

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
REQUEST FOR PROPOSALS
FOR THE PROVISION OF CONSULTING SERVICES
NYCEDC CONTRACT NO. 5509-0001
PROJECT CODE NO. 5509**

REQUEST FOR PROPOSALS

Relating to

- The Infrastructure and Building Resiliency Technologies Competition -

Released on Wednesday, April 10, 2013

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PART I INTRODUCTION

1. INVITATION TO SUBMIT PROPOSAL

1.1. The Competition.

The New York City Economic Development Corporation (“NYCEDC”), acting on behalf of the City of New York (the “City”), intends to sponsor an Infrastructure and Building Resiliency Technologies Competition (the “Competition”) to identify winning projects (each, a “Project”) that involve the use of new or innovative technologies and measures to improve the resiliency of New York City’s critical infrastructure networks and building systems. NYCEDC is a not-for-profit corporation that provides economic development and other services to the City pursuant to an amended and restated master contract, dated June 30, 2012, between NYCEDC and the City (the “EDC Master Contract”).

This Request for Proposals (as amended or supplemented from time to time, this “RFP”) represents the first step in undertaking the Competition which is intended to identify Projects that will harness the best practical ideas to enhance building and infrastructure resiliency. It is currently expected that through the Competition, such Projects will be identified and the sponsors of those Projects (each a “Grantee”) will be expected to enter into a grant or other agreement with NYCEDC (each a “Grant Agreement”) and satisfy certain conditions before receiving any funds.

In releasing this RFP, NYCEDC invites qualified entities (each a “Respondent”) to submit proposals in accordance with this RFP (each a “Proposal”) to provide certain services and otherwise assist NYCEDC in the design, development, marketing and administration of the Competition, all as more fully described below in this RFP. A successful Proposal submitted in response to this RFP will demonstrate the Respondent’s experience in providing similar services, professional capability, and a competitive fee and cost schedule.

1.2. Need for Resilient Infrastructure and Building Systems

As a result of Hurricane Sandy, the City experienced widespread damage, power loss, closure of businesses, and loss of jobs. In addition, Hurricane Sandy exposed significant vulnerabilities to critical infrastructure networks and building systems in the City and beyond. Affected infrastructure included:

- ***electric power*** (more than 700,000 power customers lost electricity due to transmission substation failures, overhead line damage and customer equipment flooding);
- ***liquid fuels*** (supply chains were disrupted on multiple levels, resulting in a three-week Citywide gasoline shortage); and
- ***telecommunications networks*** (power outages and flooding resulted in outages and

disruptions to telecommunications networks leaving thousands without landline, cable and mobile telephone service).

Building systems such as electrical equipment, heating and cooling systems and plumbing also suffered significant damage in flooded areas. In the months since the storm, the City Department of Buildings issued approximately 8,700 red and yellow tags representing damaged buildings, including approximately 230 destroyed buildings.

Approximately 88,000 buildings were located in the Sandy inundation zone, approximately 85% of which suffered one foot or more of flooding resulting in the loss or damage to critical building systems. Preliminary advisory flood zone projections will likely add an additional 36,000 buildings (approx.) to the list of buildings that are vulnerable to future storms.

Addressing these vulnerabilities will require capital investment in new technologies to prepare critical networks and building systems for future risks. Post-hurricane analysis identified priority areas to prepare for the future, but sourcing specific cost-effective, innovative technologies remains difficult.

1.3. General Background.

On January 29, 2013, President Obama signed into law the Disaster Relief Appropriations Act of 2013 (Public Law 113-2) which, among other things, appropriated \$16 billion in community development block grant funds for disaster recovery (“CDBG-DR Funds”). The CDBG-DR Funds are to be used for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the areas most impacted and distressed after Hurricane Sandy.

It is expected that the U.S. Department of Housing and Urban Development (“HUD”), which administers CDBG-DR Funds, will enter into a grant agreement with the City (the “City Grant Agreement”) to disburse CDBG-DR Funds.¹ As a grantee of CDBG-DR Funds, the City is not limited in its recovery to returning to pre-disaster conditions. HUD encourages the use of CDBG-DR Funds to carry out activities that not only address disaster-related impacts, but leave communities sustainably positioned to meet the needs of their post-disaster populations and to further prospects for growth.

On March 25, 2013, the City submitted to HUD its Partial Action Plan A for CDBG-DR Funds (the “City Action Plan”), in which it identified the Competition as a way of identifying winning Projects and awarding grants for the most innovative and cost-effective measures to improve building and infrastructure resiliency. As of the date this RFP was originally issued, the City Action Plan contemplated that up to \$45,000,000 in CDBG-DR Funds may be distributed as grants to support Projects identified through the Competition.

¹ As of the date this RFP is released, the expectation is that the grant agreement will be entered into in late April at the earliest.

1.4. Goals and Objectives.

(a) The Competition aims to identify and fund Projects that will accomplish the following goals (collectively, the “Competition Goals”):

- identify Projects that have the potential to deploy the most promising new technologies and innovative practices to improve the City’s adaptation to the impacts of global climate change and the resiliency of public and private buildings and critical infrastructure networks in the City;
- competitively allocate CDBG-DR Funds to the Grantees sponsoring such Projects;
- identify resiliency measures that are cost-effective and feasible relative to other commercially available solutions;
- surface new, innovative, scalable and replicable technological solutions to identified vulnerabilities in the public and private buildings and infrastructure in the City;
- create full-time jobs; and
- leverage or otherwise catalyze additional permanent investment in the public and private buildings and infrastructure in the City.

(b) As more fully provided herein, the goal of this RFP is to solicit Proposals from qualified Respondents and identify a Consultant who is able to assist NYCEDC with developing and undertaking the Competition so that the Competition Goals are achieved.

1.6 General Terms and Conditions.

(a) As more fully described below in this RFP, NYCEDC is seeking a Consultant to assist NYCEDC with the design, development, marketing and administration of the Competition, as more specifically described in the scope of services (the “Scope of Services”) attached as Appendix B to the form of contract which is annexed to this RFP as Exhibit 1 (the “Form of Contract”).

(b) The RFP Summary below (Part I, Section 2), summarizes certain information relevant to this RFP such as the anticipated dates for the execution of a Contract with the Consultant, if one is selected pursuant to this RFP, and the anticipated Term of the Contract.

(c) All undefined capitalized terms used in this RFP have the definitions as provided in Appendix A to Part III of the Form of Contract, or if not defined therein, then as provided in the Scope of Services.

(d) Subject to the availability of CDBG-DR Funds and the Proposals received by NYCEDC in response to this RFP, NYCEDC expects to select a single Consultant to provide the Services. The Consultant will be expected to be experienced and fully qualified in all aspects of the Services. Except as may otherwise be agreed, the Consultant will be expected to promptly start undertaking the Services upon the full execution of the Contract substantially in the form of the Form of Contract and receipt from NYCEDC of a notice to proceed. The Form of Contract is an initial draft subject to further review and revision by NYCEDC prior to execution. NYCEDC

shall not be bound to the terms of any aspect of the Form of Contract, and the final acceptance of any successful Proposal shall be subject to, and contingent upon, the negotiation between the parties of a Contract in form and substance acceptable to NYCEDC. Nevertheless, **all Respondents should review the Form of Contract and be familiar with all of the terms and conditions set forth therein prior to submitting a Proposal.**

1.7 Other Requirements.

NYCEDC anticipates that the Competition, this RFP and the Form of Contract, where applicable, may be subject to certain additional rules and requirements, including rules and requirements arising from the use of CDBG-DR Funds as the source of funding to compensate the Consultant. Certain of these additional rules and requirements are described in more detail in Part II, Section 7.14 of this RFP.

2. RFP SUMMARY

2.1 In General. The RFP summary provided below in this Part I, Section 2 (the “RFP Summary”) is provided for your ease of reference and convenience only. It does not provide all of the requirements of this RFP, but should be read in conjunction with the General Requirements (Part II) and the Specific Requirements (Part III) of this RFP. You should review and become familiar with all parts of this RFP prior to submitting your Proposal.

2.2 Specific Terms, Deadlines and Requirements.

(a) Project Information.

- (i) **The Project:** The Infrastructure and Building Resiliency Technologies Competition as more fully described herein.
- (ii) **Project Site:** New York City
- (iii) **Type of Services:** Assist NYCEDC with the design, development, marketing and administration of the Competition, as more fully described in the Scope of Services.

(b) The Consultant:

- (i) **Type:** Educational, not-for-profit, private for-profit, or other entity or institution with demonstrated experience developing and implementing technology-related competitions and expertise in infrastructure and building systems and otherwise capable of providing the Services.
 - A. **The Consultant Team:** It is anticipated that the Consultant will engage a team of the Consultant’s staff and/or the Consultant’s Subcontractors (the “Consultant Team”) in providing the Services.
 - B. **Required Consultant Team Members:** None.

- C. **Other Possible Consultant Team Members:** Not applicable.
 - D. **Subcontractors:** The Consultant may retain Subcontractors as necessary to perform the Services. In all cases the Consultant should be mindful of the aggressive timeline contemplated for the provision of the Services,
- (ii) **Experience Required:** The Consultant shall be experienced and provide evidence of its experience with the following:
- A. the ability and resources to assist in the design, development, marketing, administration, implementation and promotion of the Competition and to otherwise perform the Services;
 - B. the ability and resources to develop a website providing Applicants, prospective Applicants and the general public with Competition information;
 - C. the resources to professionally and accurately respond to website, email and phone inquiries from Applicants, prospective Applicants and the general public;
 - D. the ability to judge and/or assemble the Panel of Judges to review and evaluate Application Packages for quality and eligibility;
 - E. the resources and/or access to facilities to host an awards ceremony accommodating approximately 100 people;
 - F. experience administering technology-related competitions; and
 - G. expertise in infrastructure and building systems.
- (c) Contract Information.
- (i) **Anticipated Contract Execution Date:** First half of May 2013.
 - (ii) **Anticipated Contract Term:** Two (2) years, with up to two (2) one-year extensions. Such extension option(s) to be exercised at the Corporation's sole discretion.
- (d) Questions Regarding RFP.
- (i) **Question/Clarification Deadline:**
 - A. **Date:** Wednesday, April 17, 2013
 - B. **Time:** 4:00pm

- (ii) **Permitted Method:** At the Pre-Proposal Meeting, if one is conducted; otherwise in writing to NYCEDC at the NYCEDC representative’s Mailing Address or E-Mail Address as listed in Section 2.2(f) below only.
 - (iii) **Question Response Date:** Monday, April 22, 2013
 - (iv) **Answers to Questions Available at www.nycedc.com/RFP** (the “Website”)
- (e) Pre-Proposal Meeting.
- (i) **Date:** Monday, April 15, 2013
 - (ii) **Time:** 10:30am – 11:30am
 - (iii) **Meeting Place:** NYCEDC, 110 William Street. All visitors are required to sign-in with NYCEDC’s 6th Floor reception personnel upon arrival.
 - (iv) **Confirmation Contact Person:** For questions regarding the Pre-Proposal Meeting, please send an e-mail to ResiliencyCompetitionRFP@nycedc.com and include the phrase “Pre-Proposal Meeting” in the subject line.
 - (v) **Attendance Mandatory:** Yes No
- (f) Proposal Submission Requirements.
- (i) **Label on Envelope:**
 - A. **One for the Proposal Only:** “Technical Proposal - Consulting Services for Resiliency Technologies Competition”
 - B. **One for the Doing Business Data Form Only:** “Doing Business Data Form - Consulting Services for Resiliency Technologies Competition”
 - C. **One for Prices Only:** “Financial Proposal - Consulting Services for Resiliency Technologies Competition”
 - D. **One for M/WBE Utilization Plans Only, if required by Part I, Section 2.2(g) or if a Respondent elects to submit one:** “M/WBE Utilization Plan - Consulting Services for Resiliency Technologies Competition”
 - (ii) **Number of Sets of Proposals to be submitted:** Six (6) paper copies plus one (1) electronic copy on a CD or “flash”/“thumb” drive.

(iii) **Submission Deadline:**

(i) **Date:** Wednesday, May 1, 2013

(ii) **Time:** 4:00 p.m.

(iv) **Method:** By Hand or Express Mail or other nationally-known overnight courier.

(v) **Submit to the following Recipient:**

Maryann Catalano
Senior Vice President, Contracts

(vi) **Recipient's Mailing Address:**

New York City Economic Development Corporation
110 William Street. 6th Floor
New York, NY 10038

(vii) **Recipient's E-mail address:** ResiliencyCompetitionRFP@nycedc.com

(g) M/WBE Program Percentages.

(i) **Target Subcontracting Percentage:** None required.

(ii) **Participation Goal:** None required.

(h) Selection Criteria. NYCEDC currently anticipates that the criteria on which NYCEDC will base its selection of a winning Respondent (if any) will include, without limitation, the following:

(i) the Respondent's and the proposed Consultant Team's experience in providing services similar to the Scope of Services;

(ii) the quality of the Respondent's management, reputation, and references and the quality of the proposed Consultant Team;

(iii) the terms under which the Respondent will commit its personnel and the personnel of the proposed Consultant Team members, without transfers and changes;

(iv) the quality of the Proposal and the degree to which it demonstrates the Respondent's full understanding of and the ability to perform the Services;

(v) a favorable history, if any, in contracting or doing business with the City and/or NYCEDC;

- (vi) the absence of any default in Respondent's financial obligations to NYCEDC and/or the City; and
- (vii) the proposed Fee and Cost Schedules contained in the Respondent's Financial Proposal.

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PART II GENERAL REQUIREMENTS

1. SERVICES TO BE PERFORMED AND WORK PRODUCT.

The Consultant shall perform all work and services and deliver all of the Deliverables and other Work Products specifically described in and required by the Scope of Services. **Prior to submitting a Proposal, a Respondent must review and fully understand the Scope of Services.**

2. STAFFING.

2.1 Personnel. The Consultant shall, at its own expense, employ all personnel and retain all Subcontractors (including the subconsultants on the Consultant Team, if any) as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the Term of the Contract. The Consultant and its Subcontractors will be expected to cooperate fully with NYCEDC personnel. The Respondent, if selected, will be expected to use substantially the same personnel and Subcontractors described in the Proposal to perform the Services. All personnel furnished by the Consultant as required under the Contract shall be employees or approved Subcontractors of the Consultant and not of NYCEDC or the City.

2.2 Subcontractors. If the Consultant is authorized under the Contract to enter into subcontracts for specialized services as required for performance of the Services, then such authorization (other than members of the Consultant Team which have been previously approved), the scope of services, compensation, and the principal responsible for supervising the performance of the Subcontractor's activities shall be subject to the prior written approval by NYCEDC of the Subcontractor. The Consultant, and not NYCEDC, will be responsible for the Subcontractor's work, acts and omissions. Respondents are directed to Article 4 of the Form of Contract for further information as to the requirements regarding subcontracting under the Contract.

