

“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 <u>Part II, Section 9.4</u> .
“Payroll Report”	Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete in the form annexed to this Contract in <u>Appendix I</u> (Outside Funding Sources)
“Percentage of Completion”	An amount equal to the percentage of completion of each Portion of the Services
“Person In Charge”	As identified in <u>Part I, Section 2.5</u> , 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 <u>Appendix B</u> (Scope of Services) and/or <u>Appendix C</u> (Payments)
“Principal”	The most senior officer, or member of the Consultant’s staff responsible for the performance of Services as identified in <u>Part I, Section 2.4</u>
“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 Project or Services milestones, deadlines or delivery dates
“Project”	As identified in <u>Part I, Section 1.7</u> , and described in detail in <u>Appendix B</u> (Scope of Services)
“Project Manager”	A person designated by the Corporation to serve as a liaison between the Corporation and the Consultant
“Project Site”	The location of a specific project being undertaken by the Corporation for which the Consultant’s Services are retained, as identified in any Task Order or Assignment issued pursuant to this Contract.

“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 any set percentage identified in <u>Part I, Section 1.10</u> , subject to the provisions of <u>Part II, Article 2</u> and <u>Part III, Appendix C</u> (Payments)
“Retainage Payment Date”	The date by which any Retainage identified in <u>Part I, Section 1.10</u> will be paid to the Consultant, as identified in <u>Part I, Section 1.11</u> , subject to the provisions of <u>Part II, Article 2</u> and <u>Part III, Appendix C</u>
“Scope of Services”	The Services to be provided by the Consultant in connection with this Contract, as set forth in <u>Appendix B</u> (Scope of Services)
“Services”	All of the services to be provided to the Corporation by the Consultant pursuant to the Contract, as described in greater detail in <u>Appendix B</u> (Scope of Services)
“SHPO”	State Historic Preservation Officer
“Specific Terms and Conditions”	<u>Part I</u> of this Contract
“Staff and Fee Schedule”	Schedule listing names of Consultant’s staff, hourly rates and estimated number of days to be spent providing Services
“State”	State of New York

“Subcontractor”	Any person or entity including 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 <u>Part II, Section 4.2</u>
“Subrecipient Agreement”	The Subrecipient Agreement, dated June 24, 2013, between the City and NYCEDC, as amended by the First Amendment to Subrecipient Agreement, dated July 25, 2013, (a copy of each which are attached to this Contract at <u>Appendix M</u> ) and as may be further amended, amended and restated, modified or supplemented from time to time.
“Target Subcontracting Percentage”	As defined in <u>Part II, Section 9.3</u>
“Term”	The time period of this Contract, as stated in <u>Part I, Section 1.5</u>
“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

<p><b>“Work Product”</b></p>	<p>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 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; <u>provided</u>, that Work Product shall not include any Consultant’s Underlying Intellectual Property</p>
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**Interpretation**

Except as otherwise provided herein, the following rules of interpretation shall apply to the Contract.

(a)	The singular includes the plural and the plural includes the singular.
(b)	The word “or” is not exclusive.
(c)	A reference to any law, ordinance, regulation, statute, order, code or other Legal Requirements includes any amendment or modification to such law, ordinance, regulation, statute, order, code or other Legal Requirements.
(d)	A reference to any person or entity includes its permitted successors, permitted replacements and permitted assigns.
(e)	The words “include”, “includes” and “including” are not limiting.
(f)	Unless otherwise expressly provided, references to any document, instrument or agreement (i) shall include all appendices, exhibits, schedules and other attachments thereto, (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (iii) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.
(g)	The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Contract as a whole and not to any particular provision of this Contract.
(h)	References to “days” shall mean calendar days, unless the term “Business Day” shall be used.

(i)	References to a time of day shall mean such time in New York, New York unless otherwise specified.
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**APPENDIX B**

**SCOPE OF SERVICES**

**DEFINITIONS**

- A. **In General.** 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.
- B. **Additional definitions.** For purposes of this Contract, in addition to the definitions set forth in Appendix A (Definitions) the following terms shall have the following meanings:

<b><u>"2013 Programmatic Agreement"</u></b>	The programmatic agreement dated May 9, 2013 among the Federal Emergency Management Agency, SHPO, the State Office of Emergency Management, the Delaware Nation, the Delaware Tribe of Indians, the Shinnecock Nation, the Stockbridge-Munsee Community Band of Mohicans, the LPC, and the Advisory Council on Historic Preservation.
<b><u>"Allowable Additional Costs"</u></b>	Allowable Additional Costs are costs of out-of-pocket expenses which may include the cost of printing, special mailings (such as overnight delivery and messenger services), Services-related long distance telephone and facsimile charges, and any other out-of-pocket expenses, approved in advance by the Director, on a direct cost basis (with no additional provisions or overhead fee).  Allowable Additional Costs shall not include travel to and from any Project site, meals, and those costs considered to be overhead such as normal mailing, local telephone and facsimile charges, in-house copying secretarial, clerical and typist time and the purchase of office or graphic supplies.
<b><u>"Assignment"</u></b>	Task Order assignments issued by the Corporation.
<b><u>"CDBG-DR Funds"</u></b>	Community development block grant funds for disaster recovery disbursed to any Person which originate from the funds appropriated under the Disaster Relief Appropriations Act of 2013 (Public Law 113-2).
<b><u>"CDBG-DR Program"</u></b>	Any program described in a City Action Plan or Action Plan amendment in connection with which CDBG-DR Funds are expected to be disbursed to NYCEDC pursuant to the Subrecipient Agreement.

<u>“CDBG-DR Rules”</u>	As defined in <u>Exhibit 1</u> to this <u>Appendix B</u> .
<u>“CEQR”</u>	New York City Environmental Quality Review
<u>“CFR”</u>	Code of Federal Regulations
<u>“City Action Plan”</u>	The City’s “Partial Action Plan A” as approved by HUD on May 10, 2013, a copy of which may be obtained (as of the Contract Date) from the following website: <a href="http://www.nyc.gov/html/cdbg/html/plan/read.shtml">www.nyc.gov/html/cdbg/html/plan/read.shtml</a> .
<u>“Deliverable(s)”</u>	Specific Work Product derived from associated Tasks required under this <u>Appendix B</u> (Scope of Services) and/or produced and delivered by the Consultant in connection with this Contract in furtherance of the Services.
<u>“FONSI”</u>	Notice of Finding of No Significant Impact
<u>“NEPA”</u>	National Environmental Policy Act
<u>“Project”</u>	Any capital improvement or other project funded with CDBG-DR Funds under a CDBG-DR Program.
<u>“RROF”</u>	Request for Release of Funds
<u>“SEQRA”</u>	New York State Environmental Quality Review Act
<u>“SHPO”</u>	New York State Historic Preservation Office
<u>“Tasks and Services”</u>	Tasks and Services specified to be rendered by Consultant under this Contract.
<u>“Task Order”</u>	“The specific Services to be performed by the Consultant for one or more specific Projects as detailed in a task order acceptable to NYCEDC.

