 7
    - Fish Market Building 9
    - Meat Market Building 10
    - Meat Market Building 11
    - Meat Market Building 12
    - Meat Market Building 13
    - Meat Market Building 14
    - Meat Market Building 15
    - Baldor Building 16
    - Baldor Building 17
  - The cost of consultation meetings with Con Edison, to reimburse them solely for their costs of reproducing and obtaining data specific to the distribution network and customer usage, per published or generally applicable rate schedules. The Consultant fee includes allocations of \$5,000 for each request and a maximum of four requests to Con Edison.

Other than reconnaissance site visits, intensive field data collection efforts are not included under this task with the exception of elevation certificates described under this same task. Based on the Consultant's experience in Hunts Point and data it has in-house, the Consultant believes there is sufficient information to perform the feasibility studies in this task.

Data, analysis and findings from the NY Prize Stage 1 Feasibility will be available in time for the definition of existing conditions and for the development of the Hunts Point resiliency evaluation, to the extent available to NYCEDC and subject to non-disclosure agreements.

If any data gaps are identified during Task 1.1 that are not budgeted for in Task 1.1, the Consultant may utilize Task 8 (Additional Services) at the sole discretion of NYCEDC in order to fill those data gaps.

➤ Task 1.1 Deliverable:

- The Study Area Conditions Report will include summary descriptions of constraints and opportunities, including up to 25 pages of narrative with the base maps described in Task 1.2 below.
- Technical data collected during this task will be provided as backup in digital format.
- Following the City's review and comment of a draft Study Area Conditions Report, the HDR Team will convert the report findings into a presentation slide deck that will serve as the base presentation to be expanded during Task 0 and Tasks 2 through 7.

● **Task 1.2: Mapping**

- Prepare a consolidated base map (the "Base Map"), showing existing streets, blocks, lots, curb lines, building footprints, shoreline, and key sites and facilities within the Study Area.
- Prepare individual maps (using the Base Map) documenting the various conditions found during the course of the Feasibility Study, for use in connection with this Scope of Services.
- Prepare detailed base maps (e.g., location of utilities, CSOs, etc.) for priority areas, as informed by subsequent tasks.

It may not be necessary for the Consultant to prepare the above maps for the entire Study Area. The Consultant shall propose the appropriate extent for each map.

➤ Task 1.2 Deliverables:

- Consolidated Base Map and individual maps (using the Base Map) as needed to document existing conditions, conduct the Task 2 Risk and Vulnerability Assessment and the Task 3 Identification and Preliminary Evaluation of Project Options. It is expected that maps may require modification in concert with evolving analysis to be performed in subsequent tasks. Maps should be made available to NYCEDC as both dynamic GIS files as well as presentation-ready graphics (.pdfs).
- The HDR Team will develop up to five GIS base maps to illustrate existing study area conditions of Hunts Point Peninsula described in Task 1.1 above and to depict potential and proposed project option areas, and areas that could be impacted by proposed projects.

### **Task 2: Risk and Vulnerability Assessment**

The Consultant will comprehensively assess the Study Area's vulnerabilities to climate change and to infrastructure outages, including:

- Sea level rise
- Storm surge
- Extreme precipitation events
- Extreme heat events
- System-wide infrastructure outages
- Building-level infrastructure outages

Baseline and additional analysis years, beyond those explicitly referenced below, will be determined through consultation between NYCEDC and the Consultant.

For each event type, the Consultant shall assess the likelihood of that threat occurring, the vulnerabilities presented by the existing conditions, and the risk presented as a function of threat likelihood and vulnerability.

The Consultant will coordinate with the New York City Panel on Climate Change's (NPCC) Climate Change Adaptation Task Force, which will be advancing its assessment work concurrent with this study. NYCEDC will assist in facilitating this collaboration.

In evaluating threats, at a minimum, the Consultant will analyze:

- Projected tidal flooding extent and depth due to sea level rise, using, at a minimum, NPCC2's 25th, 75th, and 90th percentile projections for the 2050s;
- Projected extent of flooding, height of flood waters and associated risk from wave action for storms at multiple levels of annual frequency, and projected at various future years;

- Anticipated inland flooding/ponding from storm water runoff that exceeds the capacity of existing drainage infrastructure, during events including but not limited to the 10.0% and 2.0% annual chance rainstorms for today and the 2020s, 2050s, 2080s, and 2100s;
- Current and projected future frequency and magnitude of extreme heat events.

In evaluating vulnerabilities, at a minimum, the Consultant will analyze:

- System and building-level energy production and distribution infrastructure, current and projected future energy demand, and the resultant current and projected future frequency and magnitude of heat-related and other-caused outages.
- Sewer infrastructure, including interceptors, regulators, tide gates, outfalls and pumping stations, and associated flooding pathways. The Consultant will use the existing sewer (InfoWorks) model from DEP's CSO Program to analyze drainage threats. The DEP model is relatively coarse in that pipes less than 48 inches are generally excluded. However, drainage system contributing areas in conjunction with a digital terrain model and the InfoWorks model allow for sufficient definition of interior drainage flood threats to assess the feasibility of flood risk reduction options at the level required for this project.
- Building-level vulnerabilities to flooding, including, but not limited to, the location of mechanicals and other critical systems and extent of business outage or displacement of residents. The vulnerability of building level mechanical and electrical systems will be based on available existing data, data collected during site reconnaissance visits, and data volunteered during stakeholder outreach programs. Detailed surveys of building by building mechanical and electrical systems are not needed to assess overall risks for a feasibility level assessment and are not included in the fee.

This task is assumed to be a desktop analysis with no additional data collection. Study area data and GIS base maps developed in Task 1 will be used in conjunction with New York City Panel on Climate Change data and Con Edison data.

The Consultant will centralize, document and organize existing information. If this involves additional unanticipated costs for third parties, then such costs may be conducted and paid out of Task 8 (Additional Services) at NYCEDC's sole discretion.

➤ Task 2 Deliverable:

- A draft and final Study Area Risk Assessment Findings memorandum summarizing the findings of the above analysis will be submitted to the City for review and comment. The memorandum will consist of a clear concise document suitable for public review and will include up to 10 pages of narrative plus a threat matrix and updated base maps.

### **Task 3: Identification and Preliminary Evaluation of Project Options**

This and the following Task will be conducted by two separate expert sub-teams within the Consultant team—one each respectively for resilient energy and flood risk protection—working in a coordinated manner to leverage the assessment conducted in Tasks 1 and 2 and to identify and incorporate into the analysis potential synergies across projects within the two categories.

#### **• Task 3.1: Initial Identification of Project Options**

The Consultant will identify the project options to be studied in a screening analysis for each of the following categories:

1. Resilient energy
  - a. Pilot Project
  - b. Any additional long-term projects
2. Flood risk reduction

The following non-exhaustive lists were articulated in the Advisory Working Group recommendations:

#### **Power/energy (Resilient Energy)**

- Elevation and protection of mechanical and electrical systems (i.e. heating, ventilation and cooling systems)
- Back-up power generation (i.e. fuel cells, generators)
- Micro-grid for independent district-wide energy generation
- Nano-grid for independent building-scale energy generation
- Cleaner energy production (less emissions, less waste, more renewables): Solar; Natural gas; Co-generation (Combined Heat and Power); Tri-Generation (Combined Cooling, Heat and Power)

#### **Coastal protection (Flood Risk Protection)**

- Shoreline/edge protection
  - Multi-purpose levee (i.e. greenway levee integrated with urban shoreline restoration)
  - Improved and/or raised bulkheads and/or seawalls
  - Wetlands (i.e. urban tidal flat restoration)
  - Green infrastructure-based storm water management
  - Green seawalls (i.e. seawalls that provide lattice work or substrates to support aquatic species)
  - Deployable flood protection
  - Integrated storm water management
- Building-level protection
  - Building and/or site flood barriers
  - Wet flood-proofing
  - Building elevation

In identifying projects to be advanced to the Feasibility Screening in Task 3.2 below, the Consultant should consider the above list, should consider the work of the NYSERDA NY Prize Phase 1 study referenced earlier, and, based on expertise, should consider other potential projects, such as energy storage and/or waste-to-energy by anaerobic digestion or other methods. In the generation of potential projects, the Consultant should also consider the Implementation Principles suggested by the Advisory Working Group.

The Consultant shall develop high-level descriptions of each proposed project that establish engineering and construction specifications for each option to the extent that assumptions need to be defined in order to complete Task 3.2.

Up to 35 project options will be identified for resilient energy and flood risk reduction in order to adequately canvas potential Pilot Project opportunities. Project options may include varying combinations of project components and features to create energy resilient systems and systems that reduce flood risks.

Task 3.1 includes one consultation meeting directly with Con Edison to obtain data specific to its distribution network and customer usage. The Task 3.1 fee includes an allocation of \$5,000 for Con Edison data/services during this task.

➤ Task 3.1 Deliverable:

- A final list, subject to agreement between EDC and the Consultant, identifying the project options to be advanced to Task 3.2: Feasibility Screening.
- Each project option or system of options will be summarized in a one page executive summary that will provide narrative, typical performance and costing metrics, and graphics summarizing the positive and negative attributes associated with each option.
- For each project, the key elements and undetermined variables (e.g. energy source or production method) will be outlined, and the technical, regulatory and financial analysis needed for determining feasibility will be preliminarily identified, subject to further refinement.

• **Task 3.2: Development of Feasibility Screening Methodology**

It is not anticipated that every project identified in Task 3.1 will be advanced to the full feasibility assessment and analysis to be conducted in Task 4. The Consultant shall develop a screening methodology for refining the initial list of projects identified in Task 3.1.

Among other criteria, to be developed by the Consultant based on expertise, the screening at this stage should at a minimum include:

- Order of magnitude cost estimation
- Expected utility given the extent of threats and vulnerabilities

For the Resilient Energy Pilot Project, the Consultant should additionally ensure that the screening analysis considers:

- Adherence with all requirements associated with the HUD CDBG-DR funding, including, among others, the ability to be implemented within the available funding, the ability to be implemented within the prescribed timeline, the project's ability to achieve independent utility, and the disallowance of funds being used to assist a privately-owned utility for any purpose.
- **Task 3.2 Deliverable:**
  - A draft and final memorandum outlining the proposed screening methodologies for resilient energy and flood risk reduction will be submitted to the City for review and comment. The HDR Team assumed the memorandum will consist of up to 10 pages of narrative including graphic depictions of the screening aids proposed for use in Task 3.3.

- **Task 3.3: Feasibility Screening**

The screening methodology developed in Task 3.2 will be applied to project options and the screening results will build upon the memorandum developed in Task 3.2.

- **Task 3.3 Deliverable:**
  - A draft and final screening report will be submitted and is anticipated to consist of up to 20 pages of narrative plus graphic depictions of screening results.

#### **Task 4: Feasibility Assessment and Analysis**

The Consultant will continue to evaluate those project options remaining after the feasibility screening in each of the following categories:

1. Resilient energy
  - a. Pilot Project
  - b. Any additional long-term projects
2. Flood risk reduction

The Consultant shall evaluate, at minimum, the technical, financial and regulatory feasibility of each project option, taking into account all applicable considerations, including but not limited to:

- **Technical:**
  - Design and engineering considerations such as constructability
  - Potential environmentally sustainable or “green” infrastructure and green-gray hybrid infrastructure solutions
- **Financial:**
  - Cost estimates, including construction, operations and maintenance

- Consideration of potential funding sources for projects not identified as Preferred Pilot Project(s) under Task 5, and for scaling up of Preferred Pilot Project(s) beyond the pilot stage
- Regulatory:
  - Identify applicable laws and regulations, legal issues, permitting challenges, and policies and plans across all levels of government relating to the design, evaluation, implementation, and maintenance of potential project concepts
  - Identification of any legislative/policy changes that would be required for implementation
- Environmental:
  - Preliminary analysis of impacts on air quality, hydrology, water quality, and ecosystems, as applicable
  - Preliminary evaluation of the supplementary environmental services and studies that would be required in future environmental assessments, including identification of any expected NEPA Environmental and Historical Preservation Compliance (“EHP”) issues. (As further described in Task 7, minimizing environmental impacts is a critical part of the decision making process in NEPA review.)
- Performance and Risk Reduction:
  - Ability of each option to address existing vulnerabilities and protect against the threats identified in Task 2
  - Impact of project on adjacent areas not served by, but affected by, changes resulting from the project
  - Extent to which multiple stakeholder groups could benefit from the project
- Projected Timeline (including public review, stakeholder engagement, environmental assessments, design, construction and permitting);
- Consideration of how the project may be incorporated into a comprehensive, multi-phase resiliency plan that fully addresses the energy and flood risks identified in Task 2, which may involve any or all of:
  - Scaling the project to a higher service level than the pilot phase will provide
  - Scaling the project to serve a broader service area than the pilot phase will support
  - Incorporating other feasible projects identified in this task – for either/both resilient energy and flood risk protection, including the identification of synergies and complementarities between projects
- Potential public and private sector and community roles/responsibilities in project implementation, operation and maintenance
- Employment analysis of the number of temporary, permanent full-time and permanent part-time jobs that would be created

Up to 5 total resilient energy projects and up to 5 total flood risk reduction projects will be identified for assessment in this Task. Two page summaries will be developed for each

alternative for use in the Sustainable Return on Investment (SROI) process proposed by the Consultant, which will also include magnitude of cost estimates.

Task 4 includes one consultation meeting directly with Con Edison to obtain data specific to its distribution network and customer usage. The Task 4 fee includes an allocation of \$5,000 for Con Edison data/services during this task. Task 4 fee schedule assumes that distribution system circuit data will be provided by Con Edison and will be readily available, requiring only minimal data cleansing and data verification. If such data requires cleansing and verification, then such costs may be conducted and paid out of Task 8 (Additional Services) at NYCEDC's sole discretion.

➤ Task 4 Deliverable:

- The results of the task will be presented in a single report that incorporates deliverables from Tasks 0 through Task 3 and summarizes the final feasibility assessment and SROI results generated in this task.
- The Task 4 deliverable will be written with the expectation that it will be the first public-facing report from the project to capture all flood and energy information developed up to this point and that EDC may further format it for publication. The flood risk reduction information in particular will need to be presented in a form that can be used for subsequent fundraising.

**Task 5: Preferred Resilient Energy Pilot Project(s)**

Based on the findings from all preceding Tasks, the Consultant shall identify a preferred resilient energy pilot project(s) (“Preferred Pilot Project(s)”) to advance to conceptual design and environmental review preparation, as required.

The identification of multiple Preferred Pilot Projects may be required in order to perform the alternatives analysis required under NEPA environmental review. Different levels of alternatives analysis are required depending on the need for an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The number of Preferred Pilot Projects to be identified should be informed by, among other things, the preliminary evaluation of the supplementary environmental services and studies conducted in Task 4.1.

