

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF  
PROGRAMS  
REQUEST FOR PROPOSALS  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

***REQUEST FOR PROPOSALS***

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**TABLE OF CONTENTS**

**PART I INTRODUCTION .....2**

1. INVITATION TO SUBMIT PROPOSAL .....2

2. RFP SUMMARY .....3

**PART II GENERAL REQUIREMENTS.....9**

1. SERVICES TO BE PERFORMED AND WORK PRODUCT .....9

2. STAFFING.....9

3. COMPENSATION .....10

4. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION .....10

5. DOING BUSINESS DATA FORM REQUIREMENTS. ....10

6. CONTRACT CONDITIONS .....11

7. GENERAL CONDITIONS, TERMS, LIMITATIONS AND REQUIREMENTS .....12

**PART III SPECIFIC REQUIREMENTS .....18**

1. STRUCTURE AND CONTENT. ....18

2. PRE-PROPOSAL INFORMATION MEETING. ....20

3. INTERVIEWS.. ....20

4. SELECTION.. ....20

5. SUBMISSION. ....20

**EXHIBIT 1 PROPOSAL FORM AND FEE AND COST SCHEDULES**

**EXHIBIT 2 INTENTIONALLY DELETED**

**EXHIBIT 3 DOING BUSINESS DATA FORM**

**EXHIBIT 4 M/WBE SUBCONTRACTOR UTILIZATION PLAN FORM**

**EXHIBIT 5 CONTRACT DRAFT**

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**PART I  
INTRODUCTION**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
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**PART I  
INTRODUCTION**

**1. INVITATION TO SUBMIT PROPOSAL**

1.1 **The Project.** Hurricane Sandy impacted approximately 64,000 residential buildings in New York City including 17,000 single family dwellings (one and two family buildings). The City is launching a Community Development Block Grant (CDBG) Program to provide financial assistance to impacted homeowners for residential repairs. As part of this program, the City will be conducting detailed assessments of damaged homes and creating Work Orders for distribution to participating General Contractors. The New York City Housing Recovery Office (HRO) is seeking professional pre-construction services to support the home assessment program.

Subject to the availability of funds and the responses to this RFP, NYCEDC will select up to two Consultants to provide the Services. The Consultants shall be experienced in all aspects of the Services. The Consultants will commence the Services upon a written Notice to Proceed from NYCEDC or upon execution of the Contract by the Consultants and NYCEDC substantially in the form of the Contract Draft. The Contract Draft 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 Contract Draft, 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, **you should review the Contract Draft and be familiar with all of the terms and conditions set forth therein prior to submitting your proposal.**

1.2 **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.\* 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.

1.3 **Other Requirements.** NYCEDC anticipates that 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 I, Section 2.2.8 and in Appendices B and J of the Contract Draft attached to this RFP.

## 2. RFP SUMMARY

2.1 **In General.** This summary of terms, deadlines and requirements specific to this RFP is set forth for your immediate reference and convenience only. It does not set forth 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.**

#### 2.2.1 **Project Information.**

2.2.1.1 **The Project:** Pre-Construction Services Related to Hurricane Sandy Relief Programs

2.2.1.2 **The Project Site:** New York City

2.2.1.3 **Type of Services:** Pre-Construction Services (the “**Services**”), as more specifically described in the Scope of Services (Appendix B of the Contract Draft)

#### 2.2.2 **The Consultant:**

2.2.2.1 **Type:** Architect/Engineer/Surveyor

2.2.2.2 **The Consultant Team:** It is anticipated that the Consultant will lead a team of consultants (collectively, with the Consultant, the “**Consultant Team**”) in providing the Services. The members of the Consultant’s staff and/or the Consultant’s Subcontractors on the Consultant Team are expected to include, without limitation, the following:

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\* 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.

**2.2.2.2.1 Required Consultant Team Members:**

2.2.2.2.1.1 Project Manager (PE or RA)

2.2.2.2.1.2 Project Architect (RA)

2.2.2.2.1.3 Project Engineer (PE)

2.2.2.2.1.4 A/E Technician

2.2.2.2.1.5 Environmental Engineer

**2.2.2.3 Experience Required:** The Consultant shall be experienced in the following:

2.2.2.3.1 Field Inspections

2.2.2.3.2 Damage Assessment

2.2.2.3.3 Environmental Review and Inspections

2.2.2.3.4 Appraisal Services

2.2.2.3.5 Feasibility Analysis

**2.2.3 Contract Information.**

2.2.3.1 **Anticipated Contract Execution Date:** July 1, 2013

2.2.3.2 **Anticipated Contract Term:** Two (2) Years, with two one year renewals, exercisable at NYCEDC's sole discretion

**2.2.4 Questions Regarding RFP.**

2.2.4.1 **Question/Clarification Deadline:**

(i) **Date:** May 17, 2013

(ii) **Time:** 4:00pm

2.2.4.2 **Permitted Method:** At Pre-Proposal Meeting, if one is conducted; otherwise in writing to Recipient at Recipient's Mailing Address or Email Address as listed in Section 2.2.6 below only.

2.2.4.3 **Question Response Date:** May 21, 2013

2.2.4.4 **Answers to Questions Available at www.nycedc.com** (the "Website")

**2.2.5 Pre-Proposal Meeting.**

2.2.5.1 **Date:** May 10, 2013

2.2.5.2 **Time:** 1:00- 2:00pm

2.2.5.3 **Meeting Place:** 110 William Street, New York, NY, Conference Room 4A/B

2.2.5.4 **Confirmation Contact:** Email address as listed in Section 2.2.6 below

2.2.5.5 **Attendance Mandatory:** No

2.2.6 **Proposal Submission Requirements.**

2.2.6.1 **Label on Envelope:**

2.2.6.1.1 **One for the Proposal Only:** “**Proposal for PRE-CONSTRUCTION SERVICES for PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF PROGRAMS**”

2.2.6.1.2 **One for the Doing Business Data Form Only:** “**Doing Business Data Form for PRE-CONSTRUCTION SERVICES for PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF PROGRAMS**”

2.2.6.1.3 **One for Prices Only:** “**Price Proposals for PRE-CONSTRUCTION SERVICES for PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF PROGRAMS**”

2.2.6.1.4 **One for M/WBE Subcontractor Utilization Plans Only, if required by Part I, Section 2.2.7:** “**M/WBE Subcontractor Utilization Plan PRE-CONSTRUCTION SERVICES for PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF PROGRAMS**”

2.2.6.2 **Number of Sets of Proposals to be submitted:** Six (6) copies and 1 Digital copy on CD

2.2.6.3 **Submission Deadline:**

(i) **Date:** May 31, 2013

(ii) **Time:** 4:00pm

2.2.6.4 **Method:** By Hand or Express Mail or other nationally-known overnight courier

**2.2.6.5 Submit to the following Recipient:**

Maryann Catalano  
Senior Vice President

**2.2.6.6 Recipient's Mailing Address:**

NYCEDC  
110 William Street. 6<sup>th</sup> Floor  
New York, NY 10038

**2.2.6.7 Recipient's E-mail address:** [Pre-ConstructionServices@nycedc.com](mailto:Pre-ConstructionServices@nycedc.com)

**2.2.6.8 M/WBE Program Percentages.** NYCEDC's M/WBE Program is not applicable because Outside Funding is being provided for this Contract. **See Section 2.2.8 and Exhibit 4 of this RFP for specific M/WBE Requirements and other Legal Requirements.**

**2.2.6.9 Local Resources.** The City encourages contractors to understand the local community and use local resources where appropriate.

**2.2.7 Selection Criteria.** Criteria on which NYCEDC will base its selection are as follows:

**2.2.7.1 Firm and Project Team Experience and Expertise in Project Specific Services [Evaluation Weight: 30%]:** This includes the experience of the firms, their subcontractors and their team members in providing the services specified in this RFP.

**2.2.7.2 Proposed Approach and Quality of Proposal [Evaluation Weight: 40%]:** This includes the firm's proposed approach to provide the services specified in this RFP, the quality of the proposal and the ability to perform the services to be rendered.

**2.2.7.3 Organizational Capability [Evaluation Weight: 30%]:** This includes the quality of the firm's management, reputation, references and proposed team as well as the terms under which the firm will commit its key personnel and team members, without transfers or personnel changes.

**2.2.8 Outside Funding Requirements:** NYCEDC anticipates that 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.
- 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.
- 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 II  
GENERAL REQUIREMENTS**

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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 Work Product specifically described in and required by the Scope of Services annexed as Appendix B in Part III of the Contract Draft. **Prior to submitting your proposal, please be sure that you 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 Contract Term. The Consultant and its Subcontractors will be expected to cooperate fully with NYCEDC personnel. The respondent shall submit with its proposal resumes of its personnel and those of its Subcontractors who will perform the Services. 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, such authorization shall be subject to the prior written approval by NYCEDC of the Subcontractor (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. The Consultant, and not NYCEDC, will be responsible for the Subcontractor's work, acts and omissions. Respondents are directed to Article 4 of the Contract Draft 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 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.** NYCEDC is 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. NYCEDC will provide the selected Consultant with an appropriate sales and use tax exemption certificate.

### 4. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION

4.1 See Part I Section 2.2.6.8, and Exhibit 4 of this RFP and for M/WBE requirements.

### 5. DOING BUSINESS DATA FORM REQUIREMENTS.

5.1 Pursuant to the City's Local Law No. 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 2 and return it in a separate envelope with the respondent's 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 Contract Draft annexed hereto. NYCEDC shall not be bound to the terms of the Contract Draft but shall use such form as a basis of negotiating a final Contract with the selected Consultant, if any. **However, please note that the General Terms and Conditions (Part II) and the Appendices (Part III), 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:

6.2.1 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).

6.2.2 Provisions providing that the Consultant:

6.2.2.1 is an independent contractor and that neither it nor any of its employees is or shall be an agent, servant or employee of the City or NYCEDC;

6.2.2.2 shall defend, indemnify and hold harmless the City and NYCEDC against any claims or damages relating to its acts and omissions;

6.2.2.3 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 Contract Term, and shall make such records available for inspection and audit;

6.2.2.4 has no conflicts of interest with, or outstanding financial obligations owing to, the City;

6.2.2.5 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;

6.2.2.6 is licensed to conduct business in the State of New York;

6.2.2.7 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;

6.2.2.8 shall complete and submit the Business Entity Questionnaire and a Principal Questionnaire for each principal of the Consultant (collectively, the "Vendex Clearance Forms");

6.2.2.9 shall complete and submit the Doing Business Data Forms;

6.2.2.10 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;

6.2.2.11 shall agree to New York County as the venue in any legal action or proceeding between the Consultant and NYCEDC;

6.2.2.12 acknowledges that the Contract shall be assignable to the City; and

6.2.2.13 comply with the City's prohibition of certain business practices with respect to Northern Ireland.

**Respondents are directed to the Contract Draft (Exhibit 1 to this RFP) 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 Contract substantially in the form annexed hereto as Exhibit 5. 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 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 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, modify or withdraw 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 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 herefrom 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.**

7.8.1 NYCEDC will advise RFP respondents of any modifications to this RFP by posting them on the Website. (See Part I, Section 2.2.4.4.) 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.

7.8.2 Respondents may submit questions and/or request clarifications from NYCEDC by submitting them *in writing* to the Recipient at the Recipient's Mailing Address or E-Mail Address listed in the RFP Summary (Part I, Section 2.2.6). All questions and requests for clarifications must be submitted no later than the Question/Clarification Deadline listed in the RFP Summary (Part I, Section 2.2.4.1). 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 (Part I, Section 2.2.4.3), 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.

7.8.3 Respondents are reminded to check the Website periodically to view updated information and answers to questions posed by other respondents.

7.8.4 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 Notice, Addendum 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, Addendum 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 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 this 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 the RFP.

7.14 **Protest Procedures.** The procedures set forth in this section shall apply to all protests (collectively, “Protests” and each individually, a “Protest”) related to this procurement. NYCEDC will not entertain any Protest that is untimely or fails in any manner to comply fully with the procedures set forth in this section.

7.14.1 **Types of Protests.** There are three types of procurement Protests:

7.14.1.1 Pre-Proposal Protest: A protest submitted prior to the proposal submission deadline to challenge the notice procedures followed by the Corporation;

7.14.1.2 Pre-award Protest: A protest submitted after the receipt and opening of proposals and contingent award, but before Contract execution; and

7.14.1.3 Post-award Protest: A protest submitted after the Contract has been executed, but only to the extent that the protest is based on newly discovered information that was not available prior to execution of a Contract.

7.14.2 **Submission of Protests/Deadlines.** All Protests must be in writing and must be submitted in accordance with the following timeline for the following types of Protests:

7.14.2.1 A Pre-Proposal Protest must be submitted at least two (2) working days prior to the Submission Deadline set forth in Part I, Section 2.2.6.3 of the RFP;

7.14.2.2 A Pre-award Protest must be submitted five (5) working days from the later of receipt of Notice of the Corporation’s contingent award of the Contract and the date proposals are made publicly available; and

7.14.2.3 A Post-award Protest must be submitted five (5) working days from the date the protesting party knew or should have known the newly discovered evidence that serves as the grounds of its Protest.

The respondent shall have been deemed to have received NYCEDC's determination notice no later than five (5) days from the date of mailing or upon delivery, if delivered by hand. A Protest will be considered submitted when the Protest is received by the Corporation.

7.14.3 Contents of Protest: The Protest should include, without limitation, the following information:

7.14.3.1 name, address and telephone number of the protester;

7.14.3.2 appropriate identification of the procurement, including the Contract Number;

7.14.3.3 statement of the basis of the Protest;

7.14.3.4 supporting exhibits and documentary evidence to substantiate the grounds for the Protest; and

7.14.3.5 form of relief requested.

7.14.4 Address for Submission of Protests:

NYCEDC  
110 William Street  
New York, NY 10038  
Attention: Maryann Catalano, Senior Vice President, Contracts

7.14.5 Method of Submission: By Hand or U.S. Mail

7.14.6 Envelope: The envelope enclosing the Protest must be clearly labeled "PROTEST" and must list the Contract Number to which the Protest relates.

7.14.7 Additional Information: The Corporation may request that the protestor submit additional information that it may need in order to consider the Protest. Any additional information requested by the Corporation must be submitted within the time period established by the Corporation in order to expedite consideration of the Protest. Failure of the protester to comply with a request for information within the specified time period will result in a resolution of the Protest without consideration of any information subsequently submitted by the protester in an untimely manner.

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF  
PROGRAMS  
REQUEST FOR PROPOSALS  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**PART III  
SPECIFIC REQUIREMENTS**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF  
PROGRAMS  
REQUEST FOR PROPOSALS  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**PART III  
SPECIFIC REQUIREMENTS**

**1. STRUCTURE AND CONTENT.**

In order to be considered responsive, your proposal must be organized and include all of the items as listed below. If Part I, Section 2.2.7 indicates that:

- M/WBE Program Percentages **are not** applicable to this RFP, the proposal must be submitted in **three (3) sealed envelopes**
- M/WBE Program Percentages **are** applicable to this RFP, the proposal must be submitted in **four (4) sealed envelopes**.

The contents of the envelopes must be as follows:

1.1 **Envelope # 1 [Required for All Proposals]**. In one sealed envelope, labeled as required by Part I, Section 2.2.6.1.1 place the following:

1.1.1 A statement of your approach to the Services that clearly demonstrates your understanding of the Scope of Services and your ability to manage and complete multiple projects in a timely and cost-efficient manner. The proposal must include a detailed statement of your approach and ability to provide the required Services and Work Product including, but not limited to a schedule for completing all aspects of the Services. It is imperative that the proposal includes a list and detailed explanation of the extent of all work or services to be performed by Subcontractors.

1.1.2 Proposals should demonstrate clearly that the respondent is capable of and experienced in providing all of the Services necessary for the complete performance of the Contract.

1.1.3 The proposal should contain a description of the respondent's organization, including a history of the firm, a description of all subsidiaries and affiliates, an organization chart indicating the level of responsibility of all personnel who are expected to provide Services, and the name and location(s) of business of the respondent. This should be accompanied by, to the extent known, the names and resumes of all individuals and entities that will be performing the Services under the Contract including, without limitation, all personnel, Subcontractors and other entities or individuals performing and/or supervising the Services, and the respondent's

proposed staffing schedule. Please include the addresses, phone and fax numbers, e-mail addresses, designated roles, and relevant experience and expertise for the same.

1.1.4 The respondent shall make the following statements and representations as part of its proposal:

1.1.4.1 That the respondent has examined all parts of this RFP, including the Contract Draft and the Scope of Services, and all terms and conditions hereof.

1.1.4.2 That the respondent agrees to obtain all necessary approvals, permits and/or licenses required by law or regulation for the performance of the Services.

1.1.5 The respondent should provide a description of services it has previously provided to governmental and quasi-governmental organizations with similar requirements to those contained herein. 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, should be included. Information concerning personnel assignment and contract duration should be described.

1.1.6 If the Scope of Services (Appendix B, Part III of the Contract) permits payment of Allowable Additional Costs, the respondent should provide a list of anticipated Allowable Additional Cost items, excluding costs for these items.

1.1.7 The respondent should include all compliance certifications, attached hereto as Exhibit 3, with its proposal.

1.1.8 **Do not include in this portion of your proposal any costs or fees associated with the above items.** Costs and fees should be included in a separate envelope. (See Part III, Section 1.3 below.)

1.1.9 **Do not include in this portion of your proposal your Doing Business Data Form.** This form should be included in a separate envelope. (See Part III, Section 1.2 below.)

1.1.10 **Do not include in this portion of your proposal your proposed M/WBE Utilization Plan.** Your proposed M/WBE Utilization Plan should be included in a separate envelope. (See Part III, Section 1.4 below.)

1.2 **Envelope #2 [Required for All Proposals]**. In a second sealed envelope labeled as required by Part I, Section 2.2.6.1.3 place complete fee and cost schedules for all Services. All fee and cost schedules should be submitted in the forms attached hereto as Exhibit 1 to this RFP. NYCEDC may not consider fee and cost schedules that do not follow the prescribed formats.

1.3 **Envelope #3 [Required for All Proposals]**. In a third sealed envelope labeled as required by Part I, Section 2.2.6.1.2 place a complete and accurate Doing Business Data Form in the form as described in Exhibit 2 to this RFP.

1.4 **Envelope #4 [Proposals Subject to M/WBE Program Percentages Only]**. If Part I, Section 2.2.7 sets forth M/WBE Program Percentages, in a fourth separate sealed envelope labeled as required by Part I, Section 2.2.6.1.4 place a completed and signed M/WBE Subcontractor Utilization Plan in the form attached hereto as Exhibit 4.

1.5 **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:

1.5.1 not enclosed in separate sealed envelopes as aforesaid;

1.5.2 not properly labeled;

1.5.3 received by a person other than the designated Recipient; and/or

1.5.4 missing any information, certifications, supplemental forms or other documentation required by this RFP or by applicable law.

1.6 **Cover Letter**. You should include a cover letter summarizing key points of your proposal.

**2. PRE-PROPOSAL INFORMATION MEETING**. If Part I, Section 2.2.5 indicates that a pre-proposal information meeting will be held, you should attend the meeting in order to receive any additional information that may be distributed at the meeting. You will also be able to obtain answers to any questions you may have about the Services at the meeting. **If Part I, Section 2.2.5.5 indicates that attendance at the pre-proposal information meeting is mandatory and you do not attend the meeting, your proposal will not be accepted.** Please confirm your attendance to the Confirmation Contact identified in Part I, Section 2.2.5 indicating who from your office will attend. Except as may otherwise be permitted by Part I, Section 2.2.4.2, no other contact with NYCEDC or the City regarding issues raised by this RFP is permitted.

**3. 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.

**4. SELECTION**. NYCEDC will review each respondent's proposal in its totality. The selected respondent, if any, will be a respondent whose proposal is most advantageous to NYCEDC's goals. See Part I, Section 2.2.8 for an explanation of the criteria on which NYCEDC will base a selection.

## **5. SUBMISSION**

5.1 You must submit the number of sets of your proposal indicated in Part I, Section 2.2.6.2.

5.2 All proposals must be **delivered by hand or express mail or other nationally-known overnight courier**. 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 Recipient at the location designated in Part I, Section 2.2.6.6 no later than 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 you 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.

5.6 For more information, please contact the Recipient **in writing** at the Recipient's Mailing Address or at Recipient's E-mail address, all as identified in Part I, Section 2.2.6.

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF  
PROGRAMS  
REQUEST FOR PROPOSALS  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**EXHIBIT 1  
TO  
REQUEST FOR PROPOSALS**

**RESPONDENT'S PROPOSAL CERTIFICATION FORM  
AND  
FEE AND COST SCHEDULES**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF  
PROGRAMS  
REQUEST FOR PROPOSALS  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**EXHIBIT 1  
TO  
REQUEST FOR PROPOSALS**

**RESPONDENT'S PROPOSAL CERTIFICATION FORM**

**Proposal Submitted by**

**[Insert Name of Respondent] (The "Respondent")**

Respondent, in accordance with and subject to all of the terms and conditions of the Request for Proposals pursuant to which this proposal (the "Proposal") is being submitted, 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 makes the following statements and representations as part of its Proposal:

- (a) That the Respondent has examined all parts of the RFP, including the Contract Draft and the Scope of Services, and all terms and conditions hereof.
- (b) That the Respondent agrees to obtain all necessary approvals, permits and/or licenses required by law or regulation of the performance of the Services.

In order to induce NYCEDC to accept this Proposal, Respondent hereby agrees to abide by all of the terms and conditions of the Contract including, without limitation, all representation and warranties set forth therein.

WHEREFORE, the Respondent submits this Proposal to NYCEDC.

[INSERT NAME OF RESPONDENT]

Signed by: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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: \_\_\_\_\_

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF  
PROGRAMS  
REQUEST FOR PROPOSALS  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**EXHIBIT 1  
TO  
REQUEST FOR PROPOSALS**

**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 Contract Draft and, if applicable, Allowable Additional Costs per Task.
3. **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)**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF  
PROGRAMS  
REQUEST FOR PROPOSALS  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**SAMPLE FEE AND COST SCHEDULE SPREADSHEET**

## SAMPLE FEE SCHEDULE

Unit Price Table

Deliverable	Estimated Quantity	Unit	Unit Price	Extended Price
<b>Task 1</b>				
Final Damage Assessment Report	10,000	Single Family (1-4 units)		
Final Damage Assessment Report	900	Multi-unit Buildings		
Final verification and valuation of completed repairs	10,000	Single Family (1-4 units)		
Final verification and valuation of completed repairs	900	Multi-unit Buildings		
Final environmental data report.	10,000	Single Family (1-4 units)		
Final environmental data report.	900	Multi-unit Buildings		
<b>Task 2</b>				
Final Feasibility Report	10,000	Single Family (1-4 units)		
Final Feasibility Report	900	Multi-unit Buildings		
Other Architectural/Engineering Studies and Reports	T&M Allowance*	Not to Exceed	\$ 500,000	\$ 500,000
<b>Task 3</b>				
Tier 2 Environmental Review	10,000	Single Family (1-4 units)		
Tier 2 Environmental Review	900	Multi-unit Buildings		
Environmental Data and Document Management Plan	1	Plan		
<b>Task 4</b>				
Appraisals	10,000	Single Family (1-4 units)		
Appraisals	900	Multi-unit Buildings		

\*Time & Material Rate Table

<b>Required Architectural/ Engineering Disciplines</b>	<b>Hourly Rate</b>	<b>Multiplier</b>	<b>Weighted Rate</b>	<b>Extended Rate</b>
Project Manager (PE or RA)				
Project Architect (RA)				
Project Engineer (PE)				
A/E Technician				

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF PROGRAMS  
REQUEST FOR PROPOSALS  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**EXHIBIT 2  
TO  
REQUEST FOR PROPOSALS  
INTENTIONALLY DELETED**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF PROGRAMS  
REQUEST FOR PROPOSALS  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**EXHIBIT 3  
TO  
REQUEST FOR PROPOSALS  
DOING BUSINESS DATA FORM**

The Consultant shall complete and submit a Doing Business Data Form which can be found at [www.nycedc.com](http://www.nycedc.com) in the following section:

“Resource/Vendor Resources”

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

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](mailto:DoingBusiness@cityhall.nyc.gov).

[Doing Business Form](#)

[Doing Business Form-Real Property](#)

[Q&A General](#)

[Q&A Real Property](#)

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF PROGRAMS  
REQUEST FOR PROPOSALS  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**EXHIBIT 4  
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 to submit a plan to address M/WBE participation in the project (“M/WBE Utilization Plan”).

# SUBCONTRACTORS PARTICIPATION PLAN

Check One:  Initial Plan  Amended Plan

3/1/2013

The purpose of this form is to ensure that appropriate planning and consideration go into the subcontractor utilization process, and to serve as documentation of your commitment comply with M/W/DBE requirements for this project. Please complete the forms electronically and email to opportunitymwdbe@nycedc.com. Please also include a signed PDF copy to the same email. If you have any questions, you may contact Opportunity M/W/DBE at 212-312-4256.