## A. OVERVIEW

NYCEDC is seeking one or more Consultant(s) to provide comprehensive environmental services for NYCEDC and the City related to certain Projects expected to receive Federal funding through the CDBG-DR program administered by the HUD. These services will be completed on Projects related to programs listed in the City’s current and future CDBG-DR

Action Plans and Action Plan amendments currently posted at <http://www.nyc.gov/html/cdbg/html/plan/read.shtml>). The City's first CDBG-DR Action Plan was approved by HUD on May 10, 2013.

The Consultant will perform environmental services as an "on call" environmental service provider for NYCEDC and the City as directed by NYCEDC from time to time during the Contract Term, as such services are specified in an Assignment awarded to the Consultant pursuant to a Task Order issued under this Scope of Work in connection with certain Projects. All Projects that are the subject of such a Task Order are expected to receive Federal funding through the CDBG-DR program administered by HUD and will be undertaken in respect of a given CDBG-DR Program referred to in the City Action Plan. It is anticipated that such Projects will involve the following types of work:

- Under the Program known as the "Business Resiliency Investment Program" – physical investments to improve resiliency to the impacts of severe weather.
- Under the Program known as the "Neighborhood Game-Changer Investment Competition" – projects, capital improvements, initiatives or other activities expected to be undertaken by individuals or entities receiving CDBG-DR Funds in connection with such Program who are winners of the competition.
- Under the Program known as the "Infrastructure and Building Resiliency Technologies Competition" –innovative and cost-effective measures to improve building and/or infrastructure resiliency to the impacts of severe weather expected to be undertaken by individuals or entities who are grantees receiving CDBG-DR Funds as winners of the competition contemplated in such Program.
- Under the Program known as the "Business Loan and Grant Program" – projects in which individuals or entities who are borrowers or grantees of CDBG-DR Funds under such Program are using such funds to purchase moveable equipment and/or pay for certain working capital expenses.
- Other Projects which may be undertaken in the future with CDBG-DR Funds pursuant to amendments to the City Action Plan or one or more new action plans or amendments which may, from time to time, be developed by the City and approved by HUD in accordance with applicable law.

It is anticipated that NYCEDC will award the Services for these Projects from among one or more on-call environmental service providers retained or to be retained by NYCEDC for such Services. If more than one environmental service providers has been selected by NYCEDC, Task Orders will be allocated in a reasonable manner, to be determined by NYCEDC, using methods permitted under the City Contract, the Subrecipient Agreement and applicable law.

## **B. TASKS AND SERVICES**

The Consultant(s) shall perform the following services and provide the following tasks:

- 1. Conduct HUD-mandated Environmental Reviews per 24 CFR Part 58 and other applicable environmental regulations, for each Project covered in a Task Order.**

The Consultant(s) shall determine the level of review required for Projects related to certain programs listed in all Action Plans and Action Plan amendments as listed online at <http://www.nyc.gov/html/cdbg/html/plan/read.shtml> now and in the future, on an as-needed basis, according to 24 CFR Part 58. The Consultant(s) will be given Task Orders to specify which environmental reviews are requested by NYCEDC. The Consultant(s) will bill for services on a time and materials or unit cost basis, as appropriate, according to the cost schedule given in Appendix C. The Consultant(s) shall conduct the environmental reviews (including required publication of notices) for all program activities on an as-needed basis according to the required level of review. The Consultant(s) shall provide environmental reviews with tiering (preliminary environmental review on a geographic area or neighborhood when the specific sites or addresses are currently unknown), depending on the circumstances of the activity, when required.

The Consultant(s) will provide Tier I and II reviews as appropriate. (A Tier II Site Specific Review for Properties is also referred to in this document as a Tier II review.) The Consultant(s) shall make every reasonable effort to ensure that all Tier II reviews are completed within 45 calendar days or less from the time the particular Tier II review is requested in writing by NYCEDC.

The document(s) and/or reports prepared by the selected Consultant(s) in connection with the foregoing environmental review would be a joint NEPA, SEQRA and CEQR document and/or report. The proposed actions described above are expected to be funded with CDBG-DR Program Funds and are therefore subject to NEPA, and would require federal approval from HUD in accordance with 24 CFR Part 58-Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. The environmental assessment would also need to satisfy requirements of SEQRA (6 NYCRR 617.8) and CEQR (Sections 6-08 and 6-12 of Executive Order No. 91 of 1977), which requires that state and local government agencies consider the environmental consequences of projects over which they have discretionary authority before acting on those projects.

The Services, including the environmental reviews, shall be completed by the Consultant in accordance with the Applicable Agreements, copies of which are attached to this Contract at Appendix M.

**2. Assist in the Coordination with oversight/regulatory agencies etc. for permits and/or compliance resolution.**

The Consultant(s) shall work and coordinate with all required reviewers and agencies regarding the receipt of all necessary documents and permits for compliance resolution. This shall include liaison to resolve Section 106 review and requirements between the property owner and/or Project sponsor (as applicable) and SHPO LPC, as well as liaise with tribal councils where archeological concerns exist, as applicable.

3. **Perform lead-based paint inspections and risk assessments, if applicable.**
4. **Perform asbestos inspections and risk assessments, if applicable.**
5. **Assist NYCEDC with responding to public comments.**
6. **Coordinate with and report to NYCEDC.**

The Consultant(s) shall work and coordinate with, follow all guidance provided by, and report regularly to NYCEDC environmental staff. Reporting requirements shall be completed on a regular basis by the Consultant(s), as negotiated with NYCEDC. At a minimum, the Consultant will provide monthly reports to NYCEDC detailing the status of each Task Order, showing the percent complete and any outstanding items. The Consultant(s) will also support the reporting of key Project information by NYCEDC to the City, as well as from the City to HUD, including information relating to Project status, financial tracking, and Project compliance with all related CDBG-DR Rules.

