

MASTER DESIGN CONTRACT

THIS AGREEMENT (this "Agreement") dated September 13, 2016, and made effective as of July 26, 2016 (the "Effective Date"), between HOUSING TRUST FUND CORPORATION, having an office at 25 Beaver Street, New York, New York 10004, ("HTFC") and Philipp Kampf Architecture & Design, with an office at 107 Center Street, Bay Shore, NY 11706 ("Design Professional").

Introductory Statement

WHEREAS, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act as amended (42 U.S.C. § 5121-5207) (the "Stafford Act"), portions of the State of New York ("State") received major disaster declarations as a result of Hurricane Sandy, Hurricane Irene, and Tropical Storm Lee (the "Storms");

WHEREAS, the State has received an allocation of Community Development Block Grant Disaster Recovery ("CDBG-DR") funds from the United States Department of Housing and Urban Development ("HUD") for the purpose of providing assistance to recover from the Storms;

WHEREAS, HTFC is authorized to administer CDBG-DR funds in the State;

WHEREAS, Design Professional has been selected to perform design and other architectural, engineering, and/or construction-related services of the type and nature set forth in Exhibit A attached hereto (the "Scope of Work") for certain property or properties (each, a "Project Site") to be identified in one or more work orders, each in the form of Exhibit B attached hereto, and executed subsequent to the execution of this Agreement (each, a "Work Order");

WHEREAS, Design Professional has advised HTFC that Design Professional is registered to do business in the State of New York, is licensed in New York State for the type of services set forth in the Scope of Work, is experienced and properly qualified, and is engaged in the business of providing the types of services set out in the Scope of Work of this Agreement;

WHEREAS, HTFC and Design Professional desire to enter into this Agreement, under which Design Professional shall provide all or some portion of the above-referenced Scope of Work pursuant to this Agreement and relevant Work Order(s) (the "Services");

WHEREAS, while HTFC is the signatory to this Agreement, the Governor's Office of Storm Recovery ("GOSR") and its representatives shall administer the day-to-day activities and operations set forth herein and in any Work Order(s);

WHEREAS, the "Homeowner" identified in a particular Work Order will provide access to the Project Site for performance of the Services, and will be a third party beneficiary of Design Professional's obligations under this Agreement; and

WHEREAS, Design Professional acknowledges that performance of this Agreement requires compliance with certain federal and state requirements as set forth in Appendices I through III and Appendix A attached hereto;

NOW, THEREFORE, pursuant to and in consideration of the above, and other mutual covenants and obligations herein contained, it is

STIPULATED AND AGREED as follows:

1. General Obligations of the Design Professional.

(a) This Agreement incorporates by reference as if set forth herein the Design Professional's proposals dated July 13, 2016 (RFP001 & RFP002) and any subsequently submitted documents, communications and representations ("Proposal Documents") utilized by HTFC in evaluating the Design Professional for award of this Agreement.

(b) This Agreement sets forth the general terms and conditions governing the entire Scope of Work (Exhibit A) that HTFC may seek and the actual Services obligated by HTFC pursuant to a properly executed Work Order. This Agreement alone does not obligate compensation to be paid by HTFC or Services to be performed by the Design Professional. Services and compensation for such Services shall only be obliged upon the proper and complete execution of a Work Order. "Services" means the base Scope of Work, and everything required to be furnished and done by Design Professional pursuant to the Contract Documents (defined herein at 13(h)), including the employment and/or furnishing of all necessary labor, materials, equipment, supplies, tools, transportation, insurance, and other things and services of every kind necessary for the full performance and completion of Design Professional's obligations including, also, all administrative, accounting, record-keeping, notification and similar obligations.

(c) The Design Professional shall thoroughly familiarize itself with the nature and scope of the Scope of Work under this Agreement and with matters which may affect this Scope of Work, including the Law governing the Scope of Work and this Agreement. "Law" or "Laws" means all existing and future federal, state, and local statutes, laws, codes, ordinances, decrees, rules, regulations, requirements, required permits and licenses, judgments and orders, of every kind issued by any Governmental Entity, authority, or agency whether federal, state, municipal, local, or other government body or subdivision, including the regulations governing CDBG-DR funds and the requirements for contracting with the State of New York, applicable to or affecting a Project, project site, the Contract Documents, and/or the Services. Some, but not all, of the requirements are incorporated by reference in Appendix I-III and Appendix A. Any failure by the Design Professional to thoroughly familiarize itself with and understand such matters shall not relieve the Design Professional of its obligations under this Agreement or any Work Order hereunder. Changes in Law after the applicable Work Order date which require changes in the design of the Services, or in Design Professional's means and methods, shall not entitle Design Professional to any adjustment in the Work Order Price. For the avoidance of doubt, a change in Law shall include a change in the interpretation or administration of any Law, administrative protocols or procedures.

(d) Execution of each Work order shall be deemed a representation by Design Professional that, before the applicable Work Order date: (i) Design Professional has had the opportunity to inspect, if reasonably warranted, and is familiar with the nature and location of the Project Site, other physical conditions relevant to the Services, and the jurisdiction and rules involved or to be involved in the Project; and (ii) Design Professional has become familiar with other applicable general and local conditions which may be material to Design Professional's performance of the Services and the observable condition of, and all existing buildings and structures (if any) on or adjacent to, the Project Site; and (iii) Design Professional has afforded its subcontractors/sub-consultants the opportunity to conduct such inspections and to become familiar with such general and local conditions.

(e) Design Professional shall not receive additional compensation with respect to any conditions or circumstances of any kind relating to or affecting the Project Site, including Unforeseen Conditions except for Extraordinary Conditions covered by an approved Change Order. Except for Extraordinary Conditions, Design Professional assumes the entire risk of all

conditions or circumstances relating to or affecting the Project Site, including Unforeseen Conditions. Unforeseen Conditions means any and all covered or otherwise latent or hidden and materially adverse conditions of every kind whatsoever existing on or in the Project Site, or on or in any buildings or structure on the Project Site, which were not known to Design Professional and were not disclosed in any documents previously furnished to Design Professional. For the avoidance of doubt, Design Professional assumes the risk of all Unforeseen Conditions within the Work Order Price, except for Extraordinary Conditions, and Design Professional will receive no Change Orders for said Unforeseen Conditions. Extraordinary Conditions means any and all Unforeseen Conditions which would not be expected to be known to Design Professional on the basis of its experience with similar projects or its inspection of the Project Site and do not constitute a risk or obligation assumed by Design Professional in the Contract Documents.

