April 4, 2016

13 State Street LLC
c/o Norstar Development USA, L.P.
733 Broadway
Albany, New York 12207
Attention: Richard L. Higgins, President

Re: **Housing Trust Fund Corporation Commitment Letter**
**Project ID No. N/A / 13 State Street**

Ladies and Gentlemen:

I am pleased to inform you that the Housing Trust Fund Corporation ("**HTFC**") acting by and through the Governor's Office of Storm Recovery ("**GOSR**") has authorized and approved the issuance of this commitment to make certain Community Development Block Grant Disaster Recovery ("**CDBG-DR**") funds available to 13 State Street LLC as a loan under the terms and conditions set forth herein for the "**Project**," as more particularly described herein. Upon acceptance of the terms and conditions of this commitment, this letter will be a binding agreement between both of you and HTFC. GOSR has been appointed by HTFC to administer CDBG-DR funds. The basic terms of this commitment are as follows:

| | |
|---|---|
| **Loan Awardee:** | 13 State Street LLC |
| **Program:** | CDBG-DR Program |
| **CDBG –DR Loan Amount:** | $6,325,000.00 |
| **Term of Loan and Interest Rate:** | As set forth on Exhibit 3 hereto |

HTFC's offer is conditioned upon your respective agreements to deliver the Project described in your application for funding, as revised by HTFC in the accompanying attachments, and to construct, operate and manage the Project in compliance with the policies and procedures of HTFC as set forth in its manuals, statutes and regulations which are hereby expressly incorporated by this reference into this commitment. This offer is also conditioned upon your compliance with the New York State Housing Finance Agency ("**HFA**") commitment letter to Loan Awardee dated on or about March 23, 2016. This offer is also subject to HTFC's review and approval of the Project as required under any applicable federal or state environmental laws and regulations.

Attached to this commitment are the Exhibits listed below. These Exhibits contain the essential terms of this commitment including, but not limited to, development timetable, Minority/Women-Owned Business Enterprise (M/WBE) requirements, and project finance and operating economics.

The Exhibits are as follows:

1. Description of the Project and Owner
2. Income Groups to be Served
3. Project Financing and Equity Requirements

3-A Development Budget
3-B Residential Operating Economics

4. Development Timetable and Schedule of Submissions
5. Minority and Women-Owned Business Participation and Section 3 Goals
6. Environmental Submissions
7. Marketing and Management Plan, Fair Housing-Affirmative Marketing Plan
8. Closing Requirements
9. CDBG-DR Program Federal and State Requirements

Satisfaction of all the conditions set forth in this letter and the accompanying Exhibits is required in order to obtain this financing. Noncompliance with any of the terms or conditions of this commitment shall be grounds for HTFC to terminate this commitment without liability to you. This commitment will expire upon written notice from HTFC, if the milestones listed in the Development Timetable and Schedule of Submissions are not satisfied. This commitment may not be assigned or modified without the prior written agreement of HTFC and is specifically limited to the Project and property described in your application. After this letter is executed and returned to HTFC, a Project Development Meeting may be scheduled at a mutually convenient time.

Carefully review the terms of this commitment letter and the conditions set forth in each of the attached exhibits as those terms and conditions may represent revisions to the project proposed in your application.

If you wish to accept this offer of commitment as described herein and as set forth in the exhibits please indicate your acceptance by executing this commitment below, initialing all pages of the exhibits where indicated and returning all three (3) of the enclosed originals to HTFC within thirty (30) days of receipt of this letter, at the above address, Attn: Paul Lozito. **Within the time for accepting this commitment, you may request a meeting with HTFC representatives to review the terms of the commitment. This meeting, if requested, should be scheduled through Paul Lozito, HTFC, 25 Beaver Street, New York, New York 10004; tel. no. (212) 480-4656. HTFC will not consider requests for substantive changes to the terms of this commitment.**

Congratulations and best wishes for success in the development of this project.

[redacted]

Lisa Bova-Hiatt
Executive Director

Loan Awardee: 13 State Street LLC
Project ID No. N/A

**All the terms and conditions set forth herein are agreed to**

**and accepted by Loan Awardee this 5th day of April, 2016.**

**BORROWER**:

**13 STATE STREET LLC**,
a New York limited liability company

By: Norstar 13 State Street Inc.
a New York corporation
its Managing Member

[redacted]

By: _____
Richard L. Higgins
Vice President

Attachments

## EXHIBIT 1

## DESCRIPTION OF THE PROJECT AND OWNER

The Loan Awardee will use the funds to acquire and rehabilitate the former Schenectady YMCA into (i) 61-units of affordable rental housing, of which 48 units will be set aside for households earning 60% of area median income and 13 units will be set aside for households earning up to 80% of area median income, (ii) common areas and (iii) approximately 8,796 of commercial space, located at 13 State Street, City and County of Schenectady, New York 12305.

The Loan Awardee is 13 State Street LLC, a New York limited liability company with one managing member, Norstar 13 State Street Inc., a New York corporation, having a 0.01% interest ("**Managing Member**") and one investor member, which is Key Community Development Corporation, having a 99.99% interest ("**Investor Member**").

**EXHIBIT 2**

**INCOME GROUPS TO BE SERVED**

The following number of units will serve the listed income groups:

CDBG-DR Program regulated units for a term of five (5) years and thereafter subject to the HFA Regulatory Agreement.

| Unit Type (# Bedrooms) | Number of Units | Not To Exceed of Area Median Income |
|---|---|---|
| 1-bedroom | 40 | 60% |
| 1-bedroom | 9 | 80% |
| 1-bedroom with den | 6 | 60% |
| 1-bedroom with den | 4 | 80% |
| 2-bedroom | 2 | 60% |
| TOTAL | 61 | |

## EXHIBIT 3

## PROJECT FINANCING AND EQUITY REQUIREMENTS

The approved Development costs of the Project are set forth on Exhibit 3-A attached hereto (the **"Development Budget"**).

All line items in the Development Budget reflect the maximum amounts to be funded by sources identified below, except for reserves, which reflect the minimum required amount to be funded.

**Sources:**

| | | |
|---|---|---|
| I. | Lender: | New York State Housing Finance Agency |
| | Loan Amount: | $8,600,000, of which $7,160,000 shall be subject to a mandatory prepayment and a maximum of $1,440,000 will converted to a permanent loan. |
| | Type: | Construction to Permanent Financing, Utilizing Tax Exempt Bonds |
| | Term: | Construction Phase shall be 24 months (plus one six month extension option); and Permanent Phase shall be 30 years. |
| | Lien Position: | First Priority Construction Mortgage Lien and First Priority Permanent Lien |
| | Interest Rate: | 2.00% (estimated) during the Construction Phase and 4.25% (estimated) during the Permanent Phase. |
| II. | Lender: | New York State Housing Finance Agency from Community Investment Funds |
| | Loan Amount: | $500,000 |
| | Type: | Construction to Permanent Loan |
| | Term: | Construction Phase shall be 24 months (plus one six month extension option) and Permanent Phase shall be 30 years. |
| | Lien Position: | Second Priority Lien during Construction and Permanent Phases |
| | Interest Rate: | 6.00% interest only during the Construction Phase, with interest accruing and added to the principal amount of the loan at conversion; 1.00% interest only during the Permanent Phase from cash flow. |
| III. | Lender: | Housing Trust Fund Corporation |
| | Loan Amount: | $6,325,000 |
| | Type: | Construction to Permanent financing; Governor's Office of Storm Recovery Disaster Relief Program |

## EXHIBIT 3

## PROJECT FINANCING AND EQUITY REQUIREMENTS (cont'd)

| | |
|---|---|
| Term: | Construction Phase shall be 24 months (plus one six month extension option) and Permanent Phase shall be 30 years. |
| Lien Position: | Third Priority Lien during Construction and Permanent Phases |
| Interest Rate: | 6.00% interest only during the Construction Phase, with interest accruing and added to the principal amount of the loan at conversion; 1.00% interest only during the Permanent Phase from cash flow |
| LIHTC and HTC Equity: | Approximately $2,240,964 during construction and $8,963,935 during permanent (total construction and permanent) |
| TOTAL SOURCES: | Approximately $18,503,321 |

If at any time there are material changes to the identified funding sources, or additional funding commitments from another financing source are obtained, **a copy of the modified or new commitment must he provided to HCR within five (5) business days of receipt**.

If additional financing is required to complete the Project, such financing will be obtained by the Awardee without creating any additional liens or encumbrances on the project.

Project retainage and hold back of punch list costs will be released in accordance with the provisions of the Senior Lender's Loan Agreement. Any savings in approved project costs indicated by a cost certification will result in a reduction of the award adjusted by any loss in equity proceeds.

**EXHIBIT 3-A**

**DEVELOPMENT BUDGET ON THE FOLLOWING PAGE**

| | |
|---|---|
| Borrower: 13 State Street, LLC | |
| Premises: Schenectady, NY | 5/17/2016 |
| | FINAL |
| Total HFA Bonds $8,600,000 | |