#### **7. Technical assistance**

The Consultant(s) will provide technical assistance to NYCEDC including technical assistance in:

- Assessing the feasibility of Projects
- Developing and executing the optimal approach to complete associated environmental reviews of such Projects
- Determining the nature and extent of the environmental review that would be required for such Projects

#### **8. ASTM-1527-05 Environmental Assessments/ Phase I Environmental Site Assessments (ESA)**

When requested by NYCEDC, the Consultant(s) shall perform ASTM-1527-05 environmental assessments/Phase I ESA on properties and provide a scope of work for the same..

#### **9. Program Administration Services**

The Consultant(s) will work with NYCEDC on a daily basis to assist in the overall management of the programs with respect to preparing Task Orders, facilitating and expediting environmental reviews, assimilating data to be used in the preparation of the environmental records, facilitating all Task Orders from NYCEDC, and acting as the liaison with various government agencies that are responsible for providing responses or approvals as part of the environmental reviews.

These services will include managerial tasks necessary for the management and administrative aspects of the Project that shall include the following elements:

- Program planning, organization, contracting, scheduling and reporting to NYCEDC;

- Assistance with organizing and scoping of Task Orders issued under various Programs within NYCEDC;
- Liaisons with agencies as necessary to facilitate environmental reviews;
- Research, analysis, acquisition, and maintenance of Project data;
- Administrative, accounting and recordkeeping functions;
- Training for specific workflow procedures, if required;
- Regular or requested meetings with NYCEDC, other affected agencies and other parties, development of programmatic agreements as needed; and
- Costs for filing public notices and fees paid to agencies.

The Consultant(s) shall provide such program administration services on a time and materials basis in accordance with the rate schedule provided in Appendix C.

The Consultant(s) will work with NYCEDC on a regular basis to develop and facilitate all Task Orders from NYCEDC.

The Consultant(s) will maintain close coordination with NYCEDC as needed, with anticipated communication on a daily basis. In addition to the provisions of Sections 10.3 and 10.4 of the Contract, NYCEDC will have regular access to all Program data maintained by the Consultant(s) or its Subcontractors. In addition, Consultant(s) will also coordinate with NYCEDC on a Task Order basis to assure the appropriate level of environmental review is performed and no services are conducted without NYCEDC's concurrence or authorization.

#### Assistance in Comment Phases

The Consultant(s) shall also assist NYCEDC in comment phases of environmental reviews, including:

- Under the direction of NYCEDC, contact with State/Federal agencies resulting in further consultation and/or study;
- More definitive comments from State/Federal agency following completion and submittal of detailed study;
- Comments by federal agency following receipt of the —Combined Notice of Finding of No Significant Impact and of —Intent to Request a Release of Grant Funds; and
- Comments from public or private entities during the public comment period.

#### Preparing Programmatic Agreements

The Consultants(s) will assist NYCEDC in developing and implementing a programmatic agreement with regulatory agencies as necessary in order to provide for streamlined program implementation and compliance resolutions.

**10. Any other job duty that relates to 24 CFR Part 58 HUD Environmental Reviews and other environmental regulations on an as-needed basis.**

## **C. DELIVERABLES**

### **1. Environmental Reviews**

The Consultant(s) will perform the following activities for properties pursuant to 24 CFR Part 58 (HUD Environmental Review):

- a) Certification of Categorical Exclusion not subject to 24 CFR Part 58.5;
- b) Certification of Categorical Exclusion subject to 24 CFR 58.5;
- c) Environmental Assessment without further Consultation under 24 CFR 58.36;
- d) Environmental Assessment with further Consultation under 24 CFR 58.36;
- e) Environmental Impact Statements under 24 CFR Part 58.37.

As noted above, the document(s) and/or reports prepared by the selected Consultant(s) in connection with the foregoing environmental review would be a joint NEPA SEQRA CEQR document and/or report. The environmental reviews will also be completed in accordance with existing programmatic agreements, including, but not limited to the 2013 Programmatic Agreement included as one of the Applicable Agreements.

All environmental review documents/reports will include NEPA/SEQRA/CEQR topics of analysis, as appropriate, to satisfy federal, state and local environmental review requirements.

### **2. Task Orders**

Work for specific tasks for Projects requiring Environmental Reviews will be initiated and performed through specific Task Orders. One or more Task Orders will be issued by NYCEDC for each environmental review to be performed. Multiple Projects requiring environmental review may be listed on a single Task Order. Task Orders will conform to a form and content provided by NYCEDC.

Work involving any exempt determination and any special studies required for a specific Project will be initiated through specification in a Task Order.

The specific budget scope, and staff assigned for each Task Order will be determined through negotiations between the Consultant(s) and NYCEDC. The Consultant(s) will not proceed with Task Order work until the budget, scope, and staff assigned has been approved by NYCEDC. If more than one on-call environmental services provider has been retained by NYCEDC, Task Orders will be allocated in a reasonable manner, to be determined by NYCEDC.

The Consultant(s) will collect specific property information and other Project information necessary for the Consultant(s) to accomplish the work including property site descriptions, physical addresses, nature and description of requests made by the Project sponsor for CDBG-DR funds (e.g., scope of rehabilitation, repairs or reconstruction), anticipated level of review needed, previous data collected, and property contact information such as grant or loan

applicants, owners or knowledgeable parties. The Consultant(s) will also collect site contact information as necessary to access the interior and exteriors of properties under review. Failure of third parties to allow access or to be present for necessary site reviews shall not be the responsibility of Consultant(s).

(a) The Consultant(s) will review each Task Order, ascertain the level of environmental review required, and request an amendment to the Task Order to reflect a higher tier of review if needed.

(b) When NYCEDC affirms the level of review, the Consultant(s) will proceed with the preparation of the environmental review. The Consultant(s) will coordinate with NYCEDC to determine all additional consultations, permits, etc. required to complete the environmental review.

(c) The Consultant(s) will complete and electronically submit the environmental review to NYCEDC.

(d) The Consultant(s) will provide to NYCEDC proof of publication of all necessary public notices published in the official journal of the affected political jurisdiction as required by 24 CFR Part 58 – Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.

(e) At any time that the Consultant(s) has evidence that a further level of review documents is needed, or that additional assessments or studies are required, the Consultant(s) will advise NYCEDC in writing accordingly and will request an amendment to the Task Order before beginning any additional work.