The Preferred Project(s) will be selected based on:

- Performance in the feasibility study (Task 4)
- Adherence with all requirements associated with the HUD CDBG-DR funding, including, among others:
  - The ability to be implemented within the available funding,
  - The ability to be implemented within the prescribed timeline, and
  - The project's ability to achieve independent utility

- Other factors, including, but not limited to: environmental considerations, alignment with City policy goals, and consistency and compatibility with other related initiatives.
- **Task 5 Deliverable:**
  - The Task 5 deliverable will consist of a summary memorandum to NYCEDC of the Energy Pilot Project(s) and a recommended preferred Energy Pilot for conceptual design. Upon agreement with NYCEDC on the Pilot Project options, the Consultant will support EDC on the project announcement using processes outlined in Task 0.

**(Optional) Task 6: Conceptual Design and Environmental Review Preparation for the Pilot Project(s)**

Subject to the outcomes of all prior tasks, and at NYCEDC’s sole discretion, the Consultant will complete conceptual design<sup>9</sup> of the Preferred Pilot Project(s), develop an implementation plan for each Preferred Pilot Project, perform cost/benefit analyses, and identify all required environmental review. The scope and associated fee for Task 6 are based on certain reasonable assumptions about the potential Preferred Pilot Project; because the actual Preferred Pilot Project is undetermined until Tasks 0 - 5 are underway and/or completed, certain additional subtasks may be required under Task 8 (Additional Services) at the sole discretion of NYCEDC.

• **Task 6.0: Ongoing Stakeholder Engagement**

- The Consultant will conduct on-going stakeholder engagement through the proposed 6 month schedule for Task 6, including the following:
  - 2 Advisory Work Group Meetings
  - 2 Engagement Team Meetings
  - 2 Public Meetings
  - 1 Public Event
- The fee includes stipends for the Neighborhood Outreach Team, including 10 local community members to assist the Consultant with outreach. It is the Consultant’s expectation that members of the Neighborhood Outreach Team will be present at meetings, which will average about two hours per month, and will spend a total of approximately four hours of time outside of meetings in training, meeting preparation or community outreach on average per month during Task 6 (or up to six months).
- The fee includes \$1,000 per meeting for venue cost and reasonable refreshments, locally-sourced if possible, for an additional total fee of \$7,000.
- Fee includes translation services up to \$500 per meeting.

---

<sup>9</sup> Conceptual design will consist of a design basis document, conceptual cost estimate, and conceptual project schedule.

- The Big Democracy Lab will take place during the development and assessment of conceptual designs for the Pilot Project.
- **Task 6.1: Conceptual Design**
  - The Consultant shall prepare schematic design documents. The components of the schematic design will vary depending on the Preferred Pilot Project. Schematic design should be informed by this study and analysis, and shall explain all significant aspects of the Preferred Pilot Project.
  - The schematic design shall include all sketches, diagrams, drawings, renderings and physical models as necessary to fully illustrate all major elements of the Preferred Pilot Project(s).
  - The Consultant shall obtain, and become familiar with, all applicable design directives, standard details, administrative procedural bulletins and other guidelines.
  - The Consultant shall develop a schematic design including a cost estimate, with a format approved by EDC. The Schematic Design should consider all feasible options for the Preferred Pilot Project and result in an ideal design within a reasonable upper cost limit. EDC will review and comment on this design and cost estimate and seek comments from all interested parties. The Consultant shall make presentations of each design to EDC and, as directed by EDC, to interested parties. The Consultant will incorporate any necessary revisions into the Schematic Design and cost estimate at EDC's direction.
  - Once the Schematic Design and cost estimate are approved by EDC, the Consultant will produce renderings and illustrative materials depicting the design for the Preferred Pilot Project.
  - The Consultant shall identify in writing all Agency and utility regulations, ordinances, codes and permits required for approval and construction of the Preferred Pilot Project. Obtaining permits is not included.
  - In preparing all Schematic Designs, preliminary recommendations and cost estimates, the Consultant shall:
    - Consider concerns regarding elements such as appropriateness to the particular location, durability, and maintenance responsibility. The Consultant shall coordinate and discuss these concerns with EDC and the appropriate Agencies, including obtaining required Agency approvals.
    - Minimize utility relocations and street reconstruction.
    - Prepare cost estimates for the Preferred Pilot Project based on current labor costs, a breakdown for special items, and current unit prices for standard items. Separate cost estimates shall be prepared as directed by EDC.
    - Maintain current information relating to the estimated cost of the Preferred Pilot Project during the Study period and inform EDC promptly in writing of any significant changes in such estimated cost due to market conditions or changes in the scope or design of the Preferred Pilot Project.

- Ensure the cost estimates shall be consistent with the Preferred Pilot Project budget as specified by EDC. If the estimates exceed the budget, the Consultant shall, in consultation with and at no additional cost to EDC, modify the Schematic Designs as necessary until the estimates are acceptable to EDC.
- Identify and list any distinctive elements of the Schematic Design requiring a maintenance program and provide both the maintenance program and an estimate of anticipated costs to maintain each element. The Consultant should incorporate Agency standards into the designs and cost estimates.

Site Surveys by licensed surveyors or subsurface investigations are not contemplated for the conceptual design phase.

Task 6.1 includes one consultation meeting directly with Con Edison to obtain data specific to its distribution network and customer usage. The Task 6.1 fee includes an allocation of \$5,000 for Con Edison data/services during this task.

➤ Task 6.1 Deliverable:

- Design basis document, to establish the conceptual design of the preferred pilot project: The design basis document will include schematics such that a conceptual cost estimate and environmental review can be completed. This includes developing the schematics identified in the proposal as well as process flow diagrams for up to six of the major systems associated with the preferred pilot project.
- Preferred pilot project cost estimate, established to AACE Class 3 guidelines, including operations and maintenance costs. Detailed project life-cycle cost estimates will not be established for alternatives other than the preferred pilot project.
- Level 1 project schedule, developed for the preferred pilot project only
- Up to one whitepaper will be developed to promote decision making.

• **Task 6.2: Implementation Plan**

The Consultant shall develop an implementation plan for the Preferred Pilot Project(s) that at a minimum considers the following elements:

- Construction – responsible parties, required assemblages, phasing, and required procurement
- Funding – cost estimate, including detailed sources and uses of funds, and high-level funding strategy for future phases and additional projects identified in Task 4 that may, with the Preferred Pilot Project be part of a comprehensive, multi-phase resiliency plan, as further described in that Task

- Ownership, operation and maintenance of the completed asset

Project options besides the preferred pilot project will be considered in Task 6.2 however only at a conceptual level and detailed cost estimates will not be provided.

➤ Task 6.2 Deliverable:

- Implementation plan outlining the above elements

• **Task 6.3: Cost/Benefit Analysis**

The Consultant shall complete a cost/benefit analysis for the Preferred Pilot Project(s) that provides a sense of the cost efficiency of the proposal, and to the best extent possible quantifies the benefits of the Preferred Pilot Project(s) at all levels, including neighborhood, city, region, state, and national. The methodology for quantifying or otherwise accounting for social and ecological benefits and costs must follow HUD Notice CPD-16-06 (April 20, 2016).<sup>10</sup> The Cost/Benefit analysis may additionally include qualitative descriptions of benefits that cannot be monetized.

Costs and benefits to be considered shall include, but not be limited to:

- Lifecycle costs
- Resiliency value – environmental and otherwise
- Environmental value
- Social value, including among others, community development benefits
- Economic revitalization value
- Direct and indirect financial value
- Labor assessment, including number of direct and indirect jobs created by type of occupation

To the greatest extent possible, the cost/benefit analysis methodology should be based on evidence-based practices.

➤ Task 6.3 Deliverable:

Cost/benefit analysis, per the above guidelines, including both a financial model and a narrative description that is clearly and concisely written so as to be easy to understand for reviewers with limited economic expertise. The Cost-Benefit Analysis should include detailed information about the types of occupations/jobs (by trade or standard occupational classifications) that the implementation and maintenance of the selected pilot project will deliver, including from where the labor to fill these jobs will likely

---

<sup>10</sup> <http://portal.hud.gov/hudportal/documents/huddoc?id=16-06cpdn.pdf>

come (e.g., skillshed analysis). The deliverable should describe small business procurement opportunities that may arise as a result of this project.

- **Task 6.4: Identify Required Environmental Review**

Based on professional knowledge, available project information (i.e., funding sources), and published regulations and guidance, the Consultant will determine the proper level of environmental review. While it is anticipated that the technical environmental review process will take place largely in accordance with the *March 2014 CEQR Technical Manual*, as is appropriate for projects located in New York City, federal funding will require that environmental review also complies with the requirements of the National Environmental Policy Act of 1969 (NEPA). As part of the response, the Consultant should propose a strategy for a coordinated environmental review that will satisfy the requirements of CEQR, NEPA, and other appropriate federal environmental statutes related to specific environmental resources.

- **Task 6.4 Deliverable:**

Memo describing the required environmental review to be executed in Task 7

**(Optional) Task 7: Environmental Review**

Subject to the outcomes of all prior tasks, and at NYCEDC's sole discretion, the Consultant, in coordination with NYCEDC, will advance the Preferred Pilot Project(s) through the necessary environmental review identified in Task 6.4, and accordance with the below directions.

The scope for Task 7 is based on the assumption that the potential Preferred Pilot Project avoids the potential for significant adverse impacts to the built, social, and natural environment. Under this scenario, an Environmental Impact Statement (EIS) will not be needed and a NEPA Environmental Assessment / CEQR Environmental Assessment Statement (EA/ EAS) will result in a finding of no significant impact (FONSI).

Because the actual Preferred Pilot Project is undetermined until Tasks 0 - 6 are underway and/or completed, certain additional subtasks and costs associated with Task 7 may be required. If the potential for significant adverse impacts are identified during the development of the preferred pilot and/or EA, and an EIS is required, the Consultant may conduct these additional subtasks under Task 8 (Additional Services) at the sole discretion of NYCEDC.

- **Task 7.0: Ongoing Stakeholder Engagement**

- The Consultant will conduct ongoing stakeholder engagement through the proposed schedule for Task 7 at the following:
  - 2 Advisory Work Group Meetings
  - 2 Engagement Team Meetings
  - 2 Public Meetings

- 1 Public Event

- The fee includes stipends for the Neighborhood Outreach Team and for 10 local community members to assist the Consultant with outreach. It is the Consultant's expectation that members of the Neighborhood Outreach Team will be present at meetings, which will average about two hours per month, and will spend a total of approximately four hours of time outside of meetings in training, meeting preparation or community outreach on average per month during Task 7 (or up to six months).
- The fee includes \$1,000 per meeting for venue cost and reasonable refreshments, locally-sourced if possible, for an additional total fee of \$7,000.
- Fee includes translation services up to \$500 per meeting.

- **Task 7.1: Environmental Assessment Statement**

The Environmental Assessment Statement ("EAS") will be prepared in accordance with the New York City Environmental Quality Review Act ("CEQR"). The EAS will be prepared in sufficient detail to enable the lead agency to issue a positive or negative declaration, as appropriate, regarding the proposed development scenario. A screening analysis will be provided to determine whether any impact categories can be screened out. If the EAS culminates in the issuance of a positive declaration, the preparation of an EIS, as outlined in Task 8 (Additional Services), would be required.

- Public scoping meetings and hearings and public comments on EA/EAS are not required, but the Ongoing Stakeholder Engagement will be documented in the EA/EAS.
- Modeling will be performed for stationary noise analysis using Cadna-A and stationary air quality analysis using AERMOD. The Consultant assumes one model run to assess the potential for impacts and one refinement model run to confirm no potential impacts with modified design to avoid impacts—two runs each—for noise and air quality, respectively.
- Baseline noise data will be collected for one 24-hour period at the boundary location of the preferred pilot project site nearest to the noise-sensitive receptor. Baseline noise data will also be obtained for one 20-minute period at the noise-sensitive receptor. Costs include a two-week rental period of a noise meter and assume a secure location will be provided by the City to leave the noise meter; therefore, constant supervision of the equipment is not required.
- The Consultant assumes that qualitative traffic, mobile air quality and mobile noise screening assessments will be sufficient for development of a compliant EAS. Traffic data will not be collected and mobile quality modeling using MOVES software will not be performed.
- Natural resources data collection will not be required (i.e. wetland delineation, TES field surveys).
- Subsurface soil or groundwater sampling will not be performed.

- The Consultant assumes the construction period of the preferred pilot is less than two years; therefore, no detail construction period analysis is required.
- The EA/EAS will also include a qualitative assessment of up to three alternatives identified during the feasibility study phase, including the No Action Alternative.
- Permitting will not be performed during this phase of the project development.

**(Optional) Task 8: Additional Services**

Certain additional services may be required of the Consultant, at the sole discretion and election of NYCEDC. At the request of NYCEDC, the Consultant will produce a scope of work, fee estimate and timeline for any additional services to be completed under Task 8. These additional services include, but are not limited to:

- **Additional Site Conditions Work**, associated with filling any data gaps that may be identified during Task 1.
- **Additional Vulnerabilities Assessments Work**, associated with additional efforts to centralize, document and organize existing information that involve third-party efforts during Task 2.
- **Additional Feasibility Assessment and Analysis Work**, associated with filling any data gaps that might be identified during Task 4.
- **Additional Conceptual Design and Environmental Review Preparation for the Pilot Project(s) Work**, associated with Task 6:
  - Any additional conceptual engineering activities for the yet to be defined Preferred Pilot Project
  - Any costs associated with the Big Democracy Lab in excess of \$25,000
- **Additional Environmental Review Work**, if the potential for significant adverse impacts are identified during the development of the preferred pilot and/or EA, and an EIS is required. The additional EIS work may comprise:

**EIS Scoping**

If needed, the Consultant shall prepare a Draft Scope of Work for the preparation of an Environmental Impact Statement (the “EIS”). The Draft Scope of Work should be prepared in accordance with the 2014 CEQR Technical Manual, 40 CFR 1500-1508 (regulations for implementing NEPA), and any other appropriate city, state or federal statutes as determined by the lead agency.

The lead agency, in coordination with the Consultant, shall conduct a formal public scoping session. Services under this task may include, at the discretion of the lead agency, preparing a Notice of Intent to prepare an EIS and publication in the Federal

Register, preparing a Notice of the Public Hearing on the scope, presenting the proposed scope at the public hearing, recording, in the form of a transcript, and summarizing the comments received at the hearing, and/or otherwise revising the scope in consultation with the lead agency in response to the comments received from the public and other involved or interested agencies. The Consultant shall assist the lead agency in the issuance of the final scope of work for the EIS.

### **Preparation of Environmental Impact Statement**

The EIS will contain, at a minimum:

- A description of the Project and its environmental setting;
- A statement of the Project's Purpose and Need.
- A description of alternatives to the proposed project.
- An analysis of the environmental impacts of the Project alternatives, including short- and long-term effects, and associated environmental effects;
- A description of any growth-inducing effects of the Project on surrounding areas;
- An identification of any adverse environmental effects that cannot be avoided if the Project is implemented;
- An identification of any irreversible and irretrievable commitments or resources that will be involved in the Project, should it be implemented; and
- A description of mitigation proposed to minimize adverse environmental impacts.

The specific EIS tasks are described below.