| Item No. | Item | SOURCES==> | $8,600M HFA | $6,325M CDBG Disaster Recovery | $500M Commercial Investment Funds | CDBG Accrued Interest | CIF Accrued Interest | Closing Equity | Post Closing Equity | Deferred Dev. Fee | Total Budget (net of s/t bond redemption) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | TOTAL PERMANENT BUDGET | | | | | | | | |
| | | | 8,600,000 | 6,325,000 | 500,000 | 680,508 | 60,000 | 2,240,984 | 6,722,951 | 533,878 | 18,503,321 |
| | **BUILDING LOAN COSTS** | | | | | | | | | | |
| | **Hard Costs - BLA** | | | | | | | | | | |
| 1 | Sitework | 50,000 | 35,000 | 15,000 | 0 | 0 | 0 | 0 | 0 | | 50,000 |
| 2 | Demolition | 250,000 | 175,000 | 75,000 | 0 | 0 | 0 | 0 | 0 | | 250,000 |
| 3 | Environmental Remediation | 1,000,000 | 700,000 | 300,000 | 0 | 0 | 0 | 0 | 0 | | 1,000,000 |
| 4 | Residential | 7,900,000 | 4,218,853 | 3,681,147 | 0 | 0 | 0 | 0 | 0 | | 7,900,000 |
| 5 | Commercial | 675,000 | 0 | 235,000 | 440,000 | 0 | 0 | 0 | 0 | | 675,000 |
| 6 | Bond Premium | 106,000 | 74,200 | 31,800 | 0 | 0 | 0 | 0 | 0 | | 106,000 |
| 7 | Security | 20,000 | 14,000 | 6,000 | 0 | 0 | 0 | 0 | 0 | | 20,000 |
| 8 | Insurance | 125,000 | 87,500 | 37,500 | 0 | 0 | 0 | 0 | 0 | | 125,000 |
| 9 | General Requirements | 592,500 | 388,350 | 177,750 | 26,400 | 0 | 0 | 0 | 0 | | 592,500 |
| 10 | Builders Overhead | 197,500 | 129,450 | 59,250 | 8,800 | 0 | 0 | 0 | 0 | | 197,500 |
| 11 | Builders Profit | 592,500 | 389,950 | 177,750 | 24,800 | 0 | 0 | 0 | 0 | | 592,500 |
| 12 | Hard Cost Contingency | 987,500 | 587,500 | 400,000 | 0 | 0 | 0 | 0 | 0 | | 987,500 |
| | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 0 |
| | **Total Hard Costs - BLA** | 12,496,000 | 6,799,803 | 5,196,197 | 500,000 | 0 | 0 | 0 | 0 | 0 | 12,496,000 |
| | | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 0 |
| | | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 0 |
| | **Land Acquisition - BLA** | 276,000 | 0 | 0 | 0 | 0 | 0 | 276,000 | 0 | | 276,000.00 |
| | | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 0.00 |
| | **Soft Costs - BLA** | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 0 |
| | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 0 |
| 1 | Appraisal/Market Study | 14,050 | 0 | 0 | 0 | 0 | 0 | 14,050 | 0 | | 14,050 |
| 2 | Survey/SEQR/Historic | 71,880 | 0 | 51,865 | 0 | 0 | 0 | 20,015 | 0 | | 71,880 |
| 3 | HFA/SONYMA Fees | 245,311 | 0 | 0 | 0 | 0 | 0 | 245,311 | 0 | | 245,311 |
| 4 | Environmental/Archeological | 135,088 | 0 | 85,000 | 0 | 0 | 0 | 50,088 | 0 | | 135,088 |
| 5 | Architect/Engineering | 390,000 | 95,186 | 24,234 | 0 | 0 | 0 | 270,579 | 0 | | 389,999 |
| 6 | JPMC Commitment fee | 86,502 | 0 | 0 | 0 | 0 | 0 | 86,502 | 0 | | 86,502 |
| 7 | JPMC annual LC fee | 228,749 | 215,471 | 0 | 0 | 0 | 0 | 13,278 | 0 | | 228,749 |
| 8 | IDA Fees | 89,800 | 0 | 0 | 0 | 0 | 0 | 89,800 | 0 | | 89,800 |
| 9 | Insurance | 147,632 | 0 | 70,000 | 0 | 0 | 0 | 77,632 | 0 | | 147,632 |
| 10 | Davis Bacon Monitoring | 75,000 | 0 | 75,000 | 0 | 0 | 0 | 0 | 0 | | 75,000 |
| 11 | Bond Interest - BLA | 360,194 | 360,194 | 0 | 0 | 0 | 0 | 0 | 0 | | 360,194 |
| 12 | CDBG Interest | 680,508 | 0 | 0 | 0 | 680,508 | 0 | 0 | 0 | | 680,508 |
| 13 | ChaseLegal 60M/Key 50M | 110,000 | 0 | 0 | 0 | 0 | 0 | 110,000 | 0 | | 110,000 |
| 14 | Construction Monitor | 30,000 | 0 | 30,000 | 0 | 0 | 0 | 0 | 0 | | 30,000 |
| 15 | CIF Interest | 60,000 | 0 | 0 | 0 | 0 | 60,000 | 0 | 0 | | 60,000 |
| 16 | Real Estate Taxes | 37,500 | 0 | 12,500 | 0 | 0 | 0 | 25,000 | 0 | | 37,500 |
| | **Total Soft Costs - BLA** | 2,762,214 | 670,851 | 348,599 | 0 | 680,508 | 60,000 | 1,002,253 | 0 | 0 | 2,762,212 |
| | **TOTAL BUILDING LOAN COSTS** | 15,534,214 | 7,470,654 | 5,544,796 | 500,000 | 680,508 | 60,000 | 1,278,253 | 0 | 0 | 15,534,212 |
| | **PROJECT LOAN COSTS** | | | | | | | | | | |
| 1 | Developer Fee | 983,791 | 983,791 | 0 | 0 | 0 | 0 | 0 | 0 | | 983,791 |
| 2 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 0 |
| 3 | Bond Interest | 48,606 | 48,606 | 0 | 0 | 0 | 0 | 0 | 0 | | 48,606 |
| 4 | Permits | 47,494 | 0 | 20,000 | 0 | 0 | 0 | 27,494 | 0 | | 47,494 |
| 5 | Legal - Developer | 162,412 | 0 | 1,000 | 0 | 0 | 0 | 161,412 | 0 | | 162,412 |
| 6 | Cost Cert/95-5 | 35,000 | 0 | 30,500 | 0 | 0 | 0 | 4,500 | 0 | | 35,000 |
| 7 | Title/Recording | 117,227 | 0 | 20,000 | 0 | 0 | 0 | 97,227 | 0 | | 117,227 |
| 8 | Soft Cost Contingency | 30,000 | 30,000 | 0 | 0 | 0 | 0 | 0 | 0 | | 30,000 |
| 9 | SONYMA MIP | 7,200 | 0 | 0 | 0 | 0 | 0 | 7,200 | 0 | | 7,200 |
| 10 | SONYMA P&I | 7,970 | 0 | 0 | 0 | 0 | 0 | 7,970 | 0 | | 7,970 |
| 11 | Initial Operating Deficit | 47,000 | 0 | 46,000 | 0 | 0 | 0 | 1,000 | 0 | | 47,000 |
| 12 | Management/Marketing | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 0 |
| 13 | Purchase of Maintenance Equip | 58,603 | 0 | 58,603 | 0 | 0 | 0 | 0 | 0 | | 58,603 |
| 14 | Developer Fee | 1,189,805 | 0 | 0 | 0 | 0 | 0 | 655,927 | 0 | 533,878 | 1,189,805 |
| 15 | Operating Reserve | 234,000 | 66,949 | 0 | 0 | 0 | 0 | 0 | 167,051 | | 234,000 |
| | **TOTAL PROJECT LOAN COSTS** | 2,969,108 | 1,129,346 | 176,103 | 0 | 0 | 0 | 962,730 | 167,051 | 533,878 | 2,969,108 |
| | **TOTAL COSTS** | 18,503,322 | 8,600,000 | 5,720,899 | 500,000 | 680,508 | 60,000 | 2,240,984 | 167,051 | 533,878 | 18,503,320 |
| | **Bond Redemption ======>>>>>>** | | 7,160,000 | 604,101 | 0 | 0 | 0 | 0 | 6,555,900 | 0 | 7,160,000 |
| | | | | | | | | | | | Bond |
| | **Permanent Bonds =====>** | | 1,440,000 | | | | | | | | Redemption |

Above is the Project Cost Statement for the Total Budget and for the Construction Period Budget, information provided by the Borrower.

Accepted and Agreed By:

Title: _____

Organization: _____

Date: _____

| | |
|---|---|
| Developer Fee Check | **2,173,596.00** |
| | 2,173,596.00 |

| Construction Period Budget | | | | | |
|---|---|---|---|---|---|
| | $8,600,000 HFA Bonds | $5,720,900 CDBG Funds | $500,000 CIF Funds | $2,240,984 Closing Equity | Total Construction Period |
| | $ 8,600,000 | $ 5,720,900 | $ 500,000 | $ 2,240,984 | 17,061,884 |
| **BUILDING LOAN COSTS** | | | | | |
| **Hard Costs - BLA** | | | | | |
| Sitework | 35,000 | 15,000 | 0 | 0 | 50,000 |
| Demolition | 175,000 | 75,000 | 0 | 0 | 250,000 |
| Environmental Remediation | 700,000 | 300,000 | 0 | 0 | 1,000,000 |
| Residential | 4,218,853 | 3,681,147 | 0 | 0 | 7,900,000 |
| Commercial | 0 | 235,000 | 440,000 | 0 | 675,000 |
| Bond Premium | 74,200 | 31,800 | 0 | 0 | 106,000 |
| Security | 14,000 | 6,000 | 0 | 0 | 20,000 |
| Insurance | 87,500 | 37,500 | 0 | 0 | 125,000 |
| General Requirements | 388,350 | 177,750 | 26,400 | 0 | 592,500 |
| Builders Overhead | 129,450 | 59,250 | 8,800 | 0 | 197,500 |
| Builders Profit | 389,950 | 177,750 | 24,800 | 0 | 592,500 |
| Hard Cost Contingency | 587,500 | 400,000 | 0 | 0 | 987,500 |
| | 0 | 0 | 0 | 0 | 0 |
| **Total Hard Costs - BLA** | **6,799,803** | **5,196,197** | **500,000** | **0** | **12,496,000** |
| | | | | | |
| | | | | | |
| **Land Acquisition - BLA** | **0** | | **0** | **276,000** | **276,000** |
| | | | | | |
| **Soft Costs - BLA** | | | | | |
| | | | | | |
| Appraisal/Market Study | 0 | 0 | 0 | 14,050 | 14,050 |
| Survey/SEQR/Historic | 0 | 51,865 | 0 | 20,015 | 71,880 |
| HFA/SONYMA Fees | 0 | 0 | 0 | 245,311 | 245,311 |
| Environmental/Archeological | 0 | 85,000 | 0 | 50,088 | 135,088 |
| Architect/Engineering | 95,186 | 24,234 | 0 | 270,579 | 389,999 |
| JPMC Commitment fee | 0 | 0 | 0 | 86,502 | 86,502 |
| JPMC annual LC fee | 215,471 | 0 | 0 | 13,278 | 228,749 |
| IDA Fees | 0 | 0 | 0 | 89,800 | 89,800 |
| Insurance | 0 | 70,000 | 0 | 77,632 | 147,632 |
| Davis Bacon Monitoring | 0 | 75,000 | 0 | 0 | 75,000 |
| Bond Interest - BLA | 360,194 | 0 | 0 | 0 | 360,194 |
| CDBG Interest | 0 | 0 | 0 | 0 | 0 |
| ChaseLegal 60M/Key 50M | 0 | 0 | 0 | 110,000 | 110,000 |
| Construction Monitor | 0 | 30,000 | 0 | 0 | 30,000 |
| CIF Interest | 0 | 0 | 0 | | 0 |
| Real Estate Taxes | 0 | 12,500 | 0 | 25,000 | 37,500 |
| **Total Soft Costs - BLA** | **670,851** | **348,599** | **0** | **1,002,253** | **2,021,704** |
| | | | | | |
| **TOTAL BUILDING LOAN COSTS** | **7,470,654** | **5,544,796** | **500,000** | **1,278,253** | **14,793,704** |
| | | | | | |
| **PROJECT LOAN COSTS** | | | | | |
| Developer Fee | 983,791 | 0 | 0 | 0 | 983,791 |
| | 0 | | | | 0 |
| Bond Interest | 48,606 | 0 | 0 | 0 | 48,606 |
| Permits | 0 | 20,000 | 0 | 27,494 | 47,494 |
| Legal - Developer | 0 | 1,000 | 0 | 161,412 | 162,412 |
| Cost Cert/95-5 | 0 | 30,500 | 0 | 4,500 | 35,000 |
| Title/Recording | 0 | 20,000 | 0 | 97,227 | 117,227 |
| Soft Cost Contingency | 30,000 | 0 | 0 | 0 | 30,000 |
| SONYMA MIP | 0 | 0 | 0 | 7,200 | 7,200 |
| SONYMA P&I | 0 | 0 | 0 | 7,970 | 7,970 |
| Initial Operating Deficit | 0 | 46,000 | 0 | 1,000 | 47,000 |
| Management/Marketing | 0 | 0 | 0 | 0 | 0 |
| Purchase of Maintenance Equip | 0 | 58,603 | 0 | | 58,603 |
| Developer Fee | 0 | 0 | 0 | 655,927 | 655,927 |
| Operating Reserve | 66,949 | 0 | 0 | | 66,949 |
| **TOTAL PROJECT LOAN COSTS** | **1,129,346** | **176,103** | **0** | **962,730** | **2,268,179** |
| | | | | | |
| **TOTAL COSTS** | **8,600,000** | **5,720,899** | **500,000** | **2,240,984** | **17,061,883** |
| | **8,600,000** | **5,720,900** | **500,000** | **2,240,984** | |

**EXHIBIT 3-B**

**RESIDENTIAL OPERATING ECONOMICS**

**Approved Initial Rents:**

| Unit Type | Number of Units by Type | Monthly Basic Rent | Tenant-Paid Utilities |
|---|---|---|---|
| 1 bedroom (60% AMI) | 40 | 703 | 105 |
| 1 bedroom (80% AMI) | 9 | 750 | 105 |
| 1 bedroom with den (60% AMI) | 6 | 728 | 105 |
| 1 bedroom with den (80% AMI) | 4 | 925 | 105 |
| 2 bedroom (60% AMI) | 2 | 835 | 134 |

Total number of HTFC regulated units: 61

The Operating Budget must include the following annual operating expenses:

| | |
|---|---|
| Operating Reserve: | $ 206,000 |
| Replacement Reserve: | $ 250/unit, increasing annually as required by HFA |
| GOSR CDBG-DR Debt Service: | $ Payments made from 50% of Excess Income, which tracks the net cash flow set forth in Borrower's Operating Agreement |

Debt service on loans to the owner of the project or property from any principal of the project, general or limited partner, developer, affiliate, or other parties related to the project shall be payable only from project revenues after payment of all operating expenses, scheduled reserve payments and other approved mortgage debt service. Any expense payment to the owner of the project or property, principal of the project, a party related to the owner, affiliate, partner or shareholder must be approved in advance by HTFC other than any management fee and any developer fee.

## EXHIBIT 4

## DEVELOPMENT TIMETABLE AND SCHEDULE OF SUBMISSION

Awardee will provide required submissions and achieve the milestones listed on the following timetable.

| Milestones | Deadline[1] |
|---|---|
| • Construction Start: | Within 30 days of closing. |
| • Substantial Completion/Certificate of Occupancy: | 20 months from closing. |
| • Rent Up Completion Date: | 26 months from closing. |

[1] Failure to meet the deadlines in this Commitment Letter, or any other HTFC and/or HCR funding commitments, will adversely impact the competiveness of applications for funding submitted by members of your development team during future funding rounds.

**EXHIBIT 5**

**MINORITY AND WOMEN-OWNED BUSINESS PARTICIPATION AND SECTION 3 GOALS**

1. The minimum utilization for the proposed project are:

| | |
|---|---|
| MBE: | 10% |
| WBE: | 10% |

2. Awardee and its subcontractors shall undertake an equal opportunity (EEO) program to ensure that minority group members and women are afforded equal employment opportunities without discrimination as required by Article 15-A, Section 312,

3. The Awardee must conduct a "good faith" outreach effort to solicit the participation of New York State certified Minority and Women-Owned Businesses (M/WBE) and submit the M/WBE Utilization Plan not later than the date shown in Exhibit 5 of this commitment letter.