I affirm that the following statements are true and accurate:

1. I have read and understand the M/W/DBE requirements for this Project.
2. I will make and thoroughly document Good Faith Efforts to meet M/W/DBE requirements.
3. This Subcontractors Participation Plan ("Plan") lists all subcontractors I intend to use, including non-M/W/DBE firms. I understand that **Intent to Perform as Subcontractor** forms, which verify that subcontractors listed below have been contacted and intend to participate on this project, must be submitted for each contractor together with this form.
4. I understand that I must submit an amended Plan if there are any changes to the information I have provided herein.
5. Upon request, I will provide NYCEDC with proof of payments made to subcontractors.
6. **FOR CONSTRUCTION MANAGEMENT CONTRACTS ONLY.** I must submit a separate Plan for each direct subcontractor listed below who will retain second-tier subcontractors. Each direct subcontractor's Plan should be received prior to the date that subcontractor commences work on the project. If a direct subcontractor on this form is not subcontracting out a portion of its work, it must submit a **Self-Perform Statement** in lieu of a plan.

NYCEDC hereby authorizes this Plan:

X \_\_\_\_\_ Date \_\_\_\_\_  
Authorized Person

X \_\_\_\_\_ Date \_\_\_\_\_  
Opportunity M/W/DBE Officer

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

Project Information		Project Calculations- <i>Automatically Calculated</i>	
		<i>NOTE: Calculations do not take into account information provided in First-Tier Subcontractor Plans. That information will be factored in manually.</i>	
Contract #/Project #:	/	Subcontract Awards Below \$1MM	\$0.00
Business Name:		Percentage of Total Subcontracting Below \$1MM (TSP)	<b>Need Contract Amt</b>
Project Award Amount:		Subcontract Awards Below \$1MM to M/W/DBEs	\$0.00
Project Manager:		Percentage of Awards Below \$1MM to M/W/DBEs	<b>0.00%</b>
Email:		Subcontract Awards to M/W/DBEs	\$0.00
Phone:		Percentage of Total Award to M/W/DBEs	<b>Need Contract Amt</b>



**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF PROGRAMS  
REQUEST FOR PROPOSALS  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**EXHIBIT 5  
TO  
REQUEST FOR PROPOSALS  
CONTRACT DRAFT**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF  
PROGRAMS  
CONSULTANT CONTRACT  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

# ***CONSULTANT CONTRACT***

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF  
PROGRAMS  
CONSULTANT CONTRACT  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**PART I      SPECIFIC TERMS AND CONDITIONS**

**PART II     GENERAL TERMS AND CONDITIONS**

**PART III    APPENDICES**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF  
PROGRAMS  
CONSULTANT CONTRACT  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**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) unless otherwise defined in this Contract or the context otherwise requires.

**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.** 55670001
- 1.3 **Contract Date:** The date of the Contract is as of [\_\_\_\_\_]
- 1.4 **Commencement Date:** [\_\_\_\_\_]
- 1.5 **Term:** Two (2) Years, with two one year renewals, exercisable at NYCEDC’s sole discretion
- 1.6 **Maximum Contract Price:** [\_\_\_\_\_]
- 1.7 **Project:** Pre-Construction Services Related to Hurricane Sandy Relief Programs
- 1.8 **Project Site:** New York City
- 1.9 **Allowable Additional Costs:** The Allowable Additional Costs, if any, are set forth in Appendix C (Payments). [IF NONE, INSERT “NONE” OR “NOT APPLICABLE”]
- 1.10 **Retainage:** NOT APPLICABLE
- 1.11 **Retainage Payment Date:** NOT APPLICABLE
- 1.12 **M/WBE Program Percentages:**
  - 1.12.1 **Target Subcontracting Percentage:** \_\_\_\_\_% [IF NONE, INSERT “NOT APPLICABLE”]
  - 1.12.2 **Participation Goal:** \_\_\_\_\_% [IF NONE, INSERT “NOT APPLICABLE”]

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: \_\_\_\_\_]

**[INSERT SECTION 4 ONLY WHEN OUTSIDE FUNDING IS BEING UTILIZED]**

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 the provisions of Appendix I and **[INSERT “APPENDIX J” AND “APPENDIX K” IF OUTSIDE FUNDING IS BEING UTILIZED]**. The Consultant agrees to comply with the provisions of each of such Appendices.

- 4.1 **Type of Funds:** [\_\_\_\_\_]
- 4.2 **Funding Agencies:** [\_\_\_\_\_]
- 4.3 **Inspectors:** **[INSERT APPROPRIATE ENTITIES AS DESCRIBED IN PART II, Section 10.3:** [\_\_\_\_\_]
- 4.4 **Applicable Requirements:** [\_\_\_\_\_]
- 4.5 **Applicable Agreements:** [\_\_\_\_\_]

**[INSERT SECTION 5 ONLY IN SPECIAL CIRCUMSTANCES AS REQUIRED AND APPROVED BY COUNSEL]**

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:** [e.g. Apple Industrial Development Corp. (“Apple”), New York City Industrial Development Agency (“IDA”)]
- 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.

**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: \_\_\_\_\_

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF  
PROGRAMS  
CONSULTANT CONTRACT  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**PART II  
GENERAL TERMS AND CONDITIONS**

PART II            1

ARTICLE 1 PERFORMANCE OF SERVICES .....	1
ARTICLE 2 COMPENSATION .....	4
ARTICLE 3 SUSPENSION OR TERMINATION .....	5
ARTICLE 4 PERSONNEL AND SUBCONTRACTORS.....	8
ARTICLE 5 DOCUMENTS AND MATERIALS .....	10
ARTICLE 6 INDEMNIFICATION, CLAIMS AND INSURANCE.....	13
ARTICLE 7 REPRESENTATIONS AND WARRANTIES.....	17
ARTICLE 8 APPLICABLE LAWS, RULES AND REGULATIONS.....	18
ARTICLE 9 M/WBE REQUIREMENTS .....	20
ARTICLE 10 MISCELLANEOUS .....	24

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF  
PROGRAMS  
CONSULTANT CONTRACT  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**PART II  
GENERAL TERMS AND CONDITIONS**

The Corporation and the Consultant agree as follows:

**ARTICLE 1  
PERFORMANCE OF SERVICES**

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

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

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

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

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

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

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

1.4 Authority of Director/Performance of Services.

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

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

1.5 Changes to the Services.

1.5.1 The Consultant shall not make any changes in the Services without prior 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 however, that if the Consultant believes that any work or services that it has been directed to perform as a result of such alteration is beyond the Scope of Services and constitutes Extra Work, the Consultant shall so Notify the Director within three (3) days of such directive. The Director shall determine whether such altered Services are (i) within the Scope of Services; or (ii) Extra Work 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.

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

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

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

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

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

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

2.2 Miscellaneous Payment Provisions.

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

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

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

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

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

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

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

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

### **ARTICLE 3**

#### **SUSPENSION OR TERMINATION**

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

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

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

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

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

3.3 Defaults and Termination for Cause.

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

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

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

3.4 Effects of Termination for Convenience or for Cause.

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

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

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

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

### 3.5 Payment Upon Termination.

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

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

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

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

(ii) If the Contract Completion Costs are less than the Maximum Contract Price, provided that the Consultant has provided all information and documentation required by this Section, the Corporation will pay to the Consultant, an amount equal to the lesser of (a) the

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

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

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

3.5.6 The provisions of this Section 3.5 shall be in addition to any other rights the Corporation may have under this Contract, any Applicable 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, without limitation, the Director, and, in the event any personnel of the Consultant or any Subcontractor fails to cooperate, the Consultant shall relieve them of their duties of performance under this Contract.

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

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

#### 4.2 Subcontractors.

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

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

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

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

- (i) there is no privity of contract between the Subcontractor and the Corporation or the City;
- (ii) neither the Corporation nor the City will incur any liability by virtue of any act, omission, negligence, or obligation of the Subcontractor or the Consultant;
- (iii) the Subcontractor shall indemnify, defend and hold harmless the Corporation and the City, their agents, employees, members, directors, officials and officers against any and all claims, judgments or liabilities to which they may be subject (including, without limitation, any and all claims for injuries to persons (including death) and damage to property) because of any negligence or any fault or default of the Subcontractor, its agents, employees or subcontractors or the breach of the Subcontractor's obligations under the subcontract;
- (iv) the Subcontractor's Requisitions shall conform to the same requirements and include the representations, warranties and agreements set forth in Sections 2.1.2 and 2.1.3;
- (v) the "Events of Default" set forth in Section 3.3.2 as grounds for termination for cause shall be "Events of Default" and grounds for termination of the Subcontractor for cause;

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

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

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

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

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

## **ARTICLE 5** **DOCUMENTS AND MATERIALS**

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

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

5.2 Work Product.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 5.3 Confidential Information.

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

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

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

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

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

## **ARTICLE 6**

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

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

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

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

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

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

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

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

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

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

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

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

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

### 6.3 Insurance.

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

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

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

Insurance.

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

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

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

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

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

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

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

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

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

(ii) Commercial General Liability. The Consultant shall purchase and maintain commercial general liability insurance, 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 commercial general liability insurance policy must also include products and completed operations coverage, which shall include a provision that coverage will extend for a period of at least twelve (12) months from the date of final completion and acceptance by the Corporation of all of the Services. The certificate of insurance must indicate that such insurance is on a "per occurrence" and an aggregate basis. The commercial general liability policy shall be in a form at least as broad in coverage as ISO Form CG 00 01 (10/01). The additional insured protection must be as broad as coverage that would be afforded through use of ISO Forms CG 20 26, CG 20 33 and CG 20 37. The liability policy(ies) certificate of insurance must indicate cross-liability coverage providing severability of interests so that, except with respect to the limits of insurance,

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

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

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

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

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

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

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

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

contributing basis with any policies which may be available to the Corporation, and (ii) that the Consultant's policies, primary and excess, must be exhausted before implicating any Corporation policy available.

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

## **ARTICLE 7**

### **REPRESENTATIONS AND WARRANTIES**

The Consultant represents and warrants that:

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

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

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

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

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

7.6 The Consultant is not in arrears to the City upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of the Consultant to receive public contracts. The

Consultant represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

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

## **ARTICLE 8**

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

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

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

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

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

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

8.2 Modification Required by Law. The parties agree that each and every provision of federal or state or local law, rule, regulation or order, required to be inserted in this Contract, is deemed by this reference to be so inserted in its correct form, and upon the application of either party, this Contract shall be amended by the express insertion of any such provision not so

inserted or so inserted incorrectly so as to comply strictly with the law, without prejudice to the rights of either party.

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

8.4 Equal Employment Opportunity/Employment Reports.

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

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

8.4.3 Intentionally Deleted.

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

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

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

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

8.7 Sales and Use Tax.

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

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

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

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

8.10 Doing Business Data Form Requirements.

8.10.1 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.

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

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

**ARTICLE 9**  
**M/WBE REQUIREMENTS**

9.1 M/WBE Program. Local Law No. 129 of 2005 added 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 Subcontractor Utilization Plan.

9.5.1 The M/WBE Subcontractor Utilization Plan for this Contract is annexed hereto as Appendix H.

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 a multi-year contract, the Consultant shall submit an updated M/WBE Subcontractor 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 Contract Term. 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 Subcontractor 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 Subcontractor Utilization Plan. The Consultant may request modification of its M/WBE Subcontractor 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 Subcontractor 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 Subcontractor 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 Subcontractor Utilization Plan including, without limitation, a determination that the Consultant has made payments to or awarded work to M/WBE Subcontractors in amounts less than the amounts specified in the Consultant's M/WBE Subcontractor Utilization Plan (unless the Corporation has permitted the Consultant to modify the Consultant's M/WBE Subcontractor 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 Project satisfactorily in accordance with the Corporation's M/WBE Program and in order to meet the Participation Goal set for the Contract including, without limitation, the actual and administrative costs of:
  - (a) meeting the Participation Goal through additional procurements;
  - (b) payments made to any other consultant retained to complete the Services; and
  - (c) investigation and enforcement;
- (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 Subcontractor 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, without limitation, the provisions of Section 5.2 hereof, it is specifically understood and agreed that in the performance of the terms, covenants and conditions of this Contract, the Consultant and its Representatives shall not be deemed to be acting as agents, servants or employees of the Corporation or the City by virtue of this Contract or by virtue of any approval, permit, license, grant, right, or other authorization given by the City or the Corporation or any of their Representatives in connection with this Contract, but shall be deemed to be independent contractors performing work or professional services for the Corporation, and shall be deemed solely responsible for all acts taken by them pursuant to this Contract.

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

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

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

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

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

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

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

10.9 Notices.

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

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

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

10.11 Refusal to Testify.

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

10.11.2 If:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
PRE-CONSTRUCTION SERVICES RELATED TO HURRICANE SANDY RELIEF  
PROGRAMS  
CONSULTANT CONTRACT  
FOR THE PROVISION OF PRE-CONSTRUCTION SERVICES  
NYCEDC CONTRACT NO. 55660001  
PROJECT CODE NO. 5566**

**PART III  
APPENDICES**

<b>APPENDIX A</b>	<b>DEFINITIONS</b>
<b>APPENDIX B</b>	<b>SCOPE OF SERVICES</b>
<b>APPENDIX C</b>	<b>PAYMENTS</b>
<b>APPENDIX D</b>	<b>FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL MATERIALS</b>
<b>APPENDIX E</b>	<b>INSURANCE REQUIREMENTS</b>
<b>APPENDIX F</b>	<b>EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION COMPLIANCE FOR NON-CONSTRUCTION CONTRACTS ADDENDUM</b>
<b>APPENDIX G</b>	<b>E.O. 50 EMPLOYMENT REPORT FORM</b>
<b>APPENDIX H</b>	<b>CONSULTANT'S M/WBE SUBCONTRACTOR UTILIZATION PLAN</b>
<b>APPENDIX I</b>	<b>OUTSIDE FUNDING SOURCES</b>
<b>APPENDIX J</b>	<b>APPLICABLE REQUIREMENTS</b>
<b>APPENDIX K</b>	<b>APPLICABLE AGREEMENTS</b>
<b>APPENDIX L</b>	<b>RESERVED</b>
<b>APPENDIX M</b>	<b>RESERVED</b>

**APPENDIX A**  
**DEFINITIONS**

**APPENDIX A**

**DEFINITIONS**

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

Additional Insured	All individuals and entities listed in Appendix E
Allowable Additional Costs	As defined in Appendix B Scope of Services
Applicable Agreements	Various governing agreements related to the Funds, the Project and/or this Contract, including, without limitation, any specific “Applicable Agreements” identified in Part I, and any other governing agreement or MOU with the City, State and/or federal governments, or any agency thereof
Applicable Requirements	Any and all federal, state and local laws, statutes, rules, regulations and orders applicable to this Contract, the Funds or the Project, including, without limitation, any specific “Applicable Requirements” identified in Part I
Art Commission	Art Commission of the City of New York, currently known as The Public Design Commission
Borough	The City borough where the Project is located
City	The City of New York
City Contract	The Amended and Restated Contract between the City and the Corporation, dated as of June 30, 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 Part I, Section 1.4
Comptroller General	The United States Comptroller General

Confidential Information	Any and all information, records, data, materials, documents, electronic files or Work Product provided by NYCEDC and/or the City or any of its agencies to the Consultant except that which (i) shall have otherwise become publicly available through no fault of Consultant or its Representatives; (ii) becomes available to the Consultant on a nonconfidential basis from a source other than NYCEDC, the City or any of its agencies; or (iii) is known by the Consultant prior to its receipt from NYCEDC, the City or any of its agencies without any obligations of confidentiality with respect thereto
Consultant	The entity or person contracted by the Corporation to perform the Services pursuant to this Contract, as identified in Part I, Section 2.3
Consultant's Underlying Intellectual Property	The Consultant's analytical concepts, approaches, methodologies, or formats developed by the Consultant's staff, and to other materials not prepared for delivery to the Corporation and also including any derivatives, improvements, enhancements or extensions of the Consultant's Underlying Intellectual Property conceived, reduced to practice, or developed during the term of this Contract that are not uniquely applicable to the Corporation
Contract	The Contract between the Consultant and the Corporation to which this Appendix A is annexed, as defined in Part I, Section 1.1
Contract Completion Costs	As defined in Section 3.5.3
Contract Date	The date of this Contract, as stated in Part I, Section 1.3
Corporation	New York City Economic Development Corporation, a local development corporation organized pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, ("NPCL") or any successor organized pursuant to Section 1411 of the NPCL
CPL	Contractor Pollution Liability Insurance
DBEs	Disadvantaged Business Enterprises
Director	The person set forth in Part I, Section 2.2, or such other person as may be subsequently designated by the Corporation 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 available at <a href="http://www.nycedc.com">www.nycedc.com</a> to be completed by the Consultant and submitted to the Corporation pursuant to LL 34
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(s)	The reports described in Appendix G and available at <a href="http://www.nycedc.com">www.nycedc.com</a> to be completed and submitted to the Corporation pursuant to Executive Order 50
Event of Default	As described in Part II, Section 3.3.2
Extra Work	A significant alteration to the work or Services that the Consultant has been directed to perform by the Director as described in Part II, Section 1.5.2
FDNY	New York City Fire Department

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

Commission	Commission
Legal Requirements	All applicable laws, rules, regulations, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over and which affect the work and/or Services under this Contract including, without limitation, all Applicable Agreements and all Applicable Requirements
Local Law 34 (LL 34)	Local Law No. 34 of 2007, as it may be amended or superseded
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 Part I, Section 1.6
Maximum Payment	The maximum amount payable for each Portion of the Services during a billing period
MBEs	Minority-owned Business Enterprises
M/WBE Compliance Reports	As described in Part II, Section 9.6
M/WBEs	MBEs and WBEs, collectively
M/WBE Subcontractor Utilization Plan	As described in Part II, Section 9.5
MOU	Memorandum of Understanding
New York State Courts	Courts of the State of New York in the City and County of New York
Notice	Any written notice, demand, request, instruction, advice, directive or other communication in connection with this Contract to be delivered to a party designated in Part I, Section 3, for the receipt of notice in the manner set forth in Part II, Section 10.9.1
Notice to Proceed	Written Notice from the Corporation to the Consultant to proceed with the Services or any portion thereof

Notify	To give a Notice pursuant to Part II, Section 10.9.1
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 Part II, Section 9.4.
Payment Schedule	Schedule listing Maximum Payment for each Portion of the Services, appended to Appendix C when payment for Services or a Portion of the Services is on a Tasks completed basis
Payroll Report	Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete
Percentage of Completion	An amount equal to the percentage of completion of each Portion of the Services
Person In Charge	As identified in Part I, Section 2.5, the member(s) of the Consultant's professional staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services
PLL	Pollution Legal Liability Insurance Policy
Portion	Each portion, task or phase of the Services as described in Appendix B and/or Appendix C

Principal	The most senior officer, or member of the Consultant’s staff responsible for the performance of Services as identified in Part I, Section 2.4
Progress Reports	Reports which Consultant is obligated to prepare that show the status of the Services in accordance with the Progress Schedule
Progress Schedule	Any schedule issued or approved by the Corporation for the performance of the Services, including, without limitation, Project or Services milestones, deadlines or delivery dates
Project	As identified in Part I, Section 1.7, and described in detail in Appendix B
Project Manager	A person designated by the Corporation to serve as a liaison between the Corporation and the Consultant
Project Site	The location of the Project as identified in Part I, Section 1.8 and described in detail in Appendix B
Public Design Commission (“PDC”)	Public Design Commission of the New York City (f/k/a The Art Commission)
RAP	Remedial action plan
Representatives	The employees, agents, servants, officers, directors, members, independent contractors and subcontractors of a person or entity
Requisition	A request for payment, to be submitted by Consultant not more than once per month, setting forth in detail, for the billing period for which partial payment is requested, the amount requested and Services performed during the billing period
Retainage	Any sum withheld from any payment to the Consultant including, without limitation, those set forth in Part II, Sections 1.5.3, 2.2.1 and 4.2.3
Retainage Payment Date	The date by which any Retainage identified in Part I, Section 1.10 will be paid to the Consultant, as identified in Part I, Section 1.11, subject to the provisions of Part II, Article 2 and Part III, Appendix C
Scope of Services	The Services to be provided by the Consultant in connection with this Contract, as set forth in Appendix B

Services	All of the services to be provided to the Corporation by the Consultant pursuant to the Contract, as described in greater detail in Appendix B
SHPO	State Historic Preservation Officer
Specific Terms and Conditions	Part I of this Contract
Fee and Cost Schedule	Schedule listing names of Consultant's staff, hourly rates and estimated number of days to be spent providing Services, appended to Appendix C when payment for Services or a Portion of the Services is on an hourly rate basis
State	State of New York
Subcontractor	Any person or entity including, without limitation, contractors, consultants, subconsultants, vendors and subcontractors of such persons or entities, employed or retained by the Consultant in accordance with the Contract to provide any services, work, materials, equipment or supplies in connection with the Services
Subcontractors' Costs	The compensation payable by the Consultant to any subcontractor(s) of the Consultant pursuant to a contract(s) entered into pursuant to Part II, Section 4.2
Target Subcontracting Percentage	As defined in Part II, Section 9.3
Term	The time period of this Contract, as stated in Part I, Section 1.5
USACOE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
UST	Underground storage tanks
WBEs	Women-owned Business Enterprises
Worker's Compensation	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services
Work-Made-For-Hire	As defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101

## Work Product

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

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

## Scope of Services

The New York City Economic Development Corporation (NYCEDC) is seeking to retain two Consultants to provide the Pre-Construction Professional Services as outlined in this solicitation. These programs are designed to help NYC residents directly affected by Hurricane Sandy to achieve permanent, sustainable housing solutions. The Consultant will play an essential role in ensuring that the program accurately assesses the level of damage incurred at a building and prepare estimates of the cost to complete rehabilitation or repair of the building, including the development and implementation of appropriate strategies to address resiliency issues or mitigate environmental concerns.

This solicitation is issued by NYCEDC in support of the Mayor's Office of Housing Recovery Operations (HRO). Programmatic oversight will be provided by HRO. While NYCEDC will hold the contracts for this work, HRO will primarily oversee the contract services and provide direction and feedback to the selected Consultants.

In response to housing needs incurred as a result of Hurricane Sandy, the City of New York (the City) applied for assistance through the Department of Housing and Urban Development (HUD) Community Development Block Grant-Disaster Recovery (CDBG-DR) program. This solicitation will build the capacity for the City to deliver assistance under the CDBG-DR program. This solicitation seeks Consultants to provide the following services:

- Task I: Damage Assessments and Cost to Complete
  - Complete inspection report verifying damage was a result of the Storm (structural, electrical, plumbing, visual mold inspection, testing for lead based paint, etc.) and photo documentation of existing conditions.
  - Develop a cost estimate of total damage caused by the Storm that will be used to determine whether the unit is “substantially” damaged.
  - Assessment of remaining work to rehabilitate building.
  - Determine the scope and quality (code compliance) of any repairs completed by Homeowner for use in Duplication of Benefits determination by Case Manager (case management not in scope).
  - On-site collection of Environmental Data for environmental review.
  - Not in scope: detailed cost estimate and case management services.
- Task II: Professional Engineering Services
  - Feasibility review to determine appropriate housing recovery activity.
  - Other planning and engineering services necessary to evaluate special circumstances related to housing recovery options (land use issues, feasibility of hazard mitigations, elevation surveys, etc).
- Task III: Environmental Review and Environmental Data Management
  - Desktop and Tier II site-specific environmental screening.
  - Production of site-specific environmental review records.
  - Developing site-specific mitigation plans, where required.
- Task IV: Appraisal Services

- Determine Fair Market Value (FMV) of home pre-storm to be used in determination of substantial damage. If storm damage to home is equal or greater than fifty percent of FMV pre-storm, the home qualifies as substantially damaged.

The following background section provides context for the services to be provided under Tasks I through IV.

## **I. BACKGROUND: COMMUNITY DEVELOPMENT BLOCK GRANT—DISASTER RECOVERY (CDBG-DR) HOUSING PROGRAMS OVERVIEW**

The City's Housing Recovery Programs are designed to meet the unmet housing assistance needs described in the NYC CDBG-DR Action Plan,<sup>1</sup> which is incorporated into this solicitation by reference, and help people affected by Hurricane Sandy - including homeowners and tenants of rental properties - achieve permanent, sustainable housing solutions that allow them to remain in New York City and, where possible, return to their neighborhoods.

The objectives of the programs include:

1. Help people affected by Sandy directly by replacing and rehabilitating housing units, including identifying opportunities for mitigation enhancement measures;
2. Help people affected by Sandy by improving the resilience of their housing units while restoring their buildings/residences;
3. Support resilience improvements to reduce risk and strengthen neighborhoods in flood zones; and,
4. Leverage philanthropic investments to address immediate gaps with flexible capital and maximize CDBG-DR dollars at scale.

To pursue these objectives, the City has built programs that incorporate lessons from past disasters; build upon stakeholder input from agencies and relevant organizations across the city, state, and national levels; and, leverage the experience of locally-based organizations to ensure the diverse needs and particular contexts of affected residents are addressed. Our focus is to provide assistance to affected New Yorkers quickly while ensuring accountability and proper use of funds. We have also accounted for the complexities faced by affected residents working through the assistance process and therefore embedded quality customer service and counseling options to help people understand their options and the impacts (financial and otherwise) of their decisions. The City's strategy will balance speedy response with adequate planning and take into account the distinct needs of different communities. For program operations, the City will maximize private and non-profit sector expertise and the deep experience of the NYC housing infrastructure while putting appropriate accountability and oversight mechanisms in place.