### **Project Description/Analysis Framework**

The chapter should contain, at a minimum: a project identification (brief description and location of the project); the background and/or history of the project; a statement of the public purpose and need for the project; key planning considerations that have shaped the current proposal; a detailed description of the project; and discussion of the approvals required, procedures to be followed, and the role of the EIS in the process.

As needed, the section on approval procedures will explain the ULURP process, its timing, and hearings before the Community Board, the Manhattan Borough President's office, the New York City Planning Commission ("CPC"), and the New York City Council. The role of the EIS as a full-disclosure document to aid in decision-making will be identified and its relationship to ULURP and the public hearings described. The chapter should also summarize the NEPA process and the applicability of other federal laws and regulations to the project.

### **Land Use, Zoning, and Public Policy**

Based on the technology selected and its location and use, the consultant will evaluate whether changes in land use or zoning are needed and compatibility with surrounding land uses. In addition, consistency with other NYC land use policies, such as the NYC Waterfront Revitalization Program, HUD requirements, etc., will be required.

### **Socioeconomic Conditions**

The Consultant shall examine the effects of the project alternatives on socioeconomic character of the study area, including economic activity. The preliminary assessment should generally examine five areas of concern including: (1) direct residential displacement; (2) direct business and institutional displacement; (3) indirect residential displacement; (4) indirect business and institutional displacement; and (5) adverse effects on specific industries. The Consultant should conduct screening analyses pursuant to the *March 2014 CEQR Technical Manual* methodology. The analysis should present sufficient information regarding the effects of the Project to make a preliminary assessment either to rule out the possibility of significant impacts or to determine that more detailed analysis is required to make a determination as to impacts.

### **Community Facilities and Services**

The Project is not expected to introduce new workers or residential populations to the area during operation, therefore community facilities analysis may focus on the availability of emergency response services to serve the energy plant during emergencies. The Consultant will identify and locate the relevant local police precinct and fire stations serving the Project Site, and describe existing service conditions, highlighting particular problem areas. The Consultant will describe changes that may occur in the future without the Project, and assess the impacts of the Project on police and fire services.

### **Open Space and Recreational Facilities**

The Consultant should conduct a screening study to determine whether the project will result in direct or indirect effects on open space and whether these effects are sufficient to perform an assessment. The project is not expected to introduce sufficient new workers or residential populations to the area to impact open space supply and demand.

### **Shadows**

The Consultant shall examine the Project's potential shadow effects pursuant to the *March 2014 CEQR Technical Manual* criteria. The Consultant shall also assess the project's potential shadowing effects on light-sensitive uses, including open space resources as well as light-sensitive historic resources, referencing Task C-7 "Historic and Cultural Resources" where applicable.

### **Historic and Cultural Resources**

Although review of these resources in the Hunts Point complex have typically not resulted in any impacts, the Consultant shall consider impacts on historic resources in and around the Project Site. The Consultant shall also consult the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) regarding potential impacts and mitigation, if requested by NYCEDC. Lastly, the Consultant shall consider the archaeological resources only in those areas where excavation is likely; these will depend on the technology chosen. If required, the Consultant will also be responsible for evaluating the Project's potential impacts in accordance with Section 106 of the National Historic Preservation Act and conducting an appropriate Section 106 consultation process.

### **Urban Design and Visual Resources**

The Consultant shall prepare a preliminary assessment of urban design and visual resources based on the methodologies in the March 2014 CEQR *Technical Manual*. Depending on the technology chosen, there may be no or little urban design impact on the surrounding community, however if additional analysis is required the consultant will perform the analysis as specified in the *March 2014 CEQR Technical Manual*.

### **Natural Resources**

The Consultant shall identify and provide an assessment of natural resources in the vicinity of the Project Site, assess the selected technology's potential impacts on identified natural resources, including both short-term construction effects, and any potential long-term effects, including any new outfalls, expected run-off, etc., and briefly discuss any related permits that may be required.

### **Floodplain Management Analysis**

The consultant shall be responsible for completing HUD's floodplain management 8-step decision making process for each affected property and project, if any. This task includes public noticing as needed as well as response to comments.

### **Hazardous Materials**

NYCEDC will provide a preliminary screening assessment prepared pursuant to the *March 2014 CEQR Technical Manual* to determine if the project requires further assessment. Most sites in the Hunts Point area have already been evaluated using Phase Is, Phase IIs, or NYSDEC required assessments. However, the Consultant will determine whether additional evaluation should be performed and if required, will perform the additional evaluation.

### **Water and Sewer Infrastructure**

Because of the size of the City's water supply system, and because the City is committed to maintaining adequate water supply and pressure for all users, only very large developments or actions that would have exceptionally large demand for water require a detailed assessment of water supply. Likewise, only unusual actions with very large flows could have the potential for significant impacts on sewage treatment. The Consultant shall therefore perform a preliminary assessment to determine whether more detailed assessments are warranted. If such detailed assessments are required, the consultant will perform them.

### **Solid Waste and Sanitation Services**

According to the *March 2014 CEQR Technical Manual*, actions involving construction of housing or other development generally do not require evaluation for solid waste impacts unless they are unusually large. The Consultant shall provide and evaluate the estimated amount of additional solid waste expected to be generated as a result of the Project.

### **Energy**

According to the *March 2014 CEQR Technical Manual*, because all new structures requiring heating and cooling are subject to the New York State Energy Conservation Code, which reflects State and City energy policies to conserve energy, actions resulting in new construction would not create adverse energy impacts, and as such would not require a detailed energy assessment. However, since the Preferred Pilot Project may include Combined Heat and Power (CHP), Tidal, gas-powered, anaerobic digestion, wind, solar, and/or hybrid energy, this section should evaluate the impacts of the technologies selected.

### **Transportation**

Consultant will perform a screening study to determine whether a numerical analysis of transportation parameters is required. If an analysis is warranted, consultant will perform the analysis as specified in the *March 2014 CEQR Technical Manual*.

### **Air Quality**

The air quality studies for the proposed project will concentrate on the operational impacts of the selected technology or technologies

The stationary source air quality impact analysis will determine the effects of emissions from the proposed technology on receptors in the study area and areas of concern. Depending on the technology chosen and the proposed size and use, a stationary source

analysis may be required based on the *March 2014 CEQR Technical Manual*. If so, the analysis will be performed as required in the manual.

### **Greenhouse Gas Emissions**

The lead agency will consult the Mayor's Office of Environmental Coordination to determine whether a Greenhouse Gas Emissions (GHG) consistency assessment is appropriate for inclusion in the EIS. If an assessment is warranted, the Consultant shall make qualitative assessments of GHG emissions by category that would be generated by the Project in terms of the qualitative goals set forth in the *March 2014 CEQR Technical Manual*. Tasks will include:

- Estimate the total energy usage in the operation of the buildings in the Project.
- Estimate mobile source emissions.
- Quantify emissions during construction, if warranted.
- Quantify emissions due to solid waste management, if warranted.

### **Noise**

The Consultant shall perform a screening evaluation to determine whether a noise analysis is required for the technology selected. If needed, the consultant will conduct noise studies that will examine potential noise impacts due to stationary and mobile sources. Tasks will include:

- Select appropriate noise descriptors to characterize the noise environment and the impact of the Project based on current *CEQR Technical Manual* and NYC Department of Environmental Protection criteria.
- Select receptor locations for detailed analysis. Receptor sites analyzed should include locations where development resulting from the Project would have the greatest potential to affect ambient noise levels and where high existing ambient noise levels could adversely affect new residential and other sensitive uses.
- Determine existing noise levels. At each of the receptor sites identified above, measure existing noise levels at various time periods throughout the day.
- Determine future noise levels with and without the Project.
- Compare noise levels with standards, guidelines, and other impact evaluation criteria. Also compare existing noise levels and future noise levels, both with and without the Project, with various noise standards, guidelines, and other noise criteria. In addition, compare future noise levels with the Project with future noise levels without the Project to determine project impacts.

### **Public Health**

The Consultant will perform a screening evaluation on the potential unmitigated environmental impacts with respect to hazardous materials, air quality, or noise combined with the technology that has been selected. Consultant will identify any resulting public health impacts as defined by the *March 2014 CEQR Technical Manual*. If needed, the consultant will perform the analysis

### **Neighborhood Character**

The character of a neighborhood is established by numerous factors, including land use patterns, the scale of its development, the design of its buildings, the presence of notable landmarks, and a variety of other physical features that include traffic and pedestrian patterns, noise, etc. Most of these elements will already be covered in other EIS sections. The Consultant shall therefore write a summary of the key thoughts of these other analyses. Tasks will include:

- Drawing on other EIS sections, describe the predominant factors that contribute to defining the character of the neighborhood.
- Based on planned development projects, public policy initiatives, and planned public improvements, summarize changes that can be expected in the character of the neighborhood in the future without the Project.

### **Environmental Justice**

Executive Order 12898 requires that federal agencies consider whether their actions (including funding actions) may disproportionately adversely affect low income or minority populations. The Consultant will be responsible for preparing an analysis of such potential disproportionate effects pursuant to appropriate federal regulations and guidance for preparing such analyses.

### **Construction Impacts**

The Consultant shall provide a description of the likely construction schedule for development at the Project Site and an estimate of the related construction activity. Construction impacts will vary depending on the technology selected and the schedule to be used for installing the technology. The consultant will provide a detailed discussion of how the selected technology will affect the surrounding community during construction, taking into account the duration, intensity, complexity, and location of construction activity. Consultant will perform a screening evaluation of whether a construction impacts analysis should be performed. If needed, the consultant will perform the analysis.

### **Alternatives**

Based on the pilot project(s) identified in the feasibility study, identify alternative scenarios for evaluation. It should be assumed that the EIS will include at a minimum a

No Build alternative and an appropriate number of additional alternatives as directed by the lead agency. Criteria for screening of alternatives should be well explained and include significant unavoidable impacts in any of the categories described in the EIS. The alternatives analysis is primarily qualitative, except where impacts of the Project have been identified. For technical areas where impacts have been identified, the Consultant shall analyze the alternatives to determine whether these impacts would still occur under each alternative.

### **Mitigation**

Where significant project impacts have been identified in, the Consultant shall describe the measures to mitigate those impacts, develop these measures, and coordinate with the responsible City/State agency. Where impacts cannot be mitigated, the Consultant shall describe them as unavoidable adverse impacts.

### **Summary Chapters**

The Consultant shall utilize relevant material from the body of the EIS to prepare the executive summary, which shall describe the Project, its environmental impacts, measures to mitigate those impacts, and alternatives to the Project. In addition, the Consultant would be responsible for preparing other summary chapters of the EIS, including Unavoidable Adverse Impacts, Growth Inducing Aspects of the Project, Irreversible and Irretrievable Commitments of Resources, and Secondary and Cumulative Impacts.

### **Report Preparation/Agency Reviews/DEIS Certification**

The Consultant shall edit, assemble, and reproduce the Preliminary Draft Environmental Impact Statement ("PDEIS"). The Consultant shall circulate draft chapters of the PDEIS for review by the lead agency as they are being completed, to provide adequate time for review of the impact chapters and mitigation. This assumes no major changes in the Project once work has begun, and that substantial new studies are not triggered during scoping. All technical analyses and preparation of documents will be coordinated with members of the project team.

Once the PDEIS chapters are submitted to the lead agency, they will undergo review and modifications before the lead agency certifies the DEIS document as complete and issues a notice of completion. The Project team will attend review meetings and respond promptly to review comments. It is expected that additional copies of the document will be required during DEIS certification; the Consultant shall produce and provide the required number of copies of the certified DEIS to the lead agency for distribution to initiate ULURP if needed.

The Consultant would also be responsible for drafting and publishing the Notice of Availability of the DEIS in the Federal Register, pursuant to NEPA regulations.

### **Illustrative Plans**

If needed, the Consultant shall develop and produce the illustrative graphics to inform 1) the EAS; 2) the Project Description, Land Use and Zoning, Shadows, and Urban Design and Visual Resources, Air Quality and Neighborhood Character tasks for the EIS; and 3) the ULURP non-mapping application, as needed. For these purposes, the architectural consultant may produce sketches, program tables, refined site plans, project sections, elevations, or 3-D massings of the proposed development, and renderings, which will depict the scale, massing, and density of the proposed project. However, these tasks will only be assigned if needed to explain the nature or magnitude of impacts to a certain project. In general, for each task the Consultant should assume the preparation of illustrative plans that are necessary to clarify the impacts and their magnitude.

### **(Optional Sub Task, If Needed) Preparation of ULURP Applications**

In conjunction with the preparation of the DEIS document, the Consultant shall prepare, revise, refine, and file any ULURP applications that will be necessary to implement to Project. The Consultant shall collaborate with other designated consultants, who would provide site plans, surveys, and other necessary drawings and maps. Sub-tasks may include:

- **ULURP Pre-Certification**  
The Consultant shall attend preliminary and subsequent review agency meetings before certification in order to receive agency comments on the application and shall revise and refine the application accordingly.
- **ULURP Post-Certification**  
After the City Planning Commission certifies the application, which marks the formal start of public review, if requested, the Consultant shall provide support for formal presentations to the relevant Community Board and other ULURP approving entities.

### **Public Hearing and Response to Comments**

The Consultant shall attend each public hearing about the Project, assist the lead agency in preparing notices of public hearings, be available to make presentations about the impact categories of the DEIS at each public hearing and be prepared to answer questions, and maintain a record of all comments about the impact categories made at or in response to public hearing notice. The Consultant shall prepare those portions of a

Response to Comments chapter of the Final EIS (“FEIS”) relating to the impact categories. The Consultant shall summarize all comments received and include appropriate responses for this chapter.

### **Final EIS and Record of Decision**

Under the direction of the lead agency, the Consultant shall revise the impact category chapters of the DEIS as necessary to address issues raised during the public hearings and during review of the DEIS by other interested and involved agencies. The Consultant shall perform this task consistent with the time frame set for the ULURP of the project. Under this task, the Consultant would be responsible for producing the FEIS, Notice of Completion (as per CEQR), and the Record of Decision (as per NEPA).

### **Meetings and Coordination**

Meetings and coordination will include the formal scoping session and any of the tasks related to the preparation and completion of the DEIS, FEIS, and ULURP process. The Consultant shall assume that each member of the consultant team will attend between 15 and 25 project meetings, however meetings should be called out and priced for each aspect of the process rather than in a summary section.

### **Schedule**

The consultant will prepare a draft schedule including, as a minimum, the following milestones:

- Begin preparation of the EAS
- Begin preparation of Draft Environmental Impact Statement (DEIS):
- Release Draft Scoping Document:
- Conduct Public Scoping Hearing:
- Appropriate City agencies review completed preliminary DEIS chapters:
- ULURP Certification:
- Conduct Public Hearings on DEIS
- Final Environmental Impact Statement (FEIS)
- Notice of Completion/Record of Decision

**APPENDIX C**

**PAYMENTS**

## APPENDIX C

### PAYMENTS BASED ON TASKS COMPLETED

The Maximum Payment for each Portion of the Services shall be the respective amounts set forth for in the Payment Schedule annexed hereto as Exhibit 1 to this Appendix C.