4. The Awardee or General Contractor must submit to HCR's Office of Fair Housing and Equal Opportunity (OFHEO) the Affirmation of Income Payments to MBE/WBE, the Monthly Employment Utilization Report (EEO) and the Cumulative Pay Statement not later than the 10th of each quarter.

5. Awardee will also ensure compliance with all additional M/WBE administrative requirements identified by the OFHEO.

6. Awardee shall comply with 12 U.S.C. 1701u and its regulations ("Section 3")

   a. Numerical hiring goals for Awardee and its contractors and subcontractors whose contracts exceed $100,000 are:

      30% of new hires for full-time employment shall be eligible residents (as defined in Section 3) of the neighborhood served by the project.

   b. Goals for utilization of Section 3 businesses which provide economic opportunities for eligible residents in the neighborhood of the proposed project are:

      10% of the total project dollar amount of all Section 3 covered contracts for building trades, housing construction or rehabilitation; and

      At least 3% of the total of all other Section 3 covered contracts.

## EXHIBIT 6

## ENVIRONMENTAL SUBMISSIONS

Awardee must:

1. Comply with all applicable federal, state and municipal laws, regulations and ordinances, as amended, pertaining to lead-based paint.

2. Awarded will be responsible for costs associated with any significant impacts that require mitigative measures, as a condition for proceeding with project construction.

## EXHIBIT 7

## MARKETING AND MANAGEMENT PLANS

## FAIR HOUSING-AFFIRMATIVE MARKETING PLAN

The Awardee shall submit a plan that identifies a strategy for Fair Housing and Marketing of the project. Awardee will comply with the provisions of any federal, state or local law prohibiting discrimination in housing on the grounds of race, color, national origin. age, sex, handicap, familial status, marital status or other protected class designation including Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1973, Executive orders 11063 and 11246, the affirmative fair housing marketing requirements and the Human Rights Laws of the State of New York, Section 4.03 and 4.04 of MICR Capital Programs Manual cite detailed requirements regarding Fair Housing policies and regulations. ***The Marketing Plan must be submitted to and approved by HTFC prior to construction financing closing***.

In addition to Fair Housing requirements, the Marketing Plan shall also include:

1. How information on affirmative marketing requirements and applicable federal and state non-discrimination laws will be made available to prospective tenants and the general public.

2. A description of steps to be taken to reach those eligible persons who would not likely apply for available housing without special outreach including advertising in publications which are distributed in minority and isolated communities and outreach through local community based organizations.

3. A description of the methods to be used for the selection of tenants for initial occupancy and as operational vacancies occur.

4. Awardee will market 4 fully accessible, adapted and move in ready units to households with at least one member who has a mobility impairment and 2 fully accessible, adapted and move in ready units to households with at least one member who has a vision or hearing impairment. Awardee must also comply with the requirements of section 504 of the Rehabilitation Act of 1973 relating to equitable distribution and design of units.

## EXHIBIT 7

## MARKETING AND MANAGEMENT PLANS (cont'd)

## MANAGEMENT PLAN

The Awardee must submit a plan for management of the project for review which includes the following:

1. The job titles and job descriptions of the persons who will be involved in the management of the project.

2 The job title of the person who will be directly responsible for the day-to-day operations, to whom, on the executive level, he/she will report.

3. If a site office will be staffed, the hours of operation and the number of staff provided.

4. The job title of the person in charge of bookkeeping for the project and the nature of the services that the person will provide.

5. The procedures for purchasing supplies and contracts for the project, and the job title of the person responsible for making purchases.

6. Provide the Management Agreement, or if not available:

Full and detailed plan for discharging responsibilities in the areas of staffing, apartment applications, tenant requests, re-renting of apartments, contract supervision, budgets, rent collection, income reviews, utilities, energy conservation, maintenance and operations, preventive maintenance, reporting, disbursements, and federal or state subsidy programs, if project is participating in any such program, and confirming the form of lease to be used is in accordance with paragraph 7.07 of the Capital Programs Manual.

7. A list of anticipated administrative expenses.

8. List any HRC supervised projects that the managing agent currently manages or has previously managed.

9. The job title of the person who will respond to tenants' requests for supportive services.

## EXHIBIT 8

## CLOSING REQUIREMENTS

A closing of the loan will be scheduled when the followings has occurred:

Closing Checklist: At least two weeks prior to the requested closing date, submission to and approval by HTFC of all items to be delivered prior to or at closing as stated in the closing checklist in the HTFC Legal Documents Manual.

Fulfillment of all conditions: Fulfillment of all conditions set out in this Commitment Letter, closing of, or fulfillment of all conditions precedent to funding of, any and all loans,, grants, and other financing required to complete the project.

Security and Loan Documents: At or before closing, Awardee shall execute and deliver to HTFC all of the following documents:

a. Construction and Permanent Note;

b. Construction and Permanent Mortgage, Assignment and Leases and Rents and Security Agreement;

c. CDBG-DR Regulatory Agreement;

d. Notice of Lending;

e. Notice of Assignment;

f. Performance and Completion Guaranty; and

g. Building Loan and Project Loan Agreement,

all of which shall in substantially the same form as the documents in the current HTFC Legal Documents Manual.

Please provide the name, address, telephone and fax numbers of the project attorney, if available:

Name: Cannon Heyman & Weiss, LLP
Attention: Geoffrey Cannon, Esq.
Address: 54 State Street, 5th Floor, Albany, NY 12207
Phone #: (518) 465-1500
Fax # (518) 465-6678

# EXHIBIT 9

## FEDERAL AND STATE (HTFC) REQUIREMENTS

**(See Attached Contract Appendices for Contracts)**

Governor's Office of Storm Recovery

Andrew M. Cuomo
Governor

Lisa Bova-Hiatt
Executive Director

# APPENDICES

*for*

# Contracts

*Housing Trust Fund Corporation*
*38-40 State Street*
*Albany, New York 12207*
*www.nyshcr.org*

# APPENDIX I

## HUD General Provisions

Borrower covenants and agrees that the following terms and conditions apply to any contract for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development ("HUD"). In addition, Contractor shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf.

1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

2. STATUTORY AND REGULATORY COMPLIANCE

Contractor shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.

3. BREACH OF CONTRACT TERMS

The State reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this contract, in instances where the Contractor or any of its subcontractors violate or breach any contract term. If the Contractor or any of its subcontractors violate or breach any contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

4. REPORTING REQUIREMENTS

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the State. The Contractor shall cooperate with all State efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 24 C.F.R. §§ 85.40-41 (or 84.50-52, if applicable) and 570.507.

5. ACCESS TO RECORDS

The State, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Contractor which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.

6. MAINTENANCE/RETENTION OF RECORDS

All records connected with this contract will be maintained in a central location and will be maintained for a period of at least four (4) years following the date of final payment and close-out of all pending matters related to this contract.

7. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

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

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

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

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

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

8. RIGHTS IN DATA

(a) *Definitions.* As used in this clause—

*Computer database* or *database* means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

*Computer software:* (1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled; and (2) Does not include computer databases or computer software documentation.

*Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

*Data* means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

*Form, fit, and function data means data* relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

*Limited rights* means the rights of HTFC in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

*Limited rights data* means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

*Restricted computer software* means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

*Restricted rights*, as used in this clause, means the rights of the HTFC in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

*Technical data*, means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)).

*Unlimited rights* means the rights of HTFC to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.*

(1) Except as provided in paragraph (c) of this clause, HTFC shall have unlimited rights in: (i) Data first produced in the performance of this contract; (ii) Form, fit, and function data delivered under this contract; (iii) Data delivered under this contract (except for restricted

computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to: (i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause; (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause; (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) *Copyright*.

(1) *Data first produced in the performance of this contract.* (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of HTFC, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of HTFC is required to assert copyright in all other data first produced in the performance of this contract; (ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of HTFC sponsorship (including contract number); (iii) For data other than computer software, the Contractor grants to HTFC, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of HTFC. For computer software, the Contractor grants to HTFC, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of HTFC.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of HTFC, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor: (i) Identifies the data; and (ii) Grants to HTFC, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, HTFC shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* HTFC will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the

Contractor in the performance of this contract, except: (1) As prohibited by Federal law or regulation (*e.g.*, export control or national security laws or regulations); (2) As expressly set forth in this contract; or (3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by HTFC.

(e) *Unauthorized marking of data.*

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, HTFC may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 253d, the following procedures shall apply prior to canceling or ignoring the markings: (i) HTFC will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings; (ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by HTFC for good cause shown), HTFC shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions; (iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, HTFC will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If HTFC determines that the markings are authorized, the Contractor will be so notified in writing. If HTFC determines, with concurrence of the head of the contracting activity, that the markings are not authorized, HTFC will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of HTFC's decision. HTFC will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by HTFC's determination becoming final (in which instance HTFC will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent HTFC's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of HTFC removing or ignoring authorized markings on data delivered under this contract.

(f) *Omitted or incorrect markings.*

(1) Data delivered to HTFC without any restrictive markings shall be deemed to have been furnished with unlimited rights. HTFC is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside HTFC, the Contractor may request, within 6 months (or a longer time approved by HTFC in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. HTFC may agree to do so if the Contractor: (i) Identifies the data to which the omitted notice is to be applied; (ii) Demonstrates that the omission of the notice was inadvertent; (iii) Establishes that the proposed notice is authorized; and (iv) Acknowledges that HTFC has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, HTFC may: (i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or (ii) Correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.*

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall: (i) Identify the data being withheld; and (ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to HTFC shall be treated as limited rights data and not restricted computer software.

(h) *Subcontracting.* The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to HTFC under this contract. If a subcontractor refuses to accept terms affording HTFC those rights, the Contractor shall promptly notify HTFC of the refusal and shall not proceed with the subcontract award without authorization in writing from HTFC.

(i) *Relationship to patents or other rights.* Nothing contained in this clause shall imply a license to HTFC under any patent or be construed as affecting the scope of any license or other right otherwise granted to HTFC.

9. ENERGY EFFICIENCY

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

10. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be

denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

11. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

12. SECTION 504 OF THE REHABILITATION ACT OF 1973

The Contractor shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations.

The Contractor agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.

13. AGE DISCRIMINATION ACT OF 1975

The Contractor shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

14. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 C.F.R. part 2424.

15. CONFLICTS OF INTEREST

The Contractor shall notify the State as soon as possible if this contract or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as defined at 2 C.F.R. Part 215 and 24 C.F.R. § 85.36 (or 84.42, if applicable)). The Contractor shall explain the actual or potential conflict in writing in sufficient detail so that the State is able to assess such actual or potential conflict. The Contractor shall provide the State any additional information necessary for the State to fully assess and address such actual or potential conflict of interest. The Contractor shall accept any reasonable conflict mitigation strategy employed by the State, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict.

16. SUBCONTRACTING

When subcontracting, the Contractor shall solicit for and contract with such subcontractors in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a *brand name* product instead of allowing *an equal* product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

The Contractor represents to the State that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.

The Contractor will include these HUD General Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flowdown such terms to all lower-tiered subcontractors.

17. ASSIGNABILITY

The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the State.

18. INDEMNIFICATION

The Contractor shall indemnify, defend, and hold harmless the State and its agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Contractor in the performance of the services called for in this contract.

19. COPELAND "ANTI-KICKBACK" ACT
(Applicable to all construction or repair contracts)

Salaries of personnel performing work under this contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by

the Secretary of Labor pursuant to the Copeland "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
(Applicable to construction contracts exceeding $2,000 and contracts exceeding $2,500 that involve the employment of mechanics or laborers)

The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

21. DAVIS-BACON ACT
(Applicable to construction contracts exceeding $2,000 when required by Federal program legislation)

The Contractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

22. TERMINATION FOR CAUSE (Applicable to contracts exceeding $10,000)

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the State, become the State's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the contract by the Contractor, and the State may withhold any payments to the Contractor for

the purpose of set-off until such time as the exact amount of damages due the State from the Contractor is determined.

23. TERMINATION FOR CONVENIENCE (Applicable to contracts exceeding $10,000)

The State may terminate this contract at any time by giving at least ten (10) days' notice in writing to the Contractor. If the contract is terminated by the State as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

24. SECTION 503 OF THE REHABILITATION ACT OF 1973
(Applicable to contracts exceeding $10,000)

The Contractor shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

Equal Opportunity for Workers With Disabilities

1. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:

   i. Recruitment, advertising, and job application procedures;

   ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

   iii. Rates of pay or any other form of compensation and changes in compensation;

   iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

   v. Leaves of absence, sick leave, or any other leave;

   vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;

   vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

   viii. Activities sponsored by the contractor including social or recreational programs; and

   ix. Any other term, condition, or privilege of employment.