The City's housing recovery programs are designed to meet the unmet housing assistance needs described in the NYC CDBG-DR Action Plan and help people affected by Hurricane Sandy—including homeowners and tenants of rental properties—achieve permanent, sustainable housing solutions that allow them to remain in New York City and, where possible, return to their neighborhoods.

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<sup>1</sup> [http://www.nyc.gov/html/cdbg/downloads/pdf/cdbg-dr\\_full.pdf](http://www.nyc.gov/html/cdbg/downloads/pdf/cdbg-dr_full.pdf)

## **Housing Program Overview**

The City will have two programs, each with several permanent housing recovery paths that maximize coordination across agencies. In this way, the City's programs will leverage scale, where possible, while providing solutions tailored for the different needs of homeowners or landlords in need of assistance (e.g., by geography, building type and size). Specifically, the City will have the following core programs to provide assistance to those who suffered damage from Sandy:

**NYC Houses**—Grants for reconstruction or rehabilitation of homes that have been destroyed or damaged by Sandy. Assistance will incorporate resilience measures for homes that are destroyed or have substantial damages defined by the NYC CDBG-DR Action Plan.

The City will also use CDBG-DR to create a rental subsidy program to serve extremely low-income households displaced by Hurricane Sandy. The City will assist households in finding apartments in the existing affordable housing portfolio.

**Multi-family Building Rehabilitation**—Grants, low-interest loans, and/or credit support for rebuilding or rehabilitation of multi-family rental buildings that have suffered damage. Rebuilding or rehabilitation will incorporate resilience measures for those multi-family buildings that have been destroyed or have suffered major damage. Grant disbursement will be managed through a mechanism separate from the Consultant responding to this solicitation

The initial funding will allow the City to serve a segment of its targeted population, as follows:

- **NYC Houses:** The City will prioritize assistance for those with the most severe damage and owners with the highest level of financial need. Accordingly, the City's first priority will be to assist up to 1,000 units of low, moderate and middle income homeowners whose primary residences or rental properties with year-round tenants were destroyed or had major damage. The City will also assist up to 8,300 low, moderate, and middle income households whose primary residences experienced moderate damage.
- **Multi-family buildings:** The city will invest in its multi-family housing stock—both affordable and market rate, capitalizing on the strong HPD and HDC institutional infrastructure. Through this first round of funding, the City will rehabilitate and enhance the resiliency of approximately 13,000 units of housing for low, moderate, and middle income New Yorkers.
- **Public housing:** The City will allocate \$120 million to design and construct improvements to public housing directly impacted by Hurricane Sandy. The first phase of this program is to install permanent emergency generators at 100 of NYCHA's most vulnerable buildings that were impacted. Accordingly, a portion of this allocation will be used as the non-federal share for FEMA Public Assistance projects.

Preliminary estimates suggest potential rehabilitation needs for a total of ~20,000 single-family buildings (1–4 units) and ~1800 multi-family buildings (ranging from 5 to 558 units with an

average building size of 60 units). These estimates also suggest potential reconstruction of ~800 single-family buildings and ~20 multi-family buildings. The lowest income households will be prioritized.

The City of New York has decided to proceed with a tiered environmental review in accordance with provisions identified in 24 CFR 58.15. This approach addresses broad programs and issues in initial Tier 1 or systems-level analyses, and analyzes site-specific proposals and impacts in subsequent tier studies. The initial Tier 1 or broad-level review is being conducted for the programs identified (separate from this solicitation). The broader Tier I reviews will establish the standards and processes to be followed in the site-specific reviews.

A copy of the respective Preliminary Draft Tier I Programmatic Environmental Review for the NYC Houses, Multi-family Buildings, and Public Housing Rehabilitation and Resilience programs, and sample worksheets, are available at the following link:

<http://www.nycedc.com/opportunity/pre-construction-professional-services-housing-recovery-services-rfp#scope>

## **SCOPE OF SERVICES**

### **II. SPECIFIC SCOPE OF PRE-CONSTRUCTION SERVICES REQUESTED OF CONSULTANT**

As stated earlier, the scope of services requested by this solicitation are grouped into four tasks. Proposers' responses must address all tasks. In cases where the proposer expects to subcontract some or all of the work, proposer's responses should describe tasks and activities the proposer will perform directly as the lead firm, and the tasks and activities to be provided by any subconsultants or linkage partners. Partial proposals will be considered non-responsive. Proposers are encouraged to demonstrate knowledge of local communities and NYC community-specific needs.

#### **Overall Deliverables:**

- Site assessments to include environmental data collection and estimated cost of storm damage.
- Validation and valuation of repairs completed by others for the purpose duplication of benefits determinations.
- Tier 2 Environmental Review desktop review.
- Feasibility Report determining appropriate housing recovery activity.
- Electronic deliverables in a format consistent with SQL or similar backend database (the overall Case Management System utilized by the Program is based on a Microsoft Dynamics platform)

#### **Overall Service level requirements:**

- Targeted start of data collection visits is July 1, 2013, with the bulk of visits expected to be completed over a 4 – 6 month period.

- The Consultant shall interface with the Program Case Management System which is based on Microsoft Dynamics platform. Cost estimating systems shall be compatible with the Program Cost Estimating system which is based on Xactimate ®.

**Task I: Damage Assessment and Cost to Complete**

The scope of this Task is to conduct field damage assessments and cost estimating services. Under both the NYC Houses and Multi-family Building Rehabilitation program, each eligible applicant will be assigned a Home Assessor to confirm damage caused by Hurricane Sandy and cost to complete rehabilitation of the applicant's damaged property.

The assessment will consist of site visits to carry-out the following services:

- Complete inspection report verifying damage was a result of the Storm (structural, electrical, plumbing etc.)
- Verify address and use GPS to capture precise address data.
- Conduct a visual mold assessment.
- Collect environmental data as required for Tier 2 Site Assessment.
- If the building is destroyed or unsafe to enter, the Assessor will indicate estimated total square footage.
- Verify storm related repairs previously completed to support a Duplication of Benefits determination.
- Verify storm related repairs previously completed meet HUD Housing Quality Standards.
- Photo document areas of the home damaged by the Storm, repairs done post Storm and areas of concerns regarding rehabilitation.
- Develop a budgetary cost estimate of the total damaged caused by the Storm.
- Damage assessment specialist shall be available to respond to Case Manager inquiries.
- Conduct follow-up visits as required.
- Upload each individual assessment to the Program Case Management System upon completion of the site visit.

Deliverables for this scope element include:

- Final damage assessment report for each individual property consisting of home inspection (as detailed above), details of storm related repairs previously completed, estimated cost to rehabilitate, GPS coordinates and photo documentation.
- Final report of all completed Sandy related repairs.
- Final environmental data report.

Service level requirements:

- Designate and assign a staff of experienced home inspectors, trained and ready to start site visits by July 1, 2013
- Targeted start of assessments of damage and cost to complete is July 1, 2013, with the bulk of assessments expected to be completed over a 4 – 6 month period
- Each field visit should be completed within one weeks of being assigned a property
- Expected assessments: 10,000 single family houses (1-4 units)  
900 multi-family buildings

- Capability to rapidly adjust to changes in the volume of assessments to be completed within required timeframe.

Consultant is expected to present their approach to carrying out the above services.

### **Task II: Professional Engineering Services**

- Feasibility review to determine appropriate housing recovery activity based on data from Task I- estimated cost repairs and Task III – environmental Tier 2 mitigation measures.
- Housing Recovery Activities will be defined in Program Policy Guidelines and include:
  - i) Rehabilitation
  - ii) Rehabilitation with resiliency
  - iii) Demolition and reconstruction
- Perform other engineering-related consultations as requested, such as geotechnical services, land surveys, and land use planning.

Deliverables for this scope element include:

- Final feasibility report identifies appropriate housing recovery activity as defined above.
- Other architectural/engineering studies and reports, as requested.

Service level requirements:

- Targeted start of data collection visits is July 1, 2013, with the bulk of visits expected to be completed over a 4 – 6 month period.
- Feasibility reports should be completed within three (3) days of receiving Assessment Report and Tier 2 environmental review.
- Expected Feasibility Reports: 10,000 single family houses (1-4 units)  
900 multi-family buildings
- Capability to rapidly adjust to changes in the volume of reports to be completed within required timeframe.

### **Task III: Environmental Review and Environmental Data and Document Management**

#### **Environmental Review**

The Consultant will be required to assist the City in developing and implementing a written strategy for reviewing and complying with HUD environmental requirements for each applicant to NYC's CDBG-DR housing recovery programs over the course of all allocations. This task is broken into two elements:

1. Site-Specific Environmental Review
2. Environmental Data and Document Management

#### **Site-Specific Environmental Review**

The Consultant will be expected to propose and implement strategies intended to engage the public

as well as governmental agencies in the NEPA environmental review process. Efficient consultation will be required with federal, state and/or city agencies such as: the United States Fish and Wildlife Service; New York State Department of Environmental Conservation, New York State Office of Parks and Recreation/State Historic Preservation Officer (SHPO); New York City Mayor's Office of Environmental Coordination, New York City Mayor's Office of Remediation, NYC Landmarks Preservation Commission (LPC), Department of Environmental Protection, New York City Department of Parks and Recreation.

To the extent that circumstances and or conditions dictate the need for community level studies the Consultant shall recommend the approach, breadth, and scope of such analyses.

As determined by the Tier I Programmatic Environmental Review, the Consultant will utilize HUD's statutory worksheet to complete site-specific analyses and develop and implement a series of site checklists for use in the application review to ensure compliance with applicable HUD regulations, governing laws, Executive Orders, et al. (Draft of Tier 1 is attached at link above).

The Consultant will use these checklists to conduct site checks and/or field visits, as needed, to homeowner properties and their surrounding areas in order to complete said checklists. Site-specific Environmental Reviews shall be sufficient to meet requirements in accordance with 24 CFR part 58. Finally, the Consultant will support the development of potential mitigation alternatives, as required, for sites with potential environmental impacts and/or known issues.

Project scoping will involve field inspections for the purposes of initiating agency consultations, screening for hazardous and or toxic sites/conditions, and other notable site conditions.

Deliverables for this scope element include:

- Site-specific Statutory checklist and environmental review documentation
- Completed, validated, written report(s) on environmental significance, if any, per application site or by logical grouping of project(s), delivered in a format which is compatible with the City's case management system
- Report of potential mitigation alternatives, as required for sites with potential environmental impacts or known issues

Service level requirements:

- Each site-specific review should be completed within the lesser of 21 days of assignment and/or 3 days of LPC determination
- Expected Tier 2 ERs: 10,000 single family houses (1-4 units)  
900 multi-family buildings
- Field visits as required
- Capability to rapidly adjust to changes in the volume of site specific reviews to be completed within required timeframe.

## **2) Environmental Data and Document Management**

The Consultant will prepare and implement plan for the control and management of all documents produced under this contract and for the environmental data collected in support of the

Environmental Desktop Reviews. The plan will clearly describe how Pre-construction Services case deliverables will be controlled in both hard and soft copy. The plan should indicate basic metadata that will be captured for each document to aid in document retrieval and how the files are uploaded to the HRO Program Case Management System. The plan will indicate how hard copy files will be minimized and centrally managed and the quality control procedures to ensure compliance with the document management plan.

The plan shall also clearly indicate how the use of existing environmental data resources are maximized, including the identification of previously performed environmental reviews by NEPA cooperating federal agencies.

The Consultant will also develop and maintain a geographic information system (GIS) for all relevant information necessary to support the Environmental Review Record for the NYC Housing Recovery Programs. The foundation data for the GIS exists and will be shared with the Consultant.

Deliverables under this scope element include:

- Environmental Data and Document Management Plan
- Provision of relevant environmental data to support environmental reviews in a form which can be integrated with NYC data systems
- Assist the City's environmental officer to maintain the Environmental Review Record

#### **Task VI: Appraisal Services**

The Consultant will provide appraisal services for the City.

Under both the NYC Houses and Multi-family Building Rehabilitation program, an appraisal might be ordered for pre-storm fair market value of the building for each applicant with substantial damage to their building.

Deliverables for this scope element include:

- Appraisal of the pre-storm fair market value of each individual building requested by the City

Service level requirements:

- Targeted start of appraisal orders is July 1, 2013, with the bulk of orders expected to be completed over a 4 – 6 month period
- Each appraisal should be completed within one week of being assigned a property
- Expected assessments: 10,000 single family homes (1-4 unit)  
900 multi-family buildings
- Capability to rapidly adjust to changes in the volume of appraisals to be completed within required timeframe

### III. CONTRACT CONDITIONS

Office space for these staff must be provided by the Consultant, equipped with computers and workstations and might, in some cases, be located outside of NYC.

#### A. Contract Terms

The anticipated period of performance is up to two (2) years, starting on or about July 1, 2013. The City, at its sole discretion through NYCEDC reserves the right to renew the contract for two successive one year periods. The City reserves the right to divide caseload as needed based on factors such as performance, geography or changes in application volume.

Consultant(s) are expected to cover the entire duration of the NYC Housing Recovery Programs, including all phases of funding. Consultants are asked to provide services and staff for all New York City locations—Consultants may not propose to provide services at only select geographical locations. Consultants are encouraged to demonstrate local knowledge and the potential to leverage local organizations where appropriate. Consistent with HUD Section 3 goals, Consultants shall, to the greatest extent feasible, train and hire low- or very-low income residents when appropriate<sup>2</sup>.

#### B. Staffing Levels

Over the course of the two-year contract, staffing levels will vary and require a variable and flexible staffing schedule. The Consultant is expected to propose their anticipated staffing levels, indicating the following:

- Which staff will fulfill each function
- Where the staff will be located (i.e., in NYC or outside NYC)
- How the Consultant will plan for ramp-up and ramp-down in demand, with tail-end support over an 18 month period

#### C. Assumptions Regarding Consultant(s) Price

**Task I –Damage Assessment and Cost to Complete:** Payments are based on completed deliverable per applicant. Payment will be made upon deliverable of a final report indicating the estimated initial damage and cost to complete.

**Task II- Professional Engineering Services:** Same as Task I above, in addition, Consultant should provide time and materials rates for any further architectural & engineering consultations required, understanding that the total amount of such requests my not exceed \$500,000.

**Task III - Environmental Review and Environmental Data and Document Management:** Same as Task I above and payment for site specific environmental reviews is based on a per unit cost and volume completed. Payment will be made upon deliverable of a final site-specific review. With regard to environmental data management, payment will be upon receipt of deliverables.

**Task IV – Appraisal Services:** Same as Task I above and payment will be based on a per unit cost

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<sup>2</sup> As per HUD Section 3 regulations

and volume completed. Payment will be made upon deliverable of an appraisal of pre-storm fair market value of the damaged building.

## **D. Miscellaneous**

Consultants are permitted to enter into agreements with other Consultants or subconsultants as required to fulfill the services of this solicitation. The proposal should discuss such arrangements and all partners should be noted in the proposal.

All subcontracts shall be subject to prior approval by the City. The Consultant may enter into these contracts to complete the project providing that the Consultant remains responsible for all services performed. All restrictions, obligations and responsibilities of the Consultant herein shall also apply to the subconsultants. The City shall have the right to request the removal of a subconsultant from the Contract for good cause.

## **IV. PROPOSAL CONTENT AND EVALUATION**

As part of this solicitation, proposers submitting responses should briefly address the following:

### **A. Experience**

Proposers and their team (proposers and subconsultants) should describe the following, in addition to other qualifications:

#### **Task I: Assessment of Cost to Complete**

- The team's past experience in damage assessment in situations where clients are in severe distress following any catastrophic event, large or small (a minimum of 3 years)
- Experience in verification of storm damage
- Experience in preparing estimated assessments of cost for construction and rehabilitation
- Experience in residential construction
- Experience in residential home inspection
- Experience in the use of lead-based paint assessment technology
- Experience in addressing the needs of an ethnically, racially, and/or socio-economically diverse clientele
- Experience in the use of assessment technology

#### **Task II: Professional Engineering Services**

- The team's past experience in engineering studies and land surveys for the purposes in situations where clients are in severe distress following any catastrophic event, large or small (a minimum of 3 years)
- Experience in addressing the needs of an ethnically, racially, and/or socio-economically diverse clientele
- Knowledge of Department of Housing and Urban Development Community Development Block Grants—Disaster Recovery requirements related to damaged housing.
- Experience in the use of technology needed for engineering services related to feasibility assessments as well as for land surveys

#### **Task III: Environmental Review and Data Collection**

- The team's past experience in site inspections for the purposes of environmental review in situations where clients are in severe distress following any catastrophic event, large or small (a minimum of 3 years)
- Experience in addressing the needs of an ethnically, racially, and/or socio-economically diverse clientele
- Knowledge of Department of Housing and Urban Development Community Development Block Grants—Disaster Recovery requirements related to environmental review, including but not limited to National Environmental Policy Act requirements.
- Experience in the use of technology needed for environmental data collection and environmental reviews

#### Task IV: Appraisal Services

- The team's past experience in providing appraisals at a high rate of volume (a minimum of 3 years)

### **B. Proposed Technical Approach**

Proposers should describe in detail how they will effectively carry out the scope of services described herein, including plans for:

- On-boarding and training staff.
- Developing operations process flow, key steps and anticipated timing of key steps
- Minimizing hand-offs between different steps of assessment and environmental review.
- Meeting the proposed ramp-up schedule within targeted timeline.
- Interfacing with other program staff providing different services (e.g., Housing Recovery Specialists, General Consultants).
- Varying staffing levels to satisfy City requests and variations in applicant demand.
- Managing coordination across subconsultants to ensure consistency and quality of services.
- Providing language access services for languages commonly spoken in affected areas for any task which involves interaction with the homeowner (i.e., a visit to the home). These languages should at the least include Russian, Spanish and Chinese (Mandarin and Cantonese), and may include others.

### **C. Organizational Capability and Team**

Proposers should indicate their proposed organizational structure, and how they will effectively manage staff, and manage budgets without timely City reimbursement. In addition, proposers should indicate how it can fully staff program operations on July 1, 2013 and maintain appropriate staffing levels over the two year period with an expected shift in demand.

Proposer should include a description of experience and resumes of key personnel and describe the commitment of key personnel over the course of the engagement. This description should include for each key personnel their individual percentage of time committed to the project. Proposers should also describe any additional plans to staff and commit others integral to the success of the

program—for example, leveraging those with local knowledge of NYC communities and relevant laws.

**D. Basis of Award**

The City of New York Economic Development Corporation (EDC) anticipates awarding two contracts to provide Pre-Construction Professional Services in support of the NYC Housing Recovery Programs. The awards will be made to the top two highest technically rated responsive and responsible proposers offering the most advantageous proposals to the City, taking price and other factors into account. EDC will consider the following criteria when evaluating submissions:

<b>Criteria</b>	<b>Selection weight</b>
The Consultant’s and subconsultant’s experience in providing services similar to the services described above.	<b>30%</b>
The Consultant’s and/or subconsultant proposed approach to provide the services described above, the quality of the proposal and the ability to perform the services to be rendered.	<b>40%</b>
Organizational capability, including the quality of the respondent’s management, reputation and references and the quality of the proposed Consultant’s team.  The terms under which the respondent will commit its key personnel and, as applicable, the personnel of the respondent’s team members, without transfers and personnel changes.	<b>30%</b>

Final determination of award will be dependent of successful negotiations with the apparent winner in a timely manner. The City reserves the right to cease negotiations with the apparent winner and commence negotiations with the next highest technically rated proposer.

Proposals should not exceed 20 pages, exclusive of appendices (e.g., resumes of key personnel).

**E. Legal and Compliance Notifications**

Proposers must comply with federal, state and local regulations, including those laid out by the Department of Housing and Urban Development CDBG-DR. Proposers are also required to maintain an audit trail to document appropriate use of funds and services rendered.

**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.

## APPENDIX C

### PAYMENTS BASED ON HOURLY RATES

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

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

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

- (i) Services performed by Consultant's Principal and by its professional and technical staff;
- (ii) the number of hours worked by each such Principal and its professional and technical staff in connection with the Services performed during the billing period;
- (iii) actual salaries incurred during such month;
- (iv) Allowable Additional Costs incurred;
- (v) Subcontractors' Costs incurred during the billing period;
- (vi) the amount of partial payment requested; and
- (vii) a representation and warranty that, except as set forth in the Requisition, the representations and warranties made by the Consultant in Article 7 of the Contract are true and correct as of the date of the Requisition as if made on the date of the Requisition.

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

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

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

**EXHIBIT 1 TO APPENDIX C**

**FEE AND COST SCHEDULE**

**EXHIBIT 2 TO APPENDIX C**  
**EFT ENROLLMENT FORM**





**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

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

**GENERAL INSTRUCTIONS**

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

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

**SECTION I – VENDOR INFORMATION**

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

**SECTION II – FINANCIAL INSTITUTION INFORMATION**

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

**SECTION III – VENDOR SIGNATURE**

Sign and date where indicated.

**APPENDIX D**

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





**APPENDIX E**

**INSURANCE REQUIREMENTS**

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

**APPENDIX E**

**INSURANCE REQUIREMENTS**

1. Required Policies and Amounts

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

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

<u>U.S. Harbor Workers' Long Shoremens' Compensation Act:</u>	In statutory amounts
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<u>Marine Protection and Indemnity:</u>	\$25,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than \$25,000,000 in the aggregate per year
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If the Project is adjacent to or includes an existing railroad or subway line, the Consultant, or its Subcontractors, shall purchase and maintain the following insurance in the following amounts in connection with the performance of the Services by the Consultant and its Subcontractors, and any work incidental thereto:

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

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

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 Site Coverage:	\$5,000,000 combined single limit per occurrence for bodily injury or death, and property damage, but if an annual aggregate is applicable to the policy not less than \$5,000,000 in the aggregate per year dedicated to this Project, on an “occurrence” basis, with a term of not less than ten (10) years
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Such CPL and PLL policies shall be for a term of not less than (10) years, on an “occurrence” basis, and any aggregate applicable to such policies shall be dedicated to this Project. In addition, such policies shall include, without limitation, and as applicable, (a) bodily injury and defense coverage for asbestos and lead; (b) coverage for unknown UST’s; (c) a definition of “property damage” that includes diminution in value of third-party properties; (d) a statement that such insurance is primary and over any surety contracts or bonds covering the Services; (e) a statement that the insured’s rights will not be prejudiced if there is a failure to give notice due to the insured’s belief that the occurrence was not covered; (f) coverage for products brought onto the work site where Services are being performed; (g) a definition of “stop loss” or “cleanup cost cap” that includes monitoring activities; (h) a definition of “cleanup costs” that includes any costs associated with natural resources damages; and (i) a statement that exclusions for modifications of remedial action plans (“RAP”) shall not include changes required by regulatory agencies (either via a change in regulations or as a result of governmental entity oversight, increased levels or quantities of pollutants within the boundary of the RAP, discovery of pollutants not identified in the exclusion, and amendments to the RAP because of a change in technological approach).

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

Professional Liability/Errors & Omissions Insurance:

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

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

**APPENDIX E**

**INSURANCE REQUIREMENTS**

2. Additional Insureds

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

New York City Economic Development Corporation  
The City of New York

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

## APPENDIX E

### INSURANCE REQUIREMENTS

#### 3. Required Provisions

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

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

B. The Insurer shall accept notice of accident from the Corporation or the City, within 120 days after receipt by an official of such Additional Insured (as identified in Appendix E of the Contract between the Corporation and the Consultant to which this policy applies) of notice of such accident as valid and timely notice under this policy;

C. The Insurer shall accept notice of claim from the City within 120 days after such claim has been filed with the Comptroller of the City and notice of claim from the Corporation, within 120 days after receipt by such party as valid and timely notice under this policy;

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

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

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

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

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

**APPENDIX E**

**INSURANCE REQUIREMENTS**

4. Sample Form of Insurance Certificate

# 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
	<b>S</b> GENERAL LIABILITY				
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE OCCUR. OWNER'S & CONTRACTOR'S PROT. <input checked="" type="checkbox"/> Additional Insureds—City of New York; New York City Economic Development Corp.; and Apple Industrial Development Corp.	Insurance Policy #	11/11/11	22/22/22	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COMP/OP AGG. \$ PERSONAL & ADV. INJURY \$ EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person) \$
B	<input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY	Insurance Policy #	11/11/11	22/22/22	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
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

**APPENDIX F**

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

**EQUAL EMPLOYMENT OPPORTUNITY**

## APPENDIX F

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

#### EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

## **APPENDIX G**

### **E.O. 50 EMPLOYMENT REPORT FORM**

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

“Resources/Vendor Resources”

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

#### **Non-Construction Consulting Contracts**

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

[Supply & Service Employment Report Instructions](#)

[Supply & Service – under 50 employees](#)

[Supply & Service – full form](#)

**APPENDIX H**

**M/WBE SUBCONTRACTOR UTILIZATION PLAN**

**[INSERT CONSULTANT’S COMPLETED PLAN; IF NOT APPLICABLE INSERT  
“INTENTIONALLY DELETED”]**

**APPENDIX I**

**OUTSIDE FUNDING SOURCES**

**[NOTE: IF NOT APPLICABLE, ADD THE FOLLOWING:  
“INTENTIONALLY DELETED”]**

## APPENDIX I

### OUTSIDE FUNDING SOURCE PROVISIONS

1. General Terms.

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

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

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

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

2. Termination or Suspension Related to Unavailability of Funds.

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

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

**APPENDIX J**  
**APPLICABLE REQUIREMENTS**

## **APPENDIX B**

### **NOTICE**

THIS PACKAGE CONTAINS SUPPLEMENTARY GENERAL CONDITIONS FOR USE WITH PROCUREMENT CONTRACTS AND SUBRECIPIENT AGREEMENTS 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.