For each Task Order indicating an environmental assessment of a Project with a site visit is needed, the Consultant(s) will proceed in the following manner:

The Consultant(s) will assign field staff to visit each identified site. The Consultant(s) will contact the appropriate public officials/agencies to obtain information to complete the required checklists as needed. The Consultant(s) will submit all public notices and the Notice of Finding of No Significant Impact (FONSI) and Request for Release of Funds (RROF) for publication in the required order and sequence. Costs for publication will be paid by the Consultant(s) and billed to NYCEDC for reimbursement of actual costs as an Allowable Additional Cost. Information obtained and reports developed during this exercise will be maintained by the Consultant(s) and made promptly available to NYCEDC.

For each Project that is covered in a Task Order, need by the Consultant for environmental permits and compliance demonstrations or authorizations will be evaluated during the environmental assessment of the Project.

### **3. Functional Requirements**

In order to meet the disaster recovery obligations of the City, NYCEDC and the City must comply with federal, state and local environmental laws and regulations. These laws and

regulations require substantial environmental analyses and review of the activities. The Consultant(s) shall comply with all federal, state and local environmental laws and regulations.

#### **4. Staff Requirements**

The Consultant(s) shall provide the following staff positions that shall be held by qualified, experienced personnel. In completing the Hourly Rate Schedule in the Sample Fee and Cost Schedule attached as Exhibit 2 to the RFP, Consultant(s) should identify internal titles that correspond with the staff positions and descriptions below.

- **PROGRAM MANAGEMENT STAFF**

- **Principals**  
Responsible for commitment of resources and personnel for execution of the Services.
- **Program Managers**  
Responsible for overall coordination and execution of the Services including quality control, deliverables, scheduling and invoicing as well as oversight of Program Directors and staff conducting environmental reviews and performing environmental services.
- **Program Directors**  
Responsible for Field implementation and coordination of field teams and quality review, finalization of assessment forms and consultations with agencies. Program Directors work directly with NYCEDC staff in charge of the various grant Programs to facilitate Task Orders.
- **Project Managers**  
Critical role team members serving specific functions including assignment to key agencies such as SHPO, Coastal Management Zone Division/USACE and manager of GIS platform systems. These functions include those of an architectural historian, a lead-based paint inspector and risk assessor and an asbestos inspector and risk assessor.

Note: Team members who will be assigned to the environmental analysis of the Projects with respect to historic and cultural resources and archeological resources must be qualified to conduct such assessments as required by Section 106 of the National Historic Preservation Act. There must be a team member who meets the Secretary's Professional Qualification Standard.

- **PROJECT FIELD STAFF**

- **Regional Managers -**  
Typically Principals of the Subcontractors performing the field assessments and providing reviews of deliverables, consistency with regulatory requirements of federal, state and local laws.

- **Project Managers**  
Management of multiple field teams, coordination of activities, data consolidation and reporting.
- **Project Professionals**  
Field Team leaders responsible for conducting field assessments and review of available site specific historical and land use agency databases.
- **Project Associates**  
Field team members assisting in site visits and environmental reviews
- **Project Assistants**  
Technicians and professional assistance to Project Managers – compilation and report preparation assistance
- **Administrative Assistants/Clerical**  
Support for professional staff

## **Exhibit 1 to Appendix B**

### **CDBG-DR Rules**

In addition to other applicable laws, Projects funded with CDBG-DR Funds must comply with all applicable CDBG-DR rules and regulations, as well as all other applicable federal regulations (collectively, the “CDBG-DR Rules”). The specific applicable CDBG-DR Rules will vary based on the measures being pursued for a given Project. A summary of key CDBG-DR Rules is included below. The Consultant will recommend an approach to identify applicable and ensure compliance with all applicable CDBG-DR Rules including but not limited to the CDBG-DR Rules listed below:

#### **A. Environmental Review Process under NEPA**

Consultant shall be required to provide NYCEDC with all information required to complete an environmental review process (the “Environmental Review”) as prescribed by federal law. Projects are subject to an Environmental Review determination under NEPA, and CDBG-DR Funds cannot be obligated prior to the completion of this process. No activities that utilize any project funds can be bid or contracted prior to NYCEDC receiving environmental clearance.

#### **B. National Objective Determination**

Federal Community Development Block Grant program regulations require that the project qualify under one or more of the following National Objectives:

- **Activities Benefiting Low- and Moderate-Income Persons: Creation or Retention of Jobs:** At least 51% of the jobs created or retained by the Project are made available to persons from low and moderate income households as defined by HUD, or the Project serves an area that is defined as predominately low and moderate income as defined by HUD.
- **Activities Benefiting Low- and Moderate-Income Persons: Benefits Low- and Moderate-Income Areas:** To the extent that the service area of the Project benefits low and moderate income persons as described in the project description the project may be able to qualify under this category. NYCEDC can provide maps indicating the HUD identified low and moderate income areas.
- **Activities Meeting an Urgent Need:** The Project addresses an Urgent Need as defined by HUD. It is expected that projects that do not meet the Activities Benefiting Low- and Moderate-Income Persons option will address Urgent Need because the project will address critical needs in Impact Areas.

Projects that qualify under paragraph B(1) above, Activities Benefiting Low- and Moderate-Income Persons: Creation or Retention of Jobs, shall provide annual documentation concerning positions created and/or retained and made available to low- and moderate-income households

for six years.<sup>1</sup> Jobs created under this National Objective are required to be created within two years of the funding agreement, or within two years of substantial completion of the Project, depending on the nature of the Project.

C. Duplication of Benefits

In the event the Project qualifies for other federal disaster assistance including from the Small Business Administration (SBA) or other federal sources the applicant may be required to disclose this information on the proposed sources and uses of funds for the project budget. The applicant shall be required to apply for said assistance to the extent that the application deadline for that assistance has not passed. In addition, any state or local government forms of disaster assistance received, or expected to be received shall be fully disclosed. The CDBG-DR Program requires that any forms of public financial assistance received, or expected to be received be part of the calculation in determining the amount of Award Funds that shall be approved for the project.