(f) The Design Professional shall perform the Services contained in any Work Order in a diligent, safe, professional and workmanlike manner that conforms to generally accepted industry and professional practices, and the care and skill ordinarily exercised, for such Services. Design Professional represents and warrants that it is fully familiar with the technical standards applicable to Design Professional's performance of the Services. Technical standards shall be construed to mean the most recent published technical standards of the applicable institute, organization, association, authority or society. The Design Professional will perform its services under this Agreement by competent personnel or Subconsultants under the management, supervision, and direction or employment of, the Design Professional. "Subconsultant" means any person or firm (other than employees of Design Professional) engaged by Design Professional directly or indirectly in privity with Design Professional (including every sub-subconsultant of whatsoever tier), to provide services, materials, equipment, or other matters or things constituting part of the Services under this Agreement or any Work Order.

(g) The "Starting Date" for the Services on each Project shall be as specified in the applicable Work Order, The "Completion Date" for all the Services of the Design Professional on each Project shall be as specified in the applicable Work Order, subject to extension if and to the extent permitted with the prior written approval of HTFC, which approval shall not be unreasonably withheld, as evidenced by a fully executed Change Order (defined below in section 2(a)) to the applicable Work Order. Subject to such approved extension, time is of the essence of Design Professional's completion of the work on or before the revised completion date. The

Design Professional shall commit adequate resources to perform the Services under each Work Order by the Completion Date.

(h) The Design Professional shall submit all compliance documentation required by Appendix III attached hereto, or otherwise required by any RFP, RFQ, Work Order(s), GOSR Task Order(s), or other attachments to this Agreement or any Work Order(s), by electronic submission to GOSR's Management System of Record, Elation Systems, in such form and with such frequency as set forth in the applicable requirements document(s).

(i) Coordination of Services.

(a) HTFC may, upon reasonable prior notification, call meetings during normal business hours, to the extent possible, which shall be attended by representatives of the Design Professional.

(b) The Design Professional will cooperate with HTFC at all times during the performance of Services and promptly study and act upon, as is commercially reasonable, all HTFC recommendations and proposals.

(c) The Design Professional shall cooperate with HTFC in promptly completing and submitting all documents and records required by HTFC or other authorized representative of the State of New York and otherwise comply with all applicable orders, administrative rules, regulations and procedures of HTFC for the proper administration of the Services.

2. General Obligations of HTFC.

(a) The Work Order Price for each Project shall be the amount specified as the "Work Order Price" in the applicable Work Order. HTFC agrees to compensate the Design Professional for its performance of the Services under any proper and fully executed Work Order in the amount and according to the schedule specified in the applicable Work Order. Notwithstanding the foregoing, the Design Professional agrees that in no event will HTFC pay to the Design Professional more than \$1,000,000.00 for the services under all applicable Work Orders under this Master Design Agreement. For the avoidance of doubt, the total Fee for all Services to be performed pursuant to this Agreement **shall not exceed \$1,000,000.00** without a properly and fully executed modification/Amendment placed against this Agreement, together with a fully

executed Change Order to the applicable Work Order(s). A "Change Order" means a written order issued by HTFC to Design Professional, after execution of the applicable Work Order, authorizing or requiring: a) Extra Work for a discretionary HTFC change; b) an extension of time; or c) Deleted Work. The Total Fee includes all of Design Professional's expenses, fees and expenses of Subconsultants, and the cost of the Required Insurance for the relevant Work Order. Design Professional shall secure (or cause to be secured), as part of the Work Order Price", all permits, licenses, certificates and approvals, if any, required under the Contract Documents or otherwise customary for Design Professional's services. For the avoidance of doubt, the Total Fee for each Work Order for each Project shall be and remain separate, and Design Professional may not apply any portion of the fees or expenses under one Work Order toward the fees or expenses under any other Work Order. HTFC will not be obligated to remit payment to the Design Professional for any fees or expenses (including termination costs and travel expenses) if to do so would exceed the Total Fee, and the Design Professional shall not be obligated to continue performance if to do so would cause the Design Professional's fees to exceed the Total Fee, unless and until the Parties properly and fully execute a modification/Amendment of this Agreement and a Change Order to the applicable Work Order.

(b) HTFC shall, in its sole discretion, determine the extent to which it will use the Services of the Design Professional. This Agreement does not guarantee any minimum number of Work Orders or hours or amount of funds to be utilized over its term. Design Professional acknowledges and agrees that HTFC may, at its option, conduct an evaluation of Design Professional's performance after completion of the Services under any Work Order, and that the results of any such evaluation will be a factor in Design Professional's continuing eligibility for bidding on, and award of, additional Work Orders. HTFC reserves the right, at its option, to disqualify Design Professional from such bidding and awards solely on the basis of a negative evaluation. Design Professional agrees to participate in HTFC's evaluation process and provide all requested information.

(c) Nothing herein is intended nor shall it be construed as creating any exclusive arrangement with the Design Professional. The Design Professional shall not restrict HTFC from contracting with other entities for any or all of the Services contained in the Scope of Work.

3. Work Order Contract. All Services and compensation shall be obligated pursuant to a Work Order, which shall include: 1) a Statement of Services that will set forth the specific Services and quantity of such Services; 2) the compensation and payment schedule of such compensation (the "Total Fee"); 3) the Starting Date and Completion Date for the Services; 4) insurance requirements; and 5) other terms and conditions relevant to the Services. The "Project Manager" for a particular Work Order will be identified in the Work Order and shall include any successor designated by HTFC.

4. Ownership and Use of Documents.

(a) The Design Professional agrees that all plans, specifications, drawings and other documents of any kind whatsoever, and in whatever medium expressed, prepared by the Design Professional pursuant to any Work Order or otherwise (the "Project Documents"), and all rights therein (including trademarks, trade names, rights of use, copyrights and/or other proprietary rights), shall be and remain the sole property of HTFC (whether or not HTFC or the Homeowner undertakes, terminates, or completes the applicable project, or HTFC or the Design Professional terminates this Agreement for any reason whatsoever). Design Professional agrees in any event that the Project Documents are or shall be deemed "works for hire" and, for the avoidance of doubt, hereby irrevocably, perpetually, and unconditionally assigns to HTFC all right, title and interest therein.