## CONTENTS

ARTICLE 1	DEFINITIONS . . . . .	4
ARTICLE 2	FEDERAL CONDITIONS	
	Title 1 of the Housing and Community Development Act . . . .	5
	Civil Rights Act . . . . .	5
	Executive Order 11063 . . . . .	5
	Section 3 of the Housing & Urban Development Act of 1968 . .	5
	Lead-Based Paint Poison Prevention Provisions . . . . .	6
	Flood Disaster Protection Act . . . . .	6
	Americans with Disabilities Act . . . . .	6
	Historic Preservation Act . . . . .	6
	Uniform Relocation & Real Property Acquisition Policies Act .	7
	Uniform Administrative Requirements . . . . .	7
	Program Income Provisions . . . . .	7
	Religious Conditions . . . . .	8
	Executive Order 11246 . . . . .	8
ARTICLE 3	ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION	
	Federal Labor Standards . . . . .	10
	Davis-Bacon Wage Rate Requirements . . . . .	10
	Contract Work Hours and Safe Standards Act . . . . .	10
	Copeland Act . . . . .	10
	Equal Employment Opportunity Compliance, (E.O. 11246) . . .	10
ARTICLE 4	NONDISCRIMINATION . . . . .	14
ARTICLE 5	RECORDS AND AUDITS . . . . .	14
ARTICLE 6	UNEARNED PAYMENTS . . . . .	15
ARTICLE 7	DISBURSEMENT RESTRICTIONS . . . . .	15
ARTICLE 8	DOCUMENTATION OF COSTS . . . . .	15
ARTICLE 9	BONDING . . . . .	15
ARTICLE 10	ACCOUNTING SYSTEM . . . . .	16
ARTICLE 11	COPYRIGHTS . . . . .	16
ARTICLE 12	PATENTS . . . . .	17
ARTICLE 13	SUBCONTRACTORS . . . . .	17
ARTICLE 14	SUSPENSION AND TERMINATION . . . . .	17
ARTICLE 15	REVERSION OF ASSETS . . . . .	17

ARTICLE 16	SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS . . . . .	18
ARTICLE 17	ENVIRONMENTAL PROTECTION . . . . .	18
ARTICLE 18	ENERGY EFFICIENCY . . . . .	19
ARTICLE 19	BINDING AUTHORITY . . . . .	19
EXHIBITS		
FEDERAL EXHIBIT 1	NOTICE TO BIDDERS . . . . .	19
FEDERAL EXHIBIT 2	FEDERAL LABOR STANDARDS PROVISIONS	

## ARTICLE 1

### DEFINITIONS

As used in this Contract:

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

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

(c) “City” means the City of New York.

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

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

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

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

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

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

## ARTICLE 2

### FEDERAL CONDITIONS

This Agreement is subject to:

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

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

(b) Title VIII of the Civil Rights Act of 1968 (P.L. 90-284; 42 U.S.C. §§ 3602-3620), as amended, which prohibits discrimination in the sale or rental of housing and in the provision of brokerage services based on race, color, religion, sex, national origin, disability, or familial status, and which requires affirmative action in the furtherance of Fair Housing objectives.

(c) Executive Order 11063, as amended by Executive Order 12259, pursuant to regulations issued at 24 CFR Part 107 which prohibits discrimination on the basis of race, color, religion, sex or national origin and requires equal opportunity in housing constructed, operated or provided with federal funds.

(d) Title VI of the Civil Rights Act of 1964 (P.L. 88-352; 42 U.S.C. §§ 2000d *et seq.*) and implementing regulations in 24 CFR Part 1, which states that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any Program or activity made possible by, or resulting from, this agreement. The provisions of this Article 2(d) shall be incorporated in and made a part of all subcontracts executed in connection with this agreement.

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

A. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this Agreement agree to comply with HUD'S regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement

certify that they are under no contractual or other impediments that would prevent them from complying with the Part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any Subcontractor where the Contractor has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.

F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

(f) Lead-Based Paint Poison Prevention provisions found in 24 CFR § 570.608, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead Based Paint Hazard Reduction Act of 1992 (U.S.C. §§ 4851-4856, and 24 CFR Part 35, subparts A, B, J, K, and R. This Article 2(f) is to be included in all subcontracts, for work in connection with this Agreement, which relate to residential structures.

(g) Pursuant to the provisions in 24 CFR § 570.605, Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4106), and the regulations in 44 CFR Parts 59-79 apply to this Agreement.

(h) Consistent with 24 CFR § 570.614, the Contractor warrants that all services, programs, and/or Construction (including design and alteration) under this Agreement shall be performed in accordance with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities including, but not limited to, the following: Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968 (42 U.S.C. § 4151-4157), the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 and Appendix A to 41 CFR Part 101-19, subpart 101-19.6), and the Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218, and 225).

(i) The Historic Preservation Act of 1966 (P.L. 89-665; 16 U.S.C. §§ 470 *et seq.*), the Archeological and Historic Preservation Act of 1974 (P.L. 93-291; 16 U.S.C. §§ 469-469c), Executive Order 11593 and regulations at 36 CFR Part 800. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

(j) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601-4655) and regulations at 49 CFR Part 24.

(k) Uniform Administrative Requirements.

- (i) Subrecipients that are governmental entities, including those that are public agencies or authorities, shall comply with the following:
  - a. Federal Office of Management and Budget (OMB) circular A-87, Cost Principles for State, Local and Indian Tribal Governments;
  - b. Federal Office of Management and Budget (OMB) circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (rev. 6/27/03);
  - c. The sections of 24 CFR Part 85, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, that are set forth in 24 CFR § 570.502(a).
- (ii) Subrecipients, except those which are governmental entities, public agencies or authorities, shall comply with the following:
  - a. Federal Office of Management and Budget (OMB) circular A-122, Cost Principles Non-Profit Organizations;
  - b. In the event that the Contractor is an educational institution, Federal Office of Management and Budget (OMB) circular A-21, Cost Principles for Educational Institutions;
  - c. The sections of 24 CFR Part 84, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, that are set forth in 24 CFR § 570.502(b). The provisions of 24 CFR Part 84 implement OMB circular A-110;
  - d. Federal Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (rev. 6/27/03).
  - e. Execution of a subrecipient agreement.
- (iii) Contractors shall comply with the provisions of 24 CFR Part 85 and 48 CFR Part 31, as applicable.

(l) The Contractor agrees that if any income is generated from the Community Development Block Grant Program funded activities, Contractor shall return such income to the City's Community Development Block Grant Program unless expressly authorized by the City. Such funds are subject to all applicable requirements governing the use of

Community Development Block Grant funds, including 24 CFR § 570.503(b)(3), which provides that, at the end of the program year, the City may require remittance of all or part of any program income balances (including investments thereof) held by the Subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs).

(m) If the Contractor is, or may be deemed to be, a religious or denominational institution or organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization, the Contractor agrees that in connection with services to be provided under this Agreement:

- (i) it shall not discriminate against any employee or applicant for employment on the basis of religion and shall not limit employment or give preference in employment to persons on the basis of religion.
- (ii) it shall not discriminate against any person applying for such public services on the basis of religion or religious belief and shall not limit such services or give preference to persons on the basis of religion or religious belief.
- (iii) it shall provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services.
- (iv) it shall not use CDBG funds for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under 24 CFR Part 570. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds in 24 CFR Part 570. Sanctuaries, chapels, or other rooms that a CDBG-funded religious congregation uses as its principal place of worship, however, are ineligible for CDBG-funded improvements. Disposition of real property is subject to 24 CFR § 570.200(j)(5).

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

- (i) During the performance of this Agreement the Contractor agrees as follows:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants

for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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

c. The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other Agreement or understanding, a notice to be provided by the Agency contracting officer, advising the labor union or worker's representatives of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations, and orders.

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

g. The Contractor will include the provisions of this Article 2(n) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

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

### ARTICLE 3

### ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION

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

- (a) Federal Labor Standards: The Contractor will comply with the following:
  - (i) The Davis-Bacon Act (40 U.S.C. §§ 3141 *et seq.*): In Construction contracts involving an excess of \$2000, unless exclusively in connection with the rehabilitation of residential property containing fewer than 8 units, all laborers and mechanics must be paid at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the Agency. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7 which enforce statutory labor standards provisions.
  - (ii) Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701 *et seq.*), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits, under any Construction Agreement costing in excess of \$2000. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages.
  - (iii) The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), as supplemented by the regulations contained in 29 CFR Part 3, requiring that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and prohibiting all but “permissible” salary deductions.
  - (iv) The more complete detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.
  - (v) The provisions of Article 3(a) of this Agreement shall be included in all subcontracts for work in connection with this Agreement.
- (b) Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for Construction contracts or subcontracts in excess of \$10,000.

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

- 1. As used in these specifications:
  - a. “Covered area” means the geographical area described in the solicitation from which this Agreement resulted;
  - b. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

- c. “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. “Minority” includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Agreement resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor’s or Subcontractor’s failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Agreement resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction Contractors performing Construction work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor’s obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period,

and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each Construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
  - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
  - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction work is performed.
  - g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
  - h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written

- notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
  - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

#### **ARTICLE 4**

##### NONDISCRIMINATION

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

#### **ARTICLE 5**

##### RECORDS AND AUDITS

(a) Records shall be maintained in accordance with requirements prescribed by HUD and/or the City with respect to all matters covered by this Agreement and retained for at least three years after the City makes final payments and all other pending matters concerning this Agreement are closed.

(b) At such times on such forms as HUD and/or the City may require, there shall be furnished to HUD and/or the City such statements, records, reports, data and information, as HUD and/or the City may request pertaining to matters covered by this Agreement. At a minimum, such forms will include the following:

- (i) Annual Data Collection Report forms for the purpose of including specific Program description, accomplishment, expenditure and beneficiary information in the City's Annual Performance Report.
- (ii) Annual Property Register forms for the purpose of tracking the use of CDBG purchased real property.

(c) At any time during normal business hours and as often as the City, the Agency, HUD, Inspector General, U.S. General Accounting Office, and/or the Comptroller General of the United States may deem necessary, the Contractor shall make available for examination to the City, HUD, Inspector General, U.S. General Accounting Office and/or representatives of the Comptroller General all of its books, accounts, records, reports, files, and other papers or property with respect to all matters covered by this Agreement and shall permit the City, HUD and/or representatives of the Comptroller General and the U.S. General Accounting Office to audit, examine, make excerpts of, and make transcriptions from such books, accounts, records, reports, files, and other papers or property and to make audits of all contracts, invoices, materials, payrolls, records or personnel, conditions of employment and other data relating to all matters covered by this Agreement.

## **ARTICLE 6**

### UNEARNED PAYMENTS

Unearned payments under this Agreement may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by HUD at any time, or if the Grant to the City under the Act is suspended or terminated. Unearned payments received by the Contractor will be returned to the City. All interest on funds advanced to the Contractor will be returned to the City.

## **ARTICLE 7**

### DISBURSEMENT RESTRICTIONS

No money under this Agreement shall be disbursed by the Agency to any Contractor except pursuant to a written contract which incorporates the applicable Supplementary General Conditions and unless the Contractor is in compliance with HUD requirements with regard to accounting and fiscal matters, to the extent they are applicable, and provided that the Agency has completed HUD requirements, including but not limited to environmental certifications pursuant to 24 CFR 58.

## **ARTICLE 8**

### DOCUMENTATION OF COSTS

All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Contract, shall be clearly identified and readily accessible.

## **ARTICLE 9**

### BONDING

The Agency must receive a statement from the Contractor's chief fiscal officer or their insurer assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount and

manner consistent with the coverage deemed necessary by the City of New York for its own employees. If the bond is cancelled or coverage is substantially reduced, the Contractor shall promptly notify the Agency of this fact in every case not later than 48 hours. In such event, the Agency shall not disburse any more funds to the Contractor until it has received assurance that adequate coverage has subsequently been obtained.

## **ARTICLE 10**

### ACCOUNTING SYSTEM

The Contractor shall submit to the Agency a detailed description of its accounting, reporting and internal control systems, including but not limited to the procedures for cash receipts, cash disbursements, payrolls, personnel policies, fixed petty cash controls and other systems which are necessary under the circumstances. The Agency shall evaluate and document all systems and only upon acceptance and approval of the accounting, reporting and internal control systems by the Agency, shall funds be disbursed to the Contractor, other provisions of the Agreement notwithstanding.

## **ARTICLE 11**

### COPYRIGHTS

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

(b) Any reports, documents, data, photographs, deliverables, and/or other materials, including software, produced pursuant to this Agreement (“Copyrightable Materials”), shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior permission of the City. The Department may grant the contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

(c) The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the U.S. Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this.

(d) The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for materials that is in the public domain); (ii) do not violate any copyright law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the city upon execution of this Agreement.

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

(f) If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish or otherwise use such work for City governmental purposes.

## **ARTICLE 12**

### PATENTS

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

## **ARTICLE 13**

### SUBCONTRACTORS

(a) The provisions of this Agreement shall apply to Subcontractors and their officers, agents and employees in all respects as if they were employees of the Contractor. The Contractor shall not be discharged from its obligations and liabilities, but shall be liable for all acts and negligence of Subcontractors, and their officers, agents and employees, as if they were employees of the Contractor.

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

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

## **ARTICLE 14**

### SUSPENSION AND TERMINATION

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

(b) The Contractor certifies that neither it nor its principals is currently in a state of debarment, suspension or other ineligible status as a result of prior performance, failure, fraud, or violation of City laws. The Contractor further certifies that neither it nor its principals is debarred, suspended, otherwise excluded from or ineligible for participation in Federal assistance programs. The City reserves the right to terminate this Agreement if knowledge of debarment, suspension or other ineligibility has been withheld by the Contractor.

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

## **ARTICLE 15**

### REVERSION OF ASSETS

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

(b) Any real property under the City's or the Contractor's control that was acquired in whole or in part with Community Development funds in excess of \$25,000 will be used to meet the national objectives in Section 570.208 or disposed in a manner which results in the Program being reimbursed in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-Community Development funds for acquisition of, or improvements to, the property.

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

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

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

## **ARTICLE 16**

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

The Contractor shall take the following affirmative steps in the letting of subcontracts, if subcontracts are to be let, in order to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible:

(a) Placing qualified small minority businesses and women's business enterprises on solicitation lists;

(b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

(e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

## **ARTICLE 17**

### ENVIRONMENTAL PROTECTION

For agreements, subcontracts, and subgrants of amounts in excess of \$100,000, the Contractor shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401, Federal Water Pollution control Act (33 U.S.C. §§ 1251, *et seq.*) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive

Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act).

**ARTICLE 18**

**ENERGY EFFICIENCY**

The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).

**ARTICLE 19**

(a) Hatch Act: The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

(b) Lobbying: The Subrecipient agrees that no funds provided will be used by it or its subcontractors in violation of 24 CFR § 87.100.

(c) Conflict of Interest: The Subrecipient agrees to abide by the provisions of 24 CFR §§ 84.42, 85.36, and 570.611.

**ARTICLE 20**

**BINDING AUTHORITY**

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

Federal Exhibits 1 and 2, 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
Painters . . . . .	28.6 to 26.0
Operating Engineers . . . . .	25.6 to 26.0
Plumbers . . . . .	12.0 to 14.5
Iron Workers (structural) . . . . .	25.9 to 32.0
Elevator Constructors . . . . .	5.5 to 6.5
Bricklayers . . . . .	13.4 to 15.5
Asbestos Workers . . . . .	22.8 to 28.0
Roofers . . . . .	6.3 to 7.5
Iron Workers (ornamental) . . . . .	22.4 to 23.0
Cement Masons . . . . .	23.0 to 27.0
Glazers . . . . .	16.0 to 20.0
Plasterers . . . . .	15.8 to 18.0
Teamsters . . . . .	22.0 to 22.5
Boilermakers . . . . .	13.0 to 15.5
All Other . . . . .	16.4 to 17.5

**Goals and Timetables for Women**

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

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

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

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

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

## Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees.**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

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**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

## **HURRICANE SANDY CDBG-DR APPENDIX**

### NOTICE

THIS DOCUMENT CONTAINS CONDITIONS FOR USE WITH PROCUREMENT CONTRACTS AND SUBRECIPIENT AGREEMENTS, ALONG WITH APPENDIX B, WHICH PROVIDE FOR AN ELIGIBLE ACTIVITY FUNDED IN WHOLE OR IN PART BY CDBG-DR FUNDS APPROPRIATED PURSUANT TO THE DISASTER RELIEF APPROPRIATIONS ACT OF 2013 (P.L. 113-2). IT MUST BE ANNEXED TO ALL SUCH CONTRACTS ALONG WITH A LINK TO HUD DOCKET NO. FR056960-N-01 (MAR. 5, 2013) AND APPENDIX B, AND EXPRESSLY MADE A PART OF, AND INCORPORATED BY REFERENCE INTO THOSE CONTRACTS.

## ARTICLE 1. DEFINITIONS

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

## ARTICLE 2. ADMINISTRATIVE CAP

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

## ARTICLE 3. FLOOD INSURANCE

Subrecipients shall implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements set forth in Section VI(B)(31) of HUD Docket No. FR056960-N-01.

## ARTICLE 4. CIVIL RIGHTS REQUIREMENTS

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

## ARTICLE 5. RELIGIOUS ORGANIZATIONS

In addition to the provisions in Article 2(m)(iv) of Appendix B, which cover a religious or denominational institution or organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization, payment may be authorized for a portion of eligible rehabilitation or construction costs attributable to the non-religious use of a facility that is not used exclusively for religious purposes, pursuant to Section VI(A)(4)(c) of HUD Docket No. FR056960-N-01.

## ARTICLE 6. QUARTERLY REPORTS

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

## ARTICLE 7. CONSTRUCTION STANDARDS

The Contractor or Subrecipient shall comply with the construction standards concerning energy efficiency set forth in section VI(A)(1)(a)(5) of HUD Docket No. FR-5696-N-01.

## ARTICLE 8. PROGRAM INCOME

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

## ARTICLE 9. PERFORMANCE REQUIREMENTS AND LIQUIDATED DAMAGES

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

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

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

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

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

**APPENDIX K**

**APPLICABLE AGREEMENTS**

**[NOTE: IF NOT APPLICABLE, ADD THE FOLLOWING:  
“INTENTIONALLY DELETED”]**

**[CONSULT EDC COUNSEL AND INSERT APPLICABLE OUTSIDE FUNDING  
AGREEMENTS, eg, GRANT AGREEMENTS, MOUS, ETC AS MAY BE APPLICABLE]**

**APPENDIX L**

**RESERVED**

**[RESERVED FOR ANY ADDITIONAL EXHIBITS THAT MAY BE REQUIRED FOR  
PROJECT; IF NONE, THEN DELETE THIS APPENDIX]**

**APPENDIX M**

**RESERVED**

**[RESERVED FOR ANY ADDITIONAL EXHIBITS THAT MAY BE REQUIRED;  
IF NONE, THEN DELETE THIS APPENDIX]**

**To All Respondents:**

Please note that the date for the non-mandatory Pre-Proposal Meeting for the Pre-Construction Professional Services RFP has been changed from May 10, 2013 to May 13, 2013. The meeting time and location remain the same. Please also note that the document entitled “NYC Houses Single Family Program Guidelines” has been deleted from the linked document file on Page 4 of the Scope of Work. The document is not part of this RFP.

1. All requirements of the original RFP shall remain in full force and effect, except as set forth in this Addendum and any other previously issued Addenda.
2. All capitalized terms set forth in this Addendum shall have the same meaning as set forth in the RFP being amended hereby.

**THIS ADDENDUM MUST BE SIGNED BY THE PROPOSER AND ATTACHED TO THE TECHNICAL PROPOSAL WHEN SUBMITTED.**

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

By: Maryann Catalano

Title: Senior Vice President, Contracts

**ACKNOWLEDGED AND AGREED:**

Name of Proposer: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**To All Respondents:**

**The Exhibit 1 Sample Fee Schedule is amended to add the following deliverables:**

**Task 2:**

NYCHA Architectural/Engineering Studies and Reports: T&M: Not to Exceed \$1,000,000

**Task 3:**

Tier 2 Environmental Review: NYCHA Public Housing: 32 Developments

**The Exhibit 5, Draft Contract, Appendix B Scope of Services is amended to add the following:**

**Task II: Professional Engineering Services (Scope page 6)**

- For the Public Housing program:
  - o Planning and engineering services necessary to evaluate special circumstances related to housing recovery options (such as geotechnical services, land surveys, and land use planning. elevation surveys, etc).
  - o Perform other engineering-related consultations as requested

**Task III: Environmental Review and Environmental Data and Document Management Environmental Review (Scope pages 6-8)**

- For the Public Housing program:
  - o Deliverables for this scope element include:
    - Expected Tier 2 ERs: 32 New York City Public Housing Developments consisting of 254 buildings.

**The Exhibit 5, Draft Contract, Appendix L is amended to add the following:**

**Community Development Block Grant Program - Section 3: Package for Contractors: Section 3 Forms (attached to this Addendum)**

1. All requirements of the original RFP shall remain in full force and effect, except as set forth in this Addendum and any other previously issued Addenda.
2. All capitalized terms set forth in this Addendum shall have the same meaning as set forth in the RFP being amended hereby.

**THIS ADDENDUM MUST BE SIGNED BY THE PROPOSER AND ATTACHED TO THE TECHNICAL PROPOSAL WHEN SUBMITTED.**

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

By: Maryann Catalano

Title: Senior Vice President, Contracts

**ACKNOWLEDGED AND AGREED:**

Name of Proposer: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# Community Development Block Grant Program - Section 3 Package for Contractors

## What is Section 3?

Your contract is being funded by Federal Community Development Block Grant Program (CD) funds that the City receives through the U.S. Department of Housing and Urban Development (HUD). These funds are subject to Section 3 of the Housing and Urban Development Act of 1968, which aims to foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The provision requires that recipients of HUD funds, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or moderate-income residents in connection with projects and activities in their neighborhoods. The enabling regulations for Section 3 can be found in 24 CFR Part 135.

Section 3 applies to CD-funded contracts and subcontracts in excess of \$100,000 that are for:

- 1) housing construction and/or rehabilitation (including reduction and abatement of lead-based paint hazards);
- 2) construction-related job training;
- 3) public construction projects; or
- 4) professional and/or clerical services associated with CD-funded construction and rehabilitation, such as architectural, engineering, administrative, and payroll services, etc.

## Your Basic Responsibilities as a Section 3 Contractor

As a recipient of a CD-funded contract for construction/rehabilitation-related work in excess of \$100,000, you must:

1. Document the number of new employment opportunities and the number of construction and public works training positions generated by the CD-funded project and whether those positions are filled by Section 3 residents.

### Who are Section 3 residents?

In New York City, Section 3 residents are public housing residents or persons who live in the five boroughs and who have a household income that falls below HUD's income limits. Low- or moderate-income is defined as 80% of the area median income (AMI) or below. For New York City, the current income limits are as follows:

Household Size	Very Low-Income	Low-Income	Moderate-Income	Non-Low- or Moderate-Income
HH of 1:	\$0 - \$18,050	\$18,051 - \$30,100	\$30,101 - \$48,100	\$48,101+
HH of 2:	\$0 - \$20,600	\$20,601 - \$34,400	\$34,401 - \$55,000	\$55,001+
HH of 3:	\$0 - \$23,200	\$23,201 - \$38,700	\$38,701 - \$61,850	\$61,851+
HH of 4:	\$0 - \$25,750	\$25,751 - \$42,950	\$42,951 - \$68,700	\$68,701+
HH of 5:	\$0 - \$27,850	\$27,851 - \$46,400	\$46,401 - \$74,200	\$74,201+
HH of 6:	\$0 - \$29,900	\$29,901 - \$49,850	\$49,851 - \$79,700	\$79,701+
HH of 7:	\$0 - \$31,950	\$31,951 - \$53,300	\$53,301 - \$85,200	\$85,201+
HH of 8:	\$0 - \$34,000	\$34,001 - \$56,700	\$56,701 - \$90,700	\$90,701+

To document the income of your employees, you should utilize the "Employee Self-Affirmation Form" found later in this package. It is not mandatory that employees complete these forms. However, you should explain to your staff the importance of the form and that this information helps the City and your company document compliance with federal regulations.

## Community Development Block Grant Program - Section 3 Package for Contractors

2. Document the number of all Section 3 and non-Section 3 employees already on staff.

### What is a Section 3 employee?

A Section 3 employee is either:

- An employee who is currently a Section 3 resident; or
- An employee who was hired within the past three years, was a Section 3 resident upon hire, but whose household income/housing status no longer qualifies him/her as a Section 3 resident. Employers may claim credit for these positions for three years after this individual's date of hire.