2.3 Person in Charge. In its Proposal, Respondent shall identify the member of the Respondent's staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services.

3. COMPENSATION.

Subject to and in accordance with the final terms of the Contract, NYCEDC shall compensate the selected Consultant as follows:

3.1 In General. Under the Contract, NYCEDC will agree to pay to the Consultant an amount not to exceed a Maximum Contract Price to be negotiated between NYCEDC and the Consultant based upon its response to this RFP. The Maximum Contract Price shall be the maximum compensation for all of the Services provided by the Consultant pursuant to the Contract and all expenses of the Consultant in connection therewith, including costs of any Subcontractors. The Maximum Contract Price shall be payable in arrears as provided for in Sections 2.1 and 2.2 of the General Terms and Conditions (Part II) of the Contract and Appendix C (Part III of the Contract).

3.2 Payments. In order to receive payment for Services, the Consultant will be required to submit a Requisition setting forth in detail, for the period for which payment is requested, the Services actually rendered during that period and the amount of payment requested and due therefor. Requisitions may not be submitted more than once per month. All Requisitions shall be subject to NYCEDC's review, verification and approval, and all payments shall be conditioned upon NYCEDC's determination that all Services have been performed satisfactorily and in accordance with the terms of the Contract.

3.3 Sales and Use Tax. As of the date of this RFP, NYCEDC is currently exempt from state and local sales and use tax. SUCH TAX IS NOT TO BE INCLUDED IN PROPOSALS or in invoices submitted under the Contract. Upon request NYCEDC will provide the selected Consultant with an appropriate sales and use tax exemption certificate, if at the time of such request NYCEDC is exempt from such taxes.

4. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION.

4.1 M/WBE Program. Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, to promote the public interest in avoiding fraud and favoritism in the procurement process, and to increase projects for City business and to lower contract costs. The NYCEDC endorses these goals and participation by MBEs and WBEs in the provision of the Services. Although not required, Respondents are encouraged to consider NYCEDC's M/WBE Program when preparing their Proposals.

4.2 Minority and Women -Owned Business Enterprises. In order to be considered an M/WBE for purposes of this RFP, the business must have received certification as such by DSBS. Businesses that have not been certified as M/WBEs by DSBS (even if they have been certified as M/WBEs by the New York City School Construction Authority, the Women Presidents' Educational Organization, the New York & New Jersey Minority Supplier Development Council, Inc. and/or the New York State Department of Economic Development,

Division of Minority & Women's Business Development) should contact DSBS for information and applications related to obtaining M/WBE certification from DSBS. Respondents to this RFP may also access directories of certified MBEs and WBEs maintained by DSBS. DSBS is available to assist Respondents in determining the availability of MBEs and WBEs to participate as Subcontractors and in identifying opportunities that are appropriate for participation by MBEs and WBEs in contracts. You may contact DSBS at:

Telephone: (212) 513-6311
Website: <http://www.nyc.gov/getcertified>
Address: 110 William Street
New York, New York 10038.

4.3 Target Subcontracting Percentage. There is no requirement of a Target Subcontracting Percentage under this RFP.

4.4 Participation Goal. There is no requirement of a specific Participation Goal under this RFP.

4.5 M/WBE Utilization Plans.

(a) The Respondent may complete and submit as part of its Proposal a utilization plan (the "M/WBE Utilization Plan") in the form annexed at Exhibit 3 to this RFP. A sample of a completed M/WBE Utilization Plan is annexed to the form to be completed by the respondent at Exhibit 3.

(b) If submitted, the respondent's M/WBE Utilization Plan should set forth:

(i) the percentage of work the Respondent intends to subcontract;

(ii) the percentage of work the Respondent intends to award to Subcontractors for amounts under \$1 million;

(iii) the identity of all proposed M/WBE Subcontractors to which the respondent intends to award subcontracts;

(iv) in cases where the Respondent intends to award subcontracts for amounts under \$1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and

(v) the time frames in which such work by MBEs and/or WBEs is scheduled to begin and end.

Within thirty (30) days of being awarded the Contract, if the Respondent elected to submit a M/WBE Utilization Plan, the selected Respondent should submit a definitive M/WBE Utilization Plan containing all of the information listed in Section 4.5(b) and specifying all proposed Subcontractors to which it intends to award subcontracts within the subsequent twelve (12) months. In the alternative, the Corporation may, in its sole discretion, permit the Consultant to

utilize the M/WBE Utilization Plan submitted by the Consultant with its Proposal; provided that it contains all of the required information.

4.6 Intentionally omitted.

4.7 Joint Ventures with M/WBEs. Respondents are encouraged to enter into joint ventures with MBEs and WBEs.

4.8 Violations by Respondents to RFPs. If NYCEDC determines that a Respondent has violated the requirements of NYCEDC's M/WBE Program, then NYCEDC may disqualify the Respondent from competing for the Contract and may remove the Respondent from any list of qualified consultants maintained by NYCEDC on which such Respondent is identified.

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

4.10 Other M/WBE Requirements. Article 9 of the General Terms and Conditions (Part II) of the Form of Contract contains additional provisions related to NYCEDC's M/WBE Program regarding, without limitation, reporting, change orders, modifications to M/WBE Utilization Plans, compliance audits, enforcement and evaluations. **Please be sure that you review and understand all of the requirements of NYCEDC's M/WBE Program applicable to this RFP, if any, and the Contract prior to submitting your Proposal.**

5. DOING BUSINESS DATA FORM REQUIREMENTS.

5.1 Pursuant to the City's Local Law No. 34 ("LL 34"), amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city", as such terms are defined in LL 34.

5.2 In order for the City to obtain information necessary to establish the required database, each Respondent must complete a Doing Business Data Form in the form available at the Website and described in Exhibit 4 to this RFP (a "Doing Business Data Form") and return it in a separate envelope with the Proposal.

5.3 The submission of a Doing Business Data Form that is not accurate and complete may result in appropriate sanctions. Respondents are encouraged to consult legal counsel with respect to the impact of LL 34. Respondents may also wish to review the document "Q&A: The Doing Business Data Form and the Doing Business Database" available at the Website and described in for further information. Note that responding to this RFP constitutes "doing business with the city" under LL 34.

6. CONTRACT CONDITIONS

6.1 In General. The acceptance of any Proposal shall be subject to, and contingent upon, the execution by NYCEDC of a Contract substantially in the form of the Form of Contract. NYCEDC shall not be bound to the terms of the Form of Contract but shall use such form as a basis of negotiating a final Contract with the selected Consultant, if any. **However, please note that, in general, the General Terms and Conditions (Part II) of the Form of Contract and its Appendices (other than Appendix B and Appendix C) are NOT negotiable.**

6.2 Specific Terms. The Contract shall contain, among other terms, certain provisions required by law, by policies of the City, and the City Contract including, without limitation, the following:

- (a) Executive Order 50 Supply and Service Rider - attached as Appendix F in Part III of the Contract. This rider contains equal opportunity requirements mandated under Executive Order No. 50 (1980).
- (b) Provisions providing that the Consultant:
 - (i) is an independent contractor and that neither it nor any of its employees or subcontractors is or shall be an agent, servant or employee of the City or NYCEDC;
 - (ii) shall defend, indemnify and hold harmless the City and NYCEDC against any claims or damages relating to its acts and omissions;
 - (iii) shall maintain financial and other records relating to the Contract, including, without limitation, payroll records, for a period of six (6) years from the end of the Term of the Contract, and shall make such records available for inspection and audit;
 - (iv) has no conflicts of interest with, or outstanding financial obligations owing to, the City;
 - (v) maintains insurance as specified in Article 6 of the General Terms and Conditions (Part II) of the Contract and Appendix E of Part III of the Contract with insurers licensed or authorized to provide insurance and in good standing in the State of New York, such policies to be in a form acceptable to, and include any conditions reasonably required by NYCEDC, and naming NYCEDC and the City as additional insureds;
 - (vi) is licensed to conduct business in the State of New York;
 - (vii) shall comply with the City's requirements regarding vendor background investigations, which include a review by the City's Department of Investigation of the City's past experience with the Consultant;

- (viii) shall complete and submit the Business Entity Questionnaire and a Principal Questionnaire for each principal of the Consultant (collectively, the "Vendex Clearance Forms");
- (ix) shall complete and submit the Doing Business Data Forms;
- (x) shall represent and warrant that neither it nor any of its directors, officers, members, or employees has any interest, nor shall they acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the Services as set forth in the Contract. The Consultant must further agree that it shall employ no person having such a conflict of interest in the performance of the Services;
- (xi) shall agree to New York County as the venue in any legal action or proceeding between the Consultant and NYCEDC;
- (xii) acknowledges that the Contract shall be assignable to the City; and
- (xiii) comply with the City's prohibition of certain business practices with respect to Northern Ireland.

Respondents are directed to the Form of Contract for the exact language of the provisions referred to in the foregoing paragraphs.

7. GENERAL CONDITIONS, TERMS, LIMITATIONS AND REQUIREMENTS

7.1 Proposal as Offer to Contract. Unless a specific exception is noted, submission of a Proposal in response to this RFP shall constitute an offer on the part of the successful Respondent to execute the Form of Contract substantially in the form annexed to this RFP. Any supporting documents or other items attached as exhibits to this RFP shall be incorporated into the Contract. The successful Respondent shall cooperate in supplying any information as may be required with respect to the Vendex Clearance Forms, and any other government review and approval forms. Respondent's Proposal shall remain open for acceptance by NYCEDC and shall remain firm and binding upon the Respondent for at least Sixty (60) days after the date on which the Proposals are received by NYCEDC, except that NYCEDC may by written notice to the Respondent extend that date for an additional Forty-Five (45) days.

7.2 News Releases. Recipients of this RFP shall make no news or press release pertaining to this RFP or anything contained or referenced herein without prior written approval from NYCEDC. All news and press releases pertaining to this RFP must be made in coordination with NYCEDC.

7.3 Investigations/Derogatory Information. The Respondent, the members of its Consultant Team, and all officers, principals, principal shareholders, partners and members thereof, if applicable, must complete a background questionnaire and shall be subject to investigation by NYCEDC and the City's Department of Investigation. The selection of a Respondent may be rejected or revoked, or the Contract, if awarded, terminated for cause, in NYCEDC's sole

discretion, in the event any materially derogatory information is revealed by such investigation or otherwise including, without limitation, that any such persons or any other persons substantially involved in the Respondent's activities has committed any of the acts or omissions specified as the grounds for debarment in the City's *Procurement Policy Board Rules*.

7.4 Freedom of Information Law. All Proposals submitted to NYCEDC in response to this RFP may be disclosed in accordance with the standards specified in the Freedom of Information Law, Article 6 of the Public Officers Law of the State of New York ("FOIL"). A Respondent may provide in writing, at the time of its submission, a detailed description of the specific information contained in its submission which it has determined is a trade secret and which, if disclosed, would substantially harm such entity's competitive position. This characterization shall not be determinative, but will be considered by NYCEDC when evaluating the applicability of any exemptions in response to a FOIL request.

7.5 Costs. NYCEDC shall not be liable for any cost incurred by the Respondent in the preparation of its Proposal or for any work or services performed by the Respondent prior to the execution and delivery of the Contract. NYCEDC is not obligated to pay any costs, expenses, damages or losses incurred by any Respondent at any time unless NYCEDC has expressly agreed to do so in writing.

7.6 NYCEDC Rights. This is a "Request for Proposals" and **not** a "Request for Bids". NYCEDC shall be the sole judge of whether a Proposal conforms to the requirements of this RFP and of the merits and acceptability of the individual Proposals. Notwithstanding anything to the contrary contained herein, NYCEDC reserves the right to take any of the following actions in connection with this RFP: amend, or modify this RFP; waive any requirements of this RFP; require supplemental statements and information from any Respondents to this RFP; award a contract to as many or as few or none of the Respondents as NYCEDC may select; to award a contract to entities who have not responded to this RFP; accept or reject any or all Proposals received in response to this RFP; extend the deadline for submission of Proposals; negotiate or hold discussions with one or more of the Respondents; permit the correction of deficient Proposals that do not completely conform with this RFP; waive any conditions or modify any provisions of this RFP with respect to one or more Respondents; reject any or all Proposals and cancel or withdraw this RFP, in whole or in part, for any reason or no reason, in NYCEDC's sole discretion. NYCEDC may exercise any such rights at any time, without notice to any Respondent or other parties and without liability to any Respondent or other parties for their costs, expenses or other obligations incurred in the preparation of a Proposal or otherwise. All Proposals become the property of NYCEDC.

7.7 Applicable Law. This RFP and any Contract, Subcontract or any other agreement resulting here from are subject to all applicable laws, rules, regulations and executive orders, policies, procedures and ordinances of all Federal, State and City authorities, as the same may be amended from time to time, including without limitation, equal employment opportunity laws.

7.8 Modifications and Questions.

(a) NYCEDC will advise Respondents of any modifications to this RFP by posting them on the Website. Nothing stated at any time by any representative of NYCEDC or of any

other entity shall effect a change in, or constitute a modification to this RFP unless posted on the Website or confirmed in writing by NYCEDC.

(b) Respondents may submit questions and/or request clarifications from NYCEDC by submitting them *in writing* to NYCEDC at NYCEDC's Mailing Address or E-Mail Address listed in the RFP Summary. All questions and requests for clarifications must be submitted no later than the Question/Clarification Deadline listed in the RFP Summary. Any questions or requests for clarifications received after this date will not be answered. All questions received through the Question/Clarification Deadline will be answered no later than the Question Response Date listed in the RFP Summary, and NYCEDC shall post such answers on the Website, so as to be available to all Respondents, if NYCEDC determines that such answers provide material clarification to the RFP.

(c) Respondents are reminded to check the Website periodically to view updated information and answers to questions posed by other Respondents.

(d) While NYCEDC may send notices, addenda or other information related to this RFP to Respondents via e-mail alerts or otherwise in writing, such e-mail alerts and other written materials shall be considered courtesy copies only. In the event any conflict exists between any information set forth on the Website and any such notices, addenda, or other information provided to a Respondent by NYCEDC in writing via e-mail or otherwise, the information set forth on the Website will govern and be definitive. NYCEDC is not obligated to provide the Respondent with any notices, addenda or other information that appears on the Website in writing, and the fact that NYCEDC may have sent one or more e-mails, notices, addenda or other written information to a Respondent shall not be deemed to imply that NYCEDC has any duty or obligation to continue to do so.

7.9 City Not a Party. The City is not a party to this RFP, has made no representation to any prospective Respondent and shall have no liability whatsoever in connection with this RFP.