D. Applicable Federal Labor Standards

Potential applicable federal Labor Standards include:

- Davis Bacon Act, which is triggered when construction work over \$2,000 is financed with CDBG funds; workers must be paid the prevailing wages which are determined by the U.S. Department of Labor. For questions about specific wage rates that will attach to the project contact NYCEDC.
- Copeland Anti-Kickback Act, which requires that workers be paid weekly/ and contractors submit weekly payrolls.
- Contract Work Hours and Safety Act, which applies to contracts over \$100,000 and requires the workers receive overtime compensation (time and ½) for any hours worked in excess of 40 hours in a week.
- Section 3 of Housing and Urban Development Act of 1968, which addresses the provision of employment and other economic opportunities for lower income residents of the project area. Section 3 requires that recipients of CDBG-DR Fund, to the greatest extent feasible, provide employment and other economic opportunities to low- and moderate-income residents of the service area. "Service area" is defined as the geographical area in which the persons benefitting from the Section 3 covered project reside.

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<sup>1</sup> For the purpose of the CDBG-DR NYC Hurricane Sandy program, if the annual *salary* of the *position* created or retained is less than 80% of the HUD published area median income then the entire household is presumed to meet the definition of low- and moderate-income. It is also possible to meet the low- and moderate-income job creation/retention national objective if the owner of a business with five or less employees (defined as a microenterprise business) has an annual *household* income less than 80% of the area median income. In this instance, all of the employees of that business are presumed to be low- or moderate-income under HUD regulations, however *all* of the income of the business owner's *household* (not just the salary of that owner) is considered for the purpose of determining annual income.

- In addition, federal law requires that to the greatest extent feasible, recipients of CDBG-DR financial assistance award contracts to Section 3 businesses which are defined as those that 1) are owned by low- and moderate-income Section 3 service area resident, 2) where at least 30% of the business concern's full-time employees shall be low and moderate income project area residents or 3) that provides evidence of commitment to sub-contract in excess of 25% of the dollar award of all sub-contracts to Section 3 business concerns.

Section 3 Requirements are triggered for any contract or subcontract in excess of \$100,000.

E. Uniform Relocation Assistance and Real Property Acquisition Policies Act ("URA")

The federal URA requires:

- Certain actions when a Project will result in the displacement of residents or businesses including:
  - relocation payments for persons/businesses displaced by the project;
  - notice requirements; and
  - providing for reimbursement of moving and reestablishment expenses.
- Certain actions when CDBG-DR Funds are used for the acquisition of real property including:
  - the completion of a written appraisal of the property before negotiations;
  - providing the owner with a written offer of just compensation; and
  - reimbursement of seller's expenses associated with transfer.

Eminent Domain is specifically prohibited for the purposes of this project in the City Action Plan. Federal law also requires a one for one replacement if any occupiable low- or moderate-income housing units (vacant or occupied) are demolished.

F. Prohibition Against Undue Enrichment

Award Funds may not exceed the minimum amount needed to make the proposed project financially feasible. This requires that project costs, in both the development and operating phases, be reasonable, that the project maximizes the amount of other funding available to the project including private debt, and that the return on investment is consistent with comparable projects. NYCEDC will perform underwriting of the proposed project and the use of Award Funds to insure this requirement is met.

G. Conflict of Interest

No one who exercises any functions or responsibilities with regard to the CDBG-DR Funds in New York City, or who are in a position to participate in a decision-making process or gain

inside information, may obtain a financial interest or benefit from a CDBG-DR Funds-assisted activity (or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-DR Funds-assisted activity), or with respect to the proceeds of the CDBG-DR Funds-assisted activity. This applies to individuals as well as those with whom they may have business or immediate family ties, during their tenure or for one year thereafter. This conflict requirement applies to any employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds.

#### H. Non-discrimination Requirements

Projects must comply with all applicable federal civil rights laws relating to fair housing, handicap accessibility, and equal opportunity.

#### I. Compliance with Codes, Standards and Regulations

Projects shall comply with all applicable codes, standards, and regulations related to the project, including workers' safety rules that are administered by federal agencies (e.g., the U.S. Environmental Protection Agency, Occupational Safety and Health Administration, and Department of Transportation, among others). Projects must also comply with:

- Flood Insurance Protection requirements that mandate the purchase of flood insurance protection for a prescribed period of time and dollar amount for any assisted Special Flood Hazard Area (SFHA) building
- Assistance to small businesses requirement that when CDBG-DR Funds in the Hurricane Sandy appropriation are provided to for-profit businesses, such funds may only be provided to a small business, as defined by the US Small Business Administration

#### J. Americans with Disabilities Act of 1990 and Uniform Federal Accessibility Standards Requirements for Proposed Construction/Rehab Activities

- The Americans with Disabilities Act prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, state and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of TDD/telephone relay services.
- The Architectural Barriers Act of 1968 requires that facilities designed, built, altered, or leased with federal funds be accessible to the public. Facilities that predate the law (Aug. 12, 1968) generally are not covered, but alterations or leases undertaken after the law took effect can trigger coverage. It includes uniform standards for the design, construction and alteration of buildings so that physically handicapped persons will have ready access to and use of them. These Uniform Federal Accessibility Standards (UFAS)

are developed and maintained by an Access Board and serve as the basis for the standards used to enforce the law.

K. Quarterly Report Info

The Consultant will provide NYCEDC with key project information on a quarterly basis to facilitate quarterly reporting by OMB to HUD.

**APPENDIX B-1**

HUD SUPPLEMENTARY GENERAL CONDITIONS

1. SUPPLEMENTAL GENERAL CONDITIONS-- COMMUNITY DEVELOPMENT BLOCK GRANT REQUIREMENTS
2. HURRICANE SANDY CDBG-DR APPENDIX

1. SUPPLEMENTAL GENERAL CONDITIONS– COMMUNITY DEVELOPMENT BLOCK GRANT REQUIREMENTS

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**ARTICLE 1**

**DEFINITIONS**

As used in this Contract:

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

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

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

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

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

(f) "Grant" means Community Development Block Grant Program funds provided to the Contractor through the City of New York and by the Federal Department of Housing and Urban Development.

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

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

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

**ARTICLE 2**

**FEDERAL CONDITIONS**

This Agreement is subject to:

(a) 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. In this regard, the Agency is under no obligation to make any payments to the Contractor, and shall not make any such payment, and the Contractor shall not commence performance, until:

(i) 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;

(ii) the Contractor has been notified of such instructions by the Agency. Furthermore, the Contractor and the City mutually agree that the Contractor 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 for any costs incurred in violation of this provision.

(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. The provisions of this Article 2(d) shall be incorporated in and made a part of all subcontracts executed in connection with this agreement.

(e) Section 3 of the Housing and Urban Development Act of 1968 (P.L. 90-448). Pursuant to 24 CFR § 135.38, the Contractor agrees to the following:

A. 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.

B. 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.

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 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.