(b) Submission or distribution of the Project Documents to meet official regulatory requirements or for other purposes in connection with the applicable project is not to be construed as publication in derogation of HTFC's rights. For the avoidance of doubt, HTFC shall own all right, title, and interest in and to the hard copies of all Project Documents, as well as all other physical deliverables (including models, renderings, and other presentation materials) prepared and/or furnished by Design Professional to HTFC pursuant to the Agreement. Except as expressly provided in this Agreement, the Design Professional shall not use (or distribute) the Project Documents, or any other material relating to the applicable Work Order or project, except as required by law or judicial action, without HTFC's prior written consent.

(c) This Section 4 shall survive the termination or expiration of this Agreement.

5. Design Professional Representations and Warranties. The Design Professional represents, covenants and warrants that:

(a) The Design Professional is a company in good standing and is licensed, registered and qualified to carry on business in the State of New York and has the approval, capacity, and authority to enter into this Agreement and to perform the obligations of the Design Professional under this Agreement;

(b) This Agreement does not in any way conflict with any other agreements of the Design Professional;

(c) The Design Professional possesses the business, professional, and technical expertise, and the training required to perform the Services;

(d) The Design Professional has or shall obtain, or cause to be obtained, all personnel necessary, with appropriate education, experience and expertise, to undertake and provide the Services in a manner satisfactory to HTFC.

(e) The Design Professional possesses the equipment, facilities, and employees to perform the obligations under this Agreement;

(f) The Design Professional and/or its facilities, employees, or agents, have been issued, as of the date of this Agreement and throughout the term of the Agreement, all material permits, licenses, certificates, or approvals required by applicable Law necessary to perform the Services; and

(g) All documents, including, but not limited to, invoices, billings, back-up information for invoices, and reports submitted by the Design Professional to HTFC in connection with the Services are complete and accurate to the best of the knowledge of the Design Professional. The Design Professional represents that HTFC, for whatever purpose, may rely upon all such documents and the data therein as being complete and accurate. The Design Professional agrees to promptly notify HTFC upon discovery of any instances where the Design Professional becomes aware of any discrepancies in relation to documents under this Section.

6. Inspection & Acceptance. The Design Professional shall only tender for acceptance those items that conform to the requirements of this Agreement and the relevant Work Order. HTFC reserves the right to review, inspect or test any deliverables or Services that have been tendered for acceptance. HTFC may require revision, re-performance, correction or replacement of nonconforming or defective Services or deliverables at no increase in the Total Fee. If revision,

correction, replacement or re-performance will not correct the non-conformance or is not possible, HTFC may seek an equitable price reduction or adequate consideration for acceptance of nonconforming or defective Services. HTFC must exercise its post-acceptance rights (a) within a thirty (30) days after the non-conformance or defect was discovered or should have been discovered; and (b) before any substantial change occurs in the condition of the item, unless the change is due to non-conformance or defect in the item or the actions of Design Professional or any Subconsultant.

7. Payment Process and Accounting Procedures.

- (a) Payment for all Services shall be made in United States currency.
- (b) Payment will be made after receipt of an accurate and complete invoice from the Design Professional for Services rendered, in conformance with the Work Order's payment schedule.
- (c) HTFC reserves the right to refuse payment on any portion thereof until such portion is acceptably presented.
- (d) Except as may be specifically provided in the Work Order, the Design Professional is solely responsible for all the Design Professional's costs and any other expenses necessarily and incidentally incurred in order to complete the Services.
- (e) The Design Professional shall submit an electronic invoice to GOSR's invoice management system of record, Elation Systems. The Design Professional, and all authorized Subconsultants performing services pursuant to this Agreement, shall obtain an Elation Systems account by registering at <https://www.elationsys.com/app/Registration>. Each invoice submitted to Elation Systems must include all applicable supporting documentation, including but not limited to:

- i. Name and address of the Design Professional;
- ii. Invoice date and number;
- iii. Work Order number;
- iv. Description of Services, quantity of Services, unit or rate of measure of the items delivered;

- v. If applicable, shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- vi. Terms of any discount for prompt payment offered;
- vii. Receipts and expense reports;
- viii. Subconsultant invoices;
- ix. Federal and state forms
- x. Name and address of the official to whom payment is to be sent;
- xi. Name, title, and phone number of the person to notify in event of defective invoice; and
- xii. Additional information as reasonably required by HTFC.

(f) All amounts paid by HTFC to the Design Professional are subject to audit by HTFC, as set forth in Section 9 of this Agreement.

(g) Payment will be made only to Design Professional via ACH (Automated Clearinghouse) transfer, i.e., direct deposit to the Design Professional's account. Design Professional must provide HTFC with a completed Designation of Depository for Direct Deposit of HTFC Funds form (a copy of which is attached as Exhibit C). Design Professional is solely responsible for the information provided on the form and for updating it as necessary.

(h) Payments are made pursuant to HTFC's Prompt Payments Policy, a copy of which may be obtained from HTFC's Assistant Treasurer at the address indicated above.

(i) Payment received hereunder shall be the full and complete satisfaction of any and every claim resulting from the approved items in such requisition.

(j) HTFC's payment of all or a part of an invoice shall neither relieve the Design Professional of any of its obligations under this Agreement nor constitute a waiver of any claims by HTFC.

8. Term and Termination of Agreement

(a) Term. The Term of this Agreement shall run as set forth in the period of performance.

i) **Period of Performance.** Design Professional will perform the Services set forth in all applicable Work Orders under this Design Agreement during the period:

July 26, 2016 through July 25, 2017

ii) Any extension of the Term of this Agreement shall be mutually agreed to by the Parties in writing through a modification/Amendment to the Agreement, as provided for in Appendix II. If the Agreement is not modified by the end of the period of performance of the Agreement, then unless otherwise instructed by HTFC, Design Professional shall deliver any and all Property belonging to HTFC to a location designated by HTFC. In addition, the Design Professional, at no additional cost, shall: (i) cooperate fully, at the direction of HTFC, in the orderly transition of the Services to its successor; and (ii) undertake the orderly cessation of the Services. For the purposes of this provision, "Property" means all tangible and real property owned or leased by HTFC, including the Project Documents, as well as any HTFC-furnished and Design Professional-acquired property. HTFC Property includes material, equipment, special tooling, special test equipment, and real property. Except as otherwise provided in section 4(a), Intellectual property (other than the Project Documents) shall be governed by Appendix I, Article 8.