7.10 Brokerage Fees or Commissions. The City and NYCEDC shall not be obligated to pay any fee, cost or expense for brokerage commissions or finder's fees with respect to the execution of the Contract. The Respondent agrees to pay the commission or other compensation due to any broker or finder in connection with the Contract, and to indemnify and hold harmless the City and NYCEDC from any obligation, liability, cost and/or expense incurred by the City or NYCEDC as a result of any claim for commission or compensation brought by any broker or finder in connection with the Contract.

7.11 Additional Work. During the Term of the Contract, NYCEDC, in its sole discretion, may choose to work with the selected Consultant and/or hire its services for projects other than or that exceed the Scope of Services described herein. NYCEDC's decision to do so may be based on the firm's relevant experience and its successful performance under the Contract.

7.12 Proposals From Principals. Only Proposals from principals will be considered responsive. Individuals in representative, agency or consultant status may submit Proposals only at the direction of certified principals, where the principals are solely responsible for paying for such services.

7.13 Disclaimer. NYCEDC and the City, and their respective officers, directors, agents, members and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, NYCEDC and the City do not warrant or make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or any other facet of this RFP once it has been downloaded or printed from the Website or any server, and hereby disclaim any liability for any technical errors or difficulties of any nature that may arise in connection with the Website on which this RFP is posted, or in connection with any other electronic medium utilized by Respondents or potential Respondents in connection with or otherwise related to this RFP. It is each Respondent's responsibility to conduct due diligence on the applicable laws, rules and other requirements governing the use of CDBG-DR Funds and otherwise make its own independent assessment prior to submitting its Proposal. Respondents are encouraged to seek their own professional technical, legal and financial advice in developing a responsive Proposal.

7.14 Applicable CDBG-DR Rules.

(a) NYCEDC anticipates that the Competition and the RFP, as applicable, may also be subject to the following (the "Applicable CDBG-DR Rules"):

- Title I of the *Housing and Community Development Act of 1974* (42 U.S.C. 5301 et. Seq.) as amended or supplemented from time to time;
- Federal Regulations provided at 24 CFR Part 570;
- The *Disaster Relief Appropriations Act, 2013* (Public Law 113-2), the "Appropriations Act";
- HUD Notice, dated February 28, 2013, entitled *Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy*, as such Notice was published in the Federal Register, Volume 78, No. 43 on March 5, 2013 at pg. 14329 and any other notices, rules or guidance promulgated by HUD from time to time in connection with the CDBG program and/or the Disaster Relief Appropriations Act, 2013.
- The applicable CDBG requirements attached to the Form of Contract at Appendix J thereto;
- Any other applicable laws, rules, regulations or requirements including, without limitation, Local Law 86 of 2005 regarding green building standards.

(b) Respondents are advised that to ensure timely expenditure of CDBG-DR Funds, Section 904(c) of the Appropriations Act requires that all funds be expended within two (2) years of the date that the City and HUD execute the City Grant Agreement.

(c) The Applicable CDBG-DR Rules are in addition to any modifications, amendments, new or supplemental rules, guidelines or other documents that may be promulgated from time to time by any governmental authority. Respondents should note that not all of the Applicable CDBG-DR Rules will have been finalized as of the date this RFP is released and as such, the Applicable CDBG-DR Rules are subject to being amended or supplemented, as is this

RFP, including the Form of Contract. NYCEDC also anticipates that the Competition, this RFP and the Form of Contract will need to be consistent with the EDC Master Contract (including any amendments or revisions thereto), the City Grant Agreement and other legal or contractual requirements to be identified.

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PART III

SPECIFIC REQUIREMENTS

1. SUBSTANTIVE REQUIREMENTS.

This Section 1 of Part III sets out the information that each Respondent is required to include in its Proposal. Each Proposal should address all areas set out below and follow the ordering and sub-headings used in this Section 1 of Part III.

1.1 Respondent Description. Respondents must demonstrate sufficient professional ability and experience, in line with their Proposals, to perform the Services in accordance with the Contract. Each Proposal must provide the following:

- (a) the full legal name of the Respondent (and if any Subcontractors will perform any portion of the Services, the legal names of such Subcontractors and a description of their roles in providing the Services);
- (b) a description of the Respondent's organization, including a history of the firm, a description of all subsidiaries and affiliates, and the name and location(s) of businesses of the Respondent.
- (c) a description of each member of the Consultant Team, including a description of the role such member will play in connection with the Proposal, their capacity to commit to the timely implementation of the Competition and an organization chart indicating the level of responsibility of each member who is expected to help provide the Services;
- (d) resumes of each member of the Consultant Team, including those members who work for or as Subcontractors" the addresses, phone and fax numbers, e-mail addresses;
- (e) the name, address, telephone number, and email address of the individual who is authorized to act on behalf of the Respondent as the primary contact and who is available to answer questions or requests for additional information; and
- (f) any additional documentation Respondent desires to include that will support the Proposal.

1.2 Respondent Capabilities and Experience. Each Respondent should provide in its Proposal examples of other projects on which it has worked or other consulting arrangements similar the Services to be provided by the Consultant which the Respondent has undertaken (or its Subcontractors, if applicable) which demonstrate the Respondent's capabilities and experience. The following details should be given in respect of each such other project and/or consulting arrangement:

- (a) the size, type, name and location of the other projects;
- (b) the nature or type of services provided by the Respondent (and/or its Subcontractors) in connection with such other project or consulting arrangement);

- (c) whether or not the Respondent (or its Subcontractors) has worked with or for HUD or any other federal agency, and if so, the Proposal should describe such experience in detail;
- (d) for all competitions, climate change adaptation, resiliency or related projects on which the Respondent (or its Subcontractors) have worked or provided consulting services,
 - (i) the total number of such projects which were successfully financed, constructed and completed,
 - (ii) the total number of such projects which were not successfully completed or were otherwise not implemented, along with a short explanation of the reason(s) for such lack of success or failure to be implemented, and
 - (iii) the dates on which such projects were completed obtained such approval or were denied approval or were otherwise not implemented, as the case may be;
- (e) written statements of reference or the names, addresses and telephone numbers of administrators or contract officers, who can explain the Respondent's involvement and the scope of services along with information concerning personnel assignments and contract duration should also be described;
- (f) the approximate total project or capital costs involved for constructing and operating each project; and
- (g) a list of all pending projects and/or consulting arrangements comparable to the Competition on which the Respondent (or any of its Subcontractors) are currently working.

1.3 Approach for Providing Services. Each Respondent should provide in its Proposal a narrative description of its anticipated approach for providing the Services that clearly demonstrates its understanding of the Competition and the Scope of Services and its ability to manage and complete the Services in a professional, timely, and cost-efficient manner. To this end, each Proposal should include the following:

- (a) a detailed statement of the Respondent's approach and its ability to provide the required Services and Work Product,
- (b) an estimated timeline or schedule for completing all aspects of the Services, and
- (c) a list and detailed explanation of the extent of all work or services to be performed by Subcontractors.

In preparing their estimated timeline or schedule, Respondents should note NYCEDC's current expectation that the Competition should be ready to be announced and opened up for submissions by the end of May, 2013.

The Consultant should have sufficient technical expertise to advise on the design, development, marketing and administration of the Competition. It is expected that the approximately year-long Competition will encourage ideas for Projects that outline current solutions and challenge industry to provide better and/or more cost-effective alternatives to building and infrastructure resiliency.

This RFP is intended to outline NYCEDC's vision regarding the approach to the delivery of Services. Respondents should note, however that they are encouraged to be creative and suggest an alternative approach to the structure and provision of these Services and/or to the structure or design of the Competition.

2. PRE-PROPOSAL INFORMATION MEETING.

If held, Respondents should attend the pre-Proposal meeting in order to receive any additional information that may be distributed at the meeting related to this RFP. You will also be able to obtain answers to any questions you may have about the Services at the meeting. Please confirm your attendance with the Confirmation Contact Person identified in the RFP Summary indicating who from your office will attend. Except as may otherwise be provided in the RFP Summary, no other contact with NYCEDC or the City regarding issues raised by this RFP is permitted.

3. INFORMATION TO INCLUDE IN PROPOSALS.

3.1 Optional Information. Proposals are not limited to the requirements indicated in this RFP. A Respondent may also include any additional information or materials it considers relevant to the response requirements of the RFP.

3.2 Required Information. All Proposals must be submitted in accordance with the procedures described in this RFP and should include the following:

- (a) ***Technical Proposal*** - the Respondent's "Technical Proposal" should include the information and other material specified in Part III, Section 1 of this RFP that is to be provided in each Proposal and any optional information or materials the Respondent may wish to include.
- (b) ***Doing Business Data Form*** - the Respondent's Doing Business Data Form.
- (c) ***Financial Proposal*** - the Respondent's "Financial Proposal" includes Respondent's certification and the complete fee and cost schedules for all Services submitted in the forms attached hereto at Exhibit 2 to this RFP ("Fee and Cost Schedules"). Respondents should note that in the interest of allocating the maximum amount of CDBG-DR Funds possible to actual resiliency measures in the City, to the extent reasonably possible NYCEDC is seeking to keep the Maximum Contract Price to approximately Three Hundred Thousand Dollars (\$300,000) or less. Respondents are encouraged to keep these factors in mind when preparing their Financial Proposals.
- (d) ***Cover Letter.*** A cover letter summarizing key points of the Proposal.

4. **PROPOSAL FORMAT.**

4.1 Envelopes Generally. In order to be considered responsive, your Proposal must be organized and include all of the items as listed below.

4.2 The Proposal must be submitted in no less than **three (3) sealed envelopes.**

4.3 Envelope Contents. The contents of the envelopes must be as follows:

(a) ***Envelope # 1 [Required for All Proposals].*** In one sealed envelope, labeled as required by the RFP Summary, place only the following:

- the Respondent's Technical Proposal, and
- if the Scope of Services allows payment of Allowable Additional Costs, the Respondent should provide a list of anticipated Allowable Additional Cost items, excluding costs for these items.

(b) ***Envelope #2 [Required for All Proposals].*** In a second sealed envelope, labeled as required by the RFP Summary, place a complete and accurate Doing Business Data Form

(c) ***Envelope #3 [Required for All Proposals].*** In a third sealed envelope, labeled as required by the RFP Summary, place the Respondent's Financial Proposal and the cover letter. NYCEDC may not consider Fee and Cost Schedules that do not follow the prescribed formats.

(d) ***Envelope #4 [Optional].*** If the Respondent elects to submit a M/WBE Utilization Plan, in a fourth sealed envelope, labeled as required by the RFP Summary, Respondent should place the Respondent's M/WBE Utilization Plan.

4.4 Non-compliant Proposals. In furtherance of and without limiting NYCEDC's rights as set forth in Part II, Section 7.6 of this RFP, non-compliant Proposals may, in NYCEDC's sole discretion, be considered "not responsive" and may be rejected by NYCEDC including, without limitation, Proposals that are:

- (a) not enclosed in separate sealed envelopes as provided in this Section 4 of Part III;
- (b) not properly labeled;
- (c) received by a person other than the designated NYCEDC representative; and/or
- (d) missing any information, certifications, supplemental forms or other documentation required by this RFP or by applicable law.

5. PROPOSAL SUBMISSION.

5.1 You must submit the number of sets of your Proposal indicated in the RFP Summary.

5.2 All Proposals must be **delivered by hand or express mail or other nationally-known overnight courier**. NYCEDC may elect to reject or not accept any Proposals received via facsimile or e-mail transmittal, or by regular mail will not be accepted.

5.3 **Proposals are due and must be received by the NYCEDC representative at the location designated in the RFP Summary no later than by the Submission Deadline.** Please be sure to leave adequate time to get through building security. Proposals received after the indicated date and hour and/or at a different location may not be considered.

5.4 NYCEDC reserves the right, in its discretion, from time to time, to postpone the date for submission and opening of Proposals. **Respondents are again reminded to check the Website periodically for updated information, which may include a notice of postponement.** Any Proposal submitted prior to such notice may be withdrawn without prejudice.

5.5 Please note that Respondents must respond to this RFP in order to be eligible to be considered for the award of the Contract for the Services pursuant to this RFP.

For more information, please contact the NYCEDC representative **in writing** at the mailing address or at such representative's e-mail address, all as identified in the RFP Summary.

6. INTERVIEWS.

Interviews may be held with any or all of the Respondents after the receipt of Proposals. Interviews with NYCEDC will be scheduled after its initial review of Proposals.

7. SELECTION.

NYCEDC will review each Proposal in its totality. The selected Respondent, if any, will be the Respondent whose Proposal is found to be most advantageous to the Competition Goals based on certain price and other factors taken into consideration. See the RFP Summary for an explanation of the main factors on which NYCEDC expects to base such a selection.

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EXHIBIT 1
TO
REQUEST FOR PROPOSALS

FORM OF CONTRACT

[to be attached hereto]

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
CONSULTANT CONTRACT
FOR THE PROVISION OF CONSULTING SERVICES
NYCEDC CONTRACT NO. [5509-0001]
PROJECT CODE NO. 5509**

FORM OF CONSULTANT CONTRACT

Between

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

and

[NAME OF CONSULTANT]

Dated as of [May] ____, 2013

Relating to

The Infrastructure and Building Resiliency Technologies Competition

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PART I

SPECIFIC TERMS AND CONDITIONS

New York City Economic Development Corporation (the “Corporation” or “NYCEDC”) and the Consultant identified below, in consideration of the mutual covenants contained in this Contract (as defined below) and other valuable and good consideration, do hereby agree to all of the terms and conditions set forth in (i) these Specific Terms and Conditions (Part I) set forth immediately below, (ii) the General Terms and Conditions (Part II) annexed hereto and made a part hereof and (iii) the Appendices (Part III) annexed hereto and made a part hereof.

Capitalized terms shall have the meaning set forth in Appendix A (Definitions and Interpretation) unless otherwise defined in this Contract or the context otherwise requires and the rules of interpretation set forth in Appendix A (Definitions and Interpretation) shall apply to this Contract unless otherwise expressly stated herein.