Interim payments shall be made to the Consultant. The interim payments will be made no more frequently than once a month in an amount equal to the Percentage of Completion of each Portion of the Services, multiplied by the Maximum Payment for each Portion performed during the billing period, less any Retainage. The Consultant shall also be reimbursed for Allowable Additional Costs as such costs accrue. Except as may permitted under Part II, Section 2.2.1 of the Contract, Retainage will not be applied against Allowable Additional Costs.

To request an interim payment, the Consultant shall submit to the Corporation's **Accounts Payable Department**, not more than once per month, a Requisition setting forth in detail, for the period for which partial payment is requested, the following:

- (i) the Percentage of Completion for each Portion of the Services performed by the Consultant during the billing period;
- (ii) Allowable Additional Costs incurred during the billing period;
- (iii) the amount of partial payment requested; and
- (iv) a representation and warranty that, except as set forth in the Requisition, the representations and warranties made by the Consultant in Article 7 of the Contract are true and correct as of the date of the Requisition as if made on the date of the Requisition.

An EFT Enrollment Form is attached as Exhibit 2 to this Appendix C and must be completed and returned to the Corporation prior to Consultant's submission of its first Requisition.

In addition, the Consultant shall submit Progress Reports to the Director at least monthly or in accordance with any other schedule approved by the Director, or at the Director's request. Such Progress Reports shall clearly state the reasons for any actual or anticipated delays in completion of the Services.

**EXHIBIT 1 TO APPENDIX C**

## **FEE AND COST SCHEDULE**

The maximum payment for each portion of the Services shall be the respective amounts set forth in the following table:

<u>Task/sub-Task</u>	<u>Amount per Task/sub-Task</u>
<b><i>Task 0: Ongoing Stakeholder Engagement</i></b>	
Subtask 0.1: Development of Stakeholder Engagement Plan	\$ 37,673
Subtask 0.2: Perform and Document Stakeholder Engagement	\$ 300,338
<b>Task 0 Total</b>	<b>\$ 338,011</b>
<b><i>Task 1: Existing Conditions</i></b>	
Subtask 1.1: Study Area Conditions	\$ 277,985
Subtask 1.2: Mapping	\$ 66,627
<b>Task 1 Total</b>	<b>\$ 344,612</b>
<b><i>Task 2: Risk and Vulnerability Assessment</i></b>	
	\$ 85,309
<b>Task 2 Total</b>	<b>\$ 85,309</b>
<b><i>Task 3: Identification and Preliminary Evaluation of Project Options</i></b>	
Subtask 3.1: Initial Identification of Project Options	\$ 295,125
Subtask 3.2: Development of a Feasibility Screening Methodology	\$ 93,360
Subtask 3.3: Feasibility Screening	\$ 125,561
<b>Task 3 Total</b>	<b>\$ 514,046</b>
<b><i>Task 4: Feasibility Assessment and Analysis</i></b>	
	\$ 599,874
<b>Task 4 Total</b>	<b>\$ 599,874</b>
<b><i>Task 5: Preferred Resilient Energy Pilot Project(s)</i></b>	
	\$ 55,443
<b>Task 5 Total</b>	<b>\$ 55,443</b>
<b>Maximum Contract Price (Tasks 1 – 5)</b>	<b>\$ 1,937,295</b>

***Task 6: Conceptual Design and Environmental Review Preparation for the Pilot Project(s)***

Subtask 6.1: Conceptual Design	\$	773,163
Subtask 6.2: Implementation Plan	\$	77,492
Subtask 6.3: Cost/Benefit Analysis	\$	89,436
Subtask 6.4: Identify Required Environmental Review	\$	50,232
<b>Task 6 Total</b>	\$	<b>990,323</b>

***Task 7: Environmental Review*** \$ 358,263

**Task 7 Total** \$ 358,263

**Maximum Contract Price (Tasks 6 – 7)** \$ **1,348,586**

**Task 8: Allowance for Additional Services** \$ **513,945**

**Maximum Contract Price (Tasks 1-8)** \$ **3,799,826**

**EXHIBIT 2 TO APPENDIX C**

**EFT ENROLLMENT FORM**



**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**  
**DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT)**  
**VENDOR PAYMENT ENROLLMENT FORM**

**INSTRUCTIONS:** Please complete all sections of this Enrollment Form and attach a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name. See the reverse side for more information and instructions.

**Mail to:** New York City Economic Development Corporation, 110 William Street, 4<sup>th</sup> Floor, New York, NY 10038  
**Attention:** Controller, Accounting Dept. or Fax to: 212-312-3914

**SECTION I – VENDOR INFORMATION**

1. SOCIAL SECURITY NUMBER OR TAXPAYER ID NUMBER:  
 (AS IT APPEARS ON W-9 FORM)

2. VENDOR NAME (AS IT APPEARS ON W-9 FORM);  
 (AS IT APPEARS ON W-9 FORM)

3. VENDOR'S PRIMARY ADDRESS:

4. VENDOR'S EMAIL ADDRESS:

5. CONTACT PERSON NAME:

6. CONTACT PERSON TELEPHONE NUMBER:

**SECTION II – FINANCIAL INSTITUTION INFORMATION**

1. BANK ACCOUNT NUMBER:

2. ACCOUNT NAME:

3. BANK NAME:

4. BANK BRANCH ADDRESS:

5. ROUTING TRANSIT NUMBER:  
 (LOCATED AT THE BOTTOM OF YOUR CHECK)

6. ACCOUNTING TYPE: (CHECK ONE)  
 CHECKING     SAVINGS

7. DIRECT DEPOSIT/ACH/EFT COORDINATOR'S NAME:

8. TELEPHONE NUMBER:

**SECTION III – VENDOR SIGNATURE**

\_\_\_\_\_  
 VENDOR SIGNATURE

\_\_\_\_\_  
 PRINT NAME

\_\_\_\_\_  
 DATE



NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

**DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT)  
VENDOR PAYMENT ENROLLMENT FORM**

**GENERAL INSTRUCTIONS**

Please complete all sections of the Direct Deposit EFT Enrollment Application and forward the completed application along with a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name to:

New York City Economic Development Corporation, 110 William St., Room 400  
New York, NY 10038 – Attention: Controller, Accounting Dept or Fax to: 212-312-3914.

**SECTION I – VENDOR INFORMATION**

1. Enter the vendor's social security number or taxpayer ID number, the 9-digit number reported on W-9 form.
2. Provide the name of the vendor (as it appears on the W-9).
3. Enter the vendor's complete address for EFT correspondence associated with this account.
4. Provide the vendor's E-mail address, if you have one.
5. Indicate the name and telephone number of the vendor's contact person. (If you are enrolling yourself individually, you are the contact person).

**SECTION II – FINANCIAL INSTITUTION INFORMATION**

1. Indicate the vendor's bank account number.
2. Indicate the vendor's account name.
3. Provide bank's name.
4. Provide the complete address of your bank.
5. Indicate 9-digit routing (ABA) transit number (located at the bottom of your check).
6. Indicate type of account: (Check one box only).
7. List name and telephone number of your bank's Direct Deposit/EFT Coordinator.

**SECTION III – VENDOR SIGNATURE**

Sign and date where indicated.

**EXHIBIT 3 TO APPENDIX C**





### Instructions for the Preparation and Submission of a Payroll Report

1. All persons who performed any on-site construction activity during the period of the requisition, shall be listed on the Payroll Report.
  2. Separate Payroll Reports shall be submitted by the prime contractor and each subcontractor who performed any on-site construction activity during the period of the requisition.
  3. Failure to provide the required Payroll Report may result in the requisition for payment being returned unpaid or the payment being reduced.
  4. **PAYROLL REPORT HEADING:** The Payroll Report Heading shall require the following information:
    - NAME OF PRIME CONTRACTOR:** Enter the name of the firm that has entered into the contract with the New York City government agency. Circle either the word **CONTRACTOR** or **SUBCONTRACTOR** as applicable.
    - ADDRESS:** Insert the current address (i.e., street, city, state and zip code) of the firm submitting the Payroll Report.
    - PHONE NO.:** Enter the telephone number of the firm submitting the Payroll Report in the space provided.
    - AGENCY:** Enter the name of the New York City government agency that has the contract with the Prime Contractor.
    - PAYROLL NO.:** In the space provided, enter the Payroll Number of the Contractor or Subcontractor.
    - CONTRACT REG. NO.:** Enter the Contract Registration Number here. This may be obtained from the "Notice of Award" and/or the "Order to Commence Work" letters.
    - JOB CODE:** In the space provided, enter the Contractor/ Subcontractor's in-house labor distribution code or job number where applicable.
    - WEEK ENDING DATE:** In the space provided, enter the last date of the pay-week (i.e., month, day, year).
    - PROJECT NAME & LOCATION:** In this space, enter the Project Name and Location where contract work is being performed.
    - TAX ID. NO.:** Enter in this space the Federal Tax Identification Number of the firm submitting the Payroll Report.
  5. For every employee who performed any on-site construction activity during the period of the Payroll Report, the following information shall be provided:
    - 1) **NAME, ADDRESS, LAST FOUR DIGITS OF THE SOCIAL SECURITY NO.:** The legal name, current address and the last four digits of the social security number of each employee. (Employers must keep the full social security number on file for each of their covered workers.) If the employee has no social security number, please list his/her IRS Individual Taxpayer Identification Number and mark it "ITIN".
    - 2) **LIST TRADE & CHECK WORK CLASSIFICATION:** Specify and insert the Trade applicable to the work performed by each employee. The Trade identified must be one listed on the Prevailing Wage & Supplemental Benefits Schedule of the Comptroller, i.e., Electrician, Laborer, etc. Check next to the letter J if the individual is a Journeyman. Check next to the letter A if the person is a Registered Apprentice with the Department of Labor of the State of New York. Check next to the letter H only if the person is a Helper in a trade classification that has Helper rates listed in the Comptroller's Schedule of Prevailing Wages.
    - 3) **TIME:** RT indicates Regular Time, and OT indicates Overtime.
    - 4) **DAY AND DATE:** Below this heading, in the first row, enter the appropriate sequence of the contractor's pay records. M/T/W/T/F/S, for example, is the sequence to use if the workweek ends on a Sunday, and S/S/M/T/W/F is the sequence if the workweek ends on a Friday. In the second row, below each letter representing the day of the workweek, insert the corresponding date. Below the heading **HOURS WORKED EACH DAY**, at the intersection of the column of the particular day and date and the horizontal row of the employee's name, insert the hours worked each day in the appropriate box either for RT (Regular Time) and/or OT (Overtime). If an employee worked Shift Time, the RT (Regular Time) row shall be used and adjusted accordingly.
    - 5) **TOTAL HOURS:** Add the hours worked for Regular Time and/or Shift Time with the hours worked for Overtime, and enter separate totals in this column.
    - 6) **BASE RATE OF PAY PER HOUR:** Specify the actual base rate of pay per hour paid to the employee. Do not include supplemental benefits in this amount.
    - 7) **TOTAL BASE PAY:** Total amount earned by the employee, not including benefits.
- SUPPLEMENTAL BENEFITS:**
- 8) **RATE PER HOUR:** Amount of supplemental benefits paid / provided per hour.
  - 9) **PAID TO:** Place a check mark in the appropriate box: U for Union if benefits paid to a Union, E for Employee if benefits paid in cash (or check) directly to the Employee, or O for Other, if benefits are otherwise paid / provided to the employee. If U is checked, you must insert the "Local" number of the Union in that box.
  - 10) **TOTAL BENEFITS PAID:** Total amount of supplemental benefits paid / provided for the workweek to the employee.
  - 11) **GROSS PAY:** Total amount earned for workweek. This amount comprises the Total Base Pay plus any benefit paid in cash (or check) directly to the employee (i.e., column (7) + column (9) E if Box E is checked and payment made directly to employee). No other type of benefit should be included in this column's total.
  - 12) **TOTAL TAX AND OTHER DEDUCTIONS:** Enter the sum total of all deductions in this column (including FICA, Federal, State and City Taxes, etc.). This does not absolve you from maintaining appropriate tax and other records required by law.
  - 13) **NET PAY:** Total amount of pay after all deductions (i.e., the actual Take-Home Pay).

**APPENDIX D**

**FORM OF CERTIFIED STATEMENT REGARDING  
USE OF NON-ORIGINAL MATERIALS**





**APPENDIX E**

**INSURANCE REQUIREMENTS**

- 1. Required Policies and Amounts**
- 2. Additional Insureds**
- 3. Required Provisions**
- 4. Sample Form of Insurance Certificate**

**APPENDIX E****INSURANCE REQUIREMENTS**

## 1. Required Policies and Amounts

<u>Workers' Compensation/ Disability Benefits:</u>	In statutory amounts
<u>Employer's Liability:</u>	The greater of statutory amounts or \$1,000,000
<u>Commercial General Liability:</u>	A minimum of \$1,000,000 per occurrence, with an annual aggregate of not less than \$2,000,000 in the aggregate  The maximum deductible or self-insured retention ("SIR") for the Commercial General Liability policy shall be \$10,000
<u>Automobile Liability:</u>	\$1,000,000 combined single limit per occurrence
<u>Umbrella/Excess Liability:</u>	\$10,000,000 on a per occurrence and aggregate basis, and shall be excess of primary general, automobile and employer's primary liability limits

If the Consultant or its Subcontractors use floating equipment, barges or floats, or performs marine-related construction, the Consultant and as applicable, its Subcontractors, shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services:

<u>U.S. Harbor Workers' Long Shoremens' Compensation Act:</u>	In statutory amounts
<u>Marine Protection and Indemnity:</u>	\$25,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than \$25,000,000 in the aggregate per year

If the Project is adjacent to or includes an existing railroad or subway line, the Consultant, or its Subcontractors, shall purchase and maintain the following insurance in the following amounts in connection with the performance of the Services by the Consultant and its Subcontractors, and any work incidental thereto:

Railroad Protective Liability: \$1,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than \$2,000,000 in the aggregate

If the Consultant or any of its Subcontractors is performing asbestos or other toxic or hazardous materials remediation, removal, abatement, storage or disposal work including, without limitation, related demolition work, the Consultant or its Subcontractors shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services and any work incidental thereto:

<p>Contractor Pollution Liability (“CPL”) Policy and, as applicable, Asbestos Abatement Liability Policy, Lead Abatement Contractors Liability Policy, Stop Loss Policy, Professional Services Policy, Pollution Legal Liability (“PLL”) Policy, Transportation Coverage and Non-Owned Disposal <u>Site Coverage:</u></p>	<p>\$5,000,000 combined single limit per occurrence for bodily injury or death, and property damage, but if an annual aggregate is applicable to the policy not less than \$5,000,000 in the aggregate per year dedicated to this Project, on an “occurrence” basis, with a term of not less than ten (10) years</p>
---	--

Such CPL and PLL policies shall be for a term of not less than (10) years, on an “occurrence” basis, and any aggregate applicable to such policies shall be dedicated to this Project. In addition, such policies shall include, without limitation, and as applicable, (a) bodily injury and defense coverage for asbestos and lead; (b) coverage for unknown UST’s; (c) a definition of “property damage” that includes diminution in value of third-party properties; (d) a statement that such insurance is primary and over any surety contracts or bonds covering the Services; (e) a statement that the insured’s rights will not be prejudiced if there is a failure to give notice due to the insured’s belief that the occurrence was not covered; (f) coverage for products brought onto the work site where Services are being performed; (g) a definition of “stop loss” or “cleanup cost cap” that includes monitoring activities; (h) a definition of “cleanup costs” that includes any costs associated with natural resources damages; and (i) a statement that exclusions for modifications of remedial action plans (“RAP”) shall not include changes required by regulatory agencies (either via a change in regulations or as a result of governmental entity oversight, increased levels or quantities of pollutants within the boundary of the RAP, discovery of pollutants not identified in the exclusion, and amendments to the RAP because of a change in technological approach).