(b) **Termination for Convenience.** In its sole discretion, HTFC may terminate Design Professional's right to perform services under this Agreement or under one or more Work Orders, for any reason or for no reason whatsoever (i.e., with or without cause) by written notice to Design Professional at any time after the date hereof (the "Termination Notice"). In such event, Design Professional's right to perform Services under this Agreement or, as applicable, the terminated Work Order(s), shall terminate effective as of five (5) business days after the giving of the Termination Notice (or, if later, on the date specified in the Termination Notice).

(c) **Termination for Cause.** If, through any cause, the Design Professional shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Design Professional shall violate any of the covenants, agreements, or stipulations of this Agreement, HTFC shall thereupon have the right to terminate this Agreement by giving written notice to the Design Professional of such termination, specifying this Section (c) and the effective date thereof, at least five (5) business 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 Design Professional under this Agreement shall, at the option of HTFC, become HTFC's property and the Design Professional shall be entitled to receive equitable compensation for any services satisfactorily completed hereunder. Notwithstanding the foregoing, the Design Professional shall not be relieved of liability to HTFC for damages sustained by HTFC by virtue of any breach of the Agreement by the Design Professional, and HTFC may withhold any payments to the Design Professional for the purpose of set-off until such time as the exact amount of damages due to HTFC from Design Professional is determined. If it is determined that a termination under this Section was wrongful or not justified, such termination shall be deemed a termination under Section (b) above; and Design Professional's recourse shall be as set forth in Section d below.

(d) Termination Fee. In the event of any termination under Section (b) above (i.e. not a termination for cause under Section (c)), Design Professional shall be entitled to the Termination Fee specified in this Section (d) but otherwise shall have no further claim to payment of any kind under this Agreement. "Termination Fee" means: As to Design Professional and any Subconsultants, payment representing compensation for all portions of any Total Fee(s) specified in any properly-executed Work Order(s) earned through the effective date of the termination under Section (b). Any amounts properly due to HTFC from Design Professional (or the applicable Subconsultant) pursuant to this Agreement shall be offset against the Termination Fee.

(e) Upon termination of this Agreement for any reason, the Design Professional, at no additional cost, shall: (a) reasonably cooperate , as requested by HTFC, in the orderly transition of the services to its successor; and (b) undertake the orderly cessation of the services.

(f) Upon completion of all services to be rendered by Design Professional under this Agreement, or upon any termination of this Agreement, Design Professional shall, at Design Professional's sole cost and expense, as applicable: (a) promptly remove from the Project Site(s) any equipment and facilities owned or leased by Design Professional and repair any damage caused by such removal; (b) clean and place in an orderly condition the area of the Project Site previously occupied by such equipment or facilities and/or Design Professional's personnel; and (c) cause all Employees and Subconsultants of Design Professional to vacate the Project Site.

8. Audit and Inspection Rights. HTFC's/GOSR's access to records, audit and inspection rights are subject to the provisions set forth in Appendices I and II. Notwithstanding the time periods set forth therein, Design Professional shall maintain all records connected with this Agreement for a period of at least six (6) years following the date of final payment or the close-out of all pending matters or audits related to this Agreement, whichever is later.

9. Indemnity & Insurance.

(a) Indemnity: Design Professional shall, and hereby agrees, to hold harmless, defend (with counsel acceptable to HTFC), and indemnify the Indemnitees from and against any and all losses, expenses, claims, demands, damages, judgments, liabilities or alleged liabilities, costs of any form or nature whatsoever (including reasonable attorneys' fees), whenever asserted, resulting from, arising out of, or in consequence of any action or cause of action in connection with this Agreement, the Services or Scope of Work, or any Work Order(s), including, but not limited to: property damage or destruction or loss of any property (including property of others in the care, custody or control of Design Professional); any injuries or death sustained by any persons, employees, agents, invitees and the like; any infringement of copyright, royalty, or other proprietary right in consequence of any design(s) created and/or specifications prepared in accordance with the Agreement, the Services or Scope of Work, or any Work Order(s) (arising out of Design Professional's or Subconsultant's unauthorized use of any intellectual property or otherwise); any materially untrue or incorrect statement or representation of Design Professional or Subconsultants with respect to the Services, the Project, or the Contract Documents (or for purposes of securing the Master Design Agreement or any work Order(s)); any injuries or damages resulting from defects, malfunction, misuse, etc. of Design Professional-provided equipment and materials; any violations of law; violations of this Agreement; any indemnitee's loss of coverage under any insurance by reason of acts or omissions of Design Professional or Subconsultants; and/or the conduct (including any acts, omissions, malfeasance, or willful misconduct) of Design Professional or any Subconsultant or supplier of any level or tier or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable.

"Indemnitee(s)" means Homeowner, the fee owner of a Project Site (if different than Homeowner), HTFC and its successors, affiliates, or assigns, GOSR, GOSR Referee, the

Program Manager, the Project Manager, New York State and U.S. Department of Housing and Urban Development ("HUD"); and any officer, director, attorney, official, trustee, manager, member, partner, employee, consultant, agent, servant, representative or affiliate of each of the foregoing; occupants or users of the Project Site, if any other than Homeowner; and the invitees and guests of such occupants and/or Homeowner, or others who may be determined to be third party beneficiaries of the indemnity and insurance provisions herein.

This indemnity shall expressly include, but is not limited to, the obligation of Design Professional to indemnify and reimburse HTFC for any and all attorneys' fees and other litigation or dispute resolution costs incurred, or to be incurred, in HTFC's enforcement of this Agreement, or any portion thereof, against Design Professional or otherwise arising in connection with this Agreement. Design Professional shall defend any claim, demand, allegation of liability, legal proceeding, etc. (collectively referred to as "Legal Proceedings") commenced against any Indemnitee concerning any matter covered by this Agreement or any Work Order(s). If Design Professional fails to diligently defend any such Legal Proceeding, then HTFC shall have the right (but not the obligation) to defend the same at Design Professional's expense. Design Professional shall not settle any such Legal Proceedings without HTFC's prior written consent. Design Professional shall notify HTFC promptly of every Legal Proceeding or claim of which it has knowledge, and will give timely notice of such Legal Proceedings or claims to each insurer which has issued an applicable policy of insurance.