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 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 obligations under 24 CFR Part 135.

F. 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.

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 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).

(f) 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 Article 2(f) is to be included in all subcontracts, for work in connection with this Agreement, which relate to residential structures.

(g) 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.

(h) Consistent with 24 CFR § 570.614, the Contractor 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).

(i) 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.

(j) 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.

(k) Uniform Administrative Requirements.

(i) Subrecipients that are governmental entities, including those that are public agencies or authorities, shall comply with the following:

a. Federal Office of Management and Budget (OMB) circular A-87, Cost Principles for State, Local and Indian Tribal Governments;

b. Federal Office of Management and Budget (OMB) circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (rev. 6/27/03);

c. The sections of 24 CFR Part 85, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, that are set forth in 24 CFR § 570.502(a).

(ii) Subrecipients, except those which are governmental entities, public agencies or authorities, shall comply with the following:

a. Federal Office of Management and Budget (OMB) circular A-122, Cost Principles Non-Profit Organizations;

b. In the event that the Contractor is an educational institution, Federal Office of Management and Budget (OMB) circular A-21, Cost Principles for Educational Institutions;

c. The sections of 24 CFR Part 84, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, that are set forth in 24 CFR § 570.502(b). The provisions of 24 CFR Part 84 implement OMB circular A-110;

d. Federal Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (rev. 6/27/03).

e. Execution of a subrecipient agreement.

(iii) Contractors shall comply with the provisions of 24 CFR Part 85 and 48 CFR Part 31, as applicable.

(l) The Contractor agrees that if any income is generated from the Community Development Block Grant Program funded activities, Contractor 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).

(m) If the Contractor 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 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).

(n) Executive Order 11246, as amended, and the implementing regulations contained in 41 CFR Chapter 60, as amended, prohibit discrimination in employment due to race, color, religion, sex or national origin during the performance of all Federal or federally assisted contracts.

- (i) During the performance of this Agreement the Contractor agrees as follows:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.
  - b. 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, sex, religion or national origin.
  - c. The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other Agreement or understanding, a notice to be provided by the Agency contracting officer, advising the labor union or worker's representatives of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
  - e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations, and orders.
  - f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, 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, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
  - g. The Contractor will include the provisions of this Article 2(n) 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, as amended, so that 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 Secretary of Labor as a means of enforcing such provisions, including sanctions for non-compliance: 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, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

(o) The Contractor agrees that if it enters a Construction subcontract as part of its Agreement with the City, and this Construction subcontract is for an amount more than \$10,000, the notice found at FEDERAL EXHIBIT 1 of this Agreement must be included in that Construction subcontract.

### **ARTICLE 3**                    ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION

In the event that this Agreement involves Construction work, design for Construction or Construction services, all such work or services performed or administered by the Contractor shall be subject to the following requirements in addition to those set forth in Article 2.

- (a) Federal Labor Standards: The Contractor will comply with the following:
  - (i) 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, 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 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.
  - (ii) 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, under any Construction Agreement 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.
  - (iii) 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.
  - (iv) The more complete detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.
  - (v) The provisions of Article 3(a) of this Agreement shall be included in all subcontracts for work in connection with this Agreement.

- (b) 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.

**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 Agreement 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).

#### **ARTICLE 4**

#### **NONDISCRIMINATION**

(a) The Contractor shall not, in any Program or activity receiving funds under this Agreement, discriminate against any person on the grounds of race, color, national origin, religion, sex, age, or disability. The Contractor agrees to comply with provisions of 24 CFR Part 6, 8, and 146.

## ARTICLE 5

### RECORDS AND AUDITS

(a) Records shall be maintained in accordance with requirements prescribed by 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.

(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) Annual Data Collection Report forms for the purpose of including specific Program description, accomplishment, expenditure and beneficiary information in the City's Annual Performance Report.

(ii) Annual Property Register forms for the purpose of tracking the use of CDBG purchased real property.

(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 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 6

### UNEARNED PAYMENTS

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 will be returned to the City. All interest on funds advanced to the Contractor will be returned to the City.

## ARTICLE 7

### DISBURSEMENT RESTRICTIONS

No money under this Agreement shall be disbursed by the Agency to any Contractor except pursuant to a written contract which incorporates the applicable Supplementary General Conditions and unless the Contractor 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 58.

**ARTICLE 8**

DOCUMENTATION OF COSTS

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 Contract, shall be clearly identified and readily accessible.

**ARTICLE 9**

BONDING

The Agency must receive a statement from the Contractor's chief fiscal officer or their insurer assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount and manner consistent with the coverage deemed necessary by the City of New York for its own employees. If the bond is cancelled or coverage is substantially reduced, the Contractor 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 until it has received assurance that adequate coverage has subsequently been obtained.

**ARTICLE 10**

ACCOUNTING SYSTEM

The Contractor 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 Contractor, other provisions of the Agreement notwithstanding.

**ARTICLE 11**

COPYRIGHTS

(a) Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

(b) Any reports, documents, data, photographs, deliverables, and/or other materials, including software, produced pursuant to this Agreement ("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 subsist. 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 Agreement without the prior permission

of the City. The Department may grant the contractor a license to use the Copyrightable Materials on such terms as determined by the Department 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 U.S. Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall cooperate in this effort, and agrees to provide any further 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 materials 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 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 Agreement, copies of which shall be provided to the city upon execution of this Agreement.

(e) HUD reserves a royalty-free, nonexclusive, perpetual and irrevocable license to reproduce, publish, display, perform, distribute, or otherwise use, and to authorize others to use, for Federal or State government purposes, the copyright in any Copyrightable Materials developed under or the rights to which are purchased under this Agreement.

(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.

## **ARTICLE 12**

### PATENTS

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 Agreement. In addition, any discovery or invention arising out of or developed in the course of work aided by this Agreement shall be promptly and fully reported to HUD for determination by HUD as to whether patent protection on such invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.

## **ARTICLE 13**

### SUBCONTRACTORS

(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. The Contractor 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.

(b) Employees of the Subcontractor shall be subject to the same provisions as employees of the Contractor.

(c) The services furnished by Subcontractors shall be subject to the provisions hereof as if furnished directly by the Contractor, and the Contractor shall remain responsible therefor.

## ARTICLE 14

### SUSPENSION AND TERMINATION

(a) Where the Contractor fails to perform the work satisfactorily as enumerated in the part of this Agreement known as the scope of work, the City may withhold payment, in addition to any other remedy provided for by this Agreement. Where there is failure to comply with the Agreement terms, the City reserves the right to terminate the Agreement. The City further reserves the right to terminate the Agreement for convenience.