If the Consultant or any of its Subcontractors is performing professional services in its capacity as a professional, including as may be evidenced by a license to practice that profession, the Consultant or its Subcontractors shall purchase and maintain additional insurance of the following type and in the following amount in connection with the performance of the Services and any work incidental thereto:

Professional Liability/Errors &  
Omissions Insurance:

Professional liability ("PL") and/or errors and omissions ("E & O") insurance policies shall be written with a minimum amount of \$2,000,000 per claim and in the aggregate.

If the Consultant cancels its PL or E & O policy during, or lets its PL or E & O policy coverage lapse after, the policy period in which the term for services under the Consultant Contract ends, the Consultant must obtain tail coverage, or an extended reporting period endorsement, that extends coverage of the professional liability insurance for a period of at least three years.

**APPENDIX E**

**INSURANCE REQUIREMENTS**

2. Additional Insureds

For the purposes of this Contract and the requirements of Article 6 thereof including, without limitation, Section 6.3.3 (iii), the term "Additional Insureds" shall include the following individuals and entities:

New York City Economic Development Corporation  
The City of New York  
U.S. Department of Housing and Urban Development

and such other entities and individuals as the Corporation may direct from time to time

**APPENDIX E****INSURANCE REQUIREMENTS****3. Required Provisions**

The policies required under Section 6.3.9 (ii) of the Contract shall contain the following provisions, if available:

"A. Notices from the insurer (the "Insurer") to the New York City Economic Development Corporation (the "Corporation") and the City of New York (the "City"), in connection with this policy, shall be addressed to the General Counsel, New York City Economic Development Corporation, at 110 William Street, New York, New York 10038 (with a copy to the Corporation's Contract Administrator at the same address), and to the Commissioner, New York City Department of Small Business Services, at 110 William Street, New York, New York 10038 or such other addresses as may be specified by the Corporation;

B. The Insurer shall accept notice of accident from the Corporation or the City as soon as practicable after receipt by an official of such Additional Insured (as identified in Appendix E of the Contract between the Corporation and the Consultant to which this policy applies) of notice of such accident as valid and timely notice under this policy;

C. The Insurer shall accept notice of claim from the City as soon as practicable after such claim has been filed with the Comptroller of the City and notice of claim from the Corporation, as soon as practicable after receipt by such party as valid and timely notice under this policy;

D. Notice of accident or claim to the Insurer by the Consultant, the Corporation or the City shall be deemed notice by all under this policy;

E. This policy shall not be canceled, terminated or modified by the Insurer or the Consultant unless thirty (30) days prior written notice is sent by registered mail to the Corporation or the City;

F. The presence of engineers, inspectors or other employees or agents of the Consultant, the Corporation or the City at the site of the Services performed by the Consultant shall not invalidate this policy of insurance; and

G. Violation of any of the terms of any other policy issued by the Insurer to the Consultant or a subcontractor of the Consultant shall not invalidate this policy; and

H. Insurance, if any, carried by the Corporation, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Insurer."

**APPENDIX E**

**INSURANCE REQUIREMENTS**

4. Sample Form of Insurance Certificate



**APPENDIX F**

**E.O. 50 SUPPLY & SERVICE RIDER**

**EQUAL EMPLOYMENT OPPORTUNITY**

**APPENDIX F****E.O. 50 SUPPLY & SERVICE RIDER****EQUAL EMPLOYMENT OPPORTUNITY**

**[Note: for purposes of this rider, the "contractor" means the Consultant identified in this Contract]**

This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980) (§10-14) as revised ("E.O.50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the contractor agrees that it:

- (1) will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
- (2) will not discriminate in the selection of subcontractors on the basis of the owner's, partners' or shareholders' race, color, creed, national origin, sex, age, handicap, marital status or sexual orientation or citizenship status;
- (3) will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status, or it is an equal employment opportunity employer;
- (4) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 (§10-14) and the rules and regulations promulgated thereunder; and
- (5) will furnish before the contract is awarded all information and reports including an Employment Report which are required by E.O. 50 (§10-14), the rules and regulations promulgated thereunder, and orders of the Director of the Division of Labor Services (the "Division"). Copies of all required reports are available upon request from the contracting agency; and
- (6) will permit the Division to have access to all relevant books, records and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Division, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

- (i) disapproval of the contractor;
- (ii) suspension or termination of the contract;
- (iii) declaring the contractor in default; or
- (iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Division may recommend to the contracting agency head that a contractor who has repeatedly failed to comply with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder be determined to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of New York City's small purchase limit established by rule of New York City's Procurement Policy Board to which it becomes a party unless exempted by E.O. 50 (§10-14) and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Division of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 (§10-14) and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 (§10-14) and the rules and regulations promulgated thereunder.

**APPENDIX G****E.O. 50 EMPLOYMENT REPORT FORM**

The Consultant shall complete and submit, and if applicable, shall require its Subcontractors to complete and submit, Employment Reports (as required by E.O. 50) to the Corporation which can be found at [www.nycedc.com](http://www.nycedc.com) in the following section:

“Resources/Vendor Resources”

If the Consultant cannot access or download these forms, the Corporation will, upon request, send the Consultant the required forms. The text of said section reads as follows:

**Non-Construction Consulting Contracts**

Non-construction consulting contracts require a Supply & Service employment report. Generally, the “under 50 employees” form should be used by companies with fewer than 50 employees, and the longer “full form” should be used for companies with more than 50 employees. Please refer to the Supply & Service instructions document to learn more about the forms.

Supply & Service Employment Report Instructions  
Supply & Service – under 50 employees  
Supply & Service – full form

**APPENDIX H**

**M/WBE SUBCONTRACTORS PARTICIPATION PLAN**

7/19/2013 10:00 AM

<b>SUBCONTRACTORS PARTICIPATION PLAN</b>	Check One: <input checked="" type="checkbox"/> Initial Plan <input type="checkbox"/> Amended Plan	7/19/2013
<p>The purpose of this form is to ensure that appropriate planning and consideration go into the subcontractor utilization process, and to serve as documentation of your commitment to comply with M/W/DBE requirements for this project. Please complete the forms electronically and email to <a href="mailto:opportunitymwdbes@nycdec.com">opportunitymwdbes@nycdec.com</a>. Please also include a signed PDF copy to the same email. If you have any questions, you may contact Opportunity M/W/DBE at 212-312-4256.</p> <p>I affirm that the following statements are true and accurate:</p> <p>1. I have read and understand the M/W/DBE requirements for this Project.</p> <p>2. I will make and thoroughly document Good Faith Efforts to meet M/W/DBE requirements.</p> <p>3. This Subcontractors Participation Plan ("Plan") lists all subcontractors I intend to use, including non-M/W/DBE firms. I understand that Incentive to Perform as Subcontractor forms, which verify that subcontractors listed below have been contacted and intend to participate on this project, must be submitted for each contractor together with this form.</p> <p>4. I understand that I must submit an amended Plan if there are any changes to the information I have provided herein.</p> <p>5. Upon request, I will provide NYCEDC with proof of payments made to subcontractors.</p> <p>6. FOR CONSTRUCTION MANAGEMENT CONTRACTS ONLY: I must submit a separate Plan for each direct subcontractor listed below who will retain second-tier subcontractors. Each direct subcontractor's Plan should be received prior to the date that subcontractor commences work on the project. If a direct subcontractor on this form is not subcontracting out a portion of its work, it must submit a Self-Perform Statement in lieu of a plan.</p>		
<p>NYCEDC hereby authorizes this Plan:</p>	<p><i>Thomas Miller</i>  <small>Authorized Person</small></p> <p><i>J. Rooney</i>  <small>Opportunity M/W/DBE Officer</small></p>	<p><u>4/8/16</u>  <small>Date</small></p> <p><u>4-15-16</u>  <small>Date</small></p>
<p><small>"Statements" section in RFP/RFI and Contract document, any statements made in any instrument submitted to NYCEDC in connection with the Corporation's M/WBE Program shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury.</small></p>		

Project Information		Project Calculations - <i>Automatically Calculated</i>	
Contract #/Project #:	61110002 / 6111	Awards to M/W/DBEs	\$841,650
Business Name:	Hendrixson, Dumhart & Richardson Architecture and Engineering, P.C.	Percentage of Total Award to M/W/DBEs	22%
Project Award Amount:	\$3,799,826		
Project Manager:	Carter Strickland		
Email:	Carter.Strickland@hdrinc.com		
Phone:	212-542-6129		

7/19/2015 10:00 AM

## Subcontractor Information

Business Name	M/W/DBE? ("Y" or "N")	Award Amount	Services to be Provided	Anticipated Start Date
Bright Power	N	\$119,700	Resilient Energy; Micro/Macro Grids Clean Energy, Electrical Systems	April 1, 2016
Smarter Grid Solutions	N	\$229,268	Resilient Energy; Micro/Macro Grids Clean Energy, Electrical Systems	April 1, 2016
Interaction Institute for Social Change	N	\$411,368	Stakeholder Engagement and Facilitation	April 1, 2016
Mathews Nielsen Landscape Architects	Y	\$480,150	Stakeholder Outreach, Community Connections, Open Spaces	April 1, 2016
Arcadis	N	\$75,031	Regional Resiliency, Hydrodynamic Modeling	April 1, 2016
CUNY	N	\$10,000	Workforce Development	April 1, 2016
HR&A	N	\$76,501	Long Term Funding Strategy, Economics	April 1, 2016
Integral Consulting, Inc.	N	\$15,000	Environmental Conditions, Brownfields	April 1, 2016
Matrix New World Engineering, Inc.	Y	\$246,500	Elevation Certificates, Geotechnical, Shoreline Structures, Brownfields	April 1, 2016
Toscana Clements Taylor	Y	\$115,000	Cost Estimating	April 1, 2016

Page 2 of 2

Exhibit 4 - 3

**APPENDIX I**  
**OUTSIDE FUNDING SOURCES**

**APPENDIX I****OUTSIDE FUNDING SOURCE PROVISIONS****1. General Terms.**

This Contract will be funded in whole or in part by the Funds identified in Part I, Section 4.1 of this Contract. The receipt of such Funds is conditioned upon the Consultant's compliance with certain mandatory federal, State and City terms and conditions. The Consultant must comply with all applicable mandatory terms and conditions set forth in the Applicable Requirements and Applicable Agreements including, without limitation, those set forth in Part I, Section 4.3, 4.4, this Appendix, Appendix J and in Appendix K. This Appendix shall be annexed to and made a part of any subcontract entered into by the Consultant pursuant to this Contract, and shall be binding on any Subcontractor. To the extent any terms and conditions set forth in this Appendix conflict with any other terms of this Contract, the terms and conditions of this Appendix shall govern. In the event any terms and conditions set forth in this Appendix conflict with the terms and conditions of Appendix J or Appendix K, the more stringent of the conflicting provisions shall govern.

Consultant acknowledges and agrees that the Corporation has the right to delegate the responsibilities of the Director to the City or such agency of the City as may be appropriate.

The Funds have been made available for the Project under the Applicable Requirements and Applicable Agreements including, without limitation, those listed in Part I, Section 4.4 and 4.5, and any other governing statute or agreement related to the Funds, the Project and/or the Contract.

Notwithstanding anything to the contrary in this Contract, the Corporation shall be under no obligation to make such payments except when, and to the extent, such Funds are available. The Corporation shall not be liable to the Consultant in the event any or all of such Funds are not made available.

**2. Termination or Suspension Related to Unavailability of Funds.**

In addition to any other right to postpone, delay suspend or terminate the Services or the Contract set forth in this Contract, if, pursuant to the Applicable Requirements or Applicable Agreements or otherwise, there shall be a suspension, termination or reduction of the Funds funding this Contract as a result of which Funds are not available for some or all payments under this Contract, the Corporation shall so notify the Consultant and the Consultant shall, and agrees to, cease to perform the activities specified in the notice (permanently or temporarily, as specified in the notice) on the date set forth therein, which may be immediately. The Consultant shall assume no further binding obligations in connection with any Services specified in the notice to be stopped, after the date set forth in the notice, except that such cessation need only be for the period of suspension if the Services are suspended rather than terminated. The award of Funds funding this Contract may be suspended or terminated if the Consultant materially fails to

comply with any term of such award. The award may also be terminated for convenience in accordance with the Applicable Requirements and Applicable Agreements.

**APPENDIX J**

**APPLICABLE CERTIFICATIONS AND SECTION 3 CLAUSE**

**REQUIREMENTS REGARDING LOBBYING ACTIVITIES ON FEDERAL AID CONTRACTS**

Federal regulations require that any contractor or firm intending to do business with the Federal government, or wishing to participate in any Contract funded with Federal money, disclose to the Federal government any lobbying activities which that Contractor or firm may have undertaken. More specifically, and in addition to disclosing lobbying efforts of any kinds, any prospective contractor or firm who expects to perform work funded with Federal moneys must certify that none of this lobbying activity has been paid for with Federal funds of any kind.

<p>1. Type of Federal Action:</p> <p>A. contract B. grant C. cooperative agreement D. loan E. loan guarantee F. loan insurance</p>	<p>2. Status of Federal Action:</p> <p>A. bid/offer/application B. initial award C. post-award</p>	<p>3. Report Type:</p> <p>A. initial filing B. material change For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity.</p> <p><input type="checkbox"/> Prime      <input type="checkbox"/> Subawardee Tier _____, if known:</p> <p>Congressional District, if known:</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p>	
<p>6. Federal Department/Agency</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable:</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$ _____</p>	
<p>10. a. Name and Address of Lobbying Registrant: (If individual, last name, first name MI):</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)</p>	
<p>11. Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is material representation of facts upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No: _____</p> <p>Date: _____</p>	

**INSTRUCTIONS FOR COMPLETION OF STANDARD FORM LLL**  
**DISCLOSURE OF LOBBYING ACTIVITIES.**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material required for each, payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action Identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-001".
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/ loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full name of individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title and phone number.