Notwithstanding the foregoing provisions of this section 10(a), Design Professional remains liable, without monetary limitation, for direct damages for personal injury, death or damage to real property or tangible personal property or intellectual property attributable to the negligence or other tort of Design Professional, its officers, employees, agents, Subconsultants, or those for whose acts Design Professional may be liable. Design Professional's indemnities and obligations under this Master Design Agreement shall not be limited or defined by the amount of required insurance or by any limitations or restrictions on the amount or type of damages, compensation or benefits payable to, by or for Contractor under workers' compensation acts, disability benefit acts, or any other Laws relating to employee benefits. No Indemnitee's right to indemnity under this Agreement shall be diminished, waived, or discharged by the exercise of any other remedy allowed under this Agreement or by Law.

If any Subconsultant or any other person claiming to have been employed directly or indirectly by or through Design Professional files a Lien, Design Professional shall satisfy, remove or discharge such Lien at Design Professional's expense within 30 days after notice to Design Professional of the filing thereof. If Design Professional fails to do so, HTFC may, at its election, satisfy, remove or discharge such Lien and recoup same from the Design Professional.

This Section 10(a) shall survive indefinitely the termination of this Agreement for any reason.

(b) Insurance: Design Professional shall procure and maintain without interruption, at its sole cost and expense, insurance of the type, and with limits and deductibles, as set forth in Exhibit D attached hereto and in the applicable Work Order.

10. Assignment and Subcontracting.

(a) The Parties' rights regarding assignment, delegation and subcontracting are subject to the terms of Appendix II. The right of Design Professional to assign or delegate this Agreement, or subcontract any of the Services under a Work Order to this Agreement, or any of Design Professional's rights, payments, liabilities, or duties under the Contract Documents or any portion thereof, is generally prohibited without prior written approval of HTFC, which HTFC may withhold for any reason whatsoever. Any change of control by the Design Professional shall be deemed an assignment that requires prior written consent. A "change of control" includes any merger, consolidation, sale of all or substantially all of the assets or sale of a substantial block of stock of the Design Professional. Any assignment, subcontract or delegation without HTFC's prior written consent (including any assignment or transfer by operation of law or transfer of control of Design Professional) shall be void against HTFC.

(b) Design Professional hereby consents to the assignment of the Contract Documents, and/or any part of HTFC's interest therein, to any Government entity, pension trust or other financial institution which makes, or participates in, a grant, loan, or contribution to finance any Project(s), whether or not such financing is secured by an encumbrance, whether directly or collaterally (each a "Funding Source"). Upon HTFC's written request, Design Professional shall execute any documents or instruments which any Funding Source or other assignee may reasonably request to confirm and effect Design Professional's obligations under this Agreement.

(c) The Design Professional shall not employ, contract with, or use the services of any Subconsultants, subcontractors, or other third parties ("Subconsultants") in connection with the performance of its obligations hereunder without HTFC's prior written consent in each instance. "Subcontractor" and "Subconsultant" means every person ("Person" includes any individual, incorporated or unincorporated entity, government entity, entity or organization of any kind whatsoever), other than an employee of Design Professional, utilized by Design Professional, or by any Person directly or indirectly in privity with Design Professional (including every sub-contractor of whatsoever tier and anyone for whose acts they may be liable) for any portion of the Services, whether for the furnishing of labor, materials, equipment, services, or otherwise. As part of any such subcontract hereunder, after Design Professional receives written approval, the Design Professional must incorporate the terms of this Agreement and any relevant Work Order in its subcontract, including those Insurance Requirements which are applicable to Subconsultants pursuant to section 10(b) and Exhibit D attached hereto, so that the terms apply in the same manner and with the same effect as set forth in this Agreement and Work Orders hereunder. If the Design Professional does subcontract out any portion of the Services, after notice and consent are given, nothing contained in this Agreement or otherwise shall create any relationship of contract or agency between HTFC and the Design Professional's Subconsultants, except that HTFC and Homeowner will be third-party beneficiaries of the agreement between Design Professional and each Subconsultant. Design Professional acknowledges and agrees that HTFC shall have no obligation to supervise, deal with or pay any Subconsultant or its employees. No subcontract shall relieve the Design Professional of its responsibilities and obligations hereunder. The Design Professional agrees to be as fully responsible to HTFC for the acts and omissions of its Subconsultants of any level or tier and of persons either directly or indirectly employed by any of them or for whose acts they may be liable, as it is for the acts and omissions of Design Professional and for persons directly employed by the Design Professional. For the avoidance of doubt, the Design Professional will be responsible for directing and coordinating the services and deliverables of all Subconsultants so that the result is an integrated whole complying with the requirements of this Agreement.

(d) The Design Professional's obligation to pay its Subconsultants is an independent obligation from HTFC's obligation to make payments to the Design Professional. As a result,

HTFC shall have no obligation to pay or to enforce the payment of any moneys to any Subconsultant.

11. Compliance with Law.

(a) The Design Professional shall comply with all Law applicable to this Agreement and the Services performed hereunder.

(b) The Design Professional shall promptly notify HTFC in writing upon discovery of any failure, or any allegation of any failure, of the Design Professional to comply with any applicable Law relevant to the performance of Services or any requirement of this Agreement.

(c) Duties and obligations imposed by the Agreement, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed by applicable Law.

12. Miscellaneous Provisions.

(a) Force Majeure. Any delay or failure of either party to perform its obligations hereunder shall be suspended if, and to the extent, caused by the occurrence of a Force Majeure. In the event that either Party intends to rely upon the occurrence of a force majeure to suspend or to terminate its obligations, such Party shall notify the other Party in writing immediately, or as soon as reasonably possible, setting forth the particulars of the circumstances. Written notices shall likewise be given after the effect of such occurrence has ceased.

“Force Majeure” means riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, acts of nature whose effects prevent safe passage of vehicles upon state or federal highways for a continuing period of not less than fourteen (14) days, and federal or state government orders, any of which is beyond the reasonable anticipation or control of the applicable Party and which prevents performance of this Agreement, but only to the extent that due diligence is being exerted by the applicable Party to resume performance at the earliest possible time.