(b) 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 Agreement if knowledge of debarment, suspension or other ineligibility has been withheld by the Contractor.

(c) If this Agreement is between the City and a subrecipient, the City may suspend or terminate the Agreement if Subrecipient materially fails to comply with any terms of this Agreement, pursuant to 24 CFR § 85.43, and for convenience, pursuant to 24 CFR § 85.44.

## ARTICLE 15

### REVERSION OF ASSETS

(a) At the Contract's expiration, the Contractor shall transfer to the City all Community Development funds on hand at the time of expiration and any accounts receivable attributable to the use of Community Development funds.

(b) Any real property under the City's or the Contractor's control that was acquired in whole or in part with Community Development funds in excess of \$25,000 will be used to meet the national objectives in Section 570.208 or 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-Community Development funds for acquisition of, or improvements to, the property.

(c) Any real property under the City's control that was improved in whole or in part with Community Development funds in excess of \$25,000 will be used to meet the national objectives in Section 570.208 for a period equal to the life of those improvements. The term shall be determined by the Office of Management and Budget's Office of Community Development. If the City decides to dispose of or change the use of that property so that it no longer continues to meet a national objective, the Program shall be reimbursed in the amount of the current replacement cost of those improvements, divided by the number of years of the life of the improvements, multiplied by the number of years that remain in the life of the improvements.

(d) Any real property under the Contractor's control that was improved in whole or in part with Community Development funds in excess of \$25,000 will be used to meet the national objectives in Section 570.208 for a period of five years after the date of completion of those improvements or disposed in a manner which results in the Program being reimbursed in the amount of the current replacement cost of those improvements.

(e) Title to all equipment in excess of \$150 purchased or leased pursuant to this Agreement with Community Development funds or furnished by the City shall vest in the City and the same shall be conspicuously labeled as such.

## **ARTICLE 16**

### SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS

The 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 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 17**

### ENVIRONMENTAL PROTECTION

For agreements, subcontracts, and subgrants of amounts in excess of \$100,000, the Contractor 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).

## **ARTICLE 18**

### 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).

## **ARTICLE 19**

(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 24 CFR §§ 84.42, 85.36, and 570.611.

**ARTICLE 20**

**BINDING AUTHORITY**

If any provision in this Appendix B-1 directly conflicts with any other provision in the Contract, the provision in Appendix B-1 shall be controlling.

Federal Exhibits 1 and 2, are attached to, and made a part of this Appendix B-1.

Any subcontracts entered into pursuant to this Agreement shall incorporate the following City of New York provisions by reference, which shall be binding on every Subcontractor:

- Investigations;
- Executive Order 50; and
- Conflicts of Interest

**FEDERAL EXHIBIT 1**

**NOTICE TO BIDDERS**

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL CD 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 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.

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*Supplementary General Conditions – Community Development Block Grant Requirements  
Rev. 4/18/2013*

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 Agreement, the "covered area" is the City of New York.

**Federal Labor Standards Provisions**

**U.S. Department of Housing  
and Urban Development  
Office of Labor Relations**

**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. (1) **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 (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 conforming under 29 CFR 5.5(a)(1)(B) 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.

(B) (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.

(e) 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. (f) **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 or 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.)

(U) (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)(i), 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.(f)(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.

(H) The contractor or subcontractor shall make the records required under subparagraph A.3.(f) 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.

(J) 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.

(B) **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 ratings 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. (1) 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.

(B) 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.

(C) 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 1 01 0, 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.

## 2. HURRICANE SANDY CDBG-DR APPENDIX

### ARTICLE 1. DEFINITIONS

The definitions in Article 1 of Appendix B-1 apply to this Hurricane Sandy CDBG-DR Appendix.

### ARTICLE 2. ADMINISTRATIVE CAP

Pursuant to the Disaster Relief Appropriations Act of 2013 (P.L. 113-2) and Section VI(A)(10)(b) of HUD Docket No. FR056960-N-01, attached, a Subrecipient shall not be reimbursed for general administration costs that exceed five percent.

### ARTICLE 3. FLOOD INSURANCE

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. FR056960-N-01.

### ARTICLE 4. CIVIL RIGHTS REQUIREMENTS

Subrecipients shall comply with all civil-rights related requirements, pursuant to 24 CFR § 570.503(b)(5).

### ARTICLE 5. RELIGIOUS ORGANIZATIONS

In addition to the provisions in Article 2(m)(iv) of Appendix B-1, which cover 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, 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. FR056960-N-01.

### ARTICLE 6. QUARTERLY REPORTS

The reports required by Article (5)(b) of Appendix B-1 shall be provided by the Contractor or Subrecipient to the City on a quarterly basis, pursuant to Section VI(A)(2)(e) of HUD Docket No. FR056960-N-01.

### ARTICLE 7. CONSTRUCTION STANDARDS

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.

### ARTICLE 8. PROGRAM INCOME

To the extent deemed necessary by the City, the Program Income provisions set forth in Article 2(1) of Appendix B-1 may be waived and instead the City may apply the alternative program requirements set forth in Section VI(A)(17)(a)-(b) of Docket No. FR056960-N-01, which concern the definition of program income. In such event, the alternative requirements shall be set forth in the Subrecipient Agreement.

#### ARTICLE 9. PERFORMANCE REQUIREMENTS AND LIQUIDATED DAMAGES

Contractor and or Subrecipient shall be subject to the performance requirements and liquidated damages set forth in the Agreement.

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5696-N-01]

**Allocations, Common Application, Waivers, and Alternative Requirements for Grantees  
Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in  
Response to Hurricane Sandy**

Available On-line at  
[http://portal.hud.gov/hudportal/documents/huddoc?id=CDBG-FR\\_Sandy\\_Notice.PDF](http://portal.hud.gov/hudportal/documents/huddoc?id=CDBG-FR_Sandy_Notice.PDF)

## APPENDIX C

### PAYMENTS

#### PAYMENTS BASED ON HOURLY RATES

Interim payments shall be made to the Consultant no more frequently than monthly based on the number of hours members of the Consultant's staff, as shown on the Staff and Fee Schedule annexed hereto as Exhibit 1 to this Appendix C, spent providing the Services, multiplied by the hourly rate and applicable multiplier for each such member of the Consultant's staff on the Staff and Fee Schedule, less any Retainage. The Consultant shall also be reimbursed for Allowable Additional Costs incurred.