2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Contractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).

5. The Contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.

6. The Contractor will include the provisions of this clause in every subcontract or purchase order in excess of $10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

25. <u>EXECUTIVE ORDER 11246</u>
(Applicable to construction contracts and subcontracts exceeding $10,000)

The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

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

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment 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.

B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

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

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

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

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

G. In the event of the Contractor's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

H. Contractor shall incorporate the provisions of A through G above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such subcontractor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

26. <u>CERTIFICATION OF NONSEGREGATED FACILITIES</u>
(Applicable to construction contracts exceeding $10,000)

The Contractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

27. <u>CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS</u>
(Applicable to contracts exceeding $100,000)

The Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. § 1857 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*, and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. 32 or on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 C.F.R. Part 15, as amended.

B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

C. A stipulation that as a condition for the award of the contract, prompt notice will be given of

any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.

D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (A) through (D) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. LOBBYING (Applicable to contracts exceeding $100,000)

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

29. BONDING REQUIREMENTS
(Applicable to construction and facility improvement contracts exceeding $100,000)

The Contractor shall comply with New York state bonding requirements, unless they have not been approved by HUD, in which case the Contractor shall comply with the following minimum bonding requirements:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other

negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the Contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.

(3) *A payment bond on the part of the Contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

30. <u>SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968</u>
(As required by applicable thresholds)

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 C.F.R. part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment 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 C.F.R. 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 C.F.R. 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 C.F.R. 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 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. part 135.

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

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that 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 contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

NEW YORK STATE HOUSING FINANCE AGENCY, STATE OF NEW YORK MORTGAGE AGENCY
NEW YORK STATE AFFORDABLE HOUSING CORPORATION, STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY, AND TOBACCO SETTLEMENT FINANCING CORPORATION
641 LEXINGTON AVENUE, NEW YORK, NEW YORK 10022, (212) 688-4000

HOUSING TRUST FUND CORPORATION
38-40 STATE STREET, ALBANY NEW YORK 12207

May, 2014

# APPENDIX II

# STANDARD CLAUSES FOR CONTRACTS WITH THE

# NEW YORK STATE HOUSING FINANCING AGENCY
# STATE OF NEW YORK MORTGAGE AGENCY
# NEW YORK STATE AFFORDABLE HOUSING CORPORATION
# STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY
# TOBACCO SETTLEMENT FINANCING CORPORATION
# HOUSING TRUST FUND CORPORATION
# (individually or collectively, "Agency" or "Agencies")

# NEW YORK STATE HOUSING FINANCE AGENCY, STATE OF NEW YORK MORTGAGE AGENCY NEW YORK STATE AFFORDABLE HOUSING CORPORATION, STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY, AND TOBACCO SETTLEMENT FINANCING CORPORATION 641 LEXINGTON AVENUE, NEW YORK, NEW YORK 10022, (212) 688-4000

## HOUSING TRUST FUND CORPORATION 38-40 STATE STREET, ALBANY NEW YORK 12207

**May, 2014**

## STANDARD CLAUSES FOR AGENCY CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "Contract") agree to be bound by the following clauses which are hereby made a part of the Contract (the word "Contractor" herein refers to any party other than the State of New York ("State"), whether a contractor, licenser, licensee, lessor, lessee or any other party):

**1. ACCOUNTING RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance of work done for the Agency or Agencies under this Contract (hereinafter, collectively, "the Records") consistent with generally accepted bookkeeping practices. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The Agency or Agencies involved in this Contract and any person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The Agency or Agencies shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform the Agencies' Senior Vice President and Counsel, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Agency's or Agencies' right to discovery in any pending or future litigation.

**2. CONFLICTS OF INTEREST.** The Contractor shall not accept any engagement in conflict with the Agency's or Agencies' interest in the subject matter of this Contract.

The Servicer shall not offer to any employee, member or director of the Agency or Agencies' any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

**3. SUBCONSULTANTS.** The Contractor shall not employ, contract with, or use the services of any consultant for the work of this Contract (except such third parties which may be used by the Contractor in the normal course of business, such as couriers, imaging services, etc.) without obtaining the prior written approval of the Agency or Agencies.

**4. NON-ASSIGNABILITY.** This Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent in writing of the Agency or Agencies and any attempts to assign the Contract without the Agency or Agencies' written consent are null and void. However, this Contract shall be binding upon and inure to the benefit of the Agency or Agencies and its successors and assigns.

**5. INDEMNITY.** The Contractor shall indemnify and hold the Agency or Agencies and their employees, officers, Members and Directors (collectively, the "Indemnities") harmless from and against all claims, demands, liability, loss, cost, damage or expense, including attorney's fees, which may be incurred by the Indemnities because of negligence or malfeasance on the part of the Contractor arising out of this Contract.

**6. NON-DISCRIMINATION.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. If this a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason or race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of $50 per person per day for any violation of Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

If directed to do so by the State Commissioner of Human Rights ("Commissioner"), the Contractor will send to each labor union to which the Contractor is bound a notice provided by the Commissioner advising of this provision. The Servicer will keep posted in conspicuous places notices of the Commissioner regarding laws against discrimination. The Contractor will state in

all advertisements for employees that all qualified applicants will be afforded equal opportunities without discrimination because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.

If the Contractor has fifteen or more employees, it is an unlawful employment practice for the Contractor to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an individual's status as an employee, because of such individual's race, color, religion, sex, or national origin, or because an individual opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, or because he or she made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that Title; and that it shall be an unlawful employment practice to print or publish or cause to be printed or published any notice or advertisement relating to employment indicating any preference, limitation, specification, or discrimination on the basis of race, color, religion, sex, or national origin.

If the Contractor has fifteen or more employees, the Contractor: (1) will make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed; (2) will preserve such records for such periods as the Equal Employment Opportunity Commission ("EEOC") shall prescribe by regulation; (3) will make such reports therefrom as the EEOC shall prescribe by regulation or order; (4) must post and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted a notice prepared or approved by the EEOC setting forth excerpts from, or summaries of, pertinent provisions of Title VII of the Civil Rights Act of 1964, as amended, and information pertinent to the filing of a complaint.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will comply with all non-discriminatory employment practices, will furnish all information deemed necessary by the Commissioner, and will permit the Commissioner access to its records to ascertain compliance. The Contractor will bind all subcontractors hired to perform services in connection with this Contract to the requirements of this section, take such action for enforcement as the Commissioner may direct, and notify the Commissioner if such action results in litigation. This Contract may be terminated by the Agency or Agencies upon the Commissioner's finding of non-compliance with this section, and the Contractor may be declared ineligible for future contracts with an agency of the State or a public authority until the Contractor satisfies the Commissioner of compliance.

**7. <u>EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN</u>.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby the Agency or Agencies, is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Agency or Agencies, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) the Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Agency or Agencies' contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the Agency or Agencies, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of 'a", "b", and "c" above, in every subcontract. Section 312 does not apply to: (i) work,

goods or services unrelated to this Contract; or (ii) employment outside New York State. The Agency or Agencies shall consider compliance by a Contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The Agency or Agencies shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the Agency or Agencies shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

(d) If the procurement of the goods or services provided herein is subject to minority and women-owned participation requirements pursuant to Article 15-A of the Executive Law, the Contractor shall be liable to the Agency or Agencies for liquidated or other appropriate damages and shall provide for other appropriate remedies on account of such breach in the event it is found that the Contractor willfully and intentionally failed to comply with the minority and women-owned participation requirements set-forth in Article 15-A of the Executive Law.

**8. PROPRIETARY INFORMATION.** All memoranda, analyses, spreadsheets and other pertinent documents or writings, including reports and financial statements developed or prepared by, or for, the Contractor in connection with the performance of this Contract are "Proprietary Information" and shall be, and remain, the property of the Agency or Agencies. All original documents constituting Proprietary Information shall be delivered to the Agency or Agencies by the Contractor, or any subcontractor, or any other person possessing them, upon the termination of this Contract or upon the earlier request of the Agency or Agencies, except that the Contractor may retain copies for its files. Proprietary Information may not be utilized, disclosed or otherwise made available to other persons by the Contractor without the prior written approval of the Agencies' Senior Vice President and Counsel. The provisions of this section shall be in addition to, and not in derogation of, any duty imposed upon the Contractor by any law, regulation or rule governing professional conduct respecting confidentiality.

**9. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices submitted for payment for the sale of goods or services or the lease of real or personal property to the Agency or Agencies must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the Agency or Agencies is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by Agency or Agencies to purchase the goods or services or lease the real or personal property covered by this Contract or lease. The information is maintained by Disbursement Manager at the Agency or Agencies, 641 Lexington Avenue, New York, New York 10022, under the name "Vendor Federal Social Security and Federal Employee Identification Numbers."

**10. CONTRACTUAL RELATIONSHIP.** It is expressly understood that the relationship between the Agency or Agencies and the Contractor is an independent contractual relationship and neither the Contractor, its employees, nor its subcontractors shall be considered employees of the Agency or Agencies for any purpose. Please refer to the following link on the Agency's web site to view each of the Agency's Prompt Payment Policies at http://www.nyshcr.org/AboutUs/Procurement/Contractinformation.htm or call the Agencies' Contract Officer at (212) 688-4000.

**11. ENTIRE AGREEMENT.** This Contract constitutes the entire agreement between the Contractor and the Agency or Agencies with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix II, the terms of this Appendix II shall control.

**12. MODIFICATION.** Waiver, discharge, amendment, supplement, extension or other modification of this Contract shall be subject to prior approval by the Agency or Agencies and may be effected only by an instrument in writing signed by the parties to this Contract.

**13. SECTION HEADINGS.** The caption of sections in this Contract are inserted solely for convenience of reference and are not intended to define, limit, or describe the scope of this Contract or any provision hereof or to otherwise affect this Contract in any way. The section headings shall not be considered in any way in construing this Contract.

**14. COUNTERPARTS.** This Contract may be executed in any number of counterparts. Each such counterpart shall be deemed to be a duplicate original. All such counterparts shall constitute but one and the same instrument.

**15. GOVERNING LAW.** This Contract has been executed and delivered in, and shall be construed and enforced in accordance with the laws of, the State of New York. In the event of conflict between New York State law and federal laws and regulations, the latter shall prevail.

**16. NOTICES.** All notices and other communications given hereunder shall not be effective for any purpose whatsoever unless in writing and delivered by hand or mailed by United States first class registered or certified mail, return receipt requested. Notice shall be deemed to have been given, if delivered by hand, when actually received by the party being notified, or, if mailed, when addressed (a) if to the Contractor, to the attention of the Contractor's authorized signatory of this Contract at the address specified for the Contractor on page one of this Contract, or at such other address as to which the Contractor shall have notified the Agency or Agencies, and (b) if to the Agency or Agencies, to the attention of the Senior Vice President and Counsel, at the address for the Agency or Agencies on page one this Contract, or at such other address of which the Agency or Agencies shall have notified the Contractor.

**17. SEVERABILITY.** All rights, powers and remedies provided herein may be exercised only to the extent that they do not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Contract invalid, unenforceable or not entitled to be recorded, registered, or filed under applicable law. If any provision or term of this Contract or any portion of a provision shall be held to be invalid, illegal or unenforceable, only such provision or part thereof shall be affected by such holding and this Contract shall be construed as if such invalid, illegal or unenforceable provision or part thereof had not been contained herein.

**18. WORKERS' COMPENSATION.** This Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**19. NO ARBITRATION.** Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**20. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service of process hereunder shall be complete upon the Contractor's actual receipt of process or upon the Agency's or Agencies' receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the Agency or Agencies, in writing, of each and every change of address to which service of process can be made. Service of process by the Agency or Agencies to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**21. NON-COLLUSIVE BIDDING CERTIFICATION.** If this Contract was awarded based upon the submission of a bid or proposal, the Contractor affirms, under penalty of perjury, that the prices in its bid or proposal were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, or as to any matter relating to such prices with any other Contractor or with any competitor. The Contractor further affirms that, at the time the Contractor submitted its bid or proposal, an authorized and responsible person executed and delivered a non-collusive bidding certification to the Agency or Agencies on the Contractor's behalf.

**22. LOBBYING REFORM LAW DISCLOSURE.** If the procurement of the goods or services provided herein were applicable to Lobbying Reform Law Disclosure as pursuant to State Finance Law §§139-j and 139-k, the Agency or Agencies reserves the right to terminate this Contract in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Agency or Agencies may exercise their termination right by providing written notification to the Contractor.