3. If you have a collective bargaining agreement with any labor organization or other group of workers, send them a notice advising them of your Section 3 requirements. The notice shall set forth the minimum number and job titles subject to hire, availability of apprenticeship and training positions, and the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin. You must also 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.
4. Provide adequate notification to Section 3 residents about possible employment and training opportunities that result from the CD-funded project. Methods of notifying residents include utilizing local media outlets, prominently displaying signs at the project sites, and/or notifying local community organizations.
5. Submit annual reports that summarize the number of Section 3 new hires, employees, and trainees for each year that your contract is open. A completed "Summary Report Form for Contractors and Subcontractors" (attached) should be returned to the City agency administering your contract by January 31<sup>st</sup> and must cover the preceding calendar year.
6. Maintain the Section 3 employment documentation in your files for a minimum of five years.

### Further Responsibilities

Any subcontract in excess of \$100,000 that you award as part of this project is also subject to the Section 3 requirements. Accordingly, you must also:

1. Report to the agency administering your contract the number, dollar value, and types of subcontracts awarded.
2. Report whether each subcontractor is a Section 3 Business Concern.

### What is a Section 3 Business Concern?

A Section 3 Business Concern is a business that:

- Is 51% or more owned by Section 3 residents;
- Employs Section 3 residents for at least 30 percent of its full-time, permanent staff; or
- Provides evidence of a commitment to subcontract to Section 3 business concerns, 25% or more of the dollar amount of the awarded contract.

3. *To the greatest extent feasible*, pursue contracting opportunities with Section 3 business concerns, in the following order of priority:
  - **If work is being performed at a NYCHA site –**
    - a. business concerns that are 51% or more owned by residents of the housing development at which the work is performed, or whose full-time, permanent workforce includes 30% of these persons as employees; or

## Community Development Block Grant Program - Section 3 Package for Contractors

- b. business concerns that are 51% or more owned by residents of NYCHA's public housing development(s) other than the housing development where the work is to be performed; or whose full-time permanent workforce includes 30% of these persons as employees.
- **If work is NOT being performed at a NYCHA site**, prioritize awarding subcontracts to Section 3 Business Concerns.

Your compliance with these requirements is essential to the City meeting its federally-mandated Section 3 goals, which are, on a calendar year basis:

- 30% of all new hires on applicable projects will be Section 3 residents; *and*
- 10% of the total dollar amount of all contracts' building trades work will be with Section 3 Business Concerns; *and*
- 3% of the total dollar amount of all other applicable contracts per calendar year will be with Section 3 Business Concerns.

Your Section 3 information will be aggregated and reported to HUD on a citywide basis. HUD reviews the City's annual reports, investigates complaints, and reserves the right to monitor the performance of the City's contractors. In the event of a monitoring, HUD will examine employment and contract records for evidence of actions taken to train and employ Section 3 residents and to award contracts to Section 3 businesses. Specifically, HUD will review:

- Whether all contracts awarded by the HUD grantee contain the required Section 3 clause in all applicable contracts (exact language can be found in the "Section 3 Definitions" section);
- The number of Section 3 training opportunities coordinated by the HUD grantee;
- Whether 30% of all new hires by contractors were "Section 3 residents"; and
- Whether at least 10% of the total dollar amount of all contracts' building trades work and three percent (3%) of the total dollar amount of all other applicable contracts were awarded consistent with the requirements of being a "Section 3 Business."

### Section 3 Complaint Policy

If you have a complaint about the City's Section 3 process, you can direct it to the agency overseeing your contract. However, complaints may also be directed to HUD's New York Office:

U.S. Dept. of Housing and Urban Development  
Jacob K. Javits Federal Office Building  
26 Federal Plaza, Room 3532 • New York, NY 10278-0068  
(212) 542-7519 • TTY (212) 264-0927

A written complaint should contain the name and address of the person filing the complaint; name and address of subject of complaint (HUD recipient, contractor or subcontractor); a description of acts or omissions in alleged violation of Section 3; and a description of the corrective action sought. Complaints must be filed no later than 180 days from the date of the action or omission upon which the complaint is based.

# Community Development Block Grant Program - Section 3 Package for Contractors

## Appendix - Section 3 Definitions

**Business Concern:** a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

**Contractor:** any entity which contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

**Employment Opportunities Generated by Section 3 Covered Assistance:** employment opportunities generated by the expenditure of Section 3 covered assistance (i.e., operating assistance, development assistance and modernization assistance, (as described in Section 135.3 (a) (1)). With respect to Section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection with Section 3 covered projects (as described in Section 135.3(a)(2)), including management and administrative jobs. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

**Low- or moderate-income person:** a member of a household whose total annual income does not exceed 80% of the median income for the area. Single persons are considered a household of one.

**New Hires:** full-time employees for permanent, temporary or seasonal employment opportunities.

**Section 3:** Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

**Section 3 Business Concern:** a business concern

- 1) That is 51 percent or more owned by Section 3 residents; or
- 2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
- 3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontractors to be awarded to business concerns that meet the qualifications set forth in paragraphs 1 or 2 above.

**Section 3 Clause:** The CD Program's Appendix B document (which contains pertinent federal requirements and must be attached to all CD-funded contracts) includes the following clause (referred to as the Section 3 Clause). Please note that, by signing a CD-funded contract with the agency, you are agreeing to comply with the Section 3 requirements contained therein.

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted 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 contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The contractor agrees to send to each labor organization or representative or 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,

## Community Development Block Grant Program - Section 3 Package for Contractors

shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the 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 contract for default, and debarment or suspension from future HUD assisted contracts.

**Section 3 Covered Assistance:** the use of \$100,000 or more of Community Development Block Grant funds for construction, public works, and job training (related to construction and/or public works).

**Section 3 Covered Contracts:** a contract or subcontract in excess of \$100,000 (including a professional consulting contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project.

**Section 3 Covered Projects:** a project that is receiving Community Development Block Grant funds in excess of \$100,000.

**Section 3 Employee:** A Section 3 employee is either:

- An employee who is currently a Section 3 resident; or
- An employee who was hired within the past three years, was a Section 3 resident upon hire, but whose household income/housing status no longer qualifies him/her as a Section 3 resident. Employers may claim credit for these positions for three years after this individual's date of hire.

**Section 3 Resident:** a public housing resident or an individual who resides in the five boroughs and who is considered to be a low- or moderate-income person.

**Subcontractor:** any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

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## Employee Self-Affirmation Form for Contractors and Subcontractors Subject to Section 3

This position is funded by the Community Development Block Grant (CDBG), which New York City receives each year through the Federal Department of Housing and Urban Development (HUD). To comply with Section 3 of the Housing and Urban Development Act of 1968, HUD requires CDBG-funded projects to collect residency and income information for persons involved with construction-related contracts of \$100,000 or more. **Your response is voluntary, confidential, and has no effect on your employment.** However, the information on the form will help the City maintain the federal funds that support your position.

1. Do you wish to provide information to the City?:  YES\*  NO  
\* If you answer YES, please fill out the form below.
2. Are you a resident of the five boroughs?:  YES  NO\*\*  
\*\* If you answer NO, you do not have to complete the remainder of this form.
3. If YES, are you a resident of NYCHA public housing facilities?:  YES  NO
4. Please review the chart below. Find the number of persons in your household and then **check the box** that contains the income range you believe your **household** earns on an annual basis. Income is defined as the total annual income of all family and non-family members 18+ years old living within the household. All sources of income must be counted from all persons in the household.

**Please check your Income Range based on your household size (for example if there are 5 people in your household, go to HH of 5; if there are 8 or more in your household go to HH of 8):**

HH of 1:	<input type="checkbox"/> \$0 - \$48,100	<input type="checkbox"/> \$48,101+	
HH of 2:	<input type="checkbox"/> \$0 - \$55,000	<input type="checkbox"/> \$55,001+	
HH of 3:	<input type="checkbox"/> \$0 - \$61,850	<input type="checkbox"/> \$61,851+	
HH of 4:	<input type="checkbox"/> \$0 - \$68,700	<input type="checkbox"/> \$68,701+	
HH of 5:	<input type="checkbox"/> \$0 - \$74,200	<input type="checkbox"/> \$74,201+	
HH of 6:	<input type="checkbox"/> \$0 - \$79,700	<input type="checkbox"/> \$79,701+	
HH of 7:	<input type="checkbox"/> \$0 - \$85,200	<input type="checkbox"/> \$85,201+	
HH of 8:	<input type="checkbox"/> \$0 - \$90,700	<input type="checkbox"/> \$90,701+	

5. Please check the box that most accurately describes your job classification.

- |  |   |
|--|---|
| <input type="checkbox"/> Professional            | <input type="checkbox"/> Technician             |
| <input type="checkbox"/> Office and Clerical     | <input type="checkbox"/> Official / Manager     |
| <input type="checkbox"/> Sales                   | <input type="checkbox"/> Craft Worker (skilled) |
| <input type="checkbox"/> Operative (semiskilled) | <input type="checkbox"/> Laborer (unskilled)    |
| <input type="checkbox"/> Service Worker          | <input type="checkbox"/> Other: _____           |

I affirm that the above statements are true, complete, and correct to the best of my knowledge and belief.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Print Name \_\_\_\_\_

Date Hired \_\_\_\_\_

**EMPLOYERS MUST RETAIN THIS FORM IN THEIR SECTION 3 COMPLIANCE FILE FOR FIVE YEARS.**

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**NYC Community Development Block Grant Program (CD)  
Section 3 Summary Report Form for Contractors and Subcontractors**

Your contract is funded either in whole or in part by the Community Development Block Grant (CD), which is provided to New York City through the U.S. Department of Housing and Urban Development (HUD). HUD requires the City to collect work staff information on every contractor, subcontractor, etc. that receives a CD-funded, construction-related contract in excess of \$100,000, to ensure the City's compliance with Section 3 of the U.S. Housing & Urban Development Act of 1968. Section 3 requires recipients of HUD financial assistance to provide training, employment and contracting opportunities to Section 3 residents and businesses to the greatest extent feasible, consistent with existing federal, state, and local laws and regulations.

These forms must be completed by all firms working on a Section 3-covered project whose contract amount exceeds \$100,000, even if the firm is not a "Section 3 Business."

You must complete these forms for each year that your CD contract is open. **The forms must be submitted to your funding agency by January 31<sup>st</sup> and cover the preceding calendar year.** If you subcontracted with another firm in excess of \$100,000 as part of this project, please forward the subcontractor a separate copy of this form and have them complete Parts II-V.

**PART I: CONTRACTOR INFORMATION**

Complete this section if you are the prime contractor on a CD-funded project.

City Agency Overseeing Contract: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Site: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Report Period: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

**PART II: SUBCONTRACTOR INFORMATION**

Complete this section if you are a subcontractor on a CD-funded project.

Name of Firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Firm Overseeing Subcontract: \_\_\_\_\_

Subcontract Amount: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

**NYC Community Development Block Grant Program (CD)  
Section 3 Summary Report Form for Contractors and Subcontractors**

**Part III: Employment and Training Opportunities**

1. Did your firm hire or train any new individuals in connection with any CD-funded construction projects within the past calendar year?

YES                       NO

2. Please complete the chart below.

<b>Job Category</b>	<b>TOTAL Number of New Hires<sup>1</sup></b>	<b>Number of New Hires That Are Section 3 Residents<sup>2</sup></b>	<b>TOTAL Number of Employees and Trainees<sup>3</sup></b>	<b>Number of Section 3 Employees and Trainees<sup>4</sup></b>
Professionals				
Technicians				
Office and Clerical				
Officials and Managers				
Sales				
Craft Workers (skilled)				
Operatives (semiskilled)				
Laborers (unskilled)				
Service Workers				
Other (List below)				
<b>Total</b>				

<sup>1</sup> Enter the number of new hires for each category of worker in connection with this award. **New Hire** refers to a person who was hired in connection with the Section 3-covered project and was hired during the period covered by this report.

<sup>2</sup> Enter the number of Section 3 new hires for each category of workers identified in Column A in connection with this award. **Section 3 new hire** refers to a person from a low- and moderate-income household who was hired in connection with the Section 3-covered project and was hired during the period covered by this report.

<sup>3</sup> Enter the total number of all CD-funded employees and trainees on the staff that work in connection with this award.

<sup>4</sup> Enter the number of all Section 3 Residents (including new hires) on the staff that work in connection with this award.

3. Did your firm hire any subcontractors in connection with this award?

YES                       NO

4. If yes, was the value of any of these subcontracts in excess of \$100,000?

YES\*                       NO

\*If you answered yes, please forward each subcontractor a separate copy of this form and have them complete Parts II-V.

**NYC Community Development Block Grant Program (CD)  
Section 3 Summary Report Form for Contractors and Subcontractors**

**Part IV: Summary of Efforts**

1. Did your firm recruit low- or moderate-income residents through local advertising media; signs prominently displayed at the project sites; contacts with community organizations, and/or private or public agencies operating within the five boroughs?

**YES**                       **NO**

2. Did your firm participate in a program that promotes the training or employment of Section 3 residents?

**YES**                       **NO**

3. Did your firm participate in a HUD program or other program that promotes the awards of contracts to business concerns which meet the definition of Section 3 business concerns?

**YES**                       **NO**

4. If you answered "Yes" to any of the previous questions, please describe your efforts in the space below.

**Part V: Signature**

**I affirm that the statements contained in this report are true, complete, and correct to the best of my knowledge and belief.**

\_\_\_\_\_  
Signature of Authorized Representative of Contractor / Subcontractor

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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**SECTION 3  
BUSINESS CERTIFICATION PACKET**

Your contract is funded either in whole or in part by the Community Development Block Grant (CDBG), which is provided through the United States Department of Housing and Urban Development (HUD). HUD requires the City to collect work staff information on every developer, contractor, subcontractor, etc. that receives a CD-funded, construction-related contract in excess of \$100,000, to ensure the City's compliance with Section 3 of the U.S. Housing & Urban Development Act of 1968. Section 3 requires recipients of HUD financial assistance to provide training, employment and contracting opportunities to Section 3 residents and businesses to the greatest extent feasible, consistent with existing federal, state, and local laws and regulations.

You can utilize this form to pre-certify that you are a Section 3 business concern during the RFP process or after being awarded a CD-funded contract.

Company: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

City Agency Overseeing Contract: \_\_\_\_\_

Please answer the following questions:

1. Is your company currently certified as a Section 3 business by the New York City Housing Authority (NYCHA)?

YES                       NO

2. Is your business owned (51% or more) by residents of New York City Housing Authority (NYCHA)?

YES                       NO

3. Is your business owned (51% or more) by individuals whose household incomes are BELOW 80% of Area Median Income (AMI)? *See chart below.*

YES                       NO

# of People in Household	Gross Income Is No Greater Than 80% AMI
1	\$48,100
2	\$55,000
3	\$61,850
4	\$68,700
5	\$74,200
6	\$79,700
7	\$85,200
8	\$90,700

4. Do 30% (or more) of your full time, permanent employees have household incomes that are BELOW 80% of Area Median Income (AMI)? *See chart above.*

YES                       NO

**SECTION 3  
BUSINESS CERTIFICATION PACKET**

5. Are 30% (or more) of your full-time, permanent employees residents of New York City Housing Authority (NYCHA)?

YES                       NO

6. Will you sub-contract more than 25% of this contract with any business that has any of the characteristics noted in the Questions 1, 2, 3, 4 or 5?

YES                       NO

If you plan to subcontract for any of the work on this project, please complete the chart below for each subcontracting firm and return the form to the funding City agency.

Subcontractor Name	Address	Type of Contract <i>(i.e. specified building trade, professional services, etc.)</i>	Amount of Subcontract	Is this business a Section 3 business?*
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	

*\*If YES, a Section 3 Business Questionnaire should be completed by the business and must be attached.*

*I certify that the above statements are true, complete, and correct to the best of my knowledge and belief.*

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**COPY THIS FORM AS NEEDED**

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICE,  
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,  
THE DELAWARE NATION,  
THE DELAWARE TRIBE OF INDIANS,  
THE SHINNECOCK NATION,  
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,  
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AS A RESULT OF HURRICANE SANDY**

**WHEREAS**, the mission of the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards; and

**WHEREAS**, as a result of Hurricane Sandy (DR-4085-NY) (Disaster Declaration), FEMA proposes to administer Federal disaster assistance programs set forth in Appendix A (Programs), pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq.*) (Stafford Act); the National Flood Insurance Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the Flood Disaster Protection Act of 1973, Pub. L. No. 93-234 (1973) (as amended); the National Flood Insurance Reform Act of 1994, Pub. L. No. 103-325 (1994) (as amended); and implementing regulations contained in Title 44 of the Code of Federal Regulations (CFR).

**WHEREAS**, FEMA has determined that implementation of its Programs may result in Undertakings (as defined by 16 U.S.C. § 470w and 36 CFR § 800.16(y)) that may affect properties listed in or eligible for listing in the National Register of Historic Places (National Register) pursuant to 36 CFR Part 60 (historic properties), and FEMA has consulted with the New York State Historic Preservation Officer (SHPO), the New York State Office of Emergency Management (OEM), the New York City Landmarks Preservation Commission (LPC), the Delaware Nation, the Delaware Tribe of Indians, the Shinnecock Nation, the Stockbridge-Munsee Community Band of Mohicans (Participating Tribe[s]) and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 of the National Historic Preservation Act (NHPA), Pub. L. No. 89-665 (1966) (codified as amended at 16 U.S.C. § 470f) and Section 110 of NHPA (codified as amended at 16 U.S.C. §470h-2), and the Section 106 implementing regulations at 36 CFR Part 800; and

**WHEREAS**, FEMA, ACHP, and SHPO have determined that FEMA's Section 106 requirements can be more effectively and efficiently implemented and delays to the delivery of FEMA

assistance minimized if a programmatic approach is used to stipulate roles and responsibilities, exempt certain Undertakings from Section 106 review, establish protocols for consultation, facilitate identification and evaluation of historic properties, and streamline the assessment and resolution of adverse effects; and

**WHEREAS**, in order to implement its Programs, FEMA will provide assistance to the State of New York that may provide monies and other assistance to eligible subgrantees, and as such, the New York Office of Emergency Management (OEM) that is typically responsible for administering funds provided under these Programs, has participated in this consultation, and has been invited to enter into this Agreement as an invited signatory party; and

**WHEREAS**, LPC is the agency responsible for identifying and designating New York City's landmarks and historic districts, regulates changes to designated buildings, and by law, issues permits under the LPC law (Charter of the City of New York §§ 3020 et seq. and the Administrative Code of the City of New York §§25-301 et seq.) for LPC designated properties in the City of New York, and therefore any FEMA Undertaking affecting such a property shall require an LPC permit prior to commencement of work or demolitions, LPC has participated in this consultation and has been invited to enter into this Agreement as a concurring party; and

**WHEREAS**, FEMA has determined that its Programs may result in Undertakings with the potential to affect historic properties having religious and cultural significance to Indian Tribes, including sites that may contain human remains and/or associated cultural items; and

**WHEREAS**, FEMA recognizes that the Participating Tribe(s) may have sites of religious and cultural significance on or off Tribal lands, and in meeting its Federal trust responsibility, FEMA has engaged in government-to-government consultation with the Participating Tribe(s), and pursuant to 36 CFR § 800.2 (c)(2)(ii)(E) has invited the Participating Tribe(s) to enter into an agreement that specifies how FEMA and the Participating Tribe(s) will carry out Section 106 responsibilities, including the confidentiality of information. The agreement may grant the Participating Tribe(s) additional rights to participate or concur in FEMA decisions in the Section 106 review process beyond the ones outlined in 36 CFR Part 800; and

**WHEREAS**, notwithstanding the aforementioned invitation to enter into an agreement, FEMA has invited the Participating Tribe(s) to enter into this Agreement each as an invited signatory party to fulfill the requirements of Section 106; and

**WHEREAS**, FEMA may invite additional Tribes that may have sites of religious and cultural significance to enter into the terms of this Agreement; and

**WHEREAS**, FEMA may perform direct Undertakings in order to implement its Programs; and

**WHEREAS**, in anticipation or in the immediate aftermath of the Disaster Declaration, impacted communities in the State of New York and/or affected Tribe(s) may conduct critical preparedness and response and recovery activities to safeguard public health and safety and to restore vital community services and functions. Some of these activities may become Undertakings requiring

Section 106 review subject to the terms of this Agreement, and FEMA shall coordinate the appropriate review as warranted; and

**NOW, THEREFORE, FEMA, ACHP, SHPO, (as the signatories) OEM, Participating Tribe(s) (invited signatories), and LPC(concurring party) agree that the Programs in the State of New York shall be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 responsibilities for all resulting Undertakings and effectively integrate historic preservation compliance considerations into the delivery of FEMA assistance. FEMA will not authorize implementation of an individual Undertaking until Section 106 review of the project is completed pursuant to this Agreement.**

## **STIPULATIONS**

To the extent of its legal authority, and in coordination with the other signatories, FEMA will require that the following measures be implemented:

### **I. GENERAL**

#### **A. Applicability**

1. This Agreement applies immediately for this Disaster Declaration after execution by all signatory parties and will remain in effect for the duration of the period that the Disaster Declaration remains open for FEMA funding.
2. For FEMA undertakings that also are within the jurisdiction of the Federal Communications Commission's (FCC) and within the scope of its Section 106 Programmatic Agreements for communication facilities, FEMA defers Section 106 review in accordance with the ACHP Program Comment of October 23, 2009. The approval of funding for the FEMA Undertaking will be conditioned on the compliance of the subgrantee with FCC's applicable Section 106 review, including any required consultation with affected Tribe(s). FEMA will notify the SHPO when it applies the ACHP Program Comment to an Undertaking.
3. Other Federal agencies providing financial assistance for the type of Program activities covered under the terms of this Agreement may, with the concurrence of ACHP, FEMA, SHPO satisfy their Section 106 responsibilities by accepting and complying with the terms of this Agreement. "Other Federal Agencies" may include municipalities providing funds and acting as the Responsible Entity pursuant to 24 CFR Part 58. In such situations, the Federal Agency shall notify FEMA, SHPO and ACHP and other consulting parties to the PA, including participating tribes in writing of their intent to use this Agreement to achieve compliance with Section 106 requirements, and consult with those agencies regarding its section 106 compliance. Resumes of staff that meet the Secretary's Professional Qualifications and will review Tier II projects will be included with the notification. The Federal agency may utilize this Agreement to satisfying its Section 106 responsibilities by executing the

Addendum included in Appendix D. The Agreement will be effective for the Federal agency on the date the Addendum is executed by SHPO, FEMA and ACHP.

4. This Agreement may apply to Undertakings involving multiple Federal agencies and where some or all of the Federal agencies involved in the Undertaking may designate FEMA as the lead Federal agency pursuant to 36 CFR § 800.2(a)(2) with appropriate notification to the ACHP. FEMA will act on the collective behalf of the agencies to fulfill all Section 106 responsibilities. Federal agencies that do not designate FEMA as the lead Federal agency will be responsible for doing a separate consultation pursuant to Section 106 and 36 CFR Part 800.
5. As a result of the Disaster Declaration, State, Tribal and local governments may lack the capability to perform or to contract for emergency work, and instead request that the work be accomplished by a Federal agency. Through a mission assignment (MA), FEMA may direct appropriate Federal agencies to perform the work. This Agreement will apply to such Federal assistance undertaken by or funded by FEMA pursuant to Titles IV and V of the Stafford Act and 44 CFR Part 206.
6. If SHPO has reviewed and approved an Undertaking submitted by a subgrantee that was the result of damage from Hurricane Sandy before FEMA has established an Undertaking for that same project, and FEMA confirms that the scope and effect [as defined by 36 CFR § 800.16(i)] of the Undertaking as reviewed by the SHPO has not changed, and SHPO/Tribal concurrence is documented, FEMA shall document these findings to the project files in order to confirm that the requirements of Section 106 have been satisfied.
7. If another Federal program or Federal agency has reviewed and approved an Undertaking under Section 106 of the NHPA within the past five years, FEMA has no further requirement for Section 106 review provided that it confirms that the scope and effect [as defined by 36 CFR § 800.16(i)] of the Undertaking as reviewed by the previous agency has not changed, and SHPO/Tribal concurrence is documented. FEMA shall document these findings to the project files in order to confirm that the requirements of Section 106 have been satisfied.
8. Should FEMA, in consultation with SHPO and Participating Tribe(s), determine that the previous Section 106 review was insufficient or involved interagency disagreements on eligibility, effect, or mitigation, FEMA shall conduct additional Section 106 review in accordance with the terms of this Agreement.
9. Pursuant to 44 CFR § 206.110(m), assistance to individuals and households provided under 44 CFR Part 206, Subpart D and Section 408 of the Stafford Act, including funding for owner occupied home repair and replacement, content replacement, personal property, transportation and healthcare expenses, is exempt from the provisions of Section 106. For ground disturbing activities, and construction related to 44 CFR §§ 206.117(b)(1)(ii) (temporary housing), 206.117(b)(3) (replacement

housing), 206.117(b)(4) (permanent housing construction), and 206.117(c)(1)(vi) (privately owned access routes), FEMA will conduct Section 106 review.