1. **The Contract**

- 1.1 **Contract:** These Specific Terms and Conditions (Part I), the General Terms and Conditions (Part II) and the Appendices (Part III)
- 1.2 **NYCEDC Contract No.** [5509-0001
- 1.3 **Contract Date:** The date of the Contract is as of [May] ____, 2013
- 1.4 **Commencement Date:** [May] ____, 2013
- 1.5 **Term:** [●]
- 1.6 **Maximum Contract Price:** [●]
- 1.7 **Project:** The Competition.
- 1.8 **Project Site:** City-wide.
- 1.9 **Allowable Additional Costs:** The Allowable Additional Costs are defined in Appendix B (Scope of Services) and the amount set forth in Appendix C (Payments).
- 1.10 **Retainage:** Not Applicable.
- 1.11 **Retainage Payment Date:** Not Applicable.
- 1.12 **M/WBE Program Percentages:**
 - 1.12.1 **Target Subcontracting Percentage:** [●]%
 - 1.12.2 **Participation Goal:** [●]%

2. **Parties**

- 2.1 **The Corporation:** New York City Economic Development Corporation, a not-for-profit corporation, organized under the laws of the State of New York.
- 2.2 **Director:** [●]

2.3 **The Consultant:** [●], a [INSERT STATE CONSULTANT WAS ORGANIZED AND TYPE OF BUSINESS ENTITY, *e.g.* a New York corporation (or partnership, LLP or LLC)], having an office at:

[ADDRESS: _____

_____]

[FEDERAL TAX ID# _____]

2.4 **Principal:** [●]

2.5 **Person in Charge:** [●]

3. **Notice Parties and Addresses**

3.1 **Notices to the Corporation:**

New York City Economic Development Corporation
110 William Street
New York, NY 10038
Attn: General Counsel

with a copy to:

New York City Economic Development Corporation
110 William Street
New York, NY 10038
Attn: [NAME: _____]

3.2 **Notices to the Consultant:**

[NAME: _____]

[ADDRESS: _____
_____]

Attn: [NAME: _____]

4. **Funding Source** The payments to be made to the Consultant by the Corporation pursuant to this Contract will be made from funds identified below and in accordance with all applicable Legal Requirements and the provisions of Appendix I and Appendix J. The Consultant agrees to comply with the provisions of each of such Appendices.

4.1 **Type of Funds:** CDBG-DR Funds

4.2 **Funding Agencies:** USHUD

- 4.3 **Inspectors:** [USHUD, the U.S. Comptroller General] and any other entity or individual as required under any applicable Legal Requirements or any Applicable Agreements.
- 4.4 **Applicable Statutes:**
 - 4.4.1 [Title I of the *Housing and Community Development Act of 1974* (42 U.S.C. 5301 et. Seq.);
 - 4.4.2 24 CFR Part 570, Subpart 1 and such other provisions of Part 570 as applicable and as modified by the waivers and alternative requirements applicable to the CDBG-DR Funds, including as published in the HUD notice, dated February 28, 2013, entitled *Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy*, as such notice was published in the Federal Register, Volume 78, No. 43 on March 5, 2013 at pg. 14329
 - 4.4.3 The *Disaster Relief Appropriations Act, 2013* (Public Law 113-2), the “Appropriations Act”;
 - 4.4.4 All statutes, rules, regulation and procedures set forth in any Applicable Statutes including, without limitation, those set forth in Appendix [●];
 - 4.4.5 All statutes, rules, regulation and procedures set forth in the Applicable Agreements, those set forth in Appendix [●];
 - 4.4.6 All Legal Requirement related to outside funding, including those set forth in Appendix [●];
 - 4.4.7 Any other Legal Requirements governing the Project and/or the Contract Work; and
 - 4.4.8 Any amendments to the foregoing.]

- 4.5 **Applicable Agreements:**
 - 4.5.1 [Any agreement(s) entered into by the City and/or NYCEDC with USHUD or any other governmental agency or entity, related to the CDBG-DR Funds, or any other funds made available for the Competition, including, those annexed hereto at Appendix [●];
 - 4.5.2 Any agreement(s) entered into by the City and/or NYCEDC with any other governmental agency or entity related to any other funds made available for the Competition; and
 - 4.5.3 Any amendments to the foregoing agreements.]

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

- 5.1 **Other Interested Parties:** [USHUD, the U.S. Comptroller General and any other entity or individual designated by NYCEDC and/or having an interest in this Contract and/or the Competition pursuant to any Applicable Statute or Applicable Agreement]
- 5.2 **[INSERT SPECIAL PROVISIONS OR LIST DELETED PROVISIONS HERE]**

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

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

**NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION**

[INSERT CONSULTANT NAME]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

PART II

GENERAL TERMS AND CONDITIONS

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GENERAL TERMS AND CONDITIONS

The Corporation and the Consultant hereby agree as follows:

ARTICLE 1 PERFORMANCE OF SERVICES

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

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

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

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

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

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

1.3 Complete Work and Timing and Sequence/Meetings. It is the intent of the parties that the provisions of this Contract shall not be construed so as to limit the Services, but that the Services shall include all acts necessary to fully and finally complete the work described in Appendix B (Scope of Services) hereof. The Consultant shall schedule and perform the Services in a manner so as to permit their completion diligently and expeditiously. The Principal, the Person in Charge and such other Representatives of the Consultant as may be required under the circumstances shall be available to meet with the Director or her or his designee as often as

necessary to effectively perform the Services, and as often as may be specified in Appendix B (Scope of Services).

1.4 Authority of Director/Performance of Services.

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

1.4.2 The Consultant shall perform all of the Services in a prudent and professional manner, in accordance with standards and practices as are customary for such Services in the New York City Metropolitan Statistical Area and in accordance with Industry Best Practices (as defined in Appendix B (Scope of Services)).

1.5 Changes to the Services.

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

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

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

1.6 Equipment.

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

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

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

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

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

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

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

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

ARTICLE 2
COMPENSATION

2.1 Payments.

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

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

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

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

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

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

2.2 Miscellaneous Payment Provisions.

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

- (i) the Consultant will be unable to perform the Services or any Portion thereof fully and satisfactorily in accordance with any Progress Schedule, or
- (ii) a meritorious claim exists or will exist against the Corporation, the Consultant or the City arising out of the act, omission or negligence of the Consultant or the

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

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

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

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

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

ARTICLE 3 **SUSPENSION OR TERMINATION**

3.1 Delay, Postponement or Suspension of Work.

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

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

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

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

3.3 Defaults and Termination for Cause.

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

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

(i) The Consultant fails to assign workers, order materials or enter into subcontracts in a manner sufficient to permit completion of the Services, or any Portion thereof, within the time limits of the Progress Schedule or in accordance with any Progress Schedule approved by the Corporation;

(ii) The Consultant fails to complete the Services, or any Portion thereof, within the time limits provided in this Contract or any Progress Schedule approved by the Corporation;

(iii) The Consultant materially violates any term, covenant or provision of this Contract;

(iv) The Consultant materially fails to comply with any Applicable Statutes or any Applicable Agreements;

(v) Any representation or warranty made by the Consultant in Article 7 or in any other Article in this Contract shall prove to be untrue or be breached;

(vi) The Consultant becomes insolvent, files for bankruptcy or is adjudged a debtor in possession;

(vii) The Consultant voluntarily, or by operation of law, assigns, transfers, conveys or otherwise disposes of its interest in this Contract or its right to receive funds hereunder without the prior written consent of the Corporation;

(viii) The Consultant fails to comply with the M/WBE Requirements in Article 9;
or

(ix) The Consultant or any of its officers, directors, partners, members, five (5%) percent shareholders, principals or other persons substantially involved in its activities, commits any of the acts or omissions specified as the grounds for debarment in the City’s *Procurement Policy Board Rules*.

3.4 Effects of Termination for Convenience or for Cause.

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

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

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

3.4.4 Within ten (10) days after the effective date of termination, the Consultant shall surrender and turn over to the Corporation all Work Product and any other materials related to this Contract requested by the Corporation including all materials, equipment and supplies purchased by the Consultant on behalf of the Corporation in connection with this Contract.

3.5 Payment Upon Termination.

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

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

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

(i) If the Contract Completion Costs exceed the Maximum Contract Price, Consultant shall pay such difference to the Corporation, as described in Section 3.5.4 below.

(ii) If the Contract Completion Costs are less than the Maximum Contract Price; provided, that the Consultant has provided all information and documentation required by this Section, the Corporation will pay to the Consultant, an amount equal to the lesser of (a) the difference between the Maximum Contract Price and the Contract Completion Costs, or (b) such amount, when added to sums previously paid to Consultant, equitably compensates Consultant for Services satisfactorily performed up to the date of termination. Such payment will be made as further described in Section 3.5.4 below.

3.5.4 If the termination was for cause, the Corporation will, upon full completion of the Competition, deliver a written notice to the Consultant advising the Consultant that the Competition has been completed and setting forth the Contract Completion Costs. If the Contract Completion Costs exceed the Maximum Contract Price, the Consultant shall promptly pay such difference to the Corporation upon receipt of such notice. If the Contract Completion Costs are less than the Maximum Contract Price, then, subject to (i) the Consultant's providing to the Corporation all information and documentation required by this Section, and (ii) any other applicable provisions of this Contract including Sections 3.5.5 and 3.5.6 hereof, the Corporation will pay the Consultant the amount described in Section 3.5.3(ii). Such payment shall constitute full and Final Payment to the Consultant.

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

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

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

ARTICLE 4

PERSONNEL AND SUBCONTRACTORS

4.1 Personnel.

4.1.1 The Consultant shall employ at its own expense all personnel and retain all Subcontractors as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the performance of this Contract. The personnel of the Consultant and any Subcontractor shall cooperate fully with the personnel of the Corporation including the Director, and, in the event any personnel of the Consultant or any

Subcontractor fails to cooperate, the Consultant shall relieve them of their duties of performance under this Contract.

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

4.2 Subcontractors.

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

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

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

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

(i) there is no privity of contract between the Subcontractor and the Corporation or the City;

(ii) neither the Corporation nor the City will incur any liability by virtue of any act, omission, negligence, or obligation of the Subcontractor or the Consultant;

(iii) the Subcontractor shall indemnify, defend and hold harmless the Corporation and the City, their agents, employees, members, directors, officials and officers against any and all

claims, judgments or liabilities to which they may be subject (including any and all claims for injuries to persons (including death) and damage to property) because of any negligence or any fault or default of the Subcontractor, its agents, employees or subcontractors or the breach of the Subcontractor's obligations under the subcontract;

(iv) the Subcontractor's Requisitions shall conform to the same requirements and include the representations, warranties and agreements set forth in Sections 2.1.2 and 2.1.3;

(v) the "Events of Default" set forth in Section 3.3.2 as grounds for termination for cause shall be "Events of Default" and grounds for termination of the Subcontractor for cause;

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

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

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

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

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

ARTICLE 5

DOCUMENTS AND MATERIALS

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

(i) approved in writing by the Director (i) before any Work Product or publication as to the work of the Consultant shall be considered accepted and before any distribution;

(ii) revised by the Consultant in accordance with the directions of the Director prior to approval; and

(iii) prepared so as not to violate any provisions of law including the City Charter and the Administrative Code of the City.

5.2 Work Product.

5.2.1 All Work Product is the exclusive property of the Corporation. The Corporation may use any Work Product prepared by the Consultant in such manner, for such purposes, and as often as the Corporation may deem advisable, in whole, in part or in modified form, in all formats now known or hereafter to become known, without further employment of or additional compensation to the Consultant.

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

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

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

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

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

5.2.6 The Consultant represents and warrants that to the extent that the Work Product incorporates non-original material, the Consultant shall obtain and provide the Corporation with

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

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

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

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

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

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

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

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

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

5.3 Confidential Information.

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

- (i) use the Confidential Information solely for evaluation and the performance of the Services under this Contract;
- (ii) not disclose the Confidential Information outside of its Subcontractors who have agreed in advance in writing to be bound by the terms of this Section 5.3 and its employees and to limit dissemination to only those Subcontractors and employees who have a need to know it in order to accomplish the Services;
- (iii) execute any confidentiality agreements required by any governmental or other entities or individuals which provide any information, records, data, materials, documents or electronic files to Consultant for use in performance of the Services; and
- (iv) not disclose the Confidential Information for three (3) years following Final Completion.

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

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

ARTICLE 6
INDEMNIFICATION, CLAIMS AND INSURANCE

6.1 Indemnification of the Corporation and the City.

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

6.1.2 The Consultant shall be solely responsible for all injuries to persons, including death, or damage to property sustained during its operations and work under this Contract resulting from any negligence, fault or default of the Consultant or of its employees, authorized agents, servants, independent contractors or subcontractors retained by the Consultant pursuant

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

6.2 Claims or Actions Against the Corporation.

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

6.2.2 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to this Contract, the Consultant agrees that it shall be deemed to have released the Corporation from any and all claims, causes of action, and liability to the Consultant, its Representatives, successors and assigns, in connection with this Contract or the performance of the Services.

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

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

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

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

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

6.3 Insurance.

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

and the annexed Appendix E (Insurance Requirements), as may be applicable and as may be required by the Corporation.

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

- (i) are acceptable to the Corporation;
- (ii) are rated A:X or better by A.M. Best Company; and
- (iii) may lawfully issue such insurance.

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

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

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

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

6.3.6 Prior to the commencement of the Services the Consultant shall forward to the Corporation's Contract Administration and Procurement Department at least three (3) original certificates of insurance for each policy required for compliance with this Contract, for itself and its Subcontractors substantially as set forth in Appendix E (Insurance Requirements). The Consultant shall also provide an original certificate of insurance to each of the Additional Insureds. All such original certificates of insurance shall be attached to a duly executed "Insurance Broker Certificate" in the form attached to Appendix E (Insurance Requirements)

6.3.7 The Consultant shall provide the Corporation and the Additional Insureds written confirmation of the renewal of any policy required hereunder at least thirty (30) days prior to the expiration of any such policy.

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

(i) **Workers' Compensation, Disability Benefits, and Employer's Liability Insurance.** The Consultant shall purchase and maintain and shall require each of its Subcontractors to purchase and maintain workers' compensation and disability benefits insurance in statutory amounts, and employer's liability insurance, for all of its employees engaged in the Services. The failure of the Consultant to comply with this Section 6.3.8(i) shall make this Contract voidable at the option of the Corporation.

(ii) **Commercial General Liability.** The Consultant shall purchase and maintain commercial general liability insurance, including owner's protective liability insurance, to protect the Corporation, the City and the Additional Insureds, the Consultant and its Subcontractors against any and all claims for property damage, personal injury and death arising out of the Services performed by the Consultant and its Subcontractors, and any work incidental thereto. The certificate of insurance must indicate that such insurance is on a "per occurrence" and a "per project" aggregate basis. The commercial general liability policy shall not contain any exclusions other than those in the basic unendorsed commercial general liability policy. The liability policy(ies) certificate of insurance must indicate cross-liability coverage providing severability of interests so that, except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, coverage will respond as if separate policies were in force for each insured. If at any time the commercial general liability policy should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Consultant shall suspend performance of the Services if the Corporation shall so direct. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not suspended, whether or not because of omission of the Corporation to order suspension, then the Corporation may, at its sole option, obtain insurance affording coverage equal to that required hereunder, the cost of such insurance to be payable by the Consultant to the Corporation.