Proposal No. \_\_\_\_\_

Description: \_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATION OF A POTENTIAL PRIME CONTRACTOR (MAJOR THIRD PARTY CONTRACTOR) REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

The Potential Contractor *Henningson, Durham & Richardson*  
*Architectural and Engineering* certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this proposal or bid had one or more public transactions (Federal, State or Local) terminated for cause or default.
5. The potential Contractor agrees to provide the Authority with immediate written notice if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Each Subcontractor or Vendor for the Contractor shall provide the same updated notice to the Contractor and the Contractor shall be solely responsible for collecting, updating and submitting updated information to the Authority.

NOTE: If for any reason the potential Contractor is unable to certify to any of the statements in this certification, the potential Contractor shall attach an explanation to this certification.

THE POTENTIAL CONTRACTOR, *Henningson, Durham & Richardson*  
*Architectural and Engineering* CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801, ET SEQ. ARE APPLICABLE THERETO.

*[Handwritten Signature]*  
\_\_\_\_\_  
Signature and Title of Authorized Official

*May 12, 2016*  
\_\_\_\_\_  
Date

Proposal No. \_\_\_\_\_

Description: \_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATION OF A POTENTIAL SUBCONTRACTOR/ SUPPLIER REGARDING  
DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The potential Subcontractor/ Supplier, Henningson, Durham & Richardson Architecture and Engineering P.C. certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. If for any reason the potential Subcontractor/ Supplier, is unable to certify to any of the statements in this certification, it shall attach a explanation to this proposal.

3. THE POTENTIAL SUBCONTRACTOR/ SUPPLIER, Henningson, Durham & Richardson Architectural and Engineering P.C. CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

4. The Subcontractor/ Supplier shall provide to the Authority and the Subcontractor shall to Contractor immediate written notice, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Missus Miller  
Signature and Title of Authorized Official

May 12, 2010  
Date

**Contractor Note: Contractor must require all Subcontractor/ Suppliers to complete this certification and Contractor shall submit the certifications to the Authority as they are received.**

## Section 3 Clause

All Section 3 covered contracts must include the following clause **in its entirety**:

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted project covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low- income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment practices can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulation of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).<sup>1</sup>

<sup>1</sup> This paragraph (G) is not applicable to the HOME Program; nonetheless, the regulations require that the Section 3 clause be included verbatim in all contracts subject to the requirements of Section 3.

**APPENDIX K**  
**APPLICABLE REQUIREMENTS**

**UNIFORM FEDERAL CONTRACT PROVISIONS RIDER  
FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS  
(11/10/2015)**

*[Instructions to Agencies: This Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts (“Rider”) must be attached to all federally funded procurement contracts (of any dollar amount) that are subject to 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). This Rider does not apply to subrecipient or subaward agreements. Procurement contracts funded by the U.S. Department of Housing and Urban Development CDBG Program or CDBG-DR Program must also include the CDBG or CDBG-DR Rider, as applicable.]*

**A. Definitions.** As used in this Rider:

- (1) “Awarding Entity” means the entity awarding the Contract. The Awarding Entity may be the City or a contractor at any tier.
- (2) “City” means the City of New York.
- (3) “Commissioner” means the head of the City agency entering into this Contract.
- (4) “Construction” means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.
- (5) “Contract” refers to the contract or the agreement between the Awarding Entity and the Contractor.
- (6) “Contractor” means the entity performing the services pursuant to a Contract.
- (7) “Federal Agency” means the U.S. agency or agencies funding this Contract in whole or in part.
- (8) “Government” means the U.S. government.
- (9) “Rider” means this Uniform Federal Contract Provisions Rider.

**B. Termination and Remedies for Breach of Contract.** The following provisions concerning remedies for breach of contract and termination apply to Contracts between the City and the City’s Contractor.

- (1) **Remedies for Breach of Contract.** If the Contractor violates or breaches the Contract, the City may avail itself of any or all of the remedies provided for elsewhere in this Contract. If there are no remedies provided for elsewhere in this Contract, the City may avail itself of any or all of the following remedies.

After declaring the Contractor in default pursuant to the procedures in paragraph (a) of subdivision (2) of this section (B) below, the City may (i) withhold payment for unsatisfactory services, (ii) suspend or terminate the Contract in whole or in part; and/or

(iii) have the services under this Contract completed by such means and in such manner, by contract procured with or without competition, or otherwise, as the City may deem advisable in accordance with all applicable Contract provisions and law. After completion of the services under this Contract, the City shall certify the expense incurred in such completion, which shall include the cost of procuring that contract. Should the expense of such completion, as certified by the City, exceed the total sum which would have been payable under the Contract if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the City may be charged against and deducted out of monies earned by the Contractor.

(2) **Termination.** The City shall have the right to terminate the Contract in whole or in part for cause, for convenience, due to force majeure, or due to reductions in federal funding. If the Contract does not include termination provisions elsewhere, the following termination provisions apply:

a. **Termination for Cause.** The City shall have the right to terminate the Contract, in whole or in part, for cause upon a determination that the Contractor is in default of the Contract. Unless a shorter time is determined by the City to be necessary, the City shall effect termination according to the following procedure:

i. *Notice to Cure.* The City shall give written notice of the conditions of default signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Contract pending the outcome of the default proceedings pursuant to this section.

ii. *Opportunity to be Heard.* If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Contractor must be given an opportunity to be heard upon not less than five (5) business days' notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

iii. *Notice of Termination.* After an opportunity to be heard, the Commissioner may terminate the Contract, in whole

or in part, upon finding the Contractor in default. The Commissioner shall give the Contractor written notice of such termination ("Notice of Termination"), specifying the applicable provision(s) under which the Contract is terminated and the effective date of termination. If no date is specified in the Notice of Termination, the termination shall be effective either 10 calendar days from the date the notice is personally delivered or 15 calendar days from the date Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope.

iv. *Grounds for Default.* The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Contract, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Contract when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Contract under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18

U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

v. *Basis of Settlement.* The City shall not incur or pay any further obligation pursuant to this Contract beyond the termination date set by the City in its Notice of Termination. The City shall pay for satisfactory services provided in accordance with this Contract prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Contract. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

b. **Termination for Convenience.** The City shall have the right to terminate the Contract for convenience, by providing written notice ("Notice of Termination") according to the following procedure. The Notice of Termination shall specify the applicable provision(s) under which the Contract is terminated and the effective date of termination, which shall be not less than 10 calendar days from the date the notice is personally delivered or 15 days from the date the Notice of Termination is sent by another method. The Notice of Termination shall be personally

delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. The basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

**c. Termination due to Force Majeure**

- i. For purposes of this Contract, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Force Majeure Events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.
- ii. In the event the Contractor cannot comply with the terms of the Contract (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Contract. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Contract because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Contract. Such a termination shall be deemed to be without cause.
- iii. If the City terminates the Contract due to a Force Majeure Event, the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

**d. Termination due to Reductions in Federal Funding**

- i. This Contract is funded in whole or in part by funds secured from the Federal government. Should the Federal government reduce or discontinue such funds, the City shall have, in its sole discretion, the right to terminate this Contract in whole or in part, or to reduce the funding and/or level of services of this Contract caused by such action by the Federal government, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Contract and in the total amount payable under this Contract. Any reduction in funds pursuant to this

paragraph shall be accompanied by an appropriate reduction in the services performed under this Contract.

- ii. In the case of the reduction option referred to in subparagraph (i), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 calendar days from the date of such notice. Prior to sending such notice of reduction, the City shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven calendar days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the City shall not be bound to utilize any of the Contractor's suggestions and that the City shall have sole discretion as to how to effectuate the reductions.
- iii. If the City reduces funding pursuant to this paragraph (c), the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

**C. Standard Provisions.** The Contractor shall comply with, include in its subcontracts, and cause its subcontractors to comply with the following provisions, as applicable:

- (1) *Reporting.* Contractor shall be required to produce and deliver such reports relating to the services performed under the Contract as may be required by the Awarding Entity, City or any other State or Federal governmental agency with jurisdiction.
- (2) *Non-Discrimination.* Contractor shall not violate any Federal, State, or City law prohibiting discrimination concerning employment, the provision of services, and, if applicable, housing, funded by this Contract.
- (3) *Environmental Protection.* If the Contract is in excess of \$150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. § 7401-7671q), Federal Water Pollution control Act (33 U.S.C. §§ 1251-1387) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA). The Contractor shall include this provision in all subcontracts.
- (4) *Energy Efficiency.* The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).
- (5) *Debarment.* The Contractor certifies that neither it nor its principals is currently in a state of debarment, suspension, or other ineligible status as a result of prior performance, failure, fraud, or violation of City laws. The Contractor further certifies that neither it nor

its principals is debarred, suspended, otherwise excluded from or ineligible for participation in Federal assistance programs. The City reserves the right to terminate this Contract if knowledge of debarment, suspension or other ineligibility has been withheld by the Contractor.

- (6) *Byrd Anti-Lobbying Amendment (31 USC §1352)*. Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining this Contract. If the Contract is \$100,000 or more, the Contractor shall disclose to the City any lobbying with non-Federal funds that took place in connection with obtaining this Contract. Each lower tier subcontractor shall make such certification and forward any required disclosures from tier to tier up to the City as grant recipient. (Certification appears in Federal Appendix A)
- (7) *Solid Waste Disposal Act*. Pursuant to 2 CFR § 200.322, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (codified at 42 USC § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (8) *Documentation of Costs*. All costs shall be supported by properly executed payrolls, time records, invoices, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and regularly accessible.
- (9) *Records Retention*. The Contractor shall retain all books, documents, papers, and records relating to the services performed under the Contract for three years after final payment under the Contract is made and all other pending matters are closed.
- (10) *Records Access*. The Contractor shall grant access to the City, State or any other pass-through entity, the Federal Agency, Inspectors General, and/or the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and/or records of the Contractor that are pertinent to the Contract for the purpose of making audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.
- (11) *Small Firms, M/WBE Firms, and Labor Surplus Area Firms*. Contractor shall take the following affirmative steps in the letting of subcontracts, if subcontracts are to be let, in order to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

(12) *Intangible Property.*

- a. Pursuant to 2 CFR § 200.315(d), the Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a) the copyright in any work developed under the Contract or subcontract; and (b) any rights of copyright to which a Contractor purchases ownership with grant support.
- b. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to the Contract ("Copyrightable Materials"), and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to the contract, shall upon their creation become the exclusive property of the City. The Copyrightable Materials shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Contract without the prior written

permission of the City. The City may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the City and set forth in the license.

- c. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.
- d. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract, copies of which shall be provided to the City upon execution of this Contract.
- e. The Contractor shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Contract and the Contractor shall promptly and fully report to the Government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
- f. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

**D. Special Provisions for Construction Contracts.** If this Contract involves Construction work, design for Construction, or Construction services, all such work or services performed by the Contractor and its subcontractors shall be subject to the following requirements in addition to those set forth above in paragraphs (A), (B), and (C):

(1) *Federal Labor Standards.* The Contractor will comply with the following:

- a. The Davis-Bacon Act (40 U.S.C. §§ 3141-3148): If required by the federal program legislation, in Construction contracts involving an excess of \$2000, and subject to any other federal program limitations, all laborers and mechanics must be paid at a

rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the City. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7 which enforce statutory labor standards provisions.

- b. If required by the federal program legislation and subject to any other federal program limitations, Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701-3708), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits, under any Construction contract costing in excess of \$2000. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages.
- c. The Copeland "Anti-Kickback" Act (18 U.S.C. § 874), as supplemented by the regulations contained in 29 CFR Part 3, requiring that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and prohibiting all but "permissible" salary deductions.
- d. If this Contract involves Construction work, design for Construction, or Construction services, a more complete detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.

- (2) *Equal Employment Opportunity*. Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for Construction contracts or subcontracts in excess of \$10,000. The Contractor shall include the notice found at FEDERAL EXHIBIT I in all Construction subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term "Construction Work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction .

**Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of \$10,000.**

- 1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;

- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
- (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction Contractors performing Construction Work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal

procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each Construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

- (3) (A) **Equal Opportunity Clause** (for contracts for Construction Work) required by 41 CFR Part 6-1.4(b). **Effective through January 10, 2016**

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**(B) Equal Opportunity Clause** (for contracts for Construction Work) required by 41 CFR Part 6-1.4(b). **[Effective starting January 11, 2016]**

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation

conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**E. Rights to Inventions. [Special Provisions For Contracts Involving Experimental, Developmental, or Research Work.]**

(1) If this Contract involves the performance of experimental, developmental, or research work by the Contractor or its subcontractors, and the entity performing such work is a Nonprofit Organization or Small Business Firm as defined below, the following provisions apply in addition to those set forth above in paragraphs (A), (B), and (C), unless the Contract specifically states that this provision is superseded:

*a. Definitions.* The following definitions apply to this section (D).

- i. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. § 2321 *et seq.*).
  - ii. "Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Contract performance.
  - iii. "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
  - iv. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
  - v. "Small Business Firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
  - vi. "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- b. *Allocation of Principal Rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to

practice or have practiced for or on behalf of the United States the subject invention throughout the world.

- c. *Invention Disclosure, Election of Title and Filing of Patent Application by Contractor.*
- i. The Contractor will disclose each subject invention to the City and the Federal Agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. Such disclosure shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after such disclosure, the Contractor will promptly notify the City and the Federal Agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.
  - ii. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the City and the Federal Agency within two years of disclosure to the City and the Federal Agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Federal Agency to a date that is no more than 60 days prior to the end of the statutory period.
  - iii. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign

patent applications where such filing has been prohibited by a Secrecy Order.

- iv. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may be granted at the discretion of the Federal Agency.

*d. Conditions When the Government May Obtain Title*

The Contractor will convey to the Federal Agency, upon written request, title to any subject invention --

- i. If the Contractor fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the Federal Agency may only request title within 60 calendar days after learning of the failure of the Contractor to disclose or elect within the specified times.
  - ii. In those countries in which the Contractor fails to file patent applications within the times specified in (c) above; provided, however, that if the Contractor has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Federal Agency, the Contractor shall continue to retain title in that country.
  - iii. In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.
- e. Minimum Rights to Contractor and Protection of the Contractor Right to File
- i. The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the Contract was awarded. The license is transferable only with the approval of the Federal Agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.

- ii. The Contractor's domestic license may be revoked or modified by the funding Federal Agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal Agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
  - iii. Before revocation or modification of the license, the funding Federal Agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty calendar days (or such other time as may be authorized by the funding Federal Agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and Federal Agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.
- f. Contractor Action to Protect the Government's Interest
- i. The Contractor agrees to execute or to have executed and promptly deliver to the Federal Agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal Agency when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.
  - ii. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary

to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

- iii. The Contractor will notify the Federal Agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty calendar days before the expiration of the response period required by the relevant patent office.
- iv. The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal Agency). The government has certain rights in the invention."

g. Subcontracts

- i. The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
  - ii. The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by 2 CFR § 200.315(c) and Appendix II to 2 CFR Part 200.
- h. *Reporting on Utilization of Subject Inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Federal

Agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Federal Agency in connection with any march-in proceeding undertaken by the Federal Agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. § 202(c)(5), the Federal Agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

- i. *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal Agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- j. *March-in Rights.* The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal Agency has the right in accordance with the procedures in 37 CFR § 401.6 and any supplemental regulations of the Federal Agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal Agency has the right to grant such a license itself if the Federal Agency determines that:
  - i. Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
  - ii. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;
  - iii. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or

- iv. Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- k. *Special Provisions for Contracts with Nonprofit Organizations.*  
If the Contractor is a nonprofit organization, it agrees that:
- i. Rights to a subject invention in the United States may not be assigned without the approval of the Federal Agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
  - ii. The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Federal Agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. § 202(e) and 37 CFR § 401.10;
  - iii. The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
  - iv. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are Small Business Firms and that it will give a preference to a Small Business Firm when licensing a subject invention if the Contractor determines that the Small Business Firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not Small Business Firms; provided, that the Contractor is also satisfied that the Small Business Firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary may review the Contractor's licensing program and decisions regarding Small Business Firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the Contractor could take reasonable steps

to implement more effectively the requirements of this paragraph (k)(iv).