**23. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles

(Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**24. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100 Fax: 518-292-5884
Email: opa@esd ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, New York 10017
Telephone: 212-803-2424
Email:mwbecertification@esd ny.gov
https://ny newnycontracts.com/FrontEnd/VendorSearchPublic.asp

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or Contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this Contract and agrees to cooperate with the State in these efforts.

**25. GENERAL RESPONSIBILITY LANGUAGE.** The Contractor shall at all times during Contract term remain responsible. The Contractor agrees, if requested by the Agencies, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

For purposes of this Agreement, Contractor responsibility generally means that the Contractor has the integrity to justify the award of public dollars and the capacity to perform the requirements of this Contract fully. In connection herewith, to the extent that the Agencies may make certain determinations with respect to Contractor responsibility, wherein the Agencies determine whether it has reasonable assurances that a Contractor is responsible, is an important part of the procurement process, promoting fairness in contracting, mitigating contract issues, and protecting the Contractor and the Agencies against failed contracts. In making such a responsibility determination, the Agencies shall evaluate the Contractor's responsibility with respect to four factors: (a) financial and organizational capacity; (ii) legal authority to do business in New York State; (c) integrity; and (iv) previous performance.

**26. SUSPENSION OF WORK (for Non-Responsibility).** The Agencies reserve the right to suspend any or all activities under this Contract, at any time, when the Agency discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Agencies issue a written notice authorizing a resumption of performance under the Contract.

**27. Termination (for Non-Responsibility).** Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Agency staff, the Contract may be terminated by the Agencies at the Contractor's expense where the Contractor is determined by the Agencies to be non-responsible. In such event, the Agencies may complete the contractual requirements in any manner they deem advisable and pursue available legal or equitable remedies for breach.

**28**. **Iran Divestment Act.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: http://www.ogs ny.gov/about/regs/docs/ListofEntities.pdf

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the Agency.

During the term of the Contract, should the Agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The Agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

# APPENDIX III

## DIVERSITY FORMS

# APPENDIX III

## DIVERSITY FORMS

## SECTION 1 : HUD

# Contract and Subcontract Activity

**U.S. Department of Housing and Urban Development**

OMB Approval No.: 2535-0117 (exp. 1/31/2013)

Public Reporting Burden for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

Executive Order 12421 dated July 14, 1983, directs the Minority Business Development Plans shall be developed by each Federal Agency and that these annual plans shall establish minority business development objectives. The information is used by HUD to monitor and evaluate MBE activities against the total program activity and the designated minority business enterprise (MBE) goals. The Department requires the information to provide guidance and oversight for programs for the development of minority business enterprise concerning Minority Business Development. If the information is not collected HUD would not be able to establish meaningful MBE goals nor evaluate MBE performance against these goals.
While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request.

**Privacy Act Notice -** The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. It will not be disclosed or released outside the United States Department of Housing and Urban Development without your consent, except as required or permitted by law.

| 1. Grantee/Project Owner/Developer/Sponsor/Builder/Agency | Check if: PHA ☐ IHA ☐ | 2. Location (City, State, ZIP Code) |
|---|---|---|

| 3a. Name of Contact Person | 3b. Phone Number (Including Area Code) | 4. Reporting Period ☐ Oct. 1 - Sept. 30 (Annual-FY) | 5. Program Code (Not applicable for CPD programs.) See explanation of codes at bottom of page. Use a separate sheet for each program code. | 6. Date Submitted to Field Office |
|---|---|---|---|---|

| Grant/Project Number or HUD Case Number or other identification of property, subdivision, dwelling unit, etc. 7a. | Amount of Contract or Subcontract 7b. | Type of Trade Code (See below) 7c. | Contractor or Subcontractor Business Racial/Ethnic Code (See below) 7d. | Woman Owned Business (Yes or No) 7e. | Prime Contractor Identification (ID) Number 7f. | Sec. 3 7g. | Subcontractor Identification (ID) Number 7h. | Sec. 3 7i. | Contractor/Subcontractor Name and Address 7j. Name | Street | City | State | Zip Code |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
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**CPD:**
1 = New Construction
2 = Education/Training
3 = Other

**7c: Type of Trade Codes:**
**Housing/Public Housing:**
1 = New Construction
2 = Substantial Rehab.
3 = Repair
4 = Service
5 = Project Mangt.
6 = Professional
7 = Tenant Services
8 = Education/Training
9 = Arch./Engrg. Appraisal
0 = Other

**7d: Racial/Ethnic Codes:**
1 = White Americans
2 = Black Americans
3 = Native Americans
4 = Hispanic Americans
5 = Asian/Pacific Americans
6 = Hasidic Jews

**5: Program Codes**
(Complete for Housing and Public and Indian Housing programs only):
1 = All insured, including Section 8
2 = Flexible Subsidy
3 = Section 8 Noninsured, Non-HFDA
4 = Insured (Management
5 = Asian/Pacific Americans
5 = Section 202
6 = HUD-Held (Management)
7 = Public/Indian Housing

This report is to be completed by grantees, developers, sponsors, builders, agencies, and/or project owners for reporting contract and subcontract activities of $10,000 or more under the following programs: Community Development Block Grants (entitlement and small cities); Urban Development Action Grants; Housing Development Grants; Multifamily Insured and Noninsured; Public and Indian Housing Authorities; and contracts entered into by recipients of CDBG rehabilitation assistance.

Contracts/subcontracts of less than $10,000 need be reported only if such contracts represent a significant portion of your total contracting activity. Include only contracts executed during this reporting period.

This form has been modified to capture Section 3 contract data in columns 7g and 7i. Section 3 requires that the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. Recipients using this form to report Section 3 contract data must also use Part I of form HUD-60002 to report employment and training opportunities data. Form HUD-2516 is to be completed for public and Indian housing and most community development programs. Form HUD-60002 is to be completed by all other HUD programs including State administered community development programs covered under Section 3.

A Section 3 contractor/subcontractor is a business concern that provides economic opportunities to low- and very low-income residents of the metropolitan area (or nonmetropolitan county), including a business concern that is 51 percent or more owned by low- or very low-income residents; employs a substantial number of low- or very low-income residents; or provides subcontracting or business development opportunities to businesses owned by low- or very low-income residents. Low- and very low-income residents include participants in Youthbuild programs established under Subtitle D of Title IV of the Cranston-Gonzalez National Affordable Housing Act.

The terms “low-income persons” and “very low-income persons” have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. Low-income persons mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families. Very low-income persons means low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of unusually high or low family incomes.

Submit two (2) copies of this report to your local HUD Office within ten (10) days after the end of the reporting period you checked in item 4 on the front.

Complete item 7h. only once for each contractor/subcontractor on each semi-annual report.

Enter the prime contractor's ID in item 7f. for all contracts and subcontracts. Include only contracts executed during this reporting period. PHAs/IHAs are to report all contracts/subcontracts.

**Community Development Programs**

**1. Grantee:** Enter the name of the unit of government submitting this report.

**3. Contact Person:** Enter name and phone of person responsible for maintaining and submitting contract/subcontract data.

**7a. Grant Number:** Enter the HUD Community Development Block Grant Identification Number (with dashes). For example: B-32-MC-25-0034. For Entitlement Programs and Small City multi-year comprehensive programs, enter the latest approved grant number.

**7b. Amount of Contract/Subcontract:** Enter the dollar amount rounded to the nearest dollar. If subcontractor ID number is provided in 7f, the dollar figure would be for the subcontract only and not for the prime contract.

**7c. Type of Trade:** Enter the numeric codes which best indicates the contractor's/subcontractor's service. If subcontractor ID number is provided in 7f., the type of trade code would be for the subcontractor only and not for the prime contractor. The "other" category includes supply, professional services and all other activities except construction and education/training activities.

**7d. Business Racial/Ethnic/Gender Code:** Enter the numeric code which indicates the racial/ethnic /gender character of the owner(s) and controller(s) of 51% of the business. When 51% or more is not owned and controlled by any single racial/ethnic/gender category, enter the code which seems most appropriate. If the subcontractor ID number is provided, the code would apply to the subcontractor and not to the prime contractor.

**7e. Woman Owned Business:** Enter Yes or No.

**7f. Contractor Identification (ID) Number:** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of HUD funds. Note that the Employer (IRS) Number must be provided for each contract/subcontract awarded.

**7g. Section 3 Contractor:** Enter Yes or No.

**7h. Subcontractor Identification (ID) Number:** Enter the Employer (IRS) Number of the subcontractor as the unique identifier for each subcontract awarded from HUD funds. When the subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.

**7i. Section 3 Contractor:** Enter Yes or No.

**7j. Contractor/Subcontractor Name and Address:** Enter this information for each firm receiving contract/subcontract activity only one time on each report for each firm.

**Multifamily Housing Programs**

**1. Grantee/Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report.

**3. Contact Person:** Same as item 3 under CPD Programs.

**4. Reporting Period:** Check only one period.

**5. Program Code:** Enter the appropriate program code.

**7a. Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.

**7b. Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.

**7c. Type of Trade:** Same as item 7c. under CPD Programs.

**7d. Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.

**7e. Woman Owned Business:** Enter Yes or No.

**7f. Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.

**7g. Section 3 Contractor:** Enter Yes or No.

**7h. Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.

**7i. Section 3 Contractor:** Enter Yes or No.

**7j. Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.

**Public Housing and Indian Housing Programs**

PHAs/IHAs are to report all contracts/subcontracts. Include only contracts executed during this reporting period.

**1. Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report. Check box as appropriate.

**3. Contact Person:** Same as item 3 under CPD Programs.

**4. Reporting Period:** Check only one period.

**5. Program Code:** Enter the appropriate program code.

**7a. Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.

**7b. Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.

**7c. Type of Trade:** Same as item 7c. under CPD Programs.

**7d. Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.

**7e. Woman Owned Business:** Enter Yes or No.

**7f. Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.

**7g. Section 3 Contractor:** Enter Yes or No.

**7h. Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.

**7i. Section 3 Contractor:** Enter Yes or No.

**7j. Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.

# Section 3 Summary Report

Economic Opportunities for
Low- and Very Low-Income Persons

**U.S. Department of Housing and Urban Development**
Office of Fair Housing
and Equal Opportunity

OMB Approval No. 2529-0043
(exp. 8/31/2007)

HUD Field Office:

See back of page for Public Reporting Burden statement

1. Recipient Name & Address: (street, city, state, zip)

2. Federal Identification: (contrac t/award no.)

3. Dollar Amount of Award:

4. Contact Person:

5. Phone: (include area code)

6. Reporting Period:

7. Date Report Submitted:

8. Program Code: * (Use a separate sheet for each program code)

9. Program Name:

**Part I: Employment and Training** (** Include New Hires in columns E & F.)

| A<br>Job Category | B<br>Number of New Hires | C<br>Number of New Hires that are Sec. 3 Residents | D<br>% of Aggregrate Number of Staff Hours of New Hires that are Sec. 3 Residents | E**<br>% of Total Staff Hours for Section 3 Employees and Trainees | F**<br>Number of Section 3 Employees and Trainees |
|---|---|---|---|---|---|
| Professionals | | | | | |
| Technicians | | | | | |
| Office/Clerical | | | | | |
| Construction by Trade (List)<br>Trade | | | | | |
| Trade | | | | | |
| Trade | | | | | |
| Trade | | | | | |
| Trade | | | | | |
| Other (List) | | | | | |
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| | | | | | |
| **Total** | | | | | |

***Program Codes**

1 = Flexible Subsidy
2 = Section 202/811
3 = Public/Indian Housing
A = Development,
B = Operation
C = Modernization
4 = Homeless Assistance
5 = HOME
6 = HOME-State Administered
7 = CDBG-Entitlement
8 = CDBG-State Administered
9 = Other CD Programs
10 = Other Housing Programs



form **HUD-60002** (6/2001)
ref 24 CFR 135

## Part II: Contracts Awarded

1. Construction Contracts:

| | |
|---|---|
| A. Total dollar amount of all contracts awarded on the project | $ |
| B. Total dollar amount of contracts awarded to Section 3 businesses | $ |
| C. Percentage of the total dollar amount that was awarded to Section 3 businesses | % |
| D. Total number of Section 3 businesses receiving contracts | |

2. Non-Construction Contracts:

| | |
|---|---|
| A. Total dollar amount of all non-construction contracts awarded on the project/activity | $ |
| B. Total dollar amount of non-construction contracts awarded to Section 3 businesses | $ |
| C. Percentage of the total dollar amount that was awarded to Section 3 businesses | % |
| D. Total number of Section 3 businesses receiving non-construction contracts | |

## Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

_____ Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contacts with community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.