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

(iv) **Umbrella/Excess Liability Coverage.** The Consultant shall purchase and maintain umbrella/excess liability insurance, specifically listing commercial general liability, comprehensive automobile liability and employer's liability as primary coverages, to protect the Corporation, the City, the Additional Insureds, the Consultant and its Subcontractors from any and all claims in excess of the underlying policy limits for such primary coverages. The certificate of insurance must indicate that such insurance afforded by this Section 6.3.8(iv) is on a "per occurrence" basis and an aggregate basis.

(v) If applicable, the additional policies described in Appendix E (Insurance Requirements).

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

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

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

ARTICLE 7 **REPRESENTATIONS AND WARRANTIES**

The Consultant represents and warrants that:

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

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

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

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

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

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

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

ARTICLE 8

APPLICABLE LAWS, RULES AND REGULATIONS

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

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

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

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

8.1.4 If the Consultant commences any action against the Corporation in a court located other than in the City and State of New York, then, upon request of the Corporation, the Consultant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is pending will not or

cannot transfer the action, the Consultant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City.

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

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

8.4 Equal Employment Opportunity/Employment Reports.

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

8.4.2 The Consultant covenants that it shall complete and submit and shall require all Subcontractors to complete and submit Employment Reports (as required by E.O. 50) to the Corporation in the form annexed to this Contract as Appendix G (E.O. 50 Employment Report Form).

8.4.3 The Consultant and any Subcontractors that provide any on-site construction activity shall complete and submit the Payroll Report to the Corporation in the form annexed to this Contract as Appendix H (E.O. 50 Payroll Report Form and Instructions).

8.4.4 The Consultant shall give consideration to employing City residents who are economically disadvantaged or are eligible under any applicable Legal Requirements including the Workforce Investment Act of 1998, and who have qualifications and skills commensurate with the requirements for the position available. To the greatest extent feasible, the Consultant shall give opportunities for training and employment to lower income persons in the City.

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

8.5 Minimum Wages. Except for any employees whose prevailing wage is required to be fixed pursuant to Section 220, et seq. and Section 230, et seq. of the New York State Labor Law, which employees shall be paid such prevailing wage, all persons employed by the Consultant or

any subcontractor in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor or services, used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law, unless a higher amount is required pursuant to any other provision of this Contract.

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

8.7 Sales and Use Tax.

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

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

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

8.9 Doing Business Data Form Requirements.

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

8.9.2 The Consultant shall complete and submit a Doing Business Data Form in the form attached at Appendix M (Doing Business Data Form) *prior to* the Corporation's execution of this Contract. The Consultant's failure to complete and submit a Doing Business Data Form and/or its submission of a form that is not accurate or complete may result in appropriate sanctions.

ARTICLE 9

M/WBE REQUIREMENTS

9.1 M/WBE Program. Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination

on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business and lowering contract costs. The Corporation endorses these goals and participation by MBEs and WBEs in the provision of the Services. The following goals and provisions are integral to achieve these goals. The Consultant shall comply with all requirements of the Corporation's M/WBE Program applicable to this Contract.

9.2 Minority and Women -Owned Business Enterprises. In order to be considered M/WBEs for purposes of this Contract, the M/WBEs must have received certification as such by DSBS.

9.3 Target Subcontracting Percentage. The Target Subcontracting Percentage is the percentage of the total Contract that the Corporation anticipates that the Consultant would in the normal course of business award to one or more Subcontractors for amounts under \$1 million. The Target Subcontracting Percentage applicable to this Contract is set forth in Part I, Section 1.12.1. The Consultant shall be subject to said Target Subcontracting Percentage.

9.4 Participation Goal. The Participation Goal is expressed as a percentage that represents the total dollar value of subcontracts under this Contract for amounts under \$1 million to be performed by M/WBEs compared to the total dollar value of all subcontracts under this Contract for amounts under \$1 million. The Participation Goal applicable to this Contract is set forth in Part I, Section 1.12.2. The Consultant shall be subject to the Participation Goal, unless the Corporation grants a modification of this goal pursuant to Section 9.8.

9.5 Consultant's M/WBE Utilization Plan.

9.5.1 The M/WBE Utilization Plan for this Contract is annexed hereto as Appendix L (Consultant's M/WBE Utilization Plan).

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

9.5.3 If this Contract is extended beyond the Initial Term, the Consultant shall submit an updated M/WBE Utilization Plan to the Corporation's Chief Contracting Officer 30 days prior to the anniversary of the Commencement Date in each subsequent year during the Term as extended. The Consultant's updated M/WBE Plan shall be subject to the Corporation's approval and must set forth:

- (i) the percentage of work the Consultant intends to subcontract;
- (ii) the percentage of work the Consultant intends to award to Subcontractors for amounts under \$1 million;
- (iii) the identity of all proposed Subcontractors to which the Consultant intends to award subcontracts;
- (iv) in cases where the Consultant intends to award subcontracts for amounts under \$1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and

(v) the time frames in which such work by MBEs and/or WBEs is scheduled to begin and end.

9.6 M/WBE Compliance Reports.

9.6.1 The Consultant shall provide the Corporation with written statements (“M/WBE Compliance Reports”), certified under penalty of perjury, reporting the status of the Consultant’s compliance with its M/WBE Utilization Plan as set forth in this Section 9.6.

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

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

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

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

9.6.4 In addition to the foregoing, the Consultant shall submit a final, cumulative M/WBE Compliance Report to the Corporation with its Requisition for Final Payment. The Consultant shall set forth in such final report the information required by Section 9.6.3 in connection with all Services rendered by the Consultant and its Subcontractors during the entire Contract Term.

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

9.8 Modification of the Consultant’s M/WBE Utilization Plan. The Consultant may request modification of its M/WBE Utilization Plan after the award of the Contract. The Corporation may grant such request if it determines that the Consultant has established, with appropriate documentary and other evidence, that the Consultant has made all reasonable, good faith efforts to meet the Participation Goal set for the Contract. In making such determination, the Corporation will consider, along with any other relevant factors, evidence submitted by the Consultant showing that the Consultant has, without limitation, and as applicable:

- (i) advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women’s business organizations;

(ii) provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;

(iii) sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs and WBEs that their interest in the Contract was solicited;

(iv) made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the Consultant's M/WBE Utilization Plan, and for which the Consultant claims an inability to retain MBEs or WBEs;

(v) held meetings with MBEs and/or WBEs prior to the date its proposal was due, for the purpose of explaining in detail the scope and requirements of the work for which its proposals was solicited;

(vi) made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;

(vii) submitted timely written requests for assistance to the Corporation's M/WBE liaison officer and to DSBS;

(viii) submitted a statement as to how recommendations made by DSBS and the Corporation were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

9.8.2 The Corporation's M/WBE Director and Chief Contracting Officer will provide written notice to the Consultant of the determination.

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

9.10 Enforcement. In the event the Corporation determines that the Consultant or its Subcontractors have violated the requirements of the Corporation's M/WBE Program or the M/WBE Utilization Plan including a determination that the Consultant has made payments to or awarded work to M/WBE Subcontractors in amounts less than the amounts specified in the Consultant's M/WBE Utilization Plan (unless the Corporation has permitted the Consultant to modify the Consultant's M/WBE Utilization Plan in accordance with Section 9.8), the Corporation may:

(i) terminate the Contract;

(ii) assess actual and consequential damages for and/or exercise its right to set off any additional expenses the Corporation incurs to complete the Competition satisfactorily in accordance with the Corporation's M/WBE Program and in order to meet the Participation Goal, if any, set for the Contract including the actual and administrative costs of:

(a) meeting the Participation Goal through additional procurements;

(b) payments made to any other consultant retained to complete the Services; and

(c) investigation and enforcement;

(iii) remove the Consultant from the list of qualified consultants maintained by the Corporation and/or file an advice of caution form for inclusion in VENDEX as caution data; or

(iv) assert any other right or remedy it has under the Contract.

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

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

ARTICLE 10 MISCELLANEOUS

10.1 Consultant as Independent Contractor. Notwithstanding anything contained herein to the contrary including the provisions of Section 5.2 hereof, it is specifically understood and agreed that in the performance of the terms, covenants and conditions of this Contract, the Consultant and its Representatives shall not be deemed to be acting as agents, servants or employees of the Corporation or the City by virtue of this Contract or by virtue of any approval, permit, license, grant, right, or other authorization given by the City or the Corporation or any of their Representatives in connection with this Contract, but shall be deemed to be independent contractors performing work or professional services for the Corporation, and shall be deemed solely responsible for all acts taken by them pursuant to this Contract.

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

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

10.4 Maintenance of Records. In order to facilitate any audit provided herein, the Consultant agrees to maintain accurate, readily auditable records and accounts with supporting documentation in accordance with generally accepted accounting principles of the Services performed by it, its employees, and its Subcontractors under this Contract and of all financial

accounts and transactions maintained or undertaken in connection with this Contract, including, but not limited to, time cards and records reflecting the nature of the work performed and time consumed, bank statements, cancelled checks, bills and receipts, Requisitions, and deposit slips, and to make such records available for inspection and audit in the City by the Corporation, the City, the Inspectors and any other individual or entity authorized under any Applicable Statute or Applicable Agreement upon reasonable Notice. Said records shall be maintained for a period of six years after termination of this Contract.

10.5 Modification in Writing. Subject to Section 10.13, no modification, amendment, waiver or release of any provision of this Contract or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose unless in writing and duly executed by the party against whom the same is asserted.

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

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

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

10.9 Notices.

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

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

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

10.11 Refusal to Testify.

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

10.11.2 If:

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

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

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

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

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

(i) the disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City or the Corporation, as the case may be; and/or

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

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

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

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

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

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

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

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

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

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

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

10.13 Right to Amend. Upon request by the Corporation, from time to time the Consultant and the Corporation shall enter into amendments or other modifications to the terms of this Contract as necessary or appropriate to give full effect to all Legal Requirements, including any requirements arising in connection with the Applicable CDBG-DR Rules or the use of CDBG-DR Funds as the funding source for this Contract as provided in Part I, Section 4. In connection with the foregoing, upon receipt of any such request from the Corporation, the Consultant shall cooperate with the Corporation in good faith for the purpose of promptly negotiating and entering into any such amendments or other modifications.

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**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
CONSULTANT CONTRACT
FOR THE PROVISION OF CONSULTING SERVICES
NYCEDC CONTRACT NO. [5509-0001]
PROJECT CODE NO. [5509]**

PART III

APPENDICES

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APPENDIX A

DEFINITIONS AND INTERPRETATION

Definitions

The defined terms listed below shall have the following corresponding meanings in the annexed Contract (as defined herein) unless otherwise defined or the context otherwise requires.

“Additional Insured”	All individuals and entities listed as such in <u>Appendix E</u> (Insurance Requirements)
“Allowable Additional Costs”	As defined in <u>Appendix B</u> (Scope of Services)
“Applicable Agreements”	Various governing agreements related to the Funds, the Competition and/or this Contract, including any specific “Applicable Agreements” identified in <u>Part I</u> or set forth in <u>Appendix N</u> (Applicable Agreements), and any other governing agreement or MOU with the City, State and/or federal governments, or any agency thereof
“Applicable Statutes”	Any and all federal, state and local laws, statutes, rules, regulations and orders applicable to this Contract, the Funds or the Competition, including any specific “Applicable Statutes” identified in <u>Part I</u>
“Applicable CDBG-DR Rules”	[●].
“Art Commission”	Art Commission of the City of New York
“Business Day”	Any day other than a Saturday, Sunday, legal holiday, a day on which the City is closed for business, or a day on which banking institutions in the City are authorized by law or executive order to close.
“CDBG-DR Funds”	Community development block grant funds to be used for certain disaster recovery purposes pursuant to the Disaster Relief Appropriations Act of 2013 (Public Law 113-2)
“City”	The City of New York
“City Contract”	The Amended and Restated Contract between the City and the Corporation, dated as of June 30, 2005 and the Amended and Restated Maritime Contract between the City and the Corporation, dated as of June 30, 2005, as applicable, as each may be amended, restated and/or revised from time to time

“City Comptroller”	Comptroller of the City or his or her designee
“Commencement Date”	The date upon which the Consultant shall commence the Services as stated in <u>Part I, Section 1.4</u>
“Comptroller General”	The United States Comptroller General
“Competition”	The Infrastructure and Building Resiliency Technologies Competition as more fully described in the Scope of Services.
“Confidential Information”	Any and all information, records, data, materials, documents, electronic files or Work Product provided by NYCEDC and/or the City or any of its agencies to the Consultant except that which (i) shall have otherwise become publicly available through no fault of Consultant or its Representatives; (ii) becomes available to the Consultant on a nonconfidential basis from a source other than NYCEDC, the City or any of its agencies; or (iii) is known by the Consultant prior to its receipt from NYCEDC, the City or any of its agencies without any obligations of confidentiality with respect thereto
“Consultant”	The entity or person contracted by the Corporation to perform the Services pursuant to this Contract, as identified in <u>Part I, Section 2.3</u>
“Consultant’s Underlying Intellectual Property”	The Consultant’s analytical concepts, approaches, methodologies, or formats developed by the Consultant’s staff, and to other materials not prepared for delivery to the Corporation and also including any derivatives, improvements, enhancements or extensions of the Consultant’s Underlying Intellectual Property conceived, reduced to practice, or developed during the term of this Contract that are not uniquely applicable to the Corporation
“Contract”	The Contract between the Consultant and the Corporation to which this <u>Appendix A</u> is annexed, as defined in <u>Part I, Section 1.1</u>
“Contract Completion Costs”	As defined in <u>Section 3.5.3</u>
“Contract Date”	The date of this Contract, as stated in <u>Part I, Section 1.3</u>
“Corporation”	New York City Economic Development Corporation, a not-for-profit corporation organized pursuant to the Not-for-Profit Corporation Law of the State of New York.