1. *Communication.* The central point of contact at the Federal Agency for communications on matters relating to this clause may be obtained from the City upon request.

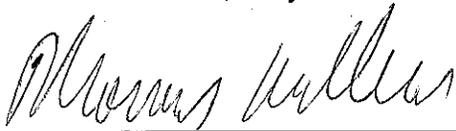
**Certification Regarding Lobbying**

The undersigned Contractor certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, <sup>Henningson, Durham & Richardson</sup> ~~Architecture and Engineering P.C.~~ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Thomas McLaughlin, Area Manager, NY/NJ  
Name and Title of Contractor's Authorized Official

May 12, 2016  
Date



**FEDERAL EXHIBIT 1**

**NOTICE TO BIDDERS**

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL CONSTRUCTION CONTRACTS AND SUB-CONTRACTS IN EXCESS OF \$10,000.**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

**Goals and Timetables for Minorities**

<u>Trade</u>	<u>Goal</u> <u>(percent)</u>	
Electricians .....	9.0 to	10.2
Carpenters .....	27.6 to	32.0
Steamfitters .....	12.2 to	13.5
Metal Lathers .....	24.6 to	25.6
Painters .....	28.6 to	26.0
Operating Engineers .....	25.6 to	26.0
Plumbers .....	12.0 to	14.5
Iron Workers (structural) .....	25.9 to	32.0
Elevator Constructors .....	5.5 to	6.5
Bricklayers .....	13.4 to	15.5
Asbestos Workers .....	22.8 to	28.0
Roofers .....	6.3 to	7.5
Iron Workers (ornamental) .....	22.4 to	23.0
Cement Masons .....	23.0 to	27.0
Glazers .....	16.0 to	20.0
Plasterers .....	15.8 to	18.0
Teamsters .....	22.0 to	22.5
Boilermakers .....	13.0 to	15.5
All Other .....	16.4 to	17.5

**Goals and Timetables for Women**

From April 1, 1980 until the present ..... 6.9

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such

geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved Construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall made a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any Construction subcontract in excess of \$10,000 at any tier for Construction Work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Contract, the "covered area" is the City of New York.

**FEDERAL EXHIBIT 2**

**[Insert Exhibit 2 for applicable federal grant program]**

# **CDBG-DR Rider**

(Version 11.10.2015)

## **INSTRUCTIONS TO NYC AGENCIES AND OFFICES**

This CDBG Rider contains supplementary general conditions for use with procurement contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended. For all procurement contracts and subrecipient agreements funded by the Community Development Block Grant Disaster Recovery ("CDBG-DR") Program, *except those funded by the regular CDBG ("CDBG") Program*, this CDBG-DR Rider must be included as an attachment, expressly made a part of, and incorporated by reference. A different rider with terms specific to the regular CDBG Program should be attached to CDBG funded procurement contracts and subrecipient agreements.

## **FEDERAL REGISTER NOTICES**

### **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Federal Register Notices applicable to the use of CDBG-DR Funds for Hurricane Sandy disaster recovery are available on the HUD Web site at <https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices>.

## **SECTION 3 NOTICE**

HUD recently issued proposed amendments to the Section 3 regulations in 24 CFR Part 135. If HUD finalizes and promulgates the amendments to 24 CFR Part 135 during the term of this Agreement, the Contractor or Subrecipient will be required to adhere to the amended 24 CFR Part 135.

**TABLE OF CONTENTS**

<b>ARTICLE</b>	<b>TITLE</b>	<b>PAGE</b>
ARTICLE 1	DEFINITIONS	3
ARTICLE 2	HOUSING AND COMMUNITY DEVELOPMENT ACT AND NATIONAL ENVIRONMENTAL POLICY ACT	4
ARTICLE 3	LABOR REQUIREMENTS	4
ARTICLE 4	ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION FOR SUBRECIPIENTS	6
ARTICLE 5	FEDERAL NON-DISCRIMINATION LAWS	14
ARTICLE 6	ENVIRONMENTAL PROTECTION; ENERGY EFFICIENCY; HISTORIC PRESERVATION; FLOOD PROTECTION; LEAD-BASED PAINT; FLOOD INSURANCE	16
ARTICLE 7	UNIFORM RELOCATION ASSISTANCE	17
ARTICLE 8	UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS	17
ARTICLE 9	UNEARNED PAYMENTS; INCOME; DOCUMENTATION OF COSTS; ACCOUNTING SYSTEM; FIDELITY BONDS; DISBURSEMENT RESTRICTIONS	17
ARTICLE 10	RECORDS AND AUDITS	18
ARTICLE 11	SUBCONTRACTORS	19
ARTICLE 12	CONFLICTS; EXHIBITS	20
ARTICLE 13	REVERSION OF ASSETS	20
ARTICLE 14	SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS	20
ARTICLE 15	INTANGIBLE PROPERTY	21
ARTICLE 16	HATCH ACT; LOBBYING; CONFLICTS OF INTEREST	22
ARTICLE 17	SUSPENSION AND TERMINATION	22
ARTICLE 18	PERFORMANCE REQUIREMENTS AND LIQUIDATED DAMAGES	22

## **ARTICLE 1. DEFINITIONS**

As used in this CDBG-DR Rider:

(a) "Act" means Title 1 of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

(b) "Agency" means the entity, or entities, executing this Agreement on behalf of the City of New York.

(c) "Agreement" means either the "contract" (as defined by 2 CFR § 200.22) between the City and the Contractor or the agreement between the City and "Subrecipient" as defined by 2 CFR § 200.93 as the context requires.

(d) "City" means the City of New York.

(e) "Construction" means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.

(f) "Contractor" and/or "Subrecipient" means the entity or entities executing this Agreement, other than the Agency.

(g) "Equipment" means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds \$5,000.

(h) "Grant" means Community Development Block Grant Program funds provided to the City of New York by the Federal Department of Housing and Urban Development or a pass-through entity.

(i) "Hometown Plan" means a voluntary areawide plan that was developed by representatives of affected groups (usually labor unions, minority organizations, and contractors), and subsequently approved by the Office of Federal Contract Compliance (OFCC), for purposes of implementing the equal employment opportunity requirements pursuant to Executive Order 11246, as amended.

(j) "HUD" means the Secretary of Housing and Urban Development or a person authorized to act on his or her behalf.

(k) "Program" means the New York City Community Development Block Grant Program approved by HUD as the same may from time to time be amended.

(l) "Real property" means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and moveable equipment.

(m) "Subcontractor" means any person, firm or corporation, other than employees of the Contractor or the Subrecipient, or another Subcontractor who is engaged by the Contractor or the Subrecipient to furnish (i) services, (ii) labor or (iii) services and/or labor and materials at the site of the work performed under this Agreement.

**ARTICLE 2. HOUSING AND COMMUNITY DEVELOPMENT ACT AND NATIONAL ENVIRONMENTAL POLICY ACT**

*[Applicable to Contractors and Subrecipients]*

This Agreement is subject to Title 1 of the Housing and Community Development Act of 1974 (P.L. 93-383) as amended (The Act) and all rules, regulations and requirements now issued or hereafter issued pursuant to the Act; the Agreement may be suspended and/or terminated without liability to the City if the Grant to the City pursuant to the Act is suspended or terminated, and unless and until the City or Agency receives Community Development funds in an amount that is deemed sufficient to enable it to fund this Agreement, the City or Agency is under no obligation to make any payments to the Contractor or Subrecipient. In this regard, the Agency is under no obligation to make any payments to the Contractor or Subrecipient, and shall not make any such payment, and the Contractor or Subrecipient shall not commence performance, until:

- (a) the Agency has received from the City's Office of Management and Budget instructions to proceed, evidencing compliance with the National Environmental Policy Act, as amended, and with regulations of the U.S. Department of Housing and Urban Development, related thereto, found at 24 CFR Part 58, and
- (b) the Contractor or Subrecipient has been notified of such instructions by the Agency. Furthermore, the Contractor or Subrecipient and the City mutually agree that the Contractor or Subrecipient shall not advance any funds, from any source without limitation, to pay for costs intended to be paid for under this Agreement prior to the receipt and notification described in this paragraph (a), and the City shall not reimburse the Contractor or Subrecipient for any costs incurred in violation of this provision.

**ARTICLE 3. LABOR REQUIREMENTS**

*[Applicable to Contractors and Subrecipients; must be included in all subcontracts]*

- (a) **Section 3.** This Agreement is subject to Section 3 of the Housing and Urban Development Act of 1968 (P.L. 90-448) and implementing regulations at 24 CFR Part 135, as may be amended during the term of this Agreement. Pursuant to 24 CFR § 135.38, the Contractor or Subrecipient agrees to the following:
  - 1. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
  - 2. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediments that would prevent them from complying with the Part 135 regulations.

3. The Contractor or Subrecipient agrees to send to each labor organization or representative of workers with which the Contractor or Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's or Subrecipient's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
4. The Contractor or Subrecipient agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor or Subrecipient will not subcontract with any Subcontractor where the Contractor or Subrecipient has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.
5. The Contractor or Subrecipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor or Subrecipient is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's or Subrecipient's obligations under 24 CFR Part 135.
6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
7. With respect to work performed in connection with Section 3 covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
8. The Contractor or Subrecipient agrees to submit, and shall cause its subcontractors to submit, quarterly reports to the Agency detailing the number of new employees hired, the number of new Section 3 employees hired, and any affirmative efforts made to direct hiring efforts to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing during the previous quarter.

- (b) ***The Davis-Bacon Act (40 U.S.C. §§ 3141 et seq.)***. In Construction contracts involving an excess of \$2000, unless exclusively in connection with the rehabilitation of residential property containing fewer than 8 units, the Contractor shall pay and the Subrecipient shall cause its contractors to pay all laborers and mechanics at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the Agency. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7, which enforce statutory labor standards provisions. **This provision supersedes section D(1)(a) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.**
- (c) ***Overtime***. In Construction contracts involving an excess of \$2000, and subject to the exception in 24 CFR section 570.603 (regarding the rehabilitation of residential property containing less than 8 units), Contractor shall comply and the Subrecipient shall cause its contractor to comply with sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701 et seq.), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages. **This provision supersedes section D(1)(b) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.**

#### **ARTICLE 4. ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION FOR SUBRECIPIENTS**

*[Applicable to Subrecipients. A similar provision for Contractors is included in the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts at section D(1)(c)-(d), (2) and (3).]*

If this Agreement involves Construction work, design for Construction, or Construction services, all such work or services performed by the Subrecipient and its Subcontractors shall be subject to the following requirements:

- (a) ***Impermissible Salary Deductions***. In Construction contracts of any amount, the Subrecipient shall cause its Subcontractor to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874), as supplemented by the regulations contained in 29 CFR Part 3, requiring that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and prohibiting all but "permissible" salary deductions.
- (b) ***Federal Labor Standards***. In Construction contracts of any amount, the Subrecipient shall cause its Subcontractors to comply with the more detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.

- (c) **Equal Employment Opportunity.** In Construction contracts or subcontracts in excess of \$10,000, the Subrecipient shall cause its Subcontractors to comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60). Subrecipient shall include the following Specifications, which are required pursuant to 41 CFR 60-4.3 in all federally assisted contracts and subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term "Construction Work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

**Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of \$10,000. (Federal Notice Required by 41 CFR 60-4.3)**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Agreement resulted.
3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades

which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Agreement resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction contractors performing Construction Work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each Construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to

community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation

employment to minority and female youth both on the site and in other areas of a contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

- (d) A. **Equal Opportunity Clause [Effective through January 10, 2016]** Subrecipient shall include the following provisions, which are required by 41 CFR section 60-1.4(b), in all federally assisted contracts and subcontracts.

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and

applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**(B) Equal Opportunity Clause [Effective starting January 11, 2016]** Subrecipient shall include the following provisions, which are required by 41 CFR section 60-1.4(b), in all federally assisted contracts and subcontracts.

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or

federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **ARTICLE 5. FEDERAL NON-DISCRIMINATION LAWS**

### ***[Applicable to Contractors and Subrecipients]***

This Agreement is subject to:

- (a) Section 109 of the Act, which requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The Contractor or Subrecipient agrees to comply with provisions of 24 CFR Part 6, 8, and 146.
- (b) Title VIII of the Civil Rights Act of 1968 (P.L. 90-284; 42 U.S.C. §§ 3602-3620), as amended, which prohibits discrimination in the sale or rental of housing and in the provision of brokerage services based on race, color, religion, sex, national origin, disability, or familial status, and which requires affirmative action in the furtherance of Fair Housing objectives.
- (c) Executive Order 11063, as amended by Executive Order 12259, pursuant to regulations issued at 24 CFR Part 107, which prohibits discrimination on the basis of race, color, religion, sex or national origin and requires equal opportunity in housing constructed, operated or provided with federal funds.
- (d) Title VI of the Civil Rights Act of 1964 (P.L. 88-352; 42 U.S.C. §§ 2000d *et seq.*) and implementing regulations in 24 CFR Part 1, which states that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any Program or activity made possible by, or resulting from, this Agreement.

- (e) Consistent with 24 CFR § 570.614, the Contractor or Subrecipient warrants that all services, programs, and/or Construction (including design and alteration) under this Agreement shall be performed in accordance with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities including, but not limited to, the following: Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968 (42 U.S.C. § 4151-4157), the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 and Appendix A to 41 CFR Part 101-19, subpart 101-19.6), and the Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218, and 225).
- (f) If the Contractor or Subrecipient is, or may be deemed to be, a religious or denominational institution or organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization, the Contractor or Subrecipient agrees that in connection with services to be provided under this Agreement:
- i. it shall not discriminate against any employee or applicant for employment on the basis of religion and shall not limit employment or give preference in employment to persons on the basis of religion.
  - ii. it shall not discriminate against any person applying for such public services on the basis of religion or religious belief and shall not limit such services or give preference to persons on the basis of religion or religious belief.
  - iii. it shall provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services.
  - iv. it shall not use CDBG funds for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under 24 CFR Part 570. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds in 24 CFR Part 570. Sanctuaries, chapels, or other rooms that a CDBG-funded religious congregation uses as its principal place of worship, however, are ineligible for CDBG-funded improvements. Disposition of real property is subject to 24 CFR § 570.200(j)(5). In addition, payment may be authorized for a portion of eligible rehabilitation or construction costs attributable to the non-religious use of a facility that is not used exclusively for

religious purposes, pursuant to Section VI(A)(4)(c) of HUD Docket No. FR-56960-N-01.