(b) Calendar Days. Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, including weekends and Federal Holidays, unless otherwise expressly provided. To the extent a deadline falls on a weekend or Federal Holiday, the next business day shall be the applicable deadline.

(c) Third Party Beneficiaries. Except as expressly set forth in this paragraph, this Agreement is intended solely for the benefit of the Parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction of any party in connection therewith. (i) Each Indemnitee is a third-party beneficiary of, and shall have the right to directly enforce, Design Professional's obligations under the indemnity and insurance provisions of this Agreement and the applicable Work Order. (ii) HTFC and homeowners are third-party beneficiaries of the agreement between Design Professional and each Subconsultant. (iii) Homeowner is a third-party beneficiary of, and shall have the right to directly enforce, Design Professional's obligations under this Agreement and the applicable Work Order, although nothing contained herein or therein shall create (or be deemed to create) any relationship of contract or agency between Homeowner and Design Professional (or any Subconsultant). No dealings of any kind whatsoever between Homeowner and Design Professional shall be deemed a waiver of the foregoing (unless Homeowner and HTFC specifically agree otherwise in writing). Upon HTFC's request, Design Professional shall furnish to Homeowner any submissions, services, or other information which Design Professional is obligated to furnish to HTFC. Design Professional agrees to allow Homeowner the right to participate in meetings concerning the Services.

(d) Authorization. The Design Professional, or the representative(s) signing this Agreement on behalf of the Design Professional, represents and warrants that the Design Professional has full power and authority to enter into this Agreement and to perform the obligations set forth herein, and that the representative(s) signing this Agreement has the authority to execute this Agreement on behalf of the Design Professional and to bind the Design Professional to its contractual obligations hereunder.

(e) Survivability. Notwithstanding any other provisions of this Agreement or a Work Order hereunder, or any general legal principles to the contrary, any provision of this Agreement, including all Appendices, Exhibits, Work Orders, modifications, amendments, change orders, and any other related Agreement document that imposes or contemplates continuing obligations on a Party, will survive the expiration or termination of this Agreement.

(f) Notices. Notwithstanding the Notice requirements in Appendix II, all notices and other communications given hereunder shall be 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:

(i) if to the DESIGN PROFESSIONAL, as follows:

Philipp Kampf Architecture & Design
Attn: Philipp E. Kampf
107 Center Street,
Bay Shore, NY 11706

and (ii) if to HTFC, to the attention of and at the following address:

HTFC
Attn: General Counsel
Governor's Office of Storm Recovery
25 Beaver Street
New York, NY 10004

(g) Exhibits; Supplementary Conditions. Exhibits A through D hereto, Appendices I through III and A hereto, and each Work Order executed by HTFC and Design Professional pursuant to this Agreement, are and shall be deemed part of (and incorporated in) this Agreement as though fully set forth in this Agreement. Design Professional shall (a) comply with the GOSR Supplementary Conditions for Contracts attached hereto as Appendices I through III and A (the "Supplementary Conditions"), (b) include such Supplementary Conditions in any Subcontract entered into under this Agreement, and (c) require all Subconsultants to flow-down such terms to all lower-tiered Subconsultants. These Supplementary Conditions include required terms for project contracts, HUD General Provisions, Participation by Minority Group Members and Women Requirements and Procedures for Contracts with HTFC, Standard Clauses for Contracts with HTFC, Standard Clauses for New York State Contracts, and required diversity forms.

(h) Entire Agreement; Order of Precedence. This Master Design Agreement and all attachments, schedules, and exhibits hereto, and all referenced documents and applicable Work Orders, any Change Orders, and any other modifications to any of the foregoing executed by HTFC and Design Professional (collectively, the "Contract Documents"), shall constitute the entire agreement between the Parties with respect to the matters herein, and integrates, merges, and supersedes all prior negotiations, representations, or agreements relating thereto, whether written or oral, except to the extent they are expressly incorporated herein. The provisions of this

Agreement and the accompanying documents shall be construed and interpreted as consistent whenever possible. Unless otherwise stated elsewhere in this Agreement, any conflicts in this Agreement and the accompanying documents shall be resolved in accordance with the following descending order of precedence:

1. Appendix I – HUD General Provisions
2. Appendix II – Standard Clause for all HTFC Contracts
3. Appendix III – Diversity Forms
4. Appendix A- Standard Clauses for New York State Contracts
5. This Agreement
6. The applicable Work Order
7. Exhibit A – Scope of Work
8. Exhibit B – Form of Work Order
9. Exhibit C – Designation of Depository for Direct Deposit of HTFC Funds
10. Exhibit D – Insurance Requirements
11. Proposal Documents

(i) Authorized Representatives. Wherever this Agreement states that a matter shall be satisfactory to, or subject to the consent or approval, of a party or the parties, such satisfaction, consent or approval must be evidenced in writing. HTFC and Design Professional have each designated the following representatives authorized to act in their respective behalf for purposes of this Agreement and any Work Order (including the execution of Work Orders) and the other Party may rely upon the signature of any such authorized representative acting in such capacity:

HTFC's Authorized Representative:

[Daniel Greene, daniel.greene@stormrecovery.ny.gov]

Design Professional's Authorized Representative:

[name, contact info]

Either Party may change its authorized representative by written notice to the other.

(j) This Agreement may be executed (a) in counterparts, a complete set of which shall constitute an original, and (b) in duplicates, each of which shall constitute an original.

Copies of this Agreement showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

(k) The Contract Documents, including all Work Order(s), shall be construed and enforced in accordance with, and governed by, the laws of the State of New York (without regard to principles of conflicts of laws). Design Professional and HTFC agree that any legal action with respect to this master Design Agreement and all Work Order(s) shall be brought and maintained only in the Supreme Court of the State of New York, New York County, and the Parties hereby accept (and submit to) the jurisdiction of such court.

(l) If any Court determines that any provision of the Contract Documents is illegal or unenforceable, the Contract Documents shall remain in effect in accordance with their terms, excluding the provision declared to be illegal or unenforceable.