“CPL”	Contractor Pollution Liability Insurance
“DBEs”	Disadvantaged Business Enterprises
“Director”	The person set forth in <u>Part I, Section 2.2</u> , or such other person as may be subsequently designated by the Corporation by Notice
“Disability Benefit”	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services
“DCAS”	New York City Department of Citywide Administrative Services
“DCP”	New York City Department of City Planning
“DEP”	New York City Department of Environmental Protection
“Division”	Division of Labor Services of DSBS
“DOB”	New York City Department of Buildings
“Doing Business Data Form”	The form annexed at <u>Appendix M</u> (Doing Business Data Form) to be completed by the Consultant and submitted to the Corporation pursuant to LL 34
“DOS”	New York City Department of Sanitation
“DOT”	New York City Department of Transportation
“DPR”	New York City Department of Parks and Recreation
“DSBS”	New York City Department of Small Business Services
“Electronic Funds Transfer (EFT)”	Any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorized a financial institution to debit or credit an account
“E.O. 50”	Executive Order No. 50 (1980), as amended or revised from time to time

“Employment Report”	Required by Executive Order 50, these reports are to be completed and submitted to the Corporation in the form annexed to this Contract as <u>Appendix G</u> (E.O. 50 Employment Report Form)
“Event of Default”	As described in <u>Part II, Section 3.3.2</u>
“Extra Work”	A significant alteration to the work or Services that the Consultant has been directed to perform by the Director as described in <u>Part II, Section 1.5.2</u>
“FDNY”	New York City Fire Department
“Federal Courts”	United States Federal Courts located in New York City
“FHWA”	United States Federal Highway Administration
“Final Completion”	The performance of all Services contemplated in this Contract to the satisfaction of the Director
“Final Payment ”	The last payment by the Corporation to the Consultant under the Contract upon Final Completion or as provided in <u>Part II, Sections 3.5.2 and 3.5.4</u> , subject to any Retainage
“Force Majeure”	Any of the following acts and events that occur without the negligence or fault, and beyond the reasonable control, of Consultant and that of any of its successors, heirs, assigns, and/or Representatives and of which Consultant has given the Corporation express written notice within three (3) days after the commencement of the alleged cause of the delay, hindrance, or obstruction: governmental preemption in connection with a national emergency, war or act of war, insurrection, riot, act of public enemy, terrorist acts, labor disputes, accidents, mechanical failure and acts of God (including fire, flood or abnormal adverse weather conditions not reasonably anticipatable)
“FTA”	United States Federal Transit Administration
“Funding Agencies”	All federal, State or local agencies or entities that are the source of the Funds including any specific “Funding Agencies” identified in <u>Part I</u>
“Funds”	All funds from the federal, State or local sources to be applied to payments for Services under this Contract including any specific “Funds” identified in <u>Part I</u>

“IDA”	New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized pursuant to Article 18-A of the General Municipal Law of the State of New York
“Inspectors”	All individuals or entities specifically identified as “Inspectors” in <u>Part I</u> , if any
“Insurer”	Any insurance company retained by the Consultant pursuant to <u>Part II, Section 6.3.2</u>
“Landmarks Preservation Commission”	The City of New York Landmarks Preservation Commission
“Legal Requirements”	All applicable laws, rules, regulations, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over and which affect the work and/or Services under this Contract including all Applicable Agreements and all Applicable Statutes
“Local Law 34 (LL 34)”	Local Law No. 34 of 2007, as it may be amended or superseded
“LPC”	City of New York Landmarks Preservation Commission
“MacBride Principles”	Those principles relating to nondiscrimination in employment and freedom of workplace opportunities that requires employers doing business in Northern Ireland to comply with specific terms set forth in Section 6-115.1 of the City’s Administrative Code
“Maximum Contract Price”	The maximum amount that may be paid for the Services under the Contract, as stated in <u>Part I, Section 1.6</u>
“Maximum Payment”	The maximum amount payable for each Portion of the Services during a billing period
“MBEs”	Minority-owned Business Enterprises
“M/WBE Compliance Reports”	As described in <u>Part II, Section 9.6</u>
“M/WBEs”	MBEs and WBEs, collectively
“M/WBE Utilization Plan”	As described in <u>Part II, Section 9.5</u>

“MOU”	Memorandum of Understanding
“New York State Courts”	Courts of the State of New York in the City and County of New York
“Notice”	Any written notice, demand, request, instruction, advice, directive or other communication in connection with this Contract to be delivered to a party designated in <u>Part I</u> , Section 3, for the receipt of notice in the manner set forth in <u>Part II</u> , <u>Section 10.9.1</u>
“Notice to Proceed”	Written Notice from the Corporation to the Consultant to proceed with the Services or any portion thereof
“Notify”	To give a Notice pursuant to <u>Part II</u> , <u>Section 10.9.1</u>
“NYCDEP”	New York City Department of Environmental Protection
“NYCEDC”	The Corporation
“NYCTA”	New York City Transit Authority
“NYPD”	New York City Police Department
“NYSDEC”	New York State Department of Environmental Conservation
“NYSDOH”	New York State Department of Health
“NYSDOS”	New York State Department of State
“NYSDOT”	New York State Department of Transportation
“OMB”	New York City Office of Management and Budget
“OPRHP”	New York State Office of Parks, Recreation and Historic Preservation
“PANYNJ”	The Port Authority of New York and New Jersey
“Participation Goal”	The Corporation’s goal for M/WBE participation related to the Contract, as defined in <u>Part II</u> , <u>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 the “Project” as identified in <u>Part I, Section 1.8</u> and described in detail in <u>Appendix B</u> (Scope of Services)
“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>
“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
“USHUD”	United States Department of Housing and Urban Development.
“UST”	Underground storage tanks
“WBEs”	Women-owned Business Enterprises
“Worker’s Compensation”	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services
“Work-Made-For-Hire”	As defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101
“Work Product”	All reports, plans, studies, surveys, data, databases, programs, processes, systems, drawings, tracings, blueprints, photographs, computer drawings, schematics, specifications, log books, correspondence, models, studies, permits approvals, designs, deliverables, samples, presentation materials, analyses, punch lists, submissions, filings, applications, schedules, documents and materials, including 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

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.

APPENDIX B
SCOPE OF SERVICES

[to be attached hereto]

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:

“ <u>Applicant</u> ”	Any eligible Person that submits an Application Package that meets the screening criteria and other requirements for the Competition.
“ <u>Application Package</u> ”	An application package submitted by each Applicant in connection with their proposed Project which includes the Project Plan, a project budget, and other appropriate information or documents to be identified and as otherwise required by the competition criteria and the Application Requirements.
“ <u>Application Requirements</u> ”	Requirements regarding application form and substance that must be met for an Application Package to be considered complete and which include the information described in <u>Annex 1</u> attached to this <u>Appendix B</u> (Scope of Services).
“ <u>CDBG-DR Funds</u> ”	Community development block grant funds for disaster recover disbursed to any Person which originate from the funds appropriated under the Disaster Relief Appropriations Act of 2013 (Public Law 113-2).
“ <u>Competition</u> ”	The Infrastructure and Building Resiliency Technologies Competition.
“ <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>Grant Agreement</u> ”	A grant or other agreement between a Grantee and NYCEDC in a form to be provided by NYCEDC, pursuant to which the Grantee will agree to undertake their Project in accordance with certain terms set forth in the agreement and NYCEDC or another Person will disburse CDBG-DR Funds to the Grantee.
“ <u>Person</u> ”	An individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association or any other similar person or entity whether for-profit or not-for-profit.
“ <u>Project</u> ”	A project proposed to be undertaken or sponsored by an Applicant in their Project Plan that involves the use of new or innovative technologies and measures to improve the resiliency of New York City’s critical infrastructure networks and/or building systems.
“ <u>Project Plan</u> ”	A plan or proposal for a Project submitted by an Applicant as part of the Competition in accordance with the competition criteria and the Application Requirements.
“ <u>Tasks</u> ”	Tasks specified as part of the Services to be rendered by Consultant under this Contract.
“ <u>Track 1</u> ”	The critical infrastructure resiliency track, designed to identify measures that increase resiliency of critical infrastructure networks, including power, liquid fuel, other energy (steam and natural gas) and telecommunications.
“ <u>Track 2</u> ”	The building resiliency technologies track, designed to identify technologies that can be implemented in public and private buildings in the City to make their systems more resilient.

OVERVIEW OF SERVICES.

The Consultant will be expected to assist with the development and administration of both Track 1 and Track 2 of the Competition over the course of the Contract Term. It is anticipated that the Competition will include an initial screening stage followed by two (2) rounds of judging for each track. As more fully described below, the Competition will be designed and carried out with significant assistance from the Consultant, including, but not limited to, assisting NYCEDC in:

- Competition design, including developing competition criteria and the requirements of Application Packages;
- Facilitating outreach to Competition participants (local, national and international)
- Convening a technical advisory panel of industry experts and key stakeholders
- Evaluating proposals in comparison to best widely-available solutions
- Monitoring post-award implementation
- Evaluating the impact of the Competition as a whole and of each individual Project that receives CDBG-DR Funds

The Consultant shall have the following expertise, abilities and resources:

- the ability and resources to assist in the design, development, marketing, administration, implementation and promotion of the Competition and to otherwise perform the Services;
- the ability and resources to develop a website providing Applicants, prospective Applicants and the general public with Competition information;
- the resources to professionally and accurately respond to website, email and phone inquiries from Applicants, prospective Applicants and the general public
- The ability to judge and/or assemble a panel of judges to review and evaluate Application Packages for quality and eligibility;
- The resources and/or access to facilities to host an awards ceremony accommodating approximately 100 people;
- experience administering technology-related competitions; and
- expertise in infrastructure and building systems.

ROLE OF NYCEDC.

NYCEDC may play a variety of roles, depending on the needs of the Competition. NYCEDC expects to take the lead responsibility for all elements of the Competition. NYCEDC may elect to nominate individuals to serve on the technical advisory panel or the panel of judges to evaluate proposals submitted under the Competition tracks. NYCEDC may also elect to provide publicity and marketing support.

COMPETITION DETAILS

The Competition details set forth below are preliminary in nature. The Consultant shall propose revised or expanded structures, terms and conditions as part of the Services to be provided hereunder. As such, the following details are guidelines for the Consultant and subject to change if recommended by the Consultant and accepted by NYCEDC. Further, NYCEDC maintains the right to change the Competition details based on the input and expertise of the Mayor’s Special Initiative for Rebuilding and Resiliency (“SIRR”), other City agencies, such as the Mayor’s Office of Long Term Planning and Sustainability (“OLTPS”) and other key stakeholders. In addition, NYCEDC maintains the right to modify the Competition details in order to comply with CDBG funding and Legal Requirements or to optimize impact. NYCEDC anticipates that up to \$45 million of the City’s CDBG allocation will be provided to winning Applicants as grants under Grant Agreements for winning Projects and/or as competition prize money.

1. Competition Design Requirements

- a. Critical Infrastructure Resiliency Track designed to identify measures that increase resiliency of critical infrastructure networks, including power, liquid fuel, other energy (steam and natural gas) and telecommunications.
- b. Building Resiliency Technologies Track designed to identify technologies that buildings can adopt to make their systems more resilient.

2. Eligible Competition Participants

It is anticipated that eligible Applicants may include a broad range of companies and organizations currently based in NYC, as well as throughout the United States and the world. Eligibility criteria will be developed to ensure that selected organizations comply with any and all Legal Requirements associated with receiving CDBG-DR Funds. Subject to any restrictions that may apply under applicable Legal Requirements, eligible Applicants could include: technology companies, engineering and design firms, infrastructure providers (e.g. utilities, telecommunications carriers, fuel suppliers) and real estate owners and developers.

3. Competition Awards

It is anticipated that the Competition will competitively award grants to multiple winning Applicants under each track, with grant amounts being based on Project - specific proven financial need as documented in the Applicants Application Packages. Awards of grant funds for winning Applicants are anticipated to include up to \$45 million in total as allocated across Track 1 and Track 2, as follows:

- a. Track 1: critical infrastructure resiliency track:
 - i. Grants to increase the resiliency of four (4) categories of critical networks:
 - o Electric power
 - o Liquid fuels
 - o Other energy (e.g., steam and natural gas)
 - o Telecommunications (wired and wireless)
- b. Track 2: building resiliency technologies track:
 - i. Grants to fund demonstration projects that use innovative technologies that:
 - o Make building systems flood resistant
 - o Enable building systems to “fail gracefully”
 - o Expedite recovery after a disaster

4. Judging Process

It is anticipated that Application Packages will be judged by a technical advisory panel of industry experts and key stakeholders and/or a panel of judges, in either case to evaluate Application Packages submitted under the Competition tracks and may involve the award of grants, pursuant to Grant Agreements, to the most potentially impactful and cost-effective solutions.

It is anticipated that the judging process shall include:

- a. Initial Screening: the Consultant shall eliminate submissions that fail to meet the Competition’s objectives through a pre-defined process, subject to the approval of NYCEDC;
- b. Round 1: the Consultant shall manage the process, subject to the approval of NYCEDC, by which a panel of evaluators will conduct a more intensive review of submissions, prioritizing based on technical potential and cost-effectiveness to determine Competition finalists; and
- c. Final Round: the Consultant shall manage the process, subject to the approval of NYCEDC, by which a judging panel of industry experts and key stakeholders will evaluate proposals against pre-defined selection criteria to determine Competition winners.

5. Selection Criteria

It is anticipated that submissions will be judged based on Applicant’s demonstration of the following:

- a. Impact and effectiveness in addressing resiliency priorities

- b. Cost and speed to implement
- c. Citywide replicability
- d. Proven success of proposed technology in a meaningful context
- e. Market validation or value proposition
- f. Local economic impact

SERVICES.

The Consultant shall undertake or provide the following six (6) tasks and deliverables described below as part of the Services:

Task 1. Design and Launch the Competition

The Consultant will propose the structure, guidelines and terms and conditions for the Competition for NYCEDC's consideration and approval. At a minimum, such proposal shall include the Consultant's approach to the following:

1. Competition design
2. Participation eligibility for Applicants
3. Competition awards and appropriate amounts for Project grant funding
4. Judging process
5. Selection criteria and submittals by which submissions will be reviewed and selected.

The proposed Competition design, including participation criteria and submittals will be based on infrastructure and building system needs identified and validated through industry research, interviews and other research methods, to be proposed by the Consultant. The Consultant shall engage with other City entities, particularly SIRR and OLTPS to ensure that the Competition design aligns with the City's rebuilding and resiliency priorities. The Competition design and criteria should build upon NYCEDC's goal to competitively allocate funds to identify and deploy the most promising technologies that improve the resiliency of NYC's buildings and critical networks. The meaning of "the most promising resiliency technologies" will be jointly defined as part of this task.

The Consultant will be responsible for initiating the overall Competition management, which will be transitioned to NYCEDC once the Competition is launched.

Consultant Deliverables:

- A written proposal for the Competition design, including eligibility requirements for both participants and submissions and selection criteria by which submissions will be reviewed and selected.

- The Competition design will not be considered final without explicit written approval from NYCEDC.
- A write-up of research questions, methodology and findings used to inform the proposed Competition design.

Task 2. Perform Competition Marketing and Outreach

The Consultant shall actively promote and market the Competition, including utilizing their network of contacts, institutions and organizations in order to reach a broad audience domestically and internationally and garner participation from a diverse range of entities. The Consultant should include references to relevant entities within their network that will allow the Consultant to effectively market the Competition.

The Consultant shall establish partnerships with domestic and international business associations and other organizations with the ability to help promote and market the Competition.