The non-discrimination provisions in this Article shall be incorporated in and made a part of all subcontracts executed in connection with this Agreement.

- (g) Subrecipients shall comply with all civil-rights related requirements, pursuant to 24 CFR § 570.503(b)(5).

**ARTICLE 6. ENVIRONMENTAL PROTECTION; ENERGY EFFICIENCY; HISTORIC PRESERVATION; FLOOD PROTECTION; LEAD-BASED PAINT**

*[Paragraphs (a) – (e) applicable to Contractors and Subrecipients; paragraph (f) applicable to Subrecipients]*

- (a) For agreements, subcontracts, and subgrants of amounts in excess of \$150,000, the Contractor or Subrecipient shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401, Federal Water Pollution control Act (33 U.S.C. §§ 1251, et seq.) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA).
- (b) The Subrecipient and Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163). Further, the Contractor or Subrecipient shall comply with the construction standards concerning energy efficiency set forth in section VI(A)(1)(a)(5) of HUD Docket No. FR-5696-N-01.
- (c) This Agreement is subject to laws and authorities listed in 24 CFR § 58.5, including the Historic Preservation Act of 1966 (P.L. 89-665; 16 U.S.C. §§ 470 *et seq.*), the Archeological and Historic Preservation Act of 1974 (P.L. 93-291; 16 U.S.C. §§ 469-469c), Executive Order 11593 and regulations at 36 CFR Part 800. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.
- (d) This Agreement is subject to the Lead-Based Paint Poison Prevention provisions found in 24 CFR § 570.608, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead Based Paint Hazard Reduction Act of 1992 (U.S.C. §§ 4851-4856, and 24 CFR Part 35, subparts A, B, J, K, and R. This provision is to be included in all subcontracts, for work in connection with this Agreement, which relate to residential structures.
- (e) Pursuant to the provisions in 24 CFR § 570.605, Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4106), and the regulations in 44 CFR Parts 59-79 apply to this Agreement.

- (f) Subrecipients shall implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements set forth in Section VI(B)(31) of HUD Docket No. FR-56960-N-01.

**ARTICLE 7. UNIFORM RELOCATION ASSISTANCE**

*[Applicable to Contractors and Subrecipients]*

This Agreement is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601-4655) and regulations at 49 CFR Part 24 and 24 CFR section 570.606.

**ARTICLE 8. UNIFORM ADMINISTRATIVE REQUIREMENTS (INCLUDING PROCUREMENT STANDARDS), COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

*[Subdivision (a) is applicable to Contractors and Subrecipients; subdivision (b) is applicable to Subrecipients only; subdivision (c) is applicable to Contractors only]*

- (a) Pursuant to 2 CFR § 2400.101 and 24 CFR § 85.1, Subrecipients and Contractors are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 (commonly referred to the "Super Circular"), as applicable.
- (b) For the procurement of all subcontracts and goods contracts, Subrecipients are required to follow the procurement standards in 2 CFR §§ 200.318-200.326, except as allowed by 2 CFR § 200.110.
- (c) Contractors are subject to the Uniform Federal Contract Provisions Rider, attached to this Agreement.

**ARTICLE 9. UNEARNED PAYMENTS; INCOME; DOCUMENTATION OF COSTS; ACCOUNTING SYSTEM; FIDELITY BONDS; DISBURSEMENT RESTRICTIONS**

*[Paragraphs (a), (b), (d), and (e) are applicable to Contractors and Subrecipients; paragraph (d) is applicable to Subrecipients only]*

- (a) Unearned payments under this Agreement may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by HUD at any time, or if the Grant to the City under the Act is suspended or terminated. Unearned payments received by the Contractor or Subrecipient will be returned to the City.

The Contractor or Subrecipient agrees that if any income is generated from the Community Development Block Grant Program funded activities, Contractor or Subrecipient shall return such income to the City's Community Development Block Grant Program unless expressly authorized by the City. Such funds are subject to all applicable requirements governing the use of Community Development Block Grant

funds, including 24 CFR § 570.503(b)(3), which provides that, at the end of the program year, the City may require remittance of all or part of any program income balances (including investments thereof) held by the Subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs). Alternative program requirements concerning the definition of "program income" are set forth in Section VI(A)(17)(a)-(b) of Docket No. FR-56960-N-01, as amended by Section II(5) of Docket No. FR-5710-N-01.

- (b) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and readily accessible.
- (c) The Subrecipient shall submit to the Agency a detailed description of its accounting, reporting and internal control systems, including but not limited to the procedures for cash receipts, cash disbursements, payrolls, personnel policies, fixed petty cash controls and other systems which are necessary under the circumstances. The Agency shall evaluate and document all systems and only upon acceptance and approval of the accounting, reporting and internal control systems by the Agency, shall funds be disbursed to the Subrecipient, other provisions of the Agreement notwithstanding.
- (d) If required by the Federal awarding agency or elsewhere in this Agreement, the Agency must receive a statement from the Contractor's or Subrecipient's chief fiscal officer or its insurer assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount equal to cash advances from the City. If the bond is cancelled or coverage is substantially reduced, the Contractor or Subrecipient shall promptly notify the Agency of this fact in every case not later than 48 hours. In such event, the Agency shall not disburse any more funds to the Contractor or Subrecipient until it has received assurance that adequate coverage has subsequently been obtained.
- (e) No money under this Agreement shall be disbursed by the Agency to any Contractor or Subrecipient except pursuant to a written contract which incorporates the applicable Supplementary General Conditions and unless the Contractor or Subrecipient is in compliance with HUD requirements with regard to accounting and fiscal matters, to the extent they are applicable, and provided that the Agency has completed HUD requirements, including but not limited to environmental certifications pursuant to 24 CFR Part 58.

## **ARTICLE 10. RECORDS AND AUDITS**

### ***[Applicable to Contractors and Subrecipients]***

- (a) Records shall be maintained in accordance with requirements prescribed by or in 2 CFR § 200.333, HUD and/or the City with respect to all matters covered by this Agreement and retained for at least three years after the City makes final payments and all other pending matters concerning this Agreement are closed, subject to the exceptions in 2 CFR § 200.333.

- (b) At such times on such forms as HUD and/or the City may require, there shall be furnished to HUD and/or the City such statements, records, reports, data and information, as HUD and/or the City may request pertaining to matters covered by this Agreement. At a minimum, such forms will include the following:
  - (i) Quarterly Data Collection Report forms for the purpose of including specific Program description, accomplishment, expenditure and beneficiary information in the City's Quarterly Performance Reports.
  - (ii) Annual Property Register forms for the purpose of tracking the use of CDBG purchased equipment.
- (c) At any time during normal business hours and as often as the City, the Agency, HUD, Inspector General, U.S. General Accounting Office, and/or the Comptroller General of the United States may deem necessary, the Contractor or Subrecipient shall make available for examination to the City, HUD, Inspector General, U.S. General Accounting Office and/or representatives of the Comptroller General all of its books, accounts, records, reports, files, and other papers or property with respect to all matters covered by this Agreement and shall permit the City, HUD and/or representatives of the Comptroller General and the U.S. General Accounting Office to audit, examine, make excerpts of, and make transcriptions from such books, accounts, records, reports, files, and other papers or property and to make audits of all contracts, invoices, materials, payrolls, records or personnel, conditions of employment and other data relating to all matters covered by this Agreement.

#### **ARTICLE 11. SUBCONTRACTORS**

##### ***[Applicable to Contractors and Subrecipients]***

- (a) The provisions of this Agreement shall apply to Subcontractors and their officers, agents and employees in all respects as if they were employees of the Contractor or Subrecipient. The Contractor or Subrecipient shall not be discharged from its obligations and liabilities, but shall be liable for all acts and negligence of Subcontractors, and their officers, agents and employees, as if they were employees of the Contractor or Subrecipient.
- (b) Employees of the Subcontractor shall be subject to the same provisions as employees of the Contractor or Subrecipient.
- (c) The services furnished by Subcontractors shall be subject to the provisions hereof as if furnished directly by the Contractor or Subrecipient, and the Contractor or Subrecipient shall remain responsible therefor.
- (d) Any subcontracts entered into pursuant to this Agreement shall include Exhibit 3 (Investigations Clause, Conflicts of Interest Clause; and Executive Order No. 50 provisions, which shall be binding on every Subcontractor.

**ARTICLE 12. CONFLICTS; EXHIBITS**

*[Applicable to Contractors and Subrecipients]*

- (a) If any provision in this CDBG Rider directly conflicts with any other provision in the Agreement, the provision in CDBG Rider shall be controlling.
- (b) Federal Exhibits 1 and 2 are attached to, and made a part of this CDBG Rider.

**ARTICLE 13. REVERSION OF ASSETS**

*[Applicable to Subrecipients]*

- (a) At the Agreement's expiration, the Subrecipient shall transfer to the City all CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds.
- (b) Any real property under the Subrecipient's control that was acquired or improved in whole or in part with Community Development funds in excess of \$25,000 must be used to either (i) meet the national objectives in Section 570.208 for a period of five years after acquisition if the property or completion of the improvements, as applicable, or (ii) disposed in a manner which results in the Program being reimbursed in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to, the property.
- (c) Title to all Equipment in excess of \$5,000 purchased pursuant to this Agreement with CDBG funds or furnished by the City shall vest in the City and the same shall be conspicuously labeled as such.

**ARTICLE 14. SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS**

*[Applicable to Subrecipients. Contractors must follow section C(11) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.]*

Subrecipient shall take the following affirmative steps in the letting of subcontracts, if subcontracts are to be let, in order to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

- (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

#### **ARTICLE 15. INTANGIBLE PROPERTY**

*[Applicable to Subrecipients. A similar provision for Contractors is included in the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts at section C(12).]*

- (a) Pursuant to 2 CFR § 200.315(d), the federal Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a) the copyright in any work developed under the Agreement or subcontract; and (b) any rights of copyright to which a Subrecipient purchases ownership with grant support.
- (b) Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to the Agreement ("Copyrightable Materials"), and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to the contract, shall upon their creation become the exclusive property of the City. The Copyrightable Materials shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Subrecipient hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Subrecipient shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Subrecipient for no purpose other than in the performance of this Agreement without the prior written permission of the City. The City may grant the Subrecipient a license to use the Copyrightable Materials on such terms as determined by the City and set forth in the license.
- (c) The Subrecipient acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Subrecipient shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.
- (d) The Subrecipient represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Subrecipient has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract, copies of which shall be provided to the City upon execution of this Contract.

- (e) The Subrecipient shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Agreement and the Contractor shall promptly and fully report to the Government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
- (f) If the Subrecipient publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

#### **ARTICLE 16. HATCH ACT; LOBBYING; CONFLICTS OF INTEREST**

*[Applicable to Subrecipients.]*

- (a) Hatch Act: The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
- (b) Lobbying: The Subrecipient agrees that no funds provided will be used by it or its Subcontractors in violation of 24 CFR § 87.100.
- (c) Conflict of Interest: The Subrecipient agrees to abide by the provisions of 2 CFR §§ 200.112 and 200.318(c) and 24 CFR § 570.611.

#### **ARTICLE 17. SUSPENSION AND TERMINATION**

*[Applicable to Subrecipients.]*

- (a) The City may take enforcement action against a Subrecipient for non-compliance, as described in 2 CFR §§ 200.338 and 200.339(a)(1) & (2), including suspension or termination.
- (b) The City may terminate for convenience pursuant to 2 CFR § 200.339(a)(3).

#### **ARTICLE 18. PERFORMANCE REQUIREMENTS AND REMEDIES**

*[Applicable to Contractors]*

The Disaster Relief Appropriations Act, 2013 (Public L. 113-2) of January 29, 2013, requires contracts to contain "performance requirements and penalties." Accordingly, Contractor shall be subject to any performance requirements and remedial provisions and/or liquidated damages set forth in this Agreement. Contractor acknowledges that negative performance evaluations may impair its ability to win future contracts with the City as follows: Under City Procurement Policy Board (PPB) Rules section 4-01, Contractor is subject to performance evaluations at least once

annually. The City shall enter such performance evaluations into the VENDEX system. To the extent allowed by the PPB Rules, such performance evaluations shall be considered by the City in:

- (1) making a determination of the Contractor's responsibility or non-responsibility in future City procurements, under PPB Rule section 2-08(g)(1)(ii) and
- (2) deciding to renew or not to renew the Agreement, under PPB Rule section 4-04(c)(10).

**FED. EXHIBIT 1**

**NOTICE TO BIDDERS**

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL HUD COMMUNITY DEVELOPMENT FUNDED CONSTRUCTION CONTRACTS AND SUB-CONTRACTS IN EXCESS OF \$10,000.

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth above.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

Goals and Timetables for Minorities

<u>Trade</u>	<u>Goal (Percent)</u>		
Electricians .....	9.0	to	10.2
Carpenters .....	27.6	to	32.0
Steamfitters .....	12.2	to	13.5
Metal Lathers .....	24.6	to	25.6
Painters .....	28.6	to	26.0
Operating Engineers .....	25.6	to	26.0
Plumbers .....	12.0	to	14.5
Iron Workers (structural) .....	25.9	to	32.0
Elevator Constructors .....	5.5	to	6.5
Bricklayers .....	13.4	to	15.5
Asbestos Workers .....	22.8	to	28.0
Roofers .....	6.3	to	7.5
Iron Workers (ornamental) .....	22.4	to	23.0
Cement Masons .....	23.0	to	27.0
Glazers .....	16.0	to	20.0
Plasterers .....	15.8	to	18.0
Teamsters .....	22.0	to	22.5
Boilermakers .....	13.0	to	15.5
All Other .....	16.4	to	17.5

Goals and Timetables for Women

From April 1, 1980 until the present ..... 6.9

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals

established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved Construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any Construction subcontract in excess of \$10,000 at any tier for Construction Work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Agreement, the "covered area" is the City of New York.

**EXHIBIT 2**

### Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**APPENDIX L**  
**WHISTLEBLOWER POSTER**



## **REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION**

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

**Department of Investigation (DOI) Complaint Bureau  
212-825-5959**

**or by mail or in person at:**

**DEPARTMENT OF INVESTIGATION  
80 MAIDEN LANE, 17th FLOOR  
NEW YORK, NEW YORK 10038  
Attention: COMPLAINT BUREAU**

**or file a complaint on-line at:**

**[www.nyc.gov/doi](http://www.nyc.gov/doi)**

*All communications are confidential.*

### **THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract over \$100,000 to DOI or to certain other government officials all of whom must forward the report to DOI.
- Any employee who has made such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.

**Get the Worms Out  
of the Big Apple.**

**APPENDIX M**

**RESERVED**