(m) Except as otherwise provided in this Agreement, the Contract Documents may not be modified or amended (or any term or provision waived or discharged) except in writing signed by the party against whom enforcement of such amendment, modification, waiver or discharge is intended to be effective. No action, failure to act, course of dealing, or delay of HTFC shall constitute a waiver by HTFC of Design Professional's compliance with the terms and conditions of the Contract Documents nor shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

[SIGNATURE PAGE FOLLOWS THIS PAGE]

IN WITNESS WHEREOF, the Parties executed this Agreement on the day and year first above written.

HTFC:

HOUSING TRUST FUND CORPORATION

By: _____
Name: _____
Title: _____



DESIGN PROFESSIONAL:

Philipp Kampf Architecture & Design

By: _____
Name: _____
Title: _____



9/12/16
PHILIPP E. KAMPF - R.A.
PRINCIPAL REGISTERED ARCHITECT

This contract has been approved by HTFC's Counsel as to form and its Treasurer as to fiscal sufficiency.

EXHIBIT A

SCOPE OF WORK

A. The Scope of Work will be defined in the Work Order documents and may include one or more of the following services, to be performed by the Design Professional and/or one or more Subconsultants thereof:

- Design services for single family (1-4 units) residential structures;
- Design and engineering of comprehensive home elevation or portions thereof;
- Design and engineering of new construction of residential projects or portions thereof;
- Design and engineering of renovation and/or repair projects or portions thereof;
- Facilitation or expediting the completion of in process residential repair, elevation, and reconstruction projects;
- Construction contract administration services;
- Standard specifications and details of approved materials, finishes, and equipment;
- Geotechnical studies, investigation and reports;
- Professional land surveying;
- Elevation certificate preparation, and permit expediting;
- Cooperation and coordination with other HTFC consultants; and
- Other relevant professional services as defined.

B. The deliverables will be defined in the Work Order documents and may include one or more of the following, to be performed by the Design Professional and/or one or more Subconsultants thereof:

- Full, partial, or revised preliminary or final construction plans for residential projects, prepared for approval by HTFC and/or Authority Having Jurisdiction;
- Studies, reports, or analysis of residential structural or nonstructural components and/or systems;
- Construction change orders and associated written orders for residential construction projects; and
- Permit applications to facilitate Program-directed residential construction activities, prepared for approval by HTFC and/or Authority Having Jurisdiction.

EXHIBIT B

FORM OF WORK ORDER FOR EACH PROJECT

REQUIREMENTS PRIOR TO EXECUTION OF WORK ORDER

Before any Work Order can be executed, the following conditions must be complied with:

1. Homeowner and HTFC shall have signed the Supplement to Grant Agreement.
2. If required under the Work Order, Design Professional shall have delivered to HTFC the Performance Bond and Payment Bond.
3. Design Professional shall have delivered to HTFC certificates of insurance with endorsements evidencing compliance with the Required Insurance types and Insurance Limits set forth in Exhibit D of the Design Agreement and the Work Order.
4. Design Professional shall have confirmed and accepted all Scope Documents listed in and to be attached to the Work Order.

COMPLETION OF EACH WORK ORDER

All sections of the Introductory Statement and Work Order Terms and Conditions portions of the Work Order shall be completed in their entirety.



Governor's Office of Storm Recovery

Andrew M. Cuomo
Governor



Lisa Bove-Hart
Interim Executive Director

WORK ORDER

Introductory Statement

HOUSING TRUST FUND CORPORATION (“HTFC”) has entered into a Master Design Agreement (“Agreement”) dated as of _____, 2016 (including all Exhibits and Supplementary Conditions thereto, the “Agreement”) with _____ (“Design Professional”), pursuant to which Design Professional shall perform certain design services for the specified Project Site. The Agreement contemplates that for each such Project site, HTFC and Homeowner will enter into a Supplement to Grant Agreement with respect to the specified Project Site and that HTFC and Design Professional will enter into a Work Order in this form setting forth the terms and conditions for the specific Project Site and Services. The “Supplement to Grant Agreement” means the Supplement to a Homeowner’s CDBG-DR Grant Agreement in which the Homeowner agrees, among other things, to performance of the Services by Design Professional, to allow access to the Project Site, and to comply with the terms and conditions of the Contract Documents in enforcing Homeowner’s rights as a third-party beneficiary thereunder. Design Professional hereby acknowledges that it has received and reviewed a copy of the Supplement to Grant Agreement with respect to the specific Project covered by this Work Order. HTFC desires to engage Design Professional to undertake the Services described in this Work Order pursuant to the terms of the Master Design Agreement, and Design Professional desires to undertake and perform such Services. Accordingly, upon execution by the parties below, this Work Order becomes part of, and is incorporated into, the Agreement. All words and phrases defined in the Agreement or its Exhibits and Supplementary Conditions have the same meaning in this Work Order.

Scope of Work: *The Services described in the Scope Documents and the other terms and conditions listed in the attached Work Order Terms and Conditions for the PROJECT ID listed below only.*

Work Order Number	Project ID	Project Site	Description of Services	Work Order Value

[SIGNATURE PAGE FOLLOWS THIS PAGE]

Work Order Number	Project ID

**Effective Date of
Work Order:** _____

Completion Date: *Listed in in the attached Work Order Terms and Conditions.*

IN WITNESS WHEREOF, HTFC and Design Professional have duly executed this Work Order (including the Terms and Conditions attached hereto) as of _____, __ 2016.

HTFC:

HOUSING TRUST FUND CORPORATION

By: _____
Name:
Title:

DESIGN PROFESSIONAL:

By: _____
Name:
Title:

Work Order Number	Project ID

Work Order Terms and Conditions

A. PROJECT: PROJECT SITE AND HOMEOWNER

The "Project" is *[insert description]*.

The "Services" and the "Deliverables" are as described in the Scope Documents attached to this Work Order to be performed in accordance with this Agreement with respect to the property located at and on the Project Site.

The "Project Site" is [street address], [city], NY [zip code].

The "Homeowner" of the Project Site is [name(s) and contact information]

B. PROJECT MANAGER

HTFC's "Project Manager" for the Project is [name and contact information].

C. STARTING DATE AND COMPLETION DATE

The "Starting Date" for the Services is _____, 20__.

The "Completion Date" for all the Services of Design Professional shall be _____, 20__.

D. WORK ORDER PRICE; PAYMENT SCHEDULE

The "Work Order Price" ("Total Fee") is: \$ _____.