10. FEMA has determined that the following types of activities have limited or no potential to affect historic properties and FEMA has no further Section 106 responsibilities, pursuant to 36 CFR § 800.3(a)(1):
  - b. Administrative actions such as personnel actions, travel, procurement of services, supplies (including vehicles and equipment) for the support of day-to-day and emergency operational activities, and the temporary storage of goods provided storage occurs within existing facilities or on previously disturbed soils.
  - c. Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents.
  - c. Granting of variances, and actions to enforce Federal, State, or local codes, standards or regulations.
  - d. Monitoring, data gathering, and reporting in support of emergency and disaster planning, response and recovery, and hazard activities.
  - e. Research and development of hazard warning systems, hazard mitigation plans, codes and standards, and education/public awareness programs.
  - f. Assistance provided for planning, studies, design and engineering costs that involve no commitment of resources other than staffing and associated funding.
  - g. Assistance provided for training, management and administration, exercises, and mobile/portable equipment purchases; with the exception of potential ground-disturbing activities and modification of existing structures.
  - h. Community Disaster Loans for funding to perform governmental functions for any eligible jurisdiction in a designated disaster area that has suffered a substantial loss of tax and other revenue.
  - i. Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements.
  - j. Funding the administrative action of acquiring properties in buyout projects e.g., surveys, legal fees, non-destructive abatement activities), excluding the real estate transaction and demolition. Per Item III.D, OEM shall advise its subgrantees that they may jeopardize Federal funding if work is performed without all required local, State and Federal licenses, permits or approvals, including the completion of the Section 106 process.

- k. Reimbursement of a subgrantee's insurance deductible, when the deductible is the total FEMA eligible cost for the project.
- l. Labor, equipment and materials used to provide security in the Disaster Declaration area, including lease, rental, purchase or repair of equipment or vehicles and payment for staff and contract labor.
- m. Application of pesticides to reduce adverse public health effects, including aerial and truck-mounted spraying.
- n. Unemployment assistance.
- o. Distribution of food coupons.
- p. Legal services.
- q. Crisis counseling.

11. The terms of this Agreement will not apply to Undertakings on Tribal (reservation lands) unless the affected Tribe(s) have concurred in writing.

12. Any FEMA Programs authorized by the United States Congress in the future may be included in this Agreement in accordance with Stipulation IV.A, Amendments. Any change in the FEMA name, Programs, or organizational structure will not affect this Agreement.

## **B. Roles and Responsibilities of FEMA, SHPO, OEM, and LPC**

### **1. FEMA:**

- a. FEMA will use Federal, Tribal, State, subgrantee, or contractor staff whose qualifications meet the Secretary of the Interior's (Secretary's) Professional Qualifications Standards (Professional Qualifications) set forth in the Federal Register at 48 Fed. Reg. 44716-01 (September 29, 1983), as amended (Qualified), in completing identification and evaluation of historic properties and in making determinations of effects. FEMA will review any National Register eligibility determination and make its own findings of effect resulting from the performance of these activities prior to submitting such determinations to the SHPO and Participating Tribe(s).
- i. FEMA acknowledges that Tribe(s) possess special expertise in assessing the National Register eligibility of properties with religious and/or cultural significance to them. Tribal leaders and, as appropriate, their representatives shall decide who meets qualifications/standards as defined by their Tribe(s) for review of undertakings affecting properties with religious and/or cultural significance to Tribe(s).

- b. FEMA will coordinate with the LPC to help LPC ensure that subgrantees apply for permits.
  - i. If an Undertaking as defined by 36 CFR § 800.5 has the potential to adversely affect an LPC designated property or one calendared for designation, then FEMA will provide LPC with the same documentation that is provided to SHPO and Participating Tribe(s).
  - ii. When LPC notifies FEMA that an Undertaking is subject to further LPC review and permitting, FEMA EHP may approve the project and will notify the Grantee that the subgrantee is responsible for obtaining a permit from LPC.
  - iii. FEMA will request LPC to be a consulting party on any Memorandum of Agreement (MOA) that is written to resolve adverse effects to buildings that are LPC designated or proposed landmarks.
- c. FEMA alone shall conduct all project consultation with participating Tribes. In accordance with 36 CFR § 800.2(c)(4), FEMA may authorize the Grantee, or a subgrantee through the Grantee, to initiate the Section 106 process with the SHPO and other consulting parties, assist in identifying other consulting parties with a demonstrated interest in the Undertaking, and prepare any necessary analyses and documentation, but FEMA will remain legally responsible for determinations of National Register eligibility and findings of effect recommended by the authorized party. FEMA shall follow the process set forth in Stipulation I.B.1.a, FEMA Roles and Responsibilities, above and notify the SHPO in writing when a Grantee or subgrantee has been authorized to initiate consultation on FEMA's behalf.
- d. Prior to authorizing the release of funds for individual undertakings requiring grant conditions pursuant to this Agreement, FEMA will inform OEM of all stipulations and conditions and ensure that they are understood so they can be adequately conveyed to subgrantees. FEMA will work in partnership with OEM to provide subgrantees with guidance on in-kind repair pursuant to The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995 (Standards), 36 CFR Part 68, or the most updated version, and techniques to avoid or minimize adverse effects to historic properties.
- e. FEMA shall provide the signatories and invited signatories with bi-annual reports for the previous six months by July 1st and December 31st of each year that this Agreement is in effect. This annual report will summarize the actions taken to implement the terms of this Agreement, statistics on Undertakings reviewed, and recommend any actions or revisions to be considered, including updates to the appendices.
- f. FEMA will confer bi-annually and as necessary with signatories and invited signatories to this Agreement within 30 days after issuance of the annual report, to review the report and/or discuss issues and concerns in greater detail.

- g. FEMA shall convene the an initial scoping meeting with the signatories and invited signatories as soon as practicable following the Disaster Declaration and provide specific points of contact and other pertinent information about the Disaster Declaration.
- h. FEMA shall ensure that all documentation resulting from Undertakings reviewed pursuant to this Agreement shall be consistent with applicable SHPO and Tribal guidelines and the confidentiality provisions of 36 CFR § 800.11(c).

**2. SHPO:**

- a. SHPO shall review FEMA's determination of the Areas of Potential Effect (APE), National Register eligibility determinations, and FEMA's effect findings and provide comments within timeframes required by this Agreement.
- b. Upon request, the SHPO will provide FEMA/and or its designee(s) with available information about historic properties (such as access to online systems or site files, GIS data, survey information, geographic areas of concern). Such data sharing may be memorialized in an agreement. Only Qualified FEMA staff and/or its designee(s) shall be afforded access to protected cultural resources information.
- c. The SHPO will identify staff or consultants to assist FEMA staff with its Section 106 responsibilities, and identify, in coordination with FEMA, specific activities that SHPO may perform for specific undertakings as agreed in writing with FEMA.
- d. As requested, SHPO staff will be available as a resource and for consultation through site visits, written requests, telephone conversations or electronic media. In those instances where consultation with SHPO has occurred, a written notice (via e-mail or regular mail) will be sent to SHPO to confirm any decisions that were reached.
- e. FEMA and the SHPO may agree to delegate some or all of the SHPO's responsibilities under this Agreement to supplementary SHPO staff assigned to FEMA-DR-4085-NY that are physically located in FEMA's Joint Field Office or SHPO offices in order to help expedite project review or other responsibilities under this Agreement. FEMA, SHPO and OEM will consult about the selection of the supplementary SHPO staff, the scope of responsibilities delegated, and the implementing procedures related to the actions and decisions delegated. FEMA and SHPO shall formally document their agreement regarding the supplementary SHPO staff.
- f. The SHPO shall participate in an initial scoping meeting for the Disaster Declaration.

- g. The SHPO may assist local jurisdictions or OEM with advance planning efforts to consider historic properties related to their preparedness, homeland security, response, recovery, and mitigation programs, for which FEMA funding may be requested.
- h. The SHPO will coordinate with FEMA, to identify consulting parties, including any communities, organizations, or individuals that may have an interest in a specific Undertaking and its effects on historic properties.

### 3. LPC

- a. LPC will review FEMA Undertakings that have the potential to adversely affect an LPC designated property or one calendared for designation using FEMA consultation documents that are provided to SHPO and Participating Tribe(s) so that LPC may notify FEMA whether or not an LPC property may be affected by the Undertaking and will require a LPC permit.
- b. LPC understands that if it does not respond to FEMA's submittal of Undertakings to them within the timeframes outlined in Stipulation I.E, i.e. within 4 days under emergency conditions, 15 days for IA and PA Undertakings and 30 days for HMGP Undertakings, FEMA will assume that none of the Undertakings are subject to LPC review and permitting and will proceed with the Undertaking.

### 4. OEM:

- a. OEM shall ensure that its subgrantees understand and acknowledge conditions and potential requirements that may be placed upon Undertakings as a result of Section 106 consultation and the provisions of this Agreement.
- b. Subgrantee government and private non-profit agencies are advised in OEM applicant briefings and program materials that FEMA funding may be jeopardized unless all local, State and Federal permits, licenses and approvals are received. NYC LPC reviews and permits were discussed in briefings held for NYC agencies and private non-profits. The official notice to a subgrantee that an Undertaking is subject to further LPC review will be the project approval document specifying the project scope and limits, and containing all conditions and caveats, including an approved Project Worksheet (PW) for a Public Assistance project, and an approved Application for an HMGP project.
- c. OEM will participate in an initial scoping meeting for the Disaster Declaration.
- d. OEM shall ensure that subgrantees understand that failure to comply with the terms of this Agreement and any project-specific conditions could jeopardize FEMA funding.

- e. OEM will notify FEMA as soon as possible of any proposed change to the approved scope of work and direct the subgrantee not to implement the changes to the proposed scope of work until any additional review required by this Agreement is complete.
- f. OEM shall ensure that its subgrantees are made aware that in the event of an unexpected discovery involving an Undertaking that has affected a previously unidentified historic property, human remains, or affected a known historic property in an unanticipated manner, the subgrantee will comply with Stipulation III.B, Unexpected Discoveries.
- g. When issued as a FEMA condition, OEM shall ensure that in its subgrant agreements, any scope of work involving ground disturbance, and resultant contracts to execute said work, provide for the protection of and notification protocols for unexpected discoveries of cultural material and human remains.
- h. If the Tribe assumes the role of Grantee for projects on Tribal lands, it will assume the same responsibilities as outlined in Stipulation I.B.3 of this Agreement, Roles and Responsibilities of the Signatories.

### C. Tribal Consultation

1. For Tribes that have assumed the responsibilities of the SHPO through appointment of a Tribal Historic Preservation Officer (THPO) per Section 101 of the NHPA, FEMA shall consult with the THPO in lieu of the SHPO for undertakings occurring on or affecting tribal lands.
2. Where no Tribal-specific consultation agreements or protocols are in place, FEMA shall consult with affected Tribe(s) in accordance with 36 CFR Part 800. In determining who the affected Tribe(s) may be, FEMA will first establish that an Undertaking has the potential to affect historic properties with religious or cultural importance. FEMA may consult with the SHPO, affected Tribe(s), any State Tribal Agency, and access the National Park Service (NPS) Native American Consultation Database to identify Tribal geographic interests.
3. FEMA shall ensure that its consultations with other consulting parties shall not include the dissemination of information, when advised of data sensitivity by the affected Tribe(s), that might risk harm to an American Indian site or property of religious or cultural significance or that might impede the use of such a site by the affected Tribe(s) in accordance with Section 304 of the NHPA and other applicable laws. Information provided is exempt from public knowledge and disclosure under the Freedom of Information Act (FOIA) by both Section 304 of the NHPA and Section 9 of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. §470aa – 470mm).

#### **D. Public Participation**

- 1. FEMA recognizes that the views of the public are essential to informed decision making throughout the Section 106 review process. FEMA will notify the public of proposed Undertakings in a manner that reflects the nature, complexity, and effect(s) of the Undertaking, the likely public interest given FEMA's specific involvement, and any confidentiality concerns of affected Tribe(s), and private individuals and businesses.**
- 2. FEMA will consult with OEM, the subgrantee, SHPO, and Participating Tribe(s), to determine if there are individuals or organizations with a demonstrated interest in historic properties that should be made aware of an Undertaking. If such parties are identified or identify themselves to FEMA, FEMA will provide them with information regarding the Undertaking and its effect on historic properties, consistent with the confidentiality provisions of 36 CFR § 800.11(c).**
- 3. In accordance with the outreach strategy developed for an Undertaking in consultation with the SHPO and Participating Tribe(s), for involving the public, FEMA will identify the appropriate stages for seeking public input during the Section 106 process.**
- 4. FEMA will consider all views provided by the public regarding an Undertaking and will consider all written requests of individuals and organizations to participate as consulting parties, and in consultation with the SHPO and Participating Tribe(s), determine which should be consulting parties. FEMA will invite any individual or organization that will assume a specific role or responsibility outlined in a Section 106 agreement document to participate as an invited signatory party in that agreement document.**
- 5. FEMA also may provide public notices and the opportunity for public comment or participation in an Undertaking through the public participation process of the National Environmental Policy Act (NEPA) and its implementing regulations set out at 44 CFR Part 10, and/or Executive Orders 11988 and 11990 relating to floodplains and wetlands as set out in 44 CFR Part 9, and Executive Order 12898, Environmental Justice, provided such notices specifically reference Section 106 as a basis for public involvement.**

#### **E. Timeframes**

**All time designations will be in calendar days unless otherwise stipulated. If any signatory or invited signatory does not object to FEMA's determination related to a proposed action within an agreed upon timeframe, FEMA may proceed to the next step in the review process as described in Stipulation II, Project Review. Due to the varied nature of Undertakings, the individual response times to FEMA's requests for comment/concurrence will vary.**

1. Under emergency conditions, the SHPO and Participating Tribe(s) will respond to any FEMA request for comments within three (3) days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period.
2. For Undertakings associated with the Individual Assistance (IA) and Public Assistance (PA) programs, the review time shall be a maximum of fifteen (15) days for delineation of the Area of Potential Effect (APE), determinations of National Register eligibility and findings of effect.
3. For the Hazard Mitigation Grant Program (HMGP), the response time for each request for concurrence shall be a maximum of thirty (30) days.

## **II. PROJECT REVIEW**

### **A. Programmatic Allowances**

1. If FEMA determines an Undertaking conforms to one or more of the allowances in Appendix B of this Agreement, FEMA will complete the Section 106 review process by documenting this determination in the project file, without SHPO and Tribal review or notification.
2. If the Undertaking involves a National Historic Landmark (NHL), FEMA shall notify the SHPO and Participating Tribe(s) and the NHL Program Manager in the NPS Northeast Regional Office that the Undertaking conforms to one or more allowances. FEMA will provide information about the proposed scope of work for the Undertaking and the allowance(s) enabling FEMA's determination.
3. If an Undertaking is not composed entirely of an allowance listed in Appendix B, FEMA will conduct Section 106 review for the entire Undertaking.
4. For an Undertaking that FEMA determines does not meet the allowance criteria, FEMA shall complete the Section 106 review process in accordance with Stipulation II.C, Standard Project Review, as applicable.
5. Allowances may be revised and new allowances may be added to this Agreement in accordance with Stipulation IV.A.3, Amendments.

## B. Expedited Review for Emergency Undertakings

1. As part of the Disaster Declaration process, FEMA will define the time interval during which the disaster causing incident occurs (the incident period, as defined in 44 CFR § 206.32(f)). FEMA may approve Federal assistance and/or funding for emergency work (as defined in 44 CFR § 206.201(b)) that occurs during the incident period, including work already completed, in response to an immediate threat to human health and safety or improved property. FEMA will conduct expedited review of emergency Undertakings from October 27, 2012, the beginning of the incident period, until January 27, 2013.
2. Should FEMA determine that it is necessary to extend the expedited review period beyond January 27, 2012, FEMA will request in writing, prior to the expiration of the expedited review period, an extension of the period of applicability in 30-day increments in accordance with 36 CFR § 800.12(d).
3. For all emergency Undertakings, FEMA will determine the following:
  - a. If the Undertaking is an immediate rescue and salvage operations conducted in response to an event to preserve life and property, FEMA has no Section 106 review responsibilities in accordance with 36 CFR § 800.12(d); or
  - b. If the Undertaking meets one or more of the Allowances in Appendix B of this Agreement, FEMA will complete the Section 106 review process pursuant to Stipulation II.A.1, Programmatic Allowances.
  - c. If FEMA determines that the emergency Undertaking will adversely affect a historic property during this expedited review period, to the extent practicable FEMA may propose treatment measures that would address adverse effects during implementation, and request the comments of the SHPO and/or the affected Tribe(s) within 3 days of receipt of this information unless FEMA determines the nature of the emergency warrants a shorter time period. FEMA may elect to consult with the SHPO and/or the affected Tribe(s) regarding the emergency Undertaking at any point before or during the implementation of an emergency Undertaking if FEMA determines circumstances are appropriate for expedited consultation.
  - d. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. In all cases, FEMA will clarify that an “expedited Undertaking review” is being requested.
  - e. FEMA will take into account any timely comments provided by SHPO and/or the affected Tribe(s) and notify the parties of how their comments were taken into consideration by FEMA, OEM, and subgrantee.

- f. Should the SHPO and/or Participating Tribes not comment within 7 days, FEMA may fund the emergency Undertaking based on the available information. This will complete the Section 106 review for the Undertaking.

C. Emergency Demolition and Debris Removal of Privately-Owned Properties

FEMA may need to carry out debris removal activities involving the demolition and removal of buildings and structures that are damaged beyond repair or that are completely collapsed and/or disassembled by the actions of the declared event and therefore must be removed for health and safety reasons. Damage to historic properties by the effects of natural disasters to such a degree that demolition is required for health and safety reasons is not an adverse effect as defined under Section 106 of NHPA. However, FEMA is required by the NHPA to determine if its specific actions in response to disasters will cause adverse effects to any historic properties. After FEMA Public Assistance Program (PA) determines a property initially eligible for demolition, FEMA EHP will review these projects using the following expedited emergency process outlined below.

1. FEMA EHP will evaluate all properties proposed for demolition to determine if they are listed in the National Register or have previously been determined to be eligible for the National Register. If a property has not been previously evaluated for National Register eligibility, FEMA will make a determination whether or not the property is eligible for the National Register. Historic properties include both those above the ground (buildings and structures) and below the ground (archaeological sites and artifacts).
2. FEMA's evaluation will include a data base/GIS review of SHPO information to identify previously-identified historic properties, field review and photography, and additional research of properties that are more than 45 years of age, including archaeological analysis if necessary.
3. FEMA EHP will evaluate all properties proposed for demolition to determine if they are LPC designated or calendared for designation. This will include a database review at <http://geo.nycnet/doitt/nycgovmap/> for designated properties and <http://a810-bisweb.nyc.gov/bisweb/bsqpm01.jsp> (New York City Buildings Department) for calendared properties.
4. FEMA will conduct an analysis of effects for any historic property identified for demolition or for any demolition that will affect other historic properties within an Area of Potential Effects (APE) and will determine if the project will result in adverse effects. The APE shall include properties within the view shed of the Undertaking that are LPC designated or calendared. The APE for historic properties that are not located within a designated National Register or LPC historic district, or within a geographic area that is eligible as a National Register district, will be the building footprint. For all others, FEMA will determine a project-specific APE. FEMA will also provide information to the SHPO for these properties that describes the specific nature of the damage to each property

5. FEMA will document its findings concerning each property that is proposed for demolition and will submit a report to the SHPO and other consulting parties, as appropriate that includes two (2) photographs of each property (more if associated resources are present) and text that briefly but adequately explains FEMA's determination of National Register eligibility and effects. These reports will be submitted via the SHPO's dedicated electronic mail account at [femarecovery@parks.ny.gov](mailto:femarecovery@parks.ny.gov).
6. SHPO will review the reports, provide its concurrence or ask for more information via electronic mail within three (3) business days. If SHPO does not concur with FEMA's finding for any property, both agencies will conduct further consultation as soon as possible to clarify FEMA's determinations or to resolve any disagreements.
7. To the extent practicable, demolition of every structure will be carried out following low impact protocols – limiting disturbance to the footprint of the existing structure, limiting the use of heavy equipment on the property, pushing all foundation materials into the building basement and emphasizing that the contractors make reasonable efforts to avoid or minimize harm to any archaeological deposits. In addition, FEMA's PA Program does not fund the removal of slabs, further ensuring that these undertakings will likely have minimal impact on archaeological resources. In most instances FEMA will make the determination that no historic properties will be affected by the demolition.
8. In cases where a demolition site is considered to be archaeologically sensitive monitoring will be required by an archaeologist who meets the Secretary's Professional Qualifications Standards. This determination will be made on a case-by case-basis by FEMA in consultation with the SHPO and other consulting parties. Eligibility determinations, assessment of effects and resolution of adverse effects will be made subsequent to identification of an archeological property. Uprooted trees and exposed stumps will be removed in accordance with the Stump Removal Policy in Appendix E.
9. Demolition of eligible historic buildings/structures may be adverse and may require development of a Memorandum of Agreement (MOA) to mitigate any adverse effects. If FEMA determines that any property demolition is an Undertaking that will result in adverse effects, it will enter into consultation with the SHPO and other appropriate consulting parties to develop an MOA to mitigate the adverse effects as required under Section 106. FEMA may choose to identify, in consultation with the SHPO, standard treatment measures to mitigate adverse effects to multiple properties.

10. This agreement only pertains to the residential structure itself and does not include the demolition or removal of any other infrastructure on these properties, including sidewalks, driveways, pools, retaining walls or similar structures that would not be eligible for FEMA Public Assistance funding.

#### D. Standard Project Review

For Undertakings not exempt from further Section 106 review, FEMA will ensure that the following standard project review steps are implemented. In the interest of streamlining, FEMA may combine some of these steps during consultation.

1. **Consulting Parties:** FEMA will consult as appropriate with the SHPO and affected Tribe(s) to identify any other parties that meet the criteria to be consulting parties and invite them to participate in the Section 106 review process. FEMA may invite others to participate as consulting parties as the Section 106 review proceeds.
2. **Area of Potential Effects:** For standing structures, qualified staff shall define the APE as the individual structure when the proposed Undertaking is limited to the repair or rehabilitation (as defined in 36 CFR § 68.3(b)(6) and 36 CFR § 68.2(b)) of a structure located outside of a National Register listed or eligible historic district. For all other undertakings, qualified staff will determine the APE in consultation with the SHPO and Participating Tribes. FEMA may also consider information provided by other parties, such as local governments, LPC, local preservation advocacy organizations, and the public, when establishing the APE.
3. **Identification and Evaluation:** Qualified staff shall determine, in consultation with the SHPO and Participating Tribes if the APE contains historic properties, including archaeological sites or properties of religious or cultural significance, that are listed in or potentially eligible for the National Register, or LPC designated and calendared properties. This may include the review of preliminary documentation collected by OEM or the subgrantee in coordination with the SHPO.
  - a. **Archaeological Properties,** FEMA may consult with the SHPO to determine the level of effort and methodology necessary to identify and define the limits of archaeological properties. For historic properties of religious and cultural significance to Participating Tribe(s), FEMA shall consult with the Tribe(s) to identify geographic areas where properties may be affected by an Undertaking in order so that FEMA may determine the necessary level of effort required to avoid or protect any such properties. FEMA may also consult with LPC regarding identification and treatment of archaeological properties.
  - b. **National Historic Landmarks:** When FEMA determines an Undertaking has the potential to affect an NHL, FEMA shall notify the Secretary through the NHL Program Manager in the NPS Northeast Regional Office in addition to the SHPO and Participating Tribe(s).

- c. **Determinations of Eligibility:** FEMA shall review or determine National Register eligibility based on identification and evaluation efforts, and consult with SHPO and Participating Tribe(s) regarding these determinations. Should the SHPO or Participating Tribe(s) disagree with the determination of eligibility, FEMA may elect to either continue consultation, treat the property as eligible for the National Register, or to obtain a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR § 63.2(d)-(e) and 36 CFR § 800.4(c)(2).
- d. **Findings of No Historic Properties Affected:** FEMA shall make a finding of “no historic properties affected” if no historic properties are present in the APE; the Undertaking is designed to avoid historic properties, including archaeological sites or properties of religious or cultural significance to Participating Tribe(s); or the Undertaking does not affect the character defining features of a historic property.
  - i. FEMA shall notify the SHPO, Participating Tribes(s), and any other consulting parties of this finding and provide supporting documentation in accordance with 36 CFR § 800.11(d) and applicable documentation standards. Unless the SHPO or Participating Tribe(s) objects to the finding pursuant to the appropriate timeframe outlined in Stipulation I.E.2 or I.E.3, Timeframes, FEMA shall complete the Section 106 review.
  - ii. If the SHPO or Participating Tribe(s) objects to a finding of “no historic properties affected”, FEMA may elect to consult with the objecting party to resolve the disagreement. If the objection is resolved, FEMA may proceed with the action in accordance with the resolution. FEMA also may elect to reconsider effects on the historic property by applying the criteria of adverse effect pursuant to Stipulation II.D.4, Application of the Criteria of Adverse Effect. If FEMA is unable to resolve the disagreement, it will forward the finding and supporting documentation to the ACHP and request that the ACHP review FEMA’s finding in accordance with 36 CFR § 800.4(d)(1)(iv)(A) through 36 CFR § 800.4(d)(1)(iv)(C). FEMA will consider the ACHP’s recommendation in making its final determination.
- 4. **Application of the Criteria of Adverse Effect:** If FEMA finds an Undertaking may affect identified historic properties in the APE, including properties of religious or cultural significance to Participating Tribe(s), or if a consulting party objects to the finding of “no historic properties affected,” FEMA will apply the criteria of adverse effect to historic properties within the APE(s), taking into account the views of the consulting parties and public concerning effects in accordance with 36 CFR § 800.5(a).
  - a. If FEMA determines that an Undertaking does not meet the adverse effect criteria or, for a standing structure, that the Undertaking meets the *Standards*, FEMA shall propose a finding of “no adverse effect” in accordance with 36 CFR § 800.5(b).