The Consultant will be responsible for designing, developing and hosting a Competition website that will provide:

1. Guidelines, rules and a timeline for Competition submissions;
2. A means for Applicants to submit their Application Packages online;
3. Marketing visibility for the Competition; and
4. Contact information for questions.

Consultant Deliverables:

- Identification and outreach to target Competition participants
- Marketing/outreach plan
- Outreach to maximize Competition participation
- Website design, launch, hosting and maintenance

Task 3. Recruit Technical Advisory Panel and Competition Judges

The Consultant shall develop a list of twenty (20) to thirty (30) candidates to serve on the judging panels for the Competition. Candidates could include:

- City representatives, including but not limited to, NYCEDC, SIRR and OLTPS
- Industry experts and key stakeholders

Candidates should possess the expertise in infrastructure and building systems required to evaluate the wide range of existing and emerging technologies proposed.

The Consultant shall assist NYCEDC in conducting outreach efforts to recruit the panels of expert judges.

Consultant Deliverables:

- List of judges, not to be considered final until explicit written approval is received from NYCEDC.

Task 4. Manage Entrant Submissions, Questions, Submissions Screening and Judging

The Consultant shall respond to questions about the Competition via the website, email and phone.

The Consultant shall conduct the submission intake process as developed in Task 1.

The Consultant will be responsible for efficiently conducting screenings to (1) eliminate submissions that fail to meet the Competition’s objectives and criteria and (2) evaluate those submissions which are potential “winners”. The first round screening should follow the NYCEDC-approved processes developed in Task 1.

Depending on the size of the response to the Competition, the Consultant may wish to enlist volunteer judges for the initial screening. Volunteer judges may include NYCEDC staff members, industry representatives, stakeholders and others as identified by the Consultant.

The Consultant shall manage judging to select finalists and winners per the methodology developed in Task 1.

Consultant Deliverables:

- List of enlisted evaluators and judges
- List of all entrant submissions
- Documentation of the screening process implemented, included but not limited to a ranking sheet
- List of finalists and winners

Task 5. Manage Logistics for Awards Ceremony

Plan and implement awards ceremonies for presentation of winning submissions. Ceremonies shall be attended by finalists, judges, press, City government, industry experts and key stakeholders. The Consultant shall host and manage the logistics of the events and assist with promotion.

Provide, or arrange for the provision of, space to accommodate the events. It is anticipated that each event will last for approximately 2-3 hours.

Task 6. Provide Project Management Support, Monitor and Report on Post-Award Implementation and Evaluate the Competition's Impact

The Consultant will work in close collaboration with NYCEDC staff on all aspects of the Competition, providing general project management support on an as-needed basis, mainly in the areas outlined in this scope.

The Consultant will work with NYCEDC staff to identify useful metrics with which to monitor and report on the Competition's outcomes.

Consultant Deliverables:

- General project management support
- Proposed metrics for reporting Competition outcomes and evaluating the Competition's impact
- Report of post-award implementation

TIMELINE

In general, the Consultant shall complete the Services and all Tasks related to the conduct and conclusion of the Competition within twenty-four (24) months of the Contract Date. The following timeline is tentative, and is subject to change at the discretion of NYCEDC. For purposes of the Contract, the timeline below shall constitute the initial Progress Schedule.

Competition timeline

- Consultant selection: Q2 2013
- Execution of the Contract with Consultant: Q2 2013
- Task 1 – Design and Launch the Competition: Q2/Q3 2013
- Task 2 – Perform Competition Marketing and Outreach: Q3/Q4 2013
- Task 3 – Recruit Technical Advisory Panel and Competition Judges: Q4 2013
- Task 4 – Manage Entrant Submissions, Questions, Submission Screening and Judging: Q4 2013 – Q4 2014
- Task 5 – Manage Logistics for Awards Ceremony: Q4 2014

- Task 6 – Provide Project Management Support, Monitor and Report on Post-Award Implementation and Evaluate the Competition’s Impact: Q4 2014 – Q2 2015

APPLICATION REQUIREMENTS

1. *[list of requirements, including requirements imposed by applicable CDBG rules, to be added here prior to execution of Contract]*

APPENDIX C

PAYMENTS

PAYMENTS BASED ON TASKS COMPLETED

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

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

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

- (i) the Percentage of Completion for each Portion of the Services performed by the Consultant during the billing period;
- (ii) Allowable Additional Costs incurred during the billing period [(not applicable to this Contract)];
- (iii) the amount of partial payment requested; and
- (iv) a representation and warranty that, except as set forth in the Requisition, the representations and warranties made by the Consultant in Article 7 of the Contract are true and correct as of the date of the Requisition as if made on the date of the Requisition.

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

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

Except as otherwise expressly provided herein, the Corporation shall have no obligation to make any payments to the Consultant hereunder unless and until the Corporation receives disbursements of CDBG-DR Funds in amounts equal to such payments and where such amounts are permitted under any Legal Requirements to be used to make such payments.

Exhibit 1 to Appendix C

Payment Schedule

[to be attached hereto]

Exhibit 1 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.,
New York, NY 10038 – Attention: Christine Nicastro 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 the 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 on 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>	\$1,000,000
<u>Commercial General Liability (including Owner's Protective Liability):</u>	\$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, on a "per project" basis
<u>Automobile Liability:</u>	\$1,000,000
<u>Umbrella/Excess Liability:</u>	\$10,000,000 combined single limit per occurrence and in the aggregate, excess of primary general, automobile and employer's primary liability limits

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

<u>U.S. Harbor Workers' Long Shoremens' Compensation Act:</u>	In statutory amounts
<u>Marine Protection and Indemnity:</u>	\$25,000,000 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
---	---

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 Insurance: \$1,000,000 per claim and in the aggregate for a period expiring not less than three (3) years after the Project's completion

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.

the respective directors, officers, officials, and employees of such entities, and such other entities 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 in violate 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
	S GENERAL LIABILITY				
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE OCCUR. OWNER'S & CONTRACTOR'S PROT.	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) \$
	<input checked="" type="checkbox"/> Additional Insureds—City of New York; New York City Economic Development Corp.; and Apple Industrial Development Corp.				
B	<input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY	Insurance Policy # M	11/11/11	22/22/22	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	P				
	EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
	L				
C	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY	Insurance Policy #	11/11/11	22/22/22	<input checked="" type="checkbox"/> STATUTORY LIMITS EACH ACCIDENT \$ DISEASE—POLICY LIMIT \$ DISEASE—EACH EMPLOYEE \$

OTHER
D Professional Liability (Consultant Contracts Only) F 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,....

ACORD 25-S (7/90)

©ACORD CORPORATION 1990

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.

(Name of broker)

(Address of broker)

(Signature of authorized official of broker)

(Name and title of authorized official)

Sworn to before me this
_____ day of _____, 2013

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 H

E.O. 50 PAYROLL REPORT FORM AND INSTRUCTIONS

[attached hereto]

INSTRUCTIONS FOR PREPARING AND SUBMITTAL OF A PAYROLL REPORT

1. All persons who perform any on-site construction activity, during the period of requisition, shall be listed on the Payroll Report.
2. Separate Payroll Reports shall be submitted by the prime contractor and each sub-contractor who performs any on-site construction activity during the period of the requisition.
3. Failure to provide the required Payroll Report may result in the requisition for payment being returned unpaid or the payment reduced.
4. **PAYROLL REPORT HEADING:** The spaces between the first set of double lines shall be referred to as the Payroll Report Heading and shall require the following information:

NAME OF CONTRACTOR / SUB-CONTRACTOR: Circle either the word **CONTRACTOR** or **SUB-CONTRACTOR** as applicable. The legal name of the firm submitting the Payroll Report shall be placed immediately below this designation.
ADDRESS: Insert the current address (i.e. Street, City, State & Zip Code) of the firm submitting the Payroll Report.
PHONE No.: Enter the telephone number of the firm in the space provided.
PAYROLL No.: In the space provided, enter the Payroll Number of the Contractor or Sub-Contractor.
CONTRACT REG. No.: Enter the Contract Registration Number here. This may be obtained from the "Notice of Award" and / or the "Order to Commence Work" letters.
JOB CODE: In the space provided enter the Contractor/ Sub-Contractor's in-house labor distribution code or job number where applicable.
WEEK ENDING - DATE: In the space provided enter the last date of the payweek (i.e. month, day, year).
PROJECT NAME & LOCATION: In this space enter the Project Name & Location where contract work is being performed.
TAX ID. No.: Enter in this space the Federal Tax Identification Number of the Contractor or Sub-Contractor as applicable.

5. For every employee who performs any on-site construction activity during the period of the Payroll Report, the following information shall be provided:
 - 1) **NAME, ADDRESS, SOCIAL SECURITY NO.:** The Legal name, current address and social security number of each employee.
 - 2) **LIST TRADE & CIRCLE WORK CLASSIFICATION:** Specify & insert the Trade applicable to the work performed by each employee. The Trade identified must be one listed on the Prevailing Wage & Supplemental Benefits Schedule of the Comptroller. Circle the letter **J** if the individual is a Journeyman, the letter **A** if the person is a Registered Apprentice with the Department of Labor of the State of New York, or the letter **H** if the person is a Helper and listed as such against the appropriate Trade on the Comptroller's Schedule of Prevailing Wages.
 - 3) **TIME:** RT relates to Regular Time, and OT relates to Over Time.
 - 4) **DAY AND DATE:** Below this heading, in the first row enter the appropriate sequence of the contractor's pay records: MTWTFSS, for example, is the sequence to use if the workweek ends on a Sunday and SSMTWTF is the sequence if the workweek ends on a Friday. In the second row, below each letter representing the day of the payweek, insert the corresponding date. Below the heading **HOURS WORKED EACH DAY** at the intersection of the column of the particular day and date and the horizontal row of the employee's name, insert the hours worked each day in the appropriate Box either for RT (Regular Time) and / or OT (Over Time). If an employee worked Shift Time the RT (Regular Time) row shall be used and adjusted accordingly.
 - 5) **TOTAL HOURS:** Sum the hours worked for Regular and / or Shift Time, the hours worked Overtime, and enter separate totals in this column.
 - 6) **BASE RATE OF PAY PER HOUR:** Specify the actual base rate of pay per hour paid to the employee. Do not include supplemental benefits in this amount.
 - 7) **TOTAL BASE PAY:** Total amount earned by the employee, not including benefits.

SUPPLEMENTAL BENEFITS:

- 8) **RATE PER HOUR:** Amount of Supplemental Benefits paid / provided per hour.
- 9) **TO:** Place a check mark in the appropriate box: **U** for Union, **E** for Employee if benefits paid in cash (or check) directly to the Employee or **O** for other, if benefits otherwise paid / provided. If **U** is checked you must insert the "Local" number of the union in that box.
- 10) **TOTAL PAID:** Total amount of Supplemental Benefits paid / provided for the payweek.
- 11) **GROSS PAY:** Total amount earned for payweek. This amount comprises the Total Base Pay plus any benefit paid in cash (or check) directly to the employee [i.e. column (7) + column (9)]. **E** if Box **E** is checked and payment made directly to employee. No other type of benefit must be included in this column's total.
- 12) **TOTAL TAX AND OTHER DEDUCTIONS:** Enter the sum total of all deductions in this column (including FICA, Federal, State & City Taxes, etc.). This does not absolve you from maintaining appropriate tax & other records required by law).
- 13) **NET PAY:** Total amount of pay after all deductions (i.e. the actual Take-Home Pay).

APPENDIX I
OUTSIDE FUNDING SOURCES

[attached hereto]

APPENDIX I

[OUTSIDE FUNDING SOURCE PROVISIONS]¹

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 Statutes and Applicable Agreements including those set forth in Part I, Section 4.3, 4.4, this Appendix, Appendix J (Standard Federal Requirements) and in Appendix K (Standard State Clauses). This Appendix shall be annexed to and made a part of any subcontract entered into by the Consultant pursuant to this Contract, and shall be binding on any Subcontractor. To the extent any terms and conditions set forth in this Appendix conflict with any other terms of this Contract, the terms and conditions of this Appendix shall govern. In the event any terms and conditions set forth in this Appendix conflict with the terms and conditions of Appendix J (Standard Federal Requirements) or Appendix K (Standard State Clauses), 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 Statutes 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 Statutes 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

¹ Applicability to be confirmed.

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

APPENDIX J
STANDARD FEDERAL REQUIREMENTS

[to be attached hereto]

APPENDIX J

NOTICE

THIS PACKAGE CONTAINS SUPPLEMENTARY GENERAL CONDITIONS FOR USE WITH CONTRACTS WHICH PROVIDE FOR AN ELIGIBLE ACTIVITY FUNDED IN WHOLE OR IN PART UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974 (P.L. 93-383) AS AMENDED. IT MUST BE ANNEXED TO ALL SUCH CONTRACTS, AND EXPRESSLY MADE A PART OF, AND INCORPORATED BY REFERENCE INTO THOSE CONTRACTS.

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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 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 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; it 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), which prohibits discrimination in the sale or rental of housing and in the provision of brokerage services, and which requires affirmative action in the furtherance of Fair Housing objectives.

(c) Executive Order 11063, pursuant to regulations issued at 24 CFR Part 107 which prohibits discrimination 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), 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. 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 and 24 CFR Part 35. 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, 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, P.L. 101-336 (1990).

(i) The Historic Preservation Act of 1966, the Archeological and Historic Preservation Act of 1974, Executive Order 11593 and regulations at 36 CFR 800.

(j) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(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. Completion of the attached FEDERAL EXHIBIT 3.
- (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 funded Program activities, such income may be retained by the Contractor if such funds are treated as additional Community Development funds and are used expressly for activities outlined in the project work section of this Agreement, and in accordance with the provisions of this Agreement. Such funds are subject to all applicable requirements governing the use of Community Development funds. The Contractor will otherwise return such income to the City Community Development Program. For Construction, the Contractor agrees that if any income is generated from the Community Development funded Program activities, such income shall be returned to the City.

(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 and shall not limit such services or give preference to persons on the basis of religion.
- (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) the funds received under this Agreement shall not be used to construct, rehabilitate, or restore any facility which is owned by the Contractor and in which the public services are to be provided; however, minor repairs may be made if such repairs:
 - (1) are directly related to the public services,
 - (2) are located in a structure used exclusively for non-religious purposes, and
 - (3) constitute in dollar terms only a minor portion of the CDBG expenditure for the public services.

(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: In Construction contracts involving an excess of \$2000, unless exclusively in connection with the rehabilitation of a structure designed for residential use by less than 8 families, 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, 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, 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, for Construction contracts or subcontracts in excess of \$10,000 pursuant to regulations at 41 CFR Chapter 60-4 (see below).

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.
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.