_____ Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.

_____ Participated in a HUD program or other program, which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.

_____ Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.

_____ Other; describe below

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u., mandates that the Department ensure that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as a self-monitoring tool. The data is entered into a data base and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Form HUD-60002, **Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons**.

**Instructions:** This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any **public and Indian Housing programs** that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to **recipients of housing and community development assistance in excess of $200,000** expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to **contracts and subcontracts in excess of $100,000** awarded in connection with the Section-3-covered activity.

Form HUD-60002 has three parts which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**, The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F) or the number of new hires utilized on the Section 3 covered project (columns B, C and F). Part II of the form relates to **contracting**, and Part III summarizes recipients' **efforts** to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.* A recipient of Section 3 covered assistance shall submit two copies of this report to the local HUD Field Office. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

HUD Field Office: Enter the Field Office name forwarding the Section 3 report.

1. Recipient: Enter the name and address of the recipient submitting this report.
2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.

4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.

6. Reporting Period: Indicate the time period (months and year) this report covers.
7. Date Report Submitted: Enter the appropriate date.
8. Program Code: Enter the appropriate program code as listed at the bottom of the page.
9. Program Name:Enter the name of the HUD Program corresponding with the "Program Code" in number 8.

**Part I: Employment and Training Opportunities**

**Column A:** Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e., supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

**Column B:** Enter the number of new hires for each category of workers identified in **Column A** in connection with this award. New Hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

**Column C:** 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 Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

**Column D:** Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

**Column E:** Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

**Column F:** Enter the number of Section 3 residents that were employed and trained in connection with this award.

**Part II: Contract Opportunities**

**Block 1**: Construction Contracts

Item A: Enter the total dollar amount of all contacts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

**Block 2:** Non-Construction Contracts

Item A: Enter the total dollar amount of all contacts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

**Part III: Summary of Efforts** - Self-explanatory

Submit two (2) copies of this report to the to the HUD Field Office of Fair Housing and Equal Opportunity, Program Operations and Compliance Center Director, at the same time the performance report is submitted to the program office. For those programs where such a report is not required, the Section 3 report is submitted by January 10. Include only contracts executed during the reporting period specified in item 8. PHAs/HAs are to report all contracts/subcontracts.

* The terms "low-income persons" and "very low-income persons" have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

| Semi-Annual Labor Standards Enforcement Report - Local Contracting Agencies (HUD Programs) | U.S. Department of Housing and Urban Development<br>Office of Labor Relations | **HUD FORM 4710**<br>OMB Approval Number 2501-0019<br>(Exp. 09/30/2013) |
|---|---|---|

| Agency Name: | Agency Type:<br>[e.g., CDBG, PHA, TDHE/IHA] | State: | LR2000 Agency ID #:<br>(HUD Use Only) |
|---|---|---|---|
| **Period Covered: Check One and Enter Year(s)** | | | |
| ☐ **Period 1**: October 1, _____ to March 31, _____ | ☐ **Period 2**: April 1, _____ to September 30, _____ | | |
| Agency Contact Person: | Agency Contact Phone/E-mail: | | |

## PART I - CONTRACTING ACTIVITY*

***Pertains ONLY to projects awarded during the reporting period.***

1. Number of prime contracts subject to the Davis-Bacon and Related Acts (DBRA) and/or the Contract Work Hours and Safety Standards Act (CWHSSA) awarded this period
   **Note: Do not include contracts included in previous semi-annual reports**

2. Total dollar amount of prime contracts reported in item 1 above **$**

3. List for each contract awarded this period:

| Project Name/Number | Contract Amount | Wage Decision Number | Wage Decision Lock-In Date |
|---|---|---|---|
| **EXAMPLE:**<br>**"Boy's Club Renovation # CD54005-65"** | **"$0,000,000.00"** | **"FL040001/Mod 3, 6/25/04, Building"** | **"07/02/04 bid open date" ◀ Lock** |

*Use additional pages if necessary

**WHAT IS THE LOCK-IN DATE?** For contracts entered into pursuant to competitive bidding procedures, the bid opening date "locks-in" the wage decision **provided** that the contract is awarded within 90 days. If the contract is awarded more than 90 days after bid opening, the contract award date 'locks-in' the wage decision. For contracts, purchase orders or other agreements for which there is no bid opening or award date, use the construction start date as the lock-in date. However, for projects receiving assistance under Section 8 of the U.S. Housing Act of 1937 or contracts involving a *project* wage determination, the lock-in rules may vary from above. See Department of Labor Regulations, 29 CFR, Part 1, Section 1.6 and/or HUD Handbook 1344.1, or consult the HUD Labor Relations staff.

**WHAT IT ISN'T**: Do not use the wage decision publication date, unless that happens to correspond to one of the trigger events described above.

If you are not sure about any of this, please feel free to contact the Labor Relations staff in your state or region.

| Semi-Annual Labor Standards Enforcement Report - Local Contracting Agencies (HUD Programs) | U.S. Department of Housing and Urban Development<br>Office of Labor Relations | HUD FORM 4710<br>OMB Approval Number 2501-0019<br>(Exp. 09/30/2013) |
|---|---|---|

| Agency Name: | Agency Type:<br>[e.g., CDBG, PHA, TDHE/IHA] | State: | LR2000 Agency ID #:<br>(HUD Use Only) |
|---|---|---|---|
| **Period Covered: Check One and Enter Year(s)** | | | |
| ☐ **Period 1**: October 1, _____ to March 31, _____ | ☐ **Period 2**: April 1, _____ to September 30, _____ | | |
| Agency Contact Person: | Agency Contact Phone/E-mail: | | |

## PART II - ENFORCEMENT ACTIVITY*

***Pertains to all projects, not just contract(s) awarded during the reporting period.***

4. Number of employers against whom **complaints** were received (list employers and projects involved below): ☐

| Employer | Project(s) |
|---|---|

5. (a) Number of cases (employers) referred to HUD Labor Relations for investigation or §5.11 hearing (list referrals below): ☐

   (b) Number of cases (employers) referred to the Department of Labor (DOL) for investigation or §5.11 hearing (list referrals below): ☐

| Employer | Project | HUD or DOL | Invest. Or Hearing |
|---|---|---|---|

6. (a) **Number of workers for whom wage restitution was collected/disbursed:** ☐
   *Report only once; if you previously reported workers for whom restitution was collected, do not report the same workers when funds are disbursed. Include workers to whom restitution was paid directly by the employer.*

   (b) **Total amount of straight time wage restitution collected/disbursed during this period:** $
   *Report only once; if you report funds collected, do not report the disbursement. Include restitution amounts paid directly by the employer as reported on correction certified payrolls.*

   (c) **Total amount of CWHHSA overtime wage restitution collected/disbursed during this period:** $
   *Report only once; if you report funds collected, do not report the disbursement. Include restitution amounts paid directly by the employer as reported on correction certified payrolls.*

   (d) **Total amount of liquidated damages collected:** $

* Use additional pages if necessary

| Semi-Annual Labor Standards Enforcement Report - Local Contracting Agencies (HUD Programs) | U.S. Department of Housing and Urban Development<br>Office of Labor Relations | HUD FORM 4710i<br>OMB Approval Number 2501-0019<br>(Exp. 09/30/2013) |
|---|---|---|

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The information is considered non-sensitive and does not require special protection. This information is required to obtain benefits. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

All Federal agencies administering programs subject to Davis-Bacon wage provisions are required by Department of Labor (DOL) regulations (29 CFR Part 5, Section 5.7(b)) to submit a report of all new covered contracts/projects and all enforcement activities each six months. In order for HUD to comply with this requirement, it must collect contract and enforcement information from local agencies that administer HUD-assisted programs subject to Davis-Bacon requirements. HUD requests that local agencies complete and submit a Semi-annual Enforcement Report each six months.

Local agencies and HUD must retain a copy of the Semi-annual Enforcement Report in its files.

*Please follow these instructions while compiling the* ***Semi-Annual Labor Standards Enforcement Report for Local Contracting Agencies (HUD Programs) (form HUD-4710).***

## Introduction

Department of Labor (DOL) Regulations 29 CFR §5.7(b) require Federal agencies administering programs subject to Davis-Bacon and Related Act (DBRA) and Contract Work Hours and Safety Standards Act (CWHSSA) labor standards to furnish a Semi-Annual Labor Standards Enforcement Report to the Administrator of the Wage and Hour Division. Some HUD programs are administered by state and local agencies for labor standards compliance. HUD must collect information from such agencies in order to capture enforcement activities for all HUD programs in its reports to DOL.

**Reporting Periods:** **Period 1 October 1 through March 31**
**Period 2 April 1 through September 30**

**Report Format:** Each agency report consists of two parts:

**Part I** concerns contracting activity for work awarded during the reporting period;
**Part II** concerns enforcement activity for all contracts, regardless of the award date.

The HUD Labor Relations staff for your area will send a courtesy reminder shortly before the due date about preparing the report and will remind you of the date your report is due. However, you should maintain accurate records throughout the year of relevant contract information so that you can submit the report timely.

## Definitions and Guidance

**Part I - Contracting Activity** - This part concerns only contracts that were ***awarded*** during this period. *Do not* include contracts that were awarded prior to this period even though the contracts may still be underway. *Do* include work subject to purchase order or other form of agreement, even if there is no formal contract award.

**Item 1.** Enter the total number of prime contracts subject to DBRA/CWHSSA ***awarded*** during this period. Track contracts by award or start of construction - **do not** track by bid opening date. Public Housing Authorities (PHAs), Tribally-designated Housing Entities (TDHEs)/Indian Housing Authorities (IHAs): Include force account work that is subject to DBRA/CWHSSA.

**Item 2.** Enter the total dollar amount of the contracts and/or PHA/TDHE/IHA force account work reported in Item1.

**Item 3.** List each project/contract name, brief descriptive information, number or unique identifier, dollar amount, the wage decision and modification number in the contract, bid opening date, contract award date, and construction start date. Identify which milestone date triggered the wage decision "lock-in" (bid opening date, contract award date or start of construction date, as appropriate). If the project was not subject to sealed bids, indicate "NA" for bid opening date and proceed to identify the other dates.

**Part II - Enforcement Activity** - This part concerns *all* enforcement activity no matter when the contract was awarded or construction began.

**Item 4.** Enter the number of **employers** (contractors, subcontractors, lower-tier subcontractors) against whom complaints were received during the report period. List the names of the employers against whom complaints were received and the projects involved.

**Item 5.** Enter the number of employers that were referred to HUD Labor Relations or DOL staff for investigations, for hearings on appeal and/or debarment hearings. List the employer, project, and agency (HUD or DOL) to which the case was referred, and the reason for referral - investigation, appeal hearing (DOL Regulations 29 CFR Part 5, Section §5.11) and/or debarment (DOL Regulations 29 CFR Part 5, Section §5.12) hearing.

**Item 6.** Enter information relative to wage restitution that was **collected and/or disbursed** during the report period. This includes restitution disbursed by the agency; restitution reported on certified payroll correction reports, amounts collected but not disbursed because workers could not be found. Report straight time wage restitution separate from Contract Work Hours and Safety Standards Act (CWHSSA) overtime wage restitution. Also list liquidated damages collected for CWHSSA overtime violations.

# APPENDIX III

## DIVERSITY FORMS SECTION 2:

## HTFC

# PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN REQUIREMENTS AND PROCEDURES FOR CONTRACTS WITH HOUSING TRUST FUND CORPORATION

## I. General Provisions

A. The Corporation is required to implement the provisions of New York State ("State") Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

B. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Housing Trust Fund Corporation ("Corporation"), to fully comply and cooperate with the Corporation in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State or local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to section VII of this Appendix III or enforcement proceedings as allowed by the Contract.

## II. Contract Goals

A. For purposes of this procurement, the Corporation hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).

B. For purposes of providing meaningful participation by MWBEs on this Contract and achieving the Contract Goals established in section III-A, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: http://www.empire.state.ny.us/MWBE/directorySearch.html .

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on this Contract.

C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Corporation for liquidated or other appropriate damages, as set forth herein.

## III. Equal Employment Opportunity (EEO)

A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement (Form PROC-8) to the Corporation within seventy two (72) hours after the date of the notice by Corporation to award the Contract to the Contractor.
3. If Contractor or Subcontractor does not have an existing EEO policy statement, the Corporation may provide the Contractor or Subcontractor a model statement (see Form PROC-4 – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
   a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
   b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
   c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national

origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

d. The Contractor will include the provisions of sections (a) through (c) of this subsection and paragraph "E" of this section, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Contract.

C. Form PROC-1- Staffing Plan

To ensure compliance with this section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the Contract.