- b. FEMA shall notify the SHPO, Participating Tribe(s), and all other consulting parties of its finding and provide supporting documentation pursuant to 36 CFR §800.11(e) and applicable documentation standards. Unless a consulting party objects within the appropriate timeframe, FEMA will proceed with its “no adverse effect” determination and complete the Section 106 review.
  - c. If FEMA finds the Undertaking may have an adverse effect, FEMA shall request through OEM that the subgrantee revise the scope of work to substantially conform to the Standards for standing structures, or avoid or minimize adverse effects for archaeological properties, in consultation with the SHPO, Participating Tribe(s), and any other consulting parties. If the subgrantee modifies the scope of work to address the adverse effect, FEMA shall notify the consulting parties, and provide supporting documentation. Unless a consulting party makes a timely objection, FEMA shall proceed with its “no adverse effect” determination and complete the Section 106 review.
  - d. If a consulting party objects to a finding of “no adverse effect,” FEMA will elect to consult with the objecting party to resolve the disagreement. If the objection is resolved, FEMA will proceed with the undertaking in accordance with the resolution, or;
  - e. If the objection cannot be resolved, FEMA will forward its findings and supporting documentation to the ACHP and request that the ACHP review the findings in accordance with 36 CFR. § 800.5(c)(3)(i-ii). FEMA will consider the ACHP’s comments in making its final determination, or;
  - f. If an Undertaking cannot be modified to avoid adverse effects FEMA will initiate consultation to resolve the adverse effect(s) in accordance with Stipulation II.D.5, Resolution of Adverse Effects.
5. Resolution of Adverse Effects: If FEMA determines that an Undertaking will adversely affect a historic property, it shall resolve the effects of the Undertaking in consultation with the SHPO, OEM, participating Tribes, subgrantee, ACHP, if participating, and any other consulting parties, by one of the following methods depending upon the nature and scale of the adverse effect as well as the determination of the historic property’s significance on a local, state or national level:
- a. Abbreviated Consultation Process: After taking into consideration the nature of the historic properties affected and the severity of the adverse effect(s), FEMA may propose to resolve the adverse effect(s) of the Undertaking through the application of Treatment Measures outlined in Appendix C as negotiated with the SHPO, OEM, and Participating Tribe(s). FEMA will not propose use the Abbreviated Consultation Process if the Undertaking may affect an NHL. The application of these Treatment Measures will not require the execution of a Memorandum of Agreement (MOA) or Programmatic Agreement.

1. FEMA will notify the consulting parties in writing of its proposed use of a specific Treatment Measure, or combination of Treatment Measures with the intent of expediting the resolution of adverse effects and provide documentation as required by 36 CFR §800.11(e) and subject to the confidentiality provisions of 36 CFR §800.11(c), as well as provide the ACHP with an adverse effect notice in accordance with 36 CFR §800.6(a)(1) and notify them of FEMA's intent to apply the Treatment Measure(s). Unless a consulting party or the ACHP objects within fifteen (15) days of receipt of FEMA's proposal, FEMA will proceed with the use of Treatment Measure(s) and will complete Section 106 review.
  2. If any of the consulting parties or the ACHP objects within the 15 day review and comment period to the resolution of adverse effects through the application of the Abbreviated Consultation Process, FEMA shall consult further with the consulting parties to explore options for resolution of the adverse effect(s). If consultation is not successful after an additional 15 day period, FEMA shall request that the ACHP arbitrate the consultation and help identify a final resolution of the adverse effect(s). If no consensus is reached, FEMA shall resolve the adverse effect(s) using procedures outlined below in Stipulation II.E.5.b, Memorandum of Agreement.
  3. Because funding and implementation details of Treatment Measure(s) for specific Undertakings may vary by program, FEMA will provide written notice to the consulting parties within sixty (60) days of the completion of the Treatment Measure(s). This written notice will serve as confirmation that the Treatment Measure(s) for a specific Undertaking have been implemented. FEMA will also include information pertaining to the completion of Treatment Measures in the annual report pursuant to Stipulation I.B.1,d, FEMA Roles and Responsibilities.
- b. Memorandum of Agreement (MOA): If the Abbreviated Consultation Process is determined infeasible or is objected to by any of the consulting parties, FEMA, in consultation with the other consulting parties, will develop an MOA in accordance with 36 CFR § 800.6(c) to stipulate treatment measures to avoid, minimize, and/or mitigate adverse effects on historic properties. If the ACHP was not previously notified of the adverse effect, FEMA will provide the documentation outlined in 36 CFR §800.11(e), and the ACHP will have 15 days to review the undertaking and determine if its participation is necessary to complete the consultation process. The MOA may also include feasible treatment measures that serve an equal or greater public benefit in promoting the preservation of historic properties in lieu of more traditional treatment measures. Should the execution of an MOA not be appropriate given the nature and significance of historic properties, scale of adverse effects, or include one or more complex Undertakings, FEMA shall resolve the adverse effects using the procedures outlined below in Stipulation II.E.5.c, Programmatic Agreement.

- c. **Programmatic Agreement:** FEMA, the SHPO, OEM, Participating Tribe(s), the ACHP, as appropriate, and any other consulting party may consult to develop a Programmatic Agreement in accordance with 36 CFR § 800.14(b) to identify programmatic conditions or treatment measures to govern the resolution of potential or anticipated adverse effects from certain complex project situations for an Undertaking or for multiple but similar Undertakings by a single subgrantee.
- d. **Objections:** Should any signatory, invited signatory, consulting party, or member of the public object within the timeframes established by this Agreement to any plans, specifications, or actions pursuant to resolving an adverse effect, FEMA shall consult further with the objecting party to seek resolution. If FEMA determines the objection cannot be resolved, FEMA shall address in accordance with Stipulation IV.B, Dispute Resolution.
- e. **National Historic Landmarks:** When FEMA determines an Undertaking will adversely affect an NHL, FEMA also will notify and invite the Secretary and ACHP to participate in consultation, pursuant to 36 CFR § 800.10. When the ACHP participates in consultation related to an NHL, the ACHP will report the outcome of the consultation to the Secretary OI and the FEMA Administrator.

### **III. OTHER CONSIDERATIONS**

- A. **Changes to an Approved Scope of Work:** OEM is required to notify FEMA and will require its subgrantees to notify it immediately when there are proposed changes to an approved scope of work for an Undertaking. When notified by OEM of any proposed substantive change to the approved scope of work for an Undertaking, FEMA may authorize the OEM or subgrantee to proceed with the change once the required review is completed.
- B. **Unexpected Discoveries:** Upon notification by a subgrantee of an unexpected discovery in accordance with Stipulation I.B.3.d, OEM Roles and Responsibilities, OEM will immediately notify FEMA and require the subgrantee to:
  - 1. Stop construction activities in the vicinity of the discovery; and,
  - 2. Notify the local law enforcement office and coroner/medical examiner if human remains are discovered, in accordance with applicable New York State statute(s);
  - 3. Take all reasonable measures to avoid or minimize harm to the property until FEMA has completed consultation with the SHPO, Participating Tribe(s), and any other consulting parties. Upon notification by OEM of a discovery, FEMA will immediately notify the SHPO, Participating Tribe(s), and any other consulting parties that may have an interest in the discovery, and consult to evaluate the discovery for National Register eligibility.
  - 4. FEMA will consult with the consulting parties in accordance with the review process outlined in Stipulation II, Project Review, to develop a mutually agreeable action plan

with timeframes to identify the discovery, take into account the effects of the Undertaking, resolve adverse effects if necessary, and ensure compliance with applicable Federal and State statutes.

5. In cases where discovered human remains are determined to be American Indian, FEMA shall consult with the appropriate Tribal representatives and SHPO. In addition, FEMA shall follow the guidelines outlined in the ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects* (2007).
6. FEMA will coordinate with OEM and the subgrantee regarding any needed modification to the scope of work for the Undertaking necessary to implement recommendations of the consultation and facilitate proceeding with the Undertaking.

#### C. Curation

1. FEMA and OEM shall ensure that all records and materials (collections) produced during the course of an archaeological survey, testing, and any data recovery operations for the implementation of its Undertakings are curated at a facility, preferably in-state, that meets the standards of, and in accordance with the applicable provisions of 36 CFR Part 79, "Curation of Federally Owned and Administered Archaeological Collections," and applicable State law and guidelines.
2. In cases where the survey, testing, or data recovery are conducted on private land, any recovered collections remain the property of the land owner and FEMA will return the collections to them with the assistance of the SHPO. In such instances, FEMA and OEM, in coordination with the SHPO or Participating Tribe(s), shall encourage land owners to donate the collection(s) to an appropriate public or Tribal entity. In cases where the property owner declines to accept responsibility for the collection(s) and wishes to transfer ownership of the collection(s) to a public or Tribal entity, FEMA and OEM will ensure curation of the collection(s) in accordance with Stipulation III.C.1 above.

#### D. Anticipatory Actions and After the Fact Review

1. OEM shall advise its subgrantees that they may jeopardize Federal funding if work is performed without all required local, State and Federal licenses, permits or approvals, including the completion of the Section 106 process. FEMA also shall document this requirement in its Record of Environmental Consideration, as applicable, as well as all project approval documents specifying the project scope and limits, and containing all conditions and caveats, including an approved Project Worksheet (PW) for a Public Assistance project, and an approved Application for an HMGP project.
2. In accordance with Section 110(k) of the NHPA, FEMA shall not grant assistance to a subgrantee who, with intent to avoid the requirements of this Agreement or Section 106 of the NHPA, has intentionally significantly and adversely affected a historic

property to which the assistance would relate, or having legal power to prevent it, allowed an adverse effect to occur. However, if after consultation with the SHPO, Participating Tribes(s), and ACHP, FEMA determines that extraordinary circumstances justify granting assistance despite the adverse effect created or permitted by the subgrantee, FEMA shall complete consultation for the Undertaking pursuant to the terms of this Agreement.

3. In circumstances where FEMA determines a subgrantee has initiated an Undertaking without willful intent to avoid the requirements of this Agreement or Section 106 of NHPA, FEMA will determine if the Undertaking would have required Section 106 review in accordance with Stipulation II.D, Standard Project Review.
4. If FEMA determines no Section 106 review or consultation with SHPO and Participating Tribe(s) would have been required pursuant to Stipulation II.D, Standard Project Review, FEMA will document this determination to the project files and consider the project Section 106 compliant.
5. If FEMA determines the Undertaking would have required Section 106 review, FEMA will coordinate with SHPO and Participating Tribe(s) to determine if consultation is feasible.
  - a. If after coordination with the SHPO and affected Tribes, FEMA determines that consultation is feasible, FEMA will review the Undertaking in accordance with Stipulation II.D, Standard Project Review.
  - b. If after coordination with the SHPO and Participating Tribe(s), FEMA determines that review is infeasible, FEMA will document that the project is noncompliant with Section 106, and the FEMA program then will make a funding eligibility decision.
6. FEMA will ensure that all Undertakings considered for after the fact review in accordance with this stipulation are included in the bi-annual reports.

#### **IV. IMPLEMENTATION OF AGREEMENT**

##### **A. Amendments**

1. If any signatory or invited signatory to the terms of the Agreement determines that the Agreement cannot be fulfilled, or that an amendment to the terms of this agreement must be made, the signatories and the invited signatories will consult for no more than 30 days to seek amendment of the Agreement.
2. This Agreement may be amended only upon the written consensus of the signatories. This Stipulation does not apply to amendments made to Appendices A, B, and C pursuant to Stipulation IV.A.3, Amendments, below.

3. Appendix A (FEMA Programs), Appendix B (Programmatic Allowances) and Appendix C (Treatment Measures) may be amended at the request of FEMA, a signatory party, or an invited signatory party in the following manner:
  - a. FEMA, on its own behalf or on behalf of another signatory or invited signatory, shall notify all signatory and invited signatory parties to this Agreement of the intent to add to or modify the current Appendix or Appendices and shall provide a draft of the updated Appendix or Appendices to all signatory and invited signatory parties.
  - b. If no signatory or invited signatory object in writing within 15 days of receipt of FEMA's proposed addition or modification, FEMA will date and sign the amended Appendix and provide a copy of the amended Appendix to all signatory and invited signatory parties.

#### **B. Dispute Resolution**

1. Should any signatory or invited signatory to this Agreement object in writing within 30 days to the terms of this Agreement, FEMA will consult with the objecting party for not more than 30 days to resolve the objection.
2. If the objection is resolved within 30 days, FEMA shall proceed in accordance with the resolution.
3. If FEMA determines within 30 days that the objection cannot be resolved, FEMA will forward to ACHP all documentation relevant to the objection, including FEMA's proposed resolution. Within 30 days of receipt, ACHP will:
  - a. Concur in FEMA's proposed resolution; or
  - b. Provide FEMA with recommendations, which FEMA will take into account in reaching a final decision regarding the objection; or
  - c. Notify FEMA that the objection will be referred for comment in accordance with 36 CFR § 800.7(a)(4), and proceed to do so. FEMA will take the resulting comment into account.
4. FEMA will take into account any ACHP recommendations or comments, and any comments from the other signatories and invited signatories, in reaching a final decision regarding the objection in accordance with 36 CFR § 800.7(c)(4). The signatories will continue to implement all other terms of this Agreement that are not subject to objection.
5. Should ACHP not respond within 30 days, FEMA may assume ACHP has no comment and proceed with its proposed resolution to the objection.

6. FEMA will provide the signatories and invited signatories with its final written decision regarding any objection brought forth pursuant to this Stipulation.
7. FEMA may authorize any disputed action to proceed, after making its final decision.
8. At any time while this Agreement is in effect, should a member of the public object in writing to implementation of its terms, FEMA will notify the other signatories and invited signatories in writing and take the objection into consideration. FEMA will consult with the objecting party and, if that party so requests, the other signatories and invited signatories, for not more than 21 days. In reaching its decision regarding the objection, FEMA will take into consideration all comments from these parties. Within 15 days after closure of this consultation period, FEMA will provide the other parties with its final decision in writing. FEMA's decision will be final.
9. Any dispute regarding National Register eligibility that is not resolved pursuant to this Stipulation will be resolved in accordance with Stipulation II.D.3.c, Determinations of Eligibility.

#### C. Severability and Termination

1. In the event any provision of this Agreement shall be deemed contrary to, or in violation of, any applicable existing law or regulation of the United States of America and/or the State New York, only the conflicting provision(s) shall be deemed null and void, and the remaining provisions of the Agreement shall remain in effect.
2. FEMA, the SHPO, OEM, or Participating Tribe(s) may terminate this Agreement by providing 30 days' written notice to the other signatory and invited signatory parties, provided that the parties consult during this period to seek amendments or other actions that would prevent termination. If this Agreement is terminated, FEMA will comply with 36 CFR Part 800. Upon such determination, FEMA will provide all other signatories and invited signatories with written notice of the termination of this Agreement.
3. A Participating Tribe may notify the other signatories and invited signatories that it is fully withdrawing from participation in the Agreement. Following such a withdrawal, FEMA will review undertakings that may affect historic properties of religious and cultural significance to the Tribe in accordance with 36 CFR §§ 800.3 through 800.7 or an applicable alternative under 36 CFR § 800.14. Withdrawal from this Agreement by a Participating Tribe does not terminate the Agreement. A Tribe that has withdrawn from the Agreement may at any time that this Agreement remains in effect notify FEMA, OEM, and SHPO in writing that it has rescinded its notice withdrawing from participation in the Agreement.
4. This Agreement may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36 CFR § 800.14(a).

#### **D. Duration and Extension**

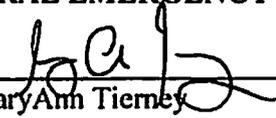
- 1. Unless terminated in accordance with Stipulation IV.C.2 or IV.C.4, Severability and Termination, this Agreement shall remain in effect until FEMA, in consultation with all other signatories, determines that all undertakings related to 4085-DR-NY have been completed.**
- 2. If another federally-declared disaster occurs within the State of New York while this PA is effective, the signatories and invited signatories will consult to determine whether it would be appropriate to extend the PA. If the parties agree that the extension of this PA is an acceptable mechanism for reviewing undertakings as a result of the new disaster, its duration shall be extended pursuant to Stipulation IV.A.**

#### **E. Execution and Implementation**

- 1. This Agreement may be implemented in counterparts, with a separate page for each signatory, invited signatory and concurring party and will become effective on the date of the final signature, and will become effective on the date of signature by FEMA, SHPO, and ACHP. FEMA will ensure that each signatory, invited signatory and concurring party is provided with a complete copy.**
- 2. Execution and implementation of this Agreement evidence that FEMA has afforded ACHP a reasonable opportunity to comment on FEMA's administration of all referenced Programs, and that FEMA has satisfied its Section 106 responsibilities for all individual Undertakings of the Programs.**

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,  
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,  
THE DELAWARE NATION,  
THE DELAWARE TRIBE OF INDIANS,  
THE SHINNECOCK NATION,  
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,  
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AS A RESULT OF HURRICANE SANDY**

Signatory:  
FEDERAL EMERGENCY MANAGEMENT AGENCY

By:  Date: 5/6/13  
By: MaryAnn Tierney  
Acting Regional Administrator, Region II

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,  
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,  
THE DELAWARE NATION,  
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THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AS A RESULT OF HURRICANE SANDY**

Signatory:

**NEW YORK STATE HISTORIC PRESERVATION OFFICER**

By: Ruth Pierpont Date: 5/3/13

By: Ruth Pierpont

New York Deputy Commissioner/New York Deputy State Historic Preservation Officer

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
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THE SHINNECOCK NATION,  
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THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AS A RESULT OF HURRICANE SANDY**

Signatory:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: \_\_\_\_\_

John M. Fowler  
Executive Director

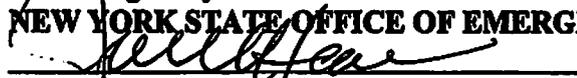
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5/10/13

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
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THE SHINNECOCK NATION,  
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THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AS A RESULT OF HURRICANE SANDY**

Invited Signatory:

**NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT**

  
\_\_\_\_\_

Date: 9/1/13

By: Jerome M. Hauer  
Commissioner

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,  
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THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AS A RESULT OF HURRICANE SANDY**

Invited Signatory:  
**THE DELAWARE NATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
C. J. Watkins  
Vice President

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,  
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THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AS A RESULT OF HURRICANE SANDY**

Invited Signatory:  
**THE DELAWARE NATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Paula Pechonick  
Chief

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
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THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,  
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THE DELAWARE TRIBE OF INDIANS,  
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THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AS A RESULT OF HURRICANE SANDY**

Invited Signatory:  
**THE SHINNECOCK NATION**

\_\_\_\_\_  
By: [name]  
[title]

Date: \_\_\_\_\_

\_\_\_\_\_  
By: [name]  
[title]

Date: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,  
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,  
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THE SHINNECOCK NATION,  
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,  
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AS A RESULT OF HURRICANE SANDY**

Invited Signatory:

**THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS**

Date: \_\_\_\_\_

\_\_\_\_\_  
By: Robert Chicks  
President of Tribal Council

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,  
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,  
THE DELAWARE NATION,  
THE DELAWARE TRIBE OF INDIANS,  
THE SHINNECOCK NATION,  
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,  
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AS A RESULT OF HURRICANE SANDY**

Concurring Party:

**NEW YORK CITY LANDMARKS PRESERVATION COMMISSION**

Date: \_\_\_\_\_

\_\_\_\_\_  
By: Robert B. Tierney

Chair, The New York City Landmarks Preservation Commission

## Appendix A

### FEMA Program Summaries

This Appendix may be amended in accordance with Stipulation IV.A, Amendments.

#### **Disaster Response and Recovery Programs**

The following programs are authorized under Titles IV and V of the Stafford Act.

##### *Public Assistance Program (PA)*

This program assists States, Tribal and local governments, and certain types of private nonprofit organizations quickly respond to and recover from major disasters or emergencies declared by the President. Grants are provided for debris removal (Public Assistance Category A), emergency protective measures (Public Assistance Category B), and the repair, replacement, or restoration of disaster-damaged, publicly owned and certain private non-profit facilities (Public Assistance Categories C-G).

##### *Individual Assistance Programs (IA)*

These programs help ensure that individuals and families that have been affected by disasters have access to the full range of FEMA assistance including: crisis counseling (Section 416), disaster legal services (Section 415), essential assistance (Section 403), emergency sheltering assistance (Section 403), transportation (Section 419), funeral services, minor home repairs (Section 408), and temporary housing assistance (Section 408). It should be noted that other Federal agencies provide disaster assistance to individuals as well, such as the US Small Business Administration, Department of Agriculture, and Department of Labor and that this assistance is not subject to the terms of this agreement.

##### *Fire Management Assistance Grant Program (FMAG)*

The FMAG is available to State, Tribal, and local governments for the mitigation, management, and control of fires on publicly or privately owned lands. Eligible costs may include expenses for field camps, equipment use, repair and replacement, materials and supplies, and mobilization and demobilization activities.

##### *Hazard Mitigation Grant Program (HMGP)*

The HMGP provides grants to States, Territories, Tribes, and local governments to implement long-term hazard mitigation measures after a Disaster Declaration. Activities may include buyouts, retrofits, relocations, elevations, and minor flood control projects.

## **Appendix B**

### **Programmatic Allowances**

This list of Allowances enumerates FEMA funded activities that based on FEMA experience have no effect or limited effect on historic properties if implemented as specified in this Appendix and will not require review by the SHPO and Participating Tribe(s) pursuant to Stipulation II.A.1, Programmatic Allowances.

The allowances consist of two tiers – Tier I and Tier II. Staff may apply Tier I allowances without meeting any professional historic preservation qualification standards, while only staff meeting the applicable Secretary’s Professional Qualifications Standards in accordance with Stipulation I.B.1.a of this Agreement may apply Tier II allowances.

When referenced in the allowances, “in-kind” shall mean that it is either the same or a similar material, and the result shall match all physical and visual aspects, including form, color, and workmanship. The in-kind repair provided for in both Tiers I and Tier II allowances in Appendix B should be limited to pre-existing architectural features and physical components of buildings and structures and in general should not be utilized when a building or structure has been substantially altered.

When referenced in the allowances, “previously disturbed soils” will refer to soils that are not likely to possess intact and distinct soil horizons and have the reduced likelihood of possessing archaeological artifacts, features, and phenomena within their original depositional contexts.

#### **Tier I Allowances**

- I. GROUND DISTURBING ACTIVITIES AND SITE WORK**, when proposed activities described below substantially conform to the original footprint and/or are performed in previously disturbed soils and the area proposed to be disturbed does not exceed the previous disturbance in depth or footprint, including the area where the activity is staged.

## **A. Debris and Snow Removal**

1. Debris removal and collection, including removal of snow, uprooted trees, limbs and branches from public rights of way, public area and the transport and disposal of such waste to existing licensed waste facilities or landfills. Uprooted trees and exposed stumps must be removed in accordance with the stump removal policy in Appendix E. This includes the temporary establishment and expansion of non-hazardous debris staging, reduction, and disposal areas at licensed transfer stations, or existing hard-topped or graveled surfaces (e.g. parking lots, roads, athletic courts) but not the creation of new or temporary access roads.
2. Removal of debris from private property provided that buildings are not affected, ground disturbance is minimal and in-ground elements, such as driveways, walkways or swimming pools are left in place.
3. Chipping and disposal of woody debris by broadcasting within existing rights-of-way.
4. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, in order to restore the facility to its pre-disaster condition. The sediment may be used to repair eroded banks or disposed of at an existing licensed or permitted spoil site.
5. Dewatering flooded developed areas by pumping.

## **B. Temporary Structures and Housing**

1. Installation of temporary structures for uses such as school classrooms, offices, or shelters for essential public service agencies, such as police, fire, rescue and medical care, as well as temporary housing for disaster personnel and victims, at the following types of locations:
  - a. Single units on private residential sites when all utilities are installed above ground or tie into pre-existing utility lines.
  - b. Existing multi-family units.
  - c. Existing RV/Mobile Home Parks and campgrounds with pre-existing utility hookups.
  - d. Paved areas, such as parking lots and paved areas at such facilities as conference centers, shopping malls, airports, business parks, military bases when all utilities are installed above ground or tie into pre-existing utility lines.
  - e. Sites that have been previously cleared and prepared for planned construction, such as land being developed for public housing, office buildings, city parks, ball fields, military bases, schools, etc. when all utilities are installed above-ground or tie into pre-existing utility lines.