(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 and/or the Comptroller General of the United States may deem necessary, the Contractor shall make available for examination to the City, HUD and/or representatives of the Comptroller General all of its records with respect to all matters covered by this Agreement and shall permit the City, HUD and/or representatives of the Comptroller General to audit, examine and make excerpts of transcripts from such records, 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

Any reports, documents, data, photographs 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, and the Contractor shall use them for no other purpose without the prior written permission of the City.

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.

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 government purposes, all copyrightable work developed or the rights to which are purchased under this Agreement.

ARTICLE 12

PATENTS

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.

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 Section 306 of the Clean Air Act (42 U.S.C. §1857(h)), 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 32 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

BINDING AUTHORITY

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

Federal Exhibits 1-3, are attached to, and made a part of this Appendix B.

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

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
Printers	22.8 to 26.0
Operating Engineers	25.6 to 26.0
Plumbers	12.0 to 14.5
Iron Workers (structural)	25.9 to 32.0
Elevator Constructors	5.5 to 6.5
Bricklayers	13.4 to 15.5
Asbestos Workers	22.8 to 28.0
Roofers	6.3 to 7.5
Iron Workers (ornamental)	22.4 to 23.0
Cement Masons	23.0 to 27.0
Glazers	16.0 to 20.0
Plasterers	15.8 to 18.0
Teamsters	22.0 to 22.5
Boilermakers	13.0 to 15.5
All Other	16.4 to 17.5

Goals and Timetables for Women

From April 1, 1980 until the present 6.9

These goals are applicable to all the Contractor’s Construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved Construction.

The Contractor’s compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female

employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall made a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

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

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the City of New York.

APPENDIX K

[STANDARD STATE CLAUSES]

[to be attached hereto as applicable]

APPENDIX L
CONSULTANT'S M/WBE UTILIZATION PLAN

[attached hereto]

M/WBE UTILIZATION PLAN FORM

Contractor: _____ Identify all MBE or WBE Subcontractors to be hired for Subcontracts less than \$1,000,000 [List Firm Name & Address]	MBE or WBE?	Services/Work to be Performed or Materials to be Supplied	Anticipated Time Frame (Start & End Date)	Tax Number/EIN	Phone Number	Fax Number	M/WBE Participation Dollar Value	Total Percentage of Work to be Subcontracted: Percentage of Participation Among All Subcontracts Less than \$1,000,000
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Overall Dollar Value of Proposal:	\$
Target Subcontracting Percentage:	%
Total Dollar Value of Target Subcontracting Percentage (<i>Overall Dollar Value of Proposal multiplied by the Target Subcontracting Percentage</i>):	\$
Participation Goal:	%
Total Dollar Value of Participation Goal (<i>Total Dollar Value of Target Subcontracting Percentage multiplied by the Participation Goal</i>):	\$

Signature: _____		Date: _____
Printed Name: _____		Title: _____

APPENDIX M

DOING BUSINESS DATA FORM

[attached hereto]



Doing Business Data Form - Contract Recipients

A Doing Business Data Form must be completed by all vendors prior to receiving an award (see Q&A sheet for more information). Please type or print in black ink, sign the last page, and return the complete Data Form to the contracting agency. **Submission of a complete and accurate form is required for any vendor to receive an award.**

This Data Form requires information to be provided on your principal officers, owners and senior managers. The name, employer, and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. This Data Form is separate from the City's VENDEX requirements.

General Instructions for Sections 2, 3, and 4:

Title: The actual office title held by the officer, owner, or manager.

Employer (if not vendor): If the individual is not employed by the vendor, list his/her employer's name.

Certification:

Fill out the certification box on the last page completely, and return the completed Data Form to the contracting agency. If you have questions, please contact the Doing Business Accountability Project at 212-788-8104 or DoingBusiness@cityhall.nyc.gov. Thank you for your cooperation.

NOTE: Under the Federal Privacy Act the furnishing of Social Security Numbers is voluntary. Failure to provide an SSN will not result in any vendor's disqualification. SSNs will not be disclosed to the public. SSNs will be used to: identify a vendor's officers, owners and managers; assist the City in enforcement of Local Law 34 by ensuring that it is applied only to those individuals intended to be covered; and provide the City a means of identifying individuals whose names are not required to be listed in the *Doing Business Database*.

Section 1: Vendor Information

Vendor Name: _____

Vendor EIN: _____

Vendor Filing Status (select one):

- New Vendor/Full Data Form. *Fill out the entire form.*
- Change from previous Data Form dated _____. *Fill out only those sections that have changed, and indicate the name of the person(s) who no longer hold positions with the vendor.*
- No Change from previous Data Form dated _____. *Skip to the bottom of the last page.*

Vendor Type: Corporation (any type) Partnership (any type) Sole Proprietor
 Other (specify): _____

Vendor Address: _____

Vendor Main Phone #: _____ Vendor is a Non-Profit: Yes No

Vendor Main E-mail: _____

Section 2: Principal Officers

Please fill in the required identification information for each officer listed below. If the vendor has no such officer or its equivalent, please check the "Position does not exist" box. If the vendor is filing a Change Data Form and the person listed is replacing someone who was previously disclosed, please check the "This person replaced" box and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

Chief Executive Officer (CEO) or equivalent officer

This position does not exist

The highest ranking officer or manager, such as the CEO, President or Executive Director; or, if those positions do not exist, the Chairperson of the Board.

Name: _____

Office Title: _____ SSN: _____

Employer (if not vendor): _____

Birth date: _____ Home phone #: _____

Home address: _____

This person replaced CEO: _____ On date: _____

Chief Financial Officer (CFO) or equivalent officer

This position does not exist

The highest ranking financial officer, such as the CFO, Treasurer, Comptroller, Financial Director, or VP for Finance.

Name: _____

Office Title: _____ SSN: _____

Employer (if not vendor): _____

Birth date: _____ Home phone #: _____

Home address: _____

This person replaced CFO: _____ On date: _____

Chief Operating Officer (COO) or equivalent officer

This position does not exist

The highest ranking operational officer, such as the COO, Chief Planning Officer, Director of Operations, or VP for Operations

Name: _____

Office Title: _____ SSN: _____

Employer (if not vendor): _____

Birth date: _____ Home phone #: _____

Home address: _____

This person replaced COO: _____ On date: _____

Section 3: Principal Owners

Please fill in the required identification information for all individuals who, through stock shares, partnership agreements or other means **own or control 10% or more of the vendor**. If no individual owners exist, you must check the appropriate box below to indicate why, and skip to the next page. If the vendor is owned by other companies, those companies do not need to be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the vendor is filing a Change Data Form, list any individuals who are no longer owners at the bottom of this page. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

- The entity is not-for-profit
- There are no individual owners
- No owner holds 10% or more shares in the entity
- Other (explain): _____

Principal Owners (who own or control 10% or more of the vendor):

Name: _____ SSN: _____

Employer (if not vendor): _____

Office Title: _____ Birth date: _____

Home address: _____

Home phone #: _____

Name: _____ SSN: _____

Employer (if not vendor): _____

Office Title: _____ Birth date: _____

Home address: _____

Home phone #: _____

Name: _____ SSN: _____

Employer (if not vendor): _____

Office Title: _____ Birth date: _____

Home address: _____

Home phone #: _____

Remove the following previously-reported Principal Owners:

Name: _____ Removal date: _____

Name: _____ Removal date: _____

Name: _____ Removal date: _____

To list more Principal Owners, please attach additional pages.

For information or assistance, call the Doing Business Accountability Project at 212-788-8104.

Section 4: Senior Contract Managers

Please fill in the required identification information for all senior managers who oversee any of the vendor's contracts with the City. Senior managers include anyone who, either by **title** or duties, has substantial discretion and high-level oversight regarding the solicitation, letting, or administration of any contract with the City. You must list at least one Senior Manager or your Data Form will be considered incomplete. If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If **the vendor** is filing a Change Data Form, list any individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

Senior Contract Managers:

Name: _____ SSN: _____

Employer (if not vendor): _____

Office Title: _____ Birth date: _____

Home address: _____

Home phone #: _____

Name: _____ SSN: _____

Employer (if not vendor): _____

Office Title: _____ Birth date: _____

Home address: _____

Home phone #: _____

Name: _____ SSN: _____

Employer (if not vendor): _____

Office Title: _____ Birth date: _____

Home address: _____

Home phone #: _____

Remove the following previously-reported Senior Contract Managers:

Name: _____ Removal date: _____

Name: _____ Removal date: _____

Name: _____ Removal date: _____

To list more Senior Contract Managers, please attach additional pages.

I certify that the information submitted on these four pages and _____ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the vendor being found non-responsible and therefore denied future City awards.

Name: _____

Signature: _____ Date: _____

Vendor Name: _____

Title: _____ Work phone#: _____

Return the completed Data Form to NYCEDC.

For information or assistance, call the Doing Business Accountability Project at 212-788-8104.

APPENDIX N

APPLICABLE AGREEMENTS

[copies to be attached hereto]

EXHIBIT 2
TO
REQUEST FOR PROPOSALS

RESPONDENT'S PROPOSAL CERTIFICATION FORM
and
FEE AND COST SCHEDULES

[attached hereto]

RESPONDENT’S PROPOSAL CERTIFICATION FORM

Proposal Submitted by

[Insert Name of Respondent] (The “Respondent”)

Respondent, in accordance with and subject to the terms of the Request for Proposals for the provision of consulting services (project code no. 5509) (the “RFP”) pursuant to which this proposal (the “Proposal”) is being submitted as of the date written below, agrees that it will provide, in consideration of the price(s) set forth in the Fee and Cost Schedule, all of the Services set forth in the Scope of Services in accordance with the Contract, and to accept in full compensation therefore (including without limitation all overhead, profit, taxes and other charges and expenses applicable thereto), the price(s) stated in the Fee and Cost Schedule. The Fee and Cost Schedule, is simultaneously being delivered to you in a separate sealed envelope and is incorporated herein and made part hereof. Respondent hereby makes the following statements and representations as part of its Proposal:

- (a) Respondent has read the RFP and the appendices attached to the RFP fully and agrees to adhere to the terms set forth therein.
- (b) Respondent agrees to obtain all necessary approvals, permits and/or licenses required by law or regulation for or in connection with the performance of the Services.

In order to induce NYCEDC to accept this Proposal, Respondent hereby agrees to abide by all of the terms of the Contract including, without limitation, all representation and warranties set forth therein. Capitalized terms used in this certification form that are not otherwise defined herein have the meanings given to them in the RFP.

[INSERT NAME OF RESPONDENT]

Signed by: _____

Printed Name: _____

Title: _____

Date: _____

Respondent’s Address: _____

Notice Address (if different from above): _____

Respondent’s Telephone Number: _____

Respondent’s Fax Number: _____

Respondent’s E-mail Address: _____

Respondent’s Tax I.D. Number: _____

SAMPLE FEE AND COST SCHEDULE

1. The Respondent shall complete and submit a Fee and Cost Schedule, substantially in the form of the “Sample Fee and Cost Schedule” on the following page.
2. The submitted Fee and Cost Schedule should cover all Services and Tasks described in the RFP and the Form of Contract and shall provide a breakdown of staff costs and, if permitted, the Allowable Additional Costs per Task.
3. The Respondent may propose additional line-items to the Fee and Cost Schedule that it reasonably believes are relevant and material to the performance of the Services and performance of the Tasks.
4. **PLEASE BE SURE THAT YOU SUBMIT YOUR FEE AND COST SCHEDULE IN A SEPARATE ENVELOPE.**

(See Sample Fee and Cost Schedule spreadsheet on following page)

SAMPLE FEE AND COST SCHEDULE SPREADSHEET

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

Task	Maximum Payment
Task 1 – Design and Launch the Competition	\$ [_____]
Task 2 – Perform Competition Marking and Outreach	\$ [_____]
Task 3 – Recruit Technical Advisory Panel and Judges	\$ [_____]
Task 4 – Manage Submissions, Questions and Judging	\$ [_____]
Task 5 – Manage Logistics for Awards Ceremony	\$ [_____]
Task 6 – Evaluate the Competition’s Impact	\$ [_____]
Total Tasks 1 – 6	\$ [_____]²

Respondents should also submit with their Financial Proposal a two-year budget detailing major costs, including a breakdown of costs related to staffing, Competition development, website development, marketing and any other items.

No multiplier overhead, administrative fee or other markup will be paid to the Consultant for Subcontractors’ costs unless agreed to in advance in writing by NYCEDC.

² As discussed in Part III, Section 3.2(c), Respondents are encouraged to keep this total amount to approximately \$300,000 or less.

EXHIBIT 3
TO
REQUEST FOR PROPOSALS
M/WBE UTILIZATION PLAN

NYCEDC is dedicated to furthering the participation of minority and women-owned businesses (“M/WBE”) in its work. With each Proposal each Respondent is encouraged (but not required) to submit a plan to address M/WBE participation in the project (“M/WBE Utilization Plan”). If submitted, the M/WBE Utilization Plan should include, but not be limited to:

- Establishment of numerical M/WBE contracting utilization goals or targets;
- Strategies and methods that will facilitate participation by M/WBE firms, such as carve-outs and/or unbundling bid packages;
- Identification of M/WBE firms seeking to perform subcontracting work in connection with the Contract; and
- Establishment of administrative procedures for implementation, monitoring and reporting of M/WBE participation.

Businesses that have been certified as being women- or minority-owned by the Port Authority of New York and New Jersey may be eligible to receive expedited certification from DSBS after completing the “DSBS Expedited Certification Affidavit”, which may be obtained by calling DSBS at (212) 513-6311.

EXHIBIT 4
TO
REQUEST FOR PROPOSALS
DOING BUSINESS DATA FORM

Each Respondent shall complete and submit a Doing Business Data Form which can be found at www.nycedc.com in the following section (as set forth below):

“ProjectsOpportunities/WorkingWithNYCEDC/VendexOtherForms”.

If the Respondent cannot access or download these forms, NYCEDC may, upon request, send the Consultant the required forms.

DOING BUSINESS ACCOUNTABILITY PROJECT FORMS

Local Law 34 of 2007 (**LL 34**) requires the creation of a database containing information about entities that do business with the City as defined by the law, and principal officers, owners and senior managers of these entities. This information will be collected on Doing Business Data Forms that are distributed, collected and reviewed by agencies, and forwarded to the Doing Business Accountability Project (DBAP) at MOCS for processing. Collected data will be used to identify entities and people who are subject to LL 34’s limitations on campaign contributions in municipal elections.

If you have any questions or concerns, please contact the **Doing Business Accountability Project** at 212-788-8104 or DoingBusiness@cityhall.nyc.gov.

 [Doing Business Form](#) (829 KB)

 [Doing Business Form-Real Property](#) (953 KB)

 [Q&A General](#) (35 KB)

 [Q&A Real Property](#) (35 KB)