D. Form PROC-5 - Workforce Employment Utilization Report ("Workforce Report")

1. Once a Contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Corporation of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
   Reports should be submitted by email to: MWBE_EEOCreports@stormrecovery.ny.gov.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the subject Contract. When the workforce to be utilized on the Contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

D. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

## IV. MWBE Utilization Plan

A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form PROC-2) either prior to, or at the time of, the execution of this Contract.

B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on this Contract pursuant to the prescribed MWBE goals set forth in section III-A of this Appendix III.

C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of this Contract. Upon the occurrence of such a material breach, the Corporation shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

## V. Waivers

A. For Waiver Requests Contractor should use Form PROC-3 – Waiver Request.

B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Corporation shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

C. If the Corporation, upon review of the Utilization Plan and updated Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Corporation may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

## VI. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form PROC-6) to the Corporation by the 10th day following each end of quarter (i.e., March 31st, June 30th, September 30th, and December 31st) over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.
Reports should be submitted by email to: MWBE_EEOCreports@stormrecovery.ny.gov.

## VII. Liquidated Damages - MWBE Participation

A. Where the Corporation determines that Contractor is not in compliance with the requirements of this Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Corporation liquidated damages.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:
   1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
   2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Agency, Contractor shall pay such liquidated damages to the Corporation within sixty (60) days after they are assessed by the Corporation unless prior to the expiration of such sixtieth ($60^{th}$) day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development
pursuant to subdivision 8 of section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Corporation.

**ALL FORMS ARE ATTACHED BELOW**

# EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

**Submit with Bid or Proposal – Instructions on page 2**

| | |
|---|---|
| **Solicitation/Program Name:** | **Report includes:**<br>□ Workforce to be utilized on this contract<br>□ Contractor/Subcontractor's total workforce |
| **Offeror's Name:** | **Reporting Entity:**<br>□ Contractor<br>□ Subcontractor<br>**Subcontractor's name**_____ |
| **Offeror's Address:** | |

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

| EEO-Job Category | Total Work force | Workforce by Gender | | Work force by Race/Ethnic Identification | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total Male (M) | Total Female (F) | White (M) | (F) | Black (M) | (F) | Hispanic (M) | (F) | Asian (M) | (F) | Native American (M) | (F) | **Disabled (M)** | **(F)** | **Veteran (M)** | **(F)** |
| Officials/Administrators | | | | | | | | | | | | | | | | | |
| Professionals | | | | | | | | | | | | | | | | | |
| Technicians | | | | | | | | | | | | | | | | | |
| Service Maintenance Workers | | | | | | | | | | | | | | | | | |
| Office/Clerical | | | | | | | | | | | | | | | | | |
| Skilled Craft Workers | | | | | | | | | | | | | | | | | |
| Paraprofessionals | | | | | | | | | | | | | | | | | |
| Protective Service Workers | | | | | | | | | | | | | | | | | |
| Totals | | | | | | | | | | | | | | | | | |

| | | |
|---|---|---|
| **PREPARED BY (Signature):** | **TELEPHONE NO.:**<br>**EMAIL ADDRESS:** | **DATE:** |
| **NAME AND TITLE OF PREPARER (Print or Type):** | **SUBMIT COMPLETED WITH BID OR PROPOSAL** | |



**PROC-1 (revised 2/2012)**

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form for the contractor's or subcontractor's total work force.

**Instructions for completing:**

1. Enter the Solicitation number or RFP number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Offerors' total workforce.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading 'Workforce by Gender'
6. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the Designated Contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male (M) or Female (F)

# M/WBE UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

**Offeror's Name:**

**Address:**

**City, State, Zip Code:**

**Region/Location of Work:**

**Federal Identification Number:**

**Solicitation Number:**

**Telephone Number:**

**M/WBE Goals in the Contract:** MBE % WBE %

| 1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No. | 2. Classification | 3. Federal ID No. | 4. Detailed Description of Work (Attach additional sheets, if necessary) | 5. Dollar Value of Subcontracts / Supplies/Services and intended performance dates of each component of the contract. |
|---|---|---|---|---|
| A. | NYS ESD CERTIFIED<br>☐ MBE<br>☐ WBE | | | |
| B. | NYS ESD CERTIFIED<br>☐ MBE<br>☐ WBE | | | |

**6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (PROC-5).**

**PREPARED and APPROVED BY:**

**NAME AND TITLE OF PREPARER (Print or Type):**

**Signature:** _____
**Authorized Signature**

**DATE:**

**TELEPHONE NO:**

**EMAIL ADDRESS:**

**SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.**

**FOR AGENCY USE ONLY**

| REVIEWED BY: | DATE: |
|---|---|
| | |

**UTILIZATION PLAN APPROVED:** ☐ YES ☐ NO Date:

**Contract No:**

**Contract Award Date:**

**Estimated Date of Completion:**

**Amount Obligated Under the Contract:**

**NOTICE OF DEFICIENCY ISSUED:** ☐ YES ☐ NO
Date:_____

**NOTICE OF ACCEPTANCE ISSUED:** ☐ YES ☐ NO
Date:_____

# REQUEST FOR WAIVER FORM

| INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS. | |
|---|---|
| **Offeror/Contractor Name:** | **Federal Identification No.:** |
| **Address:** | **Solicitation/Contract No.:** |
| **City, State, Zip Code:** | **M/WBE Goals: MBE % WBE %** |
| **By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.** | |

**Contractor is requesting a:**

1. ☐ **MBE Waiver – A waiver of the MBE Goal for this procurement is requested.** ☐ **Total** ☐ **Partial**

2. ☐ **WBE Waiver – A waiver of the WBE Goal for this procurement is requested.** ☐ **Total** ☐ **Partial**

3. ☐ **Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.) Date of such filing with Empire State Development:_____**

| | | |
|---|---|---|
| **PREPARED BY (Signature):**<br><br>**SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.** | **Date:** | |
| **Name and Title of Preparer (Printed or Typed):** | **Telephone Number:** | **Email Address:** |
| **Submit with the bid or proposal or if submitting after award, submit to the MWBE Program Unit:**<br><br>New York State Governor's Office of Storm Recovery<br>25 Beaver Street, 5th Floor<br>New York, NY 10004<br><br>Email to: MWBE_EEOCreports@stormrecovery.ny.gov | ********** **FOR AGENCY USE ONLY** ********** | |
| | **REVIEWED BY:** | **DATE:** |
| | **Waiver Granted:** ☐ **YES** **MBE:** ☐ **WBE:** ☐<br><br>☐ **Total Waiver** ☐ **Partial Waiver**<br>☐ **ESD Certification Waiver** ☐ ***Conditional**<br>☐ **Notice of Deficiency Issued** _____<br>***Comments:** | |

## REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

**When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:**

1. A statement setting forth your basis for requesting a partial or total waiver.

2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.

3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.

4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.

5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.

6. Provide copies of responses made by certified M/WBEs to your solicitations.

7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.

8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.

9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.

10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.

11. Copy of notice of application receipt issued by Empire State Development (ESD).

Note:

Unless a Total Waiver has been granted, Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by the contracting entity, to determine M/WBE compliance.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

I,_____, the (awardee/contractor)_____agree to adopt the following policies with respect to the project being developed or services rendered for (name agency/ies or project location)_____

## MWBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

(1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/W BE contractor associations.
(2) Request a list of State-certified M/WBEs from Agency(ies) and solicit bids from them directly.
(3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
(4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
(5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/W BE contract participation goals.
(6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

## EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.
(b)This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative for a statement that it will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this_____day of_____, 2_____

By _____

Print:_____Title: _____

_____is designated as the Minority Business Enterprise Liaison

He/she is responsible for administering the Minority and Women-Owned Business Enterprises-Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

20% Minority and Women's Business Enterprise Participation

10% Minority Business Enterprise Participation

10% Women's Business Enterprise Participation

**EEO Contract Goals**

___% Minority Labor Force Participation

___% Female Labor Force Participation

# WORKFORCE EMPLOYMENT UTILIZATION

| | | |
|---|---|---|
| **Contract No.:** | **Reporting Entity:**<br>□ Contractor<br>□ Subcontractor | **Reporting Period:**<br>□ January 1, 20___- March 31, 20____<br>□ April 1, 20____- June 30, 20____<br>□ July 1, 20____- September 30, 20____<br>□ October 1, 20 ___- December 31, 20 ___ |
| **Contractor's Name:** | | **Report includes:**<br>□ Work force to be utilized on this contract<br>□ Contractor/Subcontractor's total work force |
| **Contractor's Address:** | | |

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

| EEO-Job Category | Total Work force | Work force by Gender | | Work force by Race/Ethnic Identification | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male (M) | Female (F) | White (M) | White (F) | Black (M) | Black (F) | Hispanic (M) | Hispanic (F) | Asian (M) | Asian (F) | Native American (M) | Native American (F) | **Disabled (M)** | **Disabled (F)** | **Veteran (M)** | **Veteran (F)** |
| Officials/Administrators | | | | | | | | | | | | | | | | | |
| Professionals | | | | | | | | | | | | | | | | | |
| Technicians | | | | | | | | | | | | | | | | | |
| Sales Workers | | | | | | | | | | | | | | | | | |
| Office/Clerical | | | | | | | | | | | | | | | | | |
| Craft Workers | | | | | | | | | | | | | | | | | |
| Laborers | | | | | | | | | | | | | | | | | |
| Service Workers | | | | | | | | | | | | | | | | | |
| Temporary /Apprentices | | | | | | | | | | | | | | | | | |
| Totals | | | | | | | | | | | | | | | | | |

| | | |
|---|---|---|
| **PREPARED BY (Signature):** | **TELEPHONE NO.:**<br>**EMAIL ADDRESS:** | **DATE:** |
| **NAME AND TITLE OF PREPARER (Print or Type):** | **Submit completed form to:**<br>**NYS Governor's Office of Storm Recovery,**<br>**25 Beaver Street, 5th Floor, New York, NY 10004, or**<br>**MWBE_EEOCreports@stormrecovery.ny.gov** | |

**General Instructions:** The work force utilization is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force, information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to the M/WBE Program Management Unit within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

**Instructions for completing:**

1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading 'Work force by Gender'
7. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Program Management Unit at (518) 474-5513 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

**WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

**BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.

**HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

**ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

**NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- DISABLED INDIVIDUAL — any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- VIETNAM ERA VETERAN — a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- GENDER — Male or Female

Failure to submit this form will result in non-compliance

Is this a final report? Check one.
Yes_____No _____

M/WBE Quarterly Report
of
NYS AGENCY/AGENCIES Contract No._____Project No. _____

The following information indicates the payment amounts made by the grantee/contractor to the NYS Certified M/WBE subcontractor on this project. The payments as shown are in compliance with contract documents for the above reference project.

| **Contractor's Name and Address** | **Federal ID#** | **Goals/Dollar Amount**<br>**MBE____% = $_____**<br>**WBE____% = $_____** | **Contract Type:**<br>**Paid to Contractor this Quarter:**<br>**Total Paid to Contractor to Date:** |
|---|---|---|---|
| | **Project Completion Date** | **Work Location** | **Reporting Period:**<br>☐ **1st Quarter (4/1-6/30)** ☐ **3rd Quarter (10/1-12/31)**<br>☐ **2nd Quarter (7/1-9/30)** ☐ **4th Quarter (1/1-3/31)** |

| **M/WBE Subcontractor/Vendor** | **Product Code*** | **Work Status this Report** | **Total Subcontractor Contract Amount** | | **Payments this Quarter** | | **Previous Payments** | | **Total Payments Made to Date** | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | **MBE** | **WBE** | **MBE** | **WBE** | **MBE** | **WBE** | **MBE** | **WBE** |
| Name:<br>Fed ID#: | | ☐Active<br>☐Inactive<br>☐Complete | | | | | | | | |
| Name:<br>Fed ID#: | | ☐Active<br>☐Inactive<br>☐Complete | | | | | | | | |
| Name:<br>Fed ID#: | | ☐Active<br>☐Inactive<br>☐Complete | | | | | | | | |
| Name:<br>Fed ID#: | | ☐Active<br>☐Inactive<br>☐Complete | | | | | | | | |
| | | **Total:** | | | | | | | | |

*See Next Page for Product Codes

**Date:_____Name:_____Title:_____Signature: _____**



**PROC-6 (revised 2/2012)**

Use the following codes in the Product Code column to indicate the category of work for which the M/WBE was utilized:

**PRODUCT CODE KEY:**

| | |
|---|---|
| **A** | **Agriculture/Landscaping (e.g., all forms of landscaping services)** |
| **B** | **Mining (e.g., Geological Investigation)** |
| **C** | **Construction** |
| **C15** | **Building Construction – General Contractors** |
| **C16** | **Heavy Construction (e.g., highway, pipe laying)** |
| **C17** | **Special Trade Contractors (e.g., plumbing, heating, electrical, carpentry)** |
| **D** | **Manufacturing (production of goods)** |
| **E** | **Transportation, Communication and Sanitary Services (e.g., Delivery services, warehousing, broadcasting and cable systems)** |
| **F/G** | **Wholesale/Retail Goods (e.g., gravel, hospital supplies and equipment, food stores, computer stores, office supplies)** |
| **G52** | **Construction Materials (e.g., lumber, paint, lawn supplies)** |
| **H** | **Financial, Insurance and Real Estate Services** |
| **I** | **Services** |
| **I73** | **Business Services (e.g., copying, advertising, secretarial, janitorial, rental services of equipment, computer programming, security services)** |
| **I81** | **Legal Services** |
| **I82** | **Educational Services (e.g., AIDS education, automobile safety, tutoring, public speaking)** |
| **I83** | **Social Services (e.g., counselors, vocational training, child care)** |
| **I87** | **Engineering, architectural, accounting, research, management and related services** |

New York State
**Homes & Community Renewal**
www.nyshcr.org

**EEOC Statement**
of the
New York State Housing Finance Agency,
State of New York Mortgage Agency,
New York State Affordable Housing Corporation,
State of New York Municipal Bond Bank Agency,
Tobacco Settlement Financing Corporation and
Housing Trust Fund Corporation
(individually, "Agency" and collectively, "Agencies")

It is the goal of the Agencies to ensure compliance with the federal Equal Employment Opportunity Act of 1972, as amended. Respondents with fifteen (15) or more employees responding to this solicitation, must submit a statement disclosing whether the Respondent is currently operating under or negotiating, or has at some time in the last five (5) years operated under or negotiated, a conciliation agreement with the Equal Employment Opportunity Commission ("EEOC"); has been, at some time in the last five (5) years, or is currently the subject of a civil action brought against it by the EEOC; has been, at some time in the last five (5) years, or is currently the subject of an action brought against it by the EEOC for permanent, temporary or preliminary relief; has operated, at some time in the last five (5) years, or is currently operating under an order of a court to take affirmative action as a result of a civil action brought against it by EEOC.

Please answer the above question either in the affirmative or negative.

_____Respond YES or NO.

If YES, provide explanation:
_____
_____
_____
_____

_____ _____
Respondent's Signature Date of Respondent's Signature

_____
Print Name of Respondent

**HOUSING TRUST FUND CORPORATION**
**38-40 STATE STREET, ALBANY, NEW YORK 12207**

# APPENDIX IV

## CONSTRUCTION REQUIREMENTS AND PROCEDURES FOR CONTRACTS WITH

## HOUSING TRUST FUND CORPORATION

New York State
**Homes & Community Renewal**
**Office of Fair Housing and Equal Opportunity**
Web Site: www.nyshcr.org

# CUMULATIVE PAYMENT STATEMENT

(Instructions on Reverse Side)

| **Contractors Name and Address:** | **Federal ID #** | **Goals** | | **Reporting Period** | |
|---|---|---|---|---|---|
| | | MBE % | WBE % | **Quarter** | **Year** |
| | **SHARS/Project #** | **Work Location** | | | |

| ***Name of Firm and Address*** (*List All Firms*) | **Type of Service Provided** *(Select only one)* | **NYS Certified** MBE | WBE | **Payment This period** | **Contract Amount** |
|---|---|---|---|---|---|
| **Federal ID#** | ☐ • Construction<br>☐ • Supplier<br>☐ • Consultant Service<br>☐ • Service/Commodity<br>☐ • Section 3 | ☐ | ☐ | **No Payment** ☐ | |
| **Federal ID#** | ☐ • Construction<br>☐ • Supplier<br>☐ • Consultant Service<br>☐ • Service/Commodity<br>☐ • Section 3 | ☐ | ☐ | **No Payment** ☐ | |
| **Federal ID#** | ☐ • Construction<br>☐ • Supplier<br>☐ • Consultant Service<br>☐ • Service/Commodity<br>☐ • Section 3 | ☐ | ☐ | **No Payment** ☐ | |
| **Federal ID#** | ☐ • Construction<br>☐ • Supplier<br>☐ • Consultant Service<br>☐ • Service/Commodity<br>☐ • Section 3 | ☐ | ☐ | **No Payment** ☐ | |

Signature of Company Official | Print Name of Company Official | Date

**ADM-123 (rev. 3/12)**

***Failure to submit this form will result in non-compliance***

# INSTRUCTIONS FOR FILING CUMULATIVE PAYMENT STATEMENT

This document pertains to **HCR funding only:** The form is to be completed and signed by the Company Official and submitted **by the 10th of each quarter.** The form must include **ALL** (**e.g. MBE, WBE and non-M/WBE**) subcontractors or suppliers assigned to this contract. The Affirmation of Income Payments to MBE/WBE (ADM-146) must accompany this form for each MBE/WBE firm who has received payment.

| Quarter | Reporting Period | Due Date |
|---|---|---|
| 1st | April 1 – June 30 | July 10 |
| 2nd | July 1- September 30 | October 10 |
| 3rd | October 1 - December 31 | January 10 |
| 4th | January 1 – March 31 | April 10 |

**Contractor's Name & Address:** Indicate name, address, city, state and zip code.

**Contractor's Federal ID #:** If Federal ID # not assigned, provide Social Security # of the owner.

**Goals:** Indicate HCR's assigned MBE and WBE participation goals.

**Reporting Period:** Indicate reported month and year.

**SHARS/Project #:** Indicate HCR's SHARS #/Project #.

**Subcontractor or Supplier Name & Address** Indicate the name, address, city, state and zip code.

**Federal ID #:** If Federal ID # not assigned, provide Social Security # of the owner.

**Description of Work:** Check the box that best describes the work performed. (CHECK ONE BOX ONLY)

**NYS Certified** Indicate if MBE or WBE. (CHECK ONE BOX ONLY) Only firms certified by NYS will be counted towards goals

**Payments This Period:** Indicate amount paid to each subcontractors or suppliers this reporting period.

**NOTE: IF THERE WAS NO PAYMENT THIS PERIOD, PLEASE CHECK THE BOX.**

**Contract Amount:** Indicate total contract amounts or purchase agreement(s) for each subcontractor or supplier.

New York State
Homes & Community Renewal
Office of Fair Housing and Equal Opportunity
Web Site: www.nyshcr.org

**Affirmation of Income Payments to MBE/WBE**

*Each MBE and WBE FIRM must sign and submit this form to the Contractor. The Contractor/Vendor must submit this form to the Office of Fair Housing and Equal Opportunity by the* ***10th of each Quarter****.*

**CONTRACTOR**

| 1. Name and Address of Contractor | 2. SHARS/Project # |
|---|---|
| | 3. Reporting Period |
| Federal ID # | Quarter \| Year |

**M/WBE FIRM**

| 1. Name and Address | 2. Date contract started: |
|---|---|
| | 3. New York State Certified (Check One) |
| Federal ID # | ☐ MBE<br>☐ WBE |

4. Type of Service Provider (Check one box only)
☐ Construction ☐ Supplier ☐ Consultant Service ☐ Service/Commodity

**5.Summary of Payments**

**a.** Total MBE/WBE contract amount $ _____

**b.** MBE/WBE payment received for this reporting period $ _____

**c.** Total MBE/WBE payments received as of this reporting period $ _____

| Signature of MBE/WBE | Print Name of MBE/WBE | Date |
|---|---|---|
| **Signature of Contractor** | **Print Name of Contractor** | **Date** |

**Failure to submit this form will result in non-compliance.**

**ADM-146 (rev. 12/10)**

**New York State**
**Homes and Community Renewal**
*Office of Fair Housing and Equal Opportunity*
Website: www.nyshcr.org

# MONTHLY EMPLOYMENT UTILIZATION REPORT

(Instructions on Next Page)

| | | | | | |
|---|---|---|---|---|---|
| **Project Name:** | | | **Reporting Period:** | From: To: | |
| **Contractor/ Firm Name:** | | | **Address:** | | |
| **Federal ID/SS#:** | | **SHARS #:** | | **Location of Work:** | |
| **Labor Amount:** | $ | **Construction Start Date:** | | **Percent of Job Complete:** | |

| | **TOTAL NUMBER OF EMPLOYEES FOR THIS REPORTING PERIOD** | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Job or Trade Category** | **Total Number of Employees** | | **Black or African American** | | **Hispanic or Latino** | | **Native Hawaiian or Other Pacific Islander** | | **Native American or Alaskan Native** | | **Asian** | |
| | **M** | **F** | **M** | **F** | **M** | **F** | **M** | **F** | **M** | **F** | **M** | **F** |
| Professionals | | | | | | | | | | | | |
| Technicians | | | | | | | | | | | | |
| Office/Clerical | | | | | | | | | | | | |
| **Construction Trade - List Each** | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
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| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| **Grand Totals** | | | | | | | | | | | | |

Company Official's Name:_____ Title: _____

Company Official's Signature:_____ Date: _____

Telephone Number:_____ Fax Number: _____

***NOTE: Failure to submit this form will result in non-compliance.***

## INSTRUCTIONS FOR FILING MONTHLY EMPLOYMENT UTILIZATION REPORT

The Monthly Employment Utilization Report (ADM-136) is to be completed and signed by the contractor or subcontractor and ***submitted by the 10th of each quarter*** for the duration of this contract. This report covers all hourly workers, including foremen, supervisors or crew chiefs, journey workers and apprentices or trainees working on the project. Professionals, technicians and office clerical field office staff working on the contract should also be reported.

| | |
|---|---|
| Name of Project: | Indicate the Name of Assigned Project |
| Reporting Period: | Indicate reported month and year. |
| Contractor or Subcontractor Name: | Indicate name, address, city and zip code. |
| Federal ID Number: | If Federal ID # not assigned, provide Social Security # of the owner. |
| Labor Amount: | Indicate dollar amount allocated for labor on the Detailed Estimate. |
| SHARS Number: | Indicate HCR assigned SHARS #. |
| Location of Work: | Indicate county where project is located. |
| Contract Start Date: | Indicate date construction actually began. |
| Percent of Job Complete: | Indicate the estimated percentage of job completed. |
| Job or Trade Category: | Indicate the total number of employees for the field office staff, including supervisory personnel and administrative staff at the job site. Indicate the number of employees for each construction trade. |
| Total Number of Employees: | Indicate the total number of ***all*** employees, regardless of ethnicity, under each trade category for all males (M) and all females (F). ***Note: These two columns include the number of employees for the entire workforce.*** |
| Total Number of Employees Minority & Females: | Indicate the total number of employees for each minority group member(s) under each trade category for all minority males (M) and all females (F). ***Note: These columns include only the minority workforce.*** |
| Grand Totals: | Total of columns under each trade category for all males (M) and all females (F). |

**The company official's name, title and telephone number should be printed or typed at the bottom of the form.**

# APPENDIX A

# STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

January 2014

# TABLE OF CONTENTS


| | | Page |
|---|---|---|
| 1. | Executory Clause | 3 |
| 2. | Non-Assignment Clause | 3 |
| 3. | Comptroller's Approval | 3 |
| 4. | Workers' Compensation Benefits | 3 |
| 5. | Non-Discrimination Requirements | 3 |
| 6. | Wage and Hours Provisions | 3 |
| 7. | Non-Collusive Bidding Certification | 4 |
| 8. | International Boycott Prohibition | 4 |
| 9. | Set-Off Rights | 4 |
| 10. | Records | 4 |
| 11. | Identifying Information and Privacy Notification | 4 |
| 12. | Equal Employment Opportunities For Minorities and Women | 4-5 |
| 13. | Conflicting Terms | 5 |
| 14. | Governing Law | 5 |
| 15. | Late Payment | 5 |
| 16. | No Arbitration | 5 |
| 17. | Service of Process | 5 |
| 18. | Prohibition on Purchase of Tropical Hardwoods | 5-6 |
| 19. | MacBride Fair Employment Principles | 6 |
| 20. | Omnibus Procurement Act of 1992 | 6 |
| 21. | Reciprocity and Sanctions Provisions | 6 |
| 22. | Compliance with New York State Information Security Breach and Notification Act | 6 |
| 23. | Compliance with Consultant Disclosure Law | 6 |
| 24. | Procurement Lobbying | 7 |
| 25. | Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors | 7 |
| 26. | Iran Divestment Act | 7 |

## STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION**. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION**. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. <u>CONFLICTING TERMS</u>.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. <u>GOVERNING LAW</u>.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. <u>LATE PAYMENT</u>**. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. <u>NO ARBITRATION</u>.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. <u>SERVICE OF PROCESS</u>**. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. <u>PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS</u>**. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**
To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT**. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
http://www.ogs ny.gov/about/regs/docs/ListofEntities.pdf

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.