- f. Areas previously filled to depths of at least six feet so that subsurface utilities can be installed.

### **C. Recreation and Landscaping**

1. Installation of temporary removable barriers.
2. In-kind repairs or replacement, and minor upgrades/mitigation of bollards and associated protective barriers when in previously disturbed areas.

## **II. BUILDINGS**

- A. Repair or retrofit of buildings less than 45 years old.
- B. Removal of water by physical or mechanical means.
- C. Installation of grab bars and other such minor interior modifications required for compliance with the Americans with Disabilities Act (ADA).
- D. Installation of security bars over windows on rear elevations.
- E. Sheltering and Temporary Essential Power (STEP) Pilot Program: The STEP program provides essential power to affected residents and thereby reduces the demand for other shelter options by allowing individuals to return to or remain in their home while awaiting major repairs. STEP accomplishes this by 3 measures:
  1. Residential Meter Repairs: Repairs to exterior weather head, service cable, and meter box.
  2. Temporary Essential Electric Measures: Repairs to restore temporary power to residences where the utility will not turn the power back on due to damages in order to restore a minimal amount of power to allow heat and/or hot water and some power to targeted appliances, including installation of a temporary power supply, outlet panels, and other equipment that will be removed when permanent repairs are made.
  3. Rapid Temporary Exterior Repairs: Securing broken windows, covering damaged exterior walls and patching or otherwise securing damaged exterior doors. These repairs utilize raw, unfinished materials for temporary emergency repairs, such as plywood secured with a padlock.

## **III. TRANSPORTATION FACILITIES**, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including any staging areas.

### **A. Roads and Roadways**

1. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders medians, clearances, curbs, and side slopes. This allowance does not include improvement to existing roadways and appurtenances.
2. Construction of temporary emergency access roads in previously disturbed soils to allow for passage of emergency vehicles.
3. Repairs to road slips and landslides that do not require grading of undisturbed soils on the up-hill side of the slip.
4. Re-establishment, armoring and/or upgrading of existing roadway ditches.
5. In-kind repair or replacement of traffic control devices such as traffic signs and signals, delineators, pavement markings, traffic surveillance systems.
6. Installation and removal of temporary traffic control devices, including pre-formed concrete barriers and fencings.
7. In-kind repair or replacement of roadway safety elements such as barriers, guardrails, and impact-attenuation devices. In the case of guardrails, the addition of safety end treatments is allowed.

#### **B. Airports**

1. In-kind repair or replacement of existing runway surfaces and features (e.g. asphalt, concrete, gravel, and dirt) and associated air transportation safety components and systems (e.g. lighting bars, beacons, signage and weather sensors).

#### **C. Rail Systems**

1. In-kind repair or replacement of safety components.
2. In-kind repair or replacement of existing track system and passenger loading areas.

### **Tier II Allowances**

- I. GROUND DISTURBING ACTIVITIES AND SITE WORK**, when proposed activities described below substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

#### **A. Footings, Foundations, Retaining Walls, Slopes, and Slope Stabilization Systems**

1. In-kind repair, replacement, and reinforcement of footings, foundations, retaining walls, slopes, and slope stabilization systems (e.g., gabion baskets, crib walls, soldier pile and lag walls) if related ground disturbing activities are within the boundary of previously disturbed soils.

2. Installation of perimeter drainage (e.g. French drains) when performed in previously disturbed soils.

#### **B. Recreation and Landscaping**

1. In-kind repairs or replacement, and minor upgrades to recreational facilities and features (e.g. playgrounds, campgrounds, fire pits, dump stations and utility hook-ups, swimming pools, athletic fields and signage, batting cages, basketball courts, swing sets, pathways, simple wooden/wire stream crossings).
2. In-kind repair, replacements, and minor upgrades to landscaping elements (e.g., fencing, free standing walls, paving, planters, irrigation systems, lighting elements, signs, flag poles, ramps, steps).

#### **C. Piers, Docks, Boardwalks, Boat Ramps, and Dune Crossovers**

1. In-kind repair and replacement and minor upgrades to existing piers, docks, boardwalks, boat ramps and dune crossovers in areas of previously disturbed soils.

#### **D. Cemeteries**

1. Removal of woody debris such as branches, limbs, and uprooted trees from cemeteries, provided that heavy equipment and other machinery are not operated or staged on areas potentially containing human remains. Uprooted trees and exposed stumps must be removed in accordance with the stump removal policy in Appendix E. If this condition does not adequately protect human remains, then monitoring will be required by an archaeologist who meets the Secretary's Professional Qualifications Standards to oversee stump removal.

## **II. BUILDINGS**

#### **1. Interior Work: Floors, Walls, Stairs, Ceilings and Trim**

1. In-kind repair and replacement of floors, walls, stairs, ceilings, and/or trim. The allowance does not apply to decorative finishes, including murals, glazed paint, gold leaf, or ornamental plaster.
2. Interior cleaning of surfaces using a weak solution of household bleach and water, mold remediation, or mold removal. The allowance applies to interior finishes, including plaster and wallboard, provided the cleaning is restricted to damaged areas and does not affect adjacent materials.
3. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos) or for assessment of hidden damages.

#### **B. Utilities and Mechanical, Electrical, and Security Systems**

1. In-kind repair or replacement, or limited upgrading of interior utility systems, including mechanical (e.g., heating, ventilation, air conditioning), electrical, and plumbing systems. This allowance does not provide for the installation of new exposed ductwork.
2. Elevation of heating, ventilation, and air conditioning system (HVAC) and mechanical equipment as long as it is placed or located where it is not highly visible from the street.
3. Replacement or installation of interior fire detection, fire suppression, or security alarm systems. The allowance does not apply to surface mounted wiring, conduits, piping, etc., unless previously existing, provided that installation of the system hardware does not damage or cause the removal of character-defining architectural features and can be easily removed in the future.
4. Installation of building communication and surveillance security systems, such as cameras, closed-circuit television, alarm systems, and public address systems, provided that installation of the system hardware does not damage or cause the removal of character defining architectural features and can be easily removed in the future.
5. Installation of building access security devices, such as card readers, enhanced locks, and security scanners (e.g., metal detectors), provided the device does not damage or cause the removal of character-defining architectural features and can be removed in the future without impacts to significant architectural features.

### **C. Windows and Doors**

1. In-kind repair of damaged or severely deteriorated windows and window frames,, shutters, storm shutters, doors and door frames, and associated hardware, where profiles, elevations, details and materials match those of the originals.
2. In-kind replacement of window panes. Clear plate, double, laminated or triple insulating glazing can be used, provided it does not result in altering the existing window material, tint, form, muntin profiles, or number of divided lights. This allowance does not apply to the replacement of existing intact archaic or decorative glass.
3. Replacement of exterior, utilitarian, non-character-defining metal doors and frames leading into non character-defining spaces with metal blast resistant doors and frames.

### **D. Exterior Walls, Cornices, Porches, and Foundations**

1. In-kind repainting of surfaces, provided that destructive surface preparation treatments are not used, such as water blasting, sandblasting, power sanding and chemical cleaning.
2. In-kind repair of walls, porches, foundations, columns, cornices, siding, balustrades, stairs, dormers, brackets, trim, and their ancillary components or in-kind replacement of severely deteriorated or missing or lost features, as long as the replacement pieces match the original in detail and material. Any ground disturbance will be limited to previously disturbed soils.
3. In-kind repair or replacement of signs or awnings.
4. Installation of temporary stabilization bracing or shoring, provided such work does not result in additional damage.
5. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view.
6. In-kind repair of concrete and masonry walls, columns, parapets, chimneys, or cornices or limited in-kind replacement of damaged components including comparable brick, and mortar that matches the color, strength, content, rake, and joint width.
7. Bracing and reinforcing of walls, chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or reversible in the future.
8. Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in-kind, including mortar that matches the color, content, strength, rake, and joint width where occurring.
9. Repairs to and in-kind replacement of elements of curtain wall assemblies or exterior cladding that is hung on the building structure, usually from floor to floor, and when the color, size reflectivity, materials, and visual patterns are unaltered.

#### **E. Roofing**

1. Installation of scaffolding, polyethylene sheeting, or tarps, provided such work will not result in additional damage or irreversible alterations to character defining features.
2. In-kind repair or replacement of roofing, of roofing, rafters, fascia, soffits, gutters, verge boards, leader boxes, downspouts, or other damaged roof system components.
3. Repairs to a flat roof cladding, including changes in roofing materials, where the repairs are not highly visible from the ground level.

#### **F. Weatherproofing and Insulation**

1. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.
2. In-kind repair or replacement of insulation systems, provided that existing interior plaster, woodwork, exterior siding, or exterior architectural detail is not altered.

#### **G. Structural Retrofits**

1. The installation of the following retrofits/upgrades, provided that such upgrades are not visible on the exterior: attic bracing, cross bracing on pier and post foundations; fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical, electrical, and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut off valves.
2. Replacement, repair or installation of lightning rods.

### **III. TRANSPORTATION FACILITIES**, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.

#### **A. Roads and Roadways**

1. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders, medians, clearances, curbs, and side slopes. This allowance permits minor improvement to meet current code and standards or hazard mitigation measures, such as those designed to harden exposed surfaces, including the application of gravel armoring to side slopes and ditches.
2. In kind repair to historic paving materials for roads and walkways.
3. In-kind repair or replacement, or minor upgrade of culvert systems and arches beneath roads or within associated drainage systems, including provision of headwalls, riprap and any modest increase in capacity for the purposes of hazard mitigation or to meet current codes and standards, provided that the work substantially conforms to the existing footprint. For stone or brick culverts or arches beneath roadways, this allowance only applies to in-kind repair.
4. In-kind repair or replacement of road lighting systems, including period lighting fixture styles.
5. In-kind repair or replacement of road appurtenances such as curbs, berms, fences, and sidewalks.

#### **B. Bridges**

1. Installation of a temporary (Bailey-type) bridge over an existing structure or at a previously disturbed location, such as a former bridge location, to allow passage of emergency vehicles.
2. In-kind repair or replacement of bridges and bridge components (e.g. abutments, wing walls, piers, decks, and fenders in previously disturbed soils).

**IV. UTILITIES, COMMUNICATIONS SYSTEMS AND TOWERS, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.**

**A. General**

1. In-kind repair or replacement, or minor upgrading, small scale realignment, and elevation of utilities and associated features and structures within previously disturbed soils of rights-of-way or utility corridors.
2. Installation of new utilities and associated features within existing rights-of-way.
3. Directional boring of new/replacement service line and related appurtenances involving boring or silt trenches within previously disturbed soils of rights-of-way or utility corridors.
4. In-kind repair or replacement, or minor upgrade of water towers provided activities take place within previously disturbed soils. Ground-level facilities may be added or expanded in previously disturbed areas. This allowance does not apply to masonry water towers.

**B. Generators and Utilities**

1. In-kind repair or replacement, or minor upgrades elevation, and/or installation of generators, HVAC systems, and similar equipment provided activities occur within previously disturbed soils and any roof mounted equipment is not visible from the ground level.

**C. Communication Equipment/Systems and Towers**

1. Acquisition, installation, or operation of communication and security equipment/systems that use existing distribution systems, facilities, or existing infrastructure right-of-way.
2. The collocation of communication and security equipment on existing towers and buildings/structures less than 45 year in age, provided that the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.

3. Enhancement, repair or replacement of existing communication towers and antenna structures provided the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.
4. Installation of new temporary (not to exceed 12 months) communications towers and antenna structures provided that the work occurs does not require modification of buildings/structures older than 45 years and occurs within previously disturbed soils.
5. Installation of new communication towers, less than 200 feet tall, in previously developed urban complexes when the work does not require modification of buildings/structures older than 45 years, occurs within previously disturbed soils and is not within 500 feet of the boundaries of a historic property.

**V. WATER RESOURCE MANAGEMENT AND CONTROLS**, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.

**A. Canal Systems**

1. In-kind repairs or replacement to canal systems and associated elements.

**B. Breakwaters, Seawalls, Revetments, and Berms**

1. In-kind repair or replacement of breakwaters, seawalls, and revetments, provided the work occurs in previously disturbed soils.

**C. Dams, Levees, and Floodwalls**

1. In-kind repair of dams, levees, floodwalls and related features, including spillways, tide gates, and fuse plugs, provided the work occurs in previously disturbed soils.

**D. Fish Hatcheries**

1. In-kind repair or replacement of fish hatcheries and fish ladders.

**E. Waste-Water Treatment Lagoon Systems**

1. In-kind repair or replacement, or minor upgrades of waste-water treatment lagoon systems.

**VI. OTHER PROGRAM ACTIVITIES**

**A. Elevation, Demolition, and Reconstruction**

1. Activities related to the elevation, demolition and/or reconstruction of buildings or structures less than 45 years of age so long as the proposed activities substantially

conform to the original footprint and/or are performed in previously disturbed soils including any staging area, and the buildings or structures are not located within or adjacent to a National Register or LPC historic district.

**B. Safe Rooms**

1. Installation of individual safe rooms within the property limits of a residence where the installation will occur within an existing structure or building that is less than 45 years of age and has been determined by FEMA not to be significant under Criterion G, or within previously disturbed soils.

## Appendix C

### Treatment Measures

[to be negotiated on a state-by-state basis]

**The following Treatment Measures are suggested for the resolution of Adverse Effects:**

If Undertakings result or will result in adverse effects, FEMA, the SHPO, OEM, and Participating Tribes(s), may develop a treatment measure plan that includes one or more of the following Treatment Measures, depending on the nature of historic properties affected and the severity of adverse effects. If an Undertaking will adversely affect a LPC designated or calendared properties, LPC may participate in development of a treatment measure plan. This Appendix may be amended in accordance with Stipulation IV.A.3 of this Agreement, Amendments.

#### A. Recordation Package

1. **Digital Photography Package:** Prior to project implementation, the designated responsible party shall oversee the successful delivery of a Digital Photography Package prepared by staff or contractors that meet the Secretary's Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. The Digital Photography Package will meet the standards cited in the National Park Service's *National Register of Historic Places Photographic Policy March 2010* or subsequent revisions (<http://www.nps.gov/nr/publications/bulletins/photopolicy/index.htm>).
  - a. The Digital Photography Package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.
  - b. The Digital Photography Package shall include printed color copies of the digital photographs (on appropriate paper, per *NPS Photographic Policy*), a CD/DVD of the digital photographs, a completed state architectural inventory form, and a written site history of the historic property.
  - c. The designated responsible party shall submit the Digital Photography Package to the SHPO and Participating Tribe(s) for review and approval. Once approved by the SHPO and Participating Tribe(s), the designated responsible party shall submit full copies of the approved Digital Photography Package to \_\_\_\_\_ for permanent retention.

2. **35 mm Black and White Film Photography Package:** Prior to project implementation, the designated responsible party shall oversee the successful delivery of a 35 mm Black and White Film Photography Package prepared by staff or contractors that meet the Secretary's Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
  - a. The 35 mm Black and White Film Photography Package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.
  - b. The 35 mm Black and White Film Photography Package shall include one (1) full set of 35mm film black and white photographs printed on acid free paper, the corresponding 35mm film negatives in acid free sleeves, a completed state architectural inventory form, and a written site history of the historic property.
  - c. The designated responsible party shall submit the 35 mm Black and White Film Photography Package to the SHPO and Participating Tribe(s) for review and approval. Once approved by the SHPO and Participating Tribe(s), the designated responsible party shall submit full copies of the approved 35 mm Black and White Film Photography Package to \_\_\_\_\_ for permanent retention.
3. **Large Format Film Photography Package:** Prior to project implementation, the designated responsible party shall oversee the successful delivery of a Large Format Film Photography Package prepared by staff or contractors that meet the Secretary's Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
  - a. The Large Format Film Photography Package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.

- b. The Large Format Film Photography Package shall include one (1) full set of 4 x 5 or 5 x 7-inch photographs printed on acid free paper, the corresponding 4 x 5 or 5 x 7-inch negatives in acid free sleeves, a completed state architectural inventory form, and a written site history of the historic property.
- c. The designated responsible party shall submit the Large Format Film Photography Package to the SHPO and Participating Tribe(s) for review and approval. Once approved by the SHPO and affected Tribe(s), the designated responsible party shall submit full copies of the approved Large Format Film Photography Package to \_\_\_\_\_ for permanent retention.

**B. Design Review by SHPO and Participating Tribe(s)**

Prior to project implementation, FEMA, the Grantee, and subgrantee shall work with the SHPO and Participating Tribe(s) to develop a historically compatible design. Plans and specifications will, to the greatest extent feasible, preserve the basic character of a building. Primary emphasis shall be given to the major street elevations that are visible. Significant contributing features (e.g. trim, windows, doors, porches) will be repaired or replaced with either in-kind materials or materials that come as close as possible to the original materials in basic appearance. Aesthetic camouflaging treatments such as use of veneers, paints, texture compounds and other surface treatments and/or use of sympathetic infill panels and landscaping features will be employed to the greatest extent feasible. Final construction drawings used in the bidding process will be submitted to the SHPO and Participating Tribe(s) for review and comment prior to the award of a construction contract and the initiation of construction activities.

**C. Tribal Treatment Plan**

FEMA shall work with the Participating Tribe(s) to develop a plan for the protection and treatment of, including but not limited to, Native American remains, funerary objects, cultural and religious landscapes, ceremonial items, traditional gathering areas and cultural items, for known sites and in the event that any are discovered in conjunction with the Undertaking, including archaeological studies, excavation, geotechnical investigations, grading, and all ground-disturbing activity. The plan will also formalize procedures for Tribal monitoring during archaeological studies, grading, and ground disturbing activities for the Undertaking. No photography of Native Americans human remains or funerary objects will be allowed. No photography of Native Americans human remains or funerary objects will be allowed.

**D. Public Interpretation**

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and Participating Tribe(s) to design an educational interpretive plan. The plan may include signs, displays, educational pamphlets, websites, workshops and other similar mechanisms to educate the public on historic properties within the local community, state, or region. Once an interpretive plan has been agreed to by the parties, SHPO, Participating

Tribe(s), and the designated responsible party will continue to consult throughout implementation of the plan until all agreed upon actions have been completed by the designated responsible party.

#### **E. Historical Context Statements and Narratives**

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and Participating Tribe(s) to determine the topic and framework of a historic context statement or narrative the designated responsible party shall be responsible for completing. The statement or narrative may focus on an individual property, a historic district, a set of related properties, or relevant themes as identified in the statewide preservation plan. Once the topic of the historic context statement or narrative has been agreed to, the designated responsible party shall continue to coordinate with the SHPO and Participating Tribe(s) through the drafting of the document and delivery of a final product. The SHPO and Participating Tribe(s) shall have final approval over the end product. The designated responsible party will use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

#### **F. Oral History Documentation**

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and Participating Tribe(s) to identify oral history documentation needs and agree upon a topic and list of interview candidates. Once the parameters of the oral history project have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and Participating Tribe(s) through the data collection, drafting of the document, and delivery of a final product. The SHPO and Participating Tribe(s) shall have final approval over the end product. The designated responsible party will use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

#### **G. Historic Property Inventory**

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and Participating Tribe(s) to establish the appropriate level of effort to accomplish a historic property inventory. Efforts may be directed toward the resurvey of previously designated historic properties and/or districts which have undergone change or lack sufficient documentation, or the survey of new historic properties and/or districts that lack formal designation. Once the boundaries of the survey area have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and Participating Tribe(s) through the data collection process. The designated responsible party will use SHPO and Participating Tribe(s) standards for the survey of historic properties and SHPO and Participating Tribe(s) forms as appropriate. The designated responsible party will prepare a draft inventory report, according to SHPO and Participating Tribe(s) templates and guidelines, and work with the SHPO and Participating Tribe(s) until a final property inventory is approved. The designated responsible party will use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

## **H. National Register and National Historic Landmark Nominations**

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO, and Participating Tribe(s) to identify the individual properties that would benefit from a completed National Register or National Historic Landmark nomination form. Once the parties have agreed to a property, the designated responsible party shall continue to coordinate with the SHPO and Participating Tribe(s) through the drafting of the nomination form. The SHPO and Participating Tribe(s) will provide adequate guidance to the designated responsible party during the preparation of the nomination form and shall formally submit the final nomination to the Keeper for inclusion in the National Register. The designated responsible party will use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

## **I. Geo-References of Historic Maps and Aerial Photographs**

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and Participating Tribe(s) to identify the historic maps and/or aerial photographs for scanning and geo-referencing. Once a list of maps and/or aerial photographs have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and Participating Tribe(s) through the scanning and geo-referencing process and shall submit drafts of paper maps and electronic files to them for review. The SHPO and Participating Tribe(s) shall have final approval on the quality of the documentation provided by the designated responsible party. The final deliverable shall include a paper copy of each scanned image, a geo-referenced copy of each scanned image, and the metadata relating to both the original creation of the paper maps and the digitization process.

## APPENDIX D

**TO THE PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,  
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,  
THE DELAWARE NATION,  
THE DELAWARE TRIBE OF INDIANS,  
THE SHINNECOCK NATION,  
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,  
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AS A RESULT OF HURRICANE SANDY**

**WHEREAS**, as a result of Hurricane Sandy (DR-4085-NY) (Disaster Declaration), the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq.*) (Stafford Act); the National Flood Insurance Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the Flood Disaster Protection Act of 1973, Pub. L. No. 93-234 (1973) (as amended); the National Flood Insurance Reform Act of 1994, Pub. L. No. 103-325 (1994) (as amended); and implementing regulations contained in Title 44 of the Code of Federal Regulations (C.F.R.), proposes to provide assistance through the New York State Office of Emergency Management (OEM); and

**WHEREAS**, FEMA consulted with OEM, the New York State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP) and [insert others here] to develop and execute a Programmatic Agreement (PA) for its disaster recovery activities in [insert date of PA execution]; and

**WHEREAS**, [federal agency will fill in name, statutory authority, and undertaking]; and

**WHEREAS**, Stipulation [insert number here] of this PA allows other Federal agencies to fulfill their Section 106 responsibilities for those types of undertakings addressed in this PA by fully accepting all the terms of the PA and executing this Addendum;

**NOW, THEREFORE,** [federal agency] has determined to accept the terms and conditions of the PA and thereby take into account the effects of its undertakings and satisfy its Section 106 responsibilities.

**EXECUTION AND IMPLEMENTATION** of this Addendum to the PA evidences that [federal agency] has taken into account the effects of its undertaking on historic properties, and that through the execution of this Addendum and implementation of the PA, the [federal agency] will satisfy its responsibilities under Section 106 of the National Historic Preservation Act and its implementing regulations for the referenced [program or undertaking].

**SIGNATORY PARTIES:**

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

\_\_\_\_\_ Date: \_\_\_\_\_  
[name]  
[title]

**NEW YORK STATE HISTORIC PRESERVATION OFFICER**

\_\_\_\_\_ Date: \_\_\_\_\_  
[name]  
[title]

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

\_\_\_\_\_ Date: \_\_\_\_\_  
John M. Fowler  
Executive Director

**[OTHER FEDERAL AGENCY]**

Date: \_\_\_\_\_

\_\_\_\_\_

[name]

[title]

## **Appendix E**

### **Stump Removal Guidance**

Removal of stumps will be accomplished by attaching a chain to the stump and a piece of heavy equipment which will then pull the unexposed portion of the stump from the ground. If this method is not practicable, then the bucket of the machine will be used to grab and pull the stump out. Additional excavation in the surrounding soil will be avoided whenever possible and minimized when it is necessary. Void spaces will be backfilled with fill soil and any original loose native soil from the rootball when possible. Locations for proposed stump removal that are proposed to occur in areas with known archeological sites will undergo further evaluation and consultation. An archeologist will be present during the removal of rootballs within or adjacent to previously recorded archeological sites or when there are unexpected discoveries. If any potential archeological resources are discovered, work will immediately cease, and the Subgrantee or contractor will notify the Grantee and FEMA.

**To All Respondents:**

**Please note that the date for the posting of the Question & Answers responses for the Pre-Construction Professional Services RFP has been changed from the originally schedule May 21<sup>st</sup>, 2013 to May 23<sup>rd</sup>, 2013.**

**THIS ADDENDUM MUST BE SIGNED BY THE PROPOSER AND ATTACHED TO THE TECHNICAL PROPOSAL WHEN SUBMITTED.**

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

By: Maryann Catalano  
Title: Senior Vice President, Contracts

**ACKNOWLEDGED AND AGREED:**

Name of Proposer: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**To All Respondents:**

Please note that an attachment: “PROGRAMMATIC AGREEMENT AMONG THE FEDERAL EMERGENCY MANAGEMENT AGENCY, THE NEW YORK STATE HISTORIC PRESERVATION OFFICE, THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT, THE DELAWARE NATION, THE DELAWARE TRIBE OF INDIANS, THE SHINNECOCK NATION, THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS, THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AS A RESULT OF HURRICANE SANDY” has been posted on the NYCEDC website as a part of response c. to Question 51).

**THIS ADDENDUM MUST BE SIGNED BY THE PROPOSER AND ATTACHED TO THE TECHNICAL PROPOSAL WHEN SUBMITTED.**

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
By: Maryann Catalano  
Title: Senior Vice President, Contracts

**ACKNOWLEDGED AND AGREED:**

Name of Proposer: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_