On or before the Commencement Date, the Consultant shall provide to the Director an estimate of the number of hours members of the Consultant's staff, as set forth on the annexed Staff and Fee Schedule (Exhibit 1), and its Principal are anticipated to spend providing the Services. Such estimate shall be subject to the Director's approval.

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:

1. Services performed by Consultant's Principal and by its professional and technical staff;
2. the number of hours worked by each such Principal and its professional and technical staff in connection with the Services performed during the billing period;
3. actual salaries incurred during such month;
4. Allowable Additional Costs incurred;
5. Subcontractors' Costs incurred during the billing period;
6. the amount of partial payment requested; and
7. 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.

No multiplier overhead, administrative fee or other mark up will be paid to Consultant for Subcontractors' Costs or Allowable Additional Costs. Except as may be permitted under Part II, Section 2.2.1 of the Contract, Retainage will not be applied against Allowable Additional Costs 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

Staff and Fee Schedule

**HOURLY RATE FEE SCHEDULE**

	<b>Position Category</b>	<b>Corresponding Title at Consultant Firm</b>	<b>Hourly Rate*</b>
<b>Program Management Staff</b>	Principal	Senior Officer	\$254.18
	Program Manager	Officer	\$202.17
	Program Director	Senior Technical Director	\$173.79
	Project Manager	Technical Director	\$159.89
<b>Project Field Staff</b>	Regional Manager	Senior Professional	\$111.51
	Project Manager	Senior Professional	\$111.51
	Project Professional	Professional II	\$90.89
	Project Associate	Professional I	\$75.42
	Project Assistant	Technical II	\$95.66
	Admin Asst/Clerical	Technical I	\$61.77
<b>TOTAL HOURLY RATE</b>			TBD

\* Hourly rates based on multiplier of 2.98

As provided in the Scope of Services, the specific budget scope, and staff assigned for each Task Order will be determined through negotiations between the Consultant and NYCEDC.

**Exhibit 2 to Appendix C**

**EFT Enrollment Form**

*(attached hereto)*





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.





**APPENDIX E**

**INSURANCE REQUIREMENTS**

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

**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 (including Owner's Protective Liability):</u>	A minimum of \$1,000,000 combined single limit per occurrence, with an annual aggregate of not less than \$2,000,000 in the aggregate  The maximum deductible or self-insured retention (" <u>SIR</u> ") 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
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**Marine Protection and  
Indemnity:**

\$25,000,000 combined single limit 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 combined single limit 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 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:

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>	\$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
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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.

**2. Additional Insureds**

For the purposes of this Contract and the requirements of Article 6 thereof including 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

Apple Industrial Development Corp.

United States Department of Housing and Urban Development

the respective directors, officers, officials, and employees of such Persons, and such other entities, agencies and individuals as the Corporation may direct from time to time

**3. Required Provisions**

The policies required under Section 6.3.8 (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, within 120 days 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 within 120 days after such claim has been filed with the Comptroller of the City and notice of claim from the Corporation, within 120 days 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 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."

4. **Sample Form of Insurance Certificate and Form of Insurance Broker Certificate**

*[attached hereto]*

# ACORD CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)  
11/11/11

PRODUCER

Insurance Broker's Name  
Address

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

## COMPANIES AFFORDING COVERAGE

COMPANY LETTER **A** General Liability Company

COMPANY LETTER **B** Auto Liability Company

COMPANY LETTER **C** State Insurance Fund

COMPANY LETTER **D** Professional Liability Company

COMPANY LETTER **E** Builders Risk Company

INSURED

Your Firm's Name  
Address

## COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO TR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE OCCUR <input checked="" type="checkbox"/> OWNER'S & CONTRACTOR'S PROT <input checked="" type="checkbox"/> Additional Insureds	Insurance Policy #	11/11/11	22/22/22	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS COMP/OP AGG. \$ PERSONAL & ADV. INJURY \$ EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person) \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY	Insurance Policy #	11/11/11	22/22/22	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
C	<input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
C	<input type="checkbox"/> WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> OTHER	Insurance Policy #	11/11/11	22/22/22	<input checked="" type="checkbox"/> STATUTORY LIMITS EACH ACCIDENT \$ DISEASE-POLICY LIMIT \$ DISEASE-EACH EMPLOYEE \$

D Professional Liability (Consultant Contracts Only)  Owner's Protective (construction contracts only)\*  
 E Builders Risk (Construction Contracts Only)  \*In very limited situations, we will require Owner's Protective.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS  
 Referenced Project: Contract #1000000  
 Name of Project - Type of Project

CERTIFICATE HOLDER  
 New York City Economic Development Corp.  
 110 William Street, 6th Floor  
 New York, NY 10038  
 Attention: Contract Administration

CANCELLATION  
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
 SIGNATURE HERE, . . . .

Form of Insurance Broker Certificate

*[TO BE PRINTED ON BROKER'S LETTERHEAD]*

**CERTIFICATION BY BROKER**

The undersigned insurance broker represents to the New York City Economic Development Corporation and the City of New York that the attached Certificate of Insurance is accurate in all material respects and that the described insurance is effective as of the date of this certification.

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*(Name of broker)*

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*(Address of broker)*

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*(Signature of authorized official of broker)*

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*(Name and title of authorized official)*

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2013

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Notary Public

## **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 PAYROLL REPORT FORM AND INSTRUCTIONS**

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.

#### **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

### 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 those set forth in Part I, Section 4.3, 4.4, this Appendix, Appendix I (Applicable Certifications and Section 3 Clause) and in Appendix M (Applicable Agreements). 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 I (Applicable Certifications and Section 3 Clause) or Appendix M (Applicable Agreements), 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 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 I**

**APPLICABLE CERTIFICATIONS AND SECTION 3 CLAUSE**

*[attached hereto]*

**CERTIFICATION OF RESTRICTION ON LOBBYING**

I, \_\_\_\_\_, hereby certify on behalf  
*(name of authorized official)*

of \_\_\_\_\_ that:  
*(name of bidder)*

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 any agency, a Member of Congress, an officer or employee of Congress, or any 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 of Lobbying Activities,” 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 is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making for entering into this transition imposed by Section 1352, title 31, U.S. Code. 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.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By:

\_\_\_\_\_  
*(Signature of Authorized Official)*

\_\_\_\_\_  
*(Signature of Authorized Official)*