The Work Order Price includes all of Design Professional's expenses, fees and expenses of Subconsultants, and the cost of the Required Insurance. For the avoidance of doubt, the Work Order Price for all services to be provided and work to be performed pursuant to this Work Order **shall not exceed \$** _____ unless the Work Order Price is first modified in writing by a fully executed Change Order to this Work Order

Work Order payments will be made according to the following "Payment Schedule":

[insert payment schedule]

Invoices shall be submitted by the 10th and 24th of each month for processing, as applicable. Each Work Order will be invoiced and paid separately.

E. INSURANCE COVERAGE AMOUNTS

For purposes of this Work Order, "Insurance Limits" (as such term is used in the Agreement) shall mean the following:

[insert list of required coverages for applicable Work Order]

F. SCOPE DOCUMENTS

- 1.
- 2.
- 3.
- 4.

[list scope documents applicable to this project, including site assessment or engineering reports, other consultant reports, instructions for sequence of services, etc.]

G. OTHER REQUIREMENTS

These terms and requirements shall apply to each and every project for which HTFC and Design Professional enter into a Work Order. In each such case, Design Professional shall comply with these requirements in completing the Services for each applicable Project under this Agreement. The cost for any and all such requirements is included in the Total Fee.

1. [insert if applicable] Flood zone; sustainability

2. *[keep if applicable]* Design Professional understands that it is of great importance to HTFC to keep the cost of the Project within the approved budget and will design the Project within the constraints of the approved budget. If the estimated costs of completing the Project exceed the approved budget, Design Professional will revise the Project Documents with the goal of bringing the costs within the approved budget at no additional cost to HTFC. If HTFC decides to increase the approved budget for any reason, such increase shall not result in any increase in the Total Fee or otherwise require HTFC to make additional payments to Design Professional.
3. *[keep if applicable]* Before signing this Work Order, the Design Professional has visited the Project Site and familiarized itself generally with observable existing conditions which may affect the design of the project and the performance of the Design Professional's Services hereunder.
4. *[insert if applicable]* Design Professional's Subconsultants for this Work Order are listed below. All Subconsultants and persons assigned to the Services by Design Professional shall cooperate fully with HTFC and HTFC Consultants in connection with the Project.

[insert list of approved Subconsultants]

5. Notwithstanding anything to the contrary in the Agreement, the Design Professional agrees that the Design Professional is and shall be an independent contractor for all purposes of the Agreement and this Work Order and not an agent or employee of HTFC or Homeowner. The Design Professional shall have no authority whatsoever to bind HTFC or Homeowner, or to obligate HTFC or Homeowner to any contractor or other person or firm.
6. When Design Professional believes that final package of design documents and other materials due from Design Professional is complete, Design Professional shall submit the same to HTFC for review and comment. Design Professional shall make the requested corrections and revisions and resubmit the relevant documents and materials to HTFC for its additional review. Submissions shall be considered final and complete only after written approval by HTFC.
7. HTFC's approval of any plans, drawings, specifications or other documents prepared by the Design Professional, and/or any payments by HTFC to the Design Professional or any other person or firm, and/or any occupation of part or all of the Project Site by Homeowner or any other person or firm, shall not be deemed to waive, release or modify any rights of HTFC under the Agreement or this Work Order, unless specifically so provided in a separate written agreement between HTFC and the Design Professional.
8. Design Professional shall endeavor to coordinate the Services with other consultants and contractors engaged by HTFC or Homeowner, including attending meetings, coordinating performance of the Services, and coordinating the Project

Documents with HTFC and such other consultants and contractors, and upon request shall provide HTFC with copies of correspondence with such other consultants and contractors relating to the Services or the Project Site.

9. Design Professional agrees that all plans, specifications, drawings or other documents prepared by Design Professional pursuant to this Work Order ("Project Documents") are or shall be deemed "works for hire" and, for the avoidance of doubt, hereby irrevocably, perpetually, and unconditionally assigns to HTFC all right, title and interest therein. HTFC hereby grants a royalty-free license to Homeowner, as a third-party beneficiary of the Agreement and this Work Order, to use the Project Documents in connection with the Project and any future renovation or alteration to the Project.
10. Design Professional represents and warrants that Design Professional and each of its Subconsultants is registered to do business in New York State, is licensed in New York State to perform the type of Professional Services set forth in this Work Order, and is experienced and properly qualified to provide the types of services set forth in this Work Order.

EXHIBIT C

Designation of Depository for Direct Deposit of HTFC Funds

[see attached]

EXHIBIT D

Required Insurance

[TO BE CONFIRMED]

A. Design Professional Insurance

1. The "Required Insurance" under this Contract consists of all coverages described in, and required under this Section A (and under Section E of the applicable Work Order). The cost of all Required Insurance is included in the Total Fee and Work Order Price, and shall be borne by Design Professional at Design Professional's sole expense.
2. Design Professional shall secure and maintain the following coverages (with the Insurance Limits as specified in the applicable Work Order, as set forth in Section B below):
 - (a) workers' compensation insurance and disability benefits insurance as required by New York State Laws covering employers liability, workers' compensation coverage, and disability benefits coverage for all persons employed in connection with the Services (including those by Subconsultants or independent contractors engaged by Design Professional);
 - (b) commercial general liability insurance, applying on a primary, non-contributory basis irrespective of any other insurance, whether collectible or not, covering liability for bodily injury (including death) and property damage combined, and for personal and advertising injury, covering the Project Site and all streets, alleys and sidewalks adjoining or appurtenant to the Project Site, and including:
 - (i) operations-premises liability;
 - (ii) contractor's protective liability on the operations of all Subconsultants;
 - (iii) products/completed operations coverage (with completed operations maintained within Design Professional's ongoing general liability insurance program for not less than six years after completion of the Services (or such shorter period which HTFC may approve);
 - (iv) broad form property damage coverage;
 - (v) broad form contractual liability (referencing section 10 (a) of the Master Design Agreement);
 - (vi) a broad form comprehensive general liability endorsement (including explosion, subsidence, collapse, and underground damage, libel, slander, and false arrest, and products liability);

- (vii) no exclusions relating to (a) gravity related injuries, and (b) injuries sustained by the employee of an insured or any insured rather than "the insured";
 - (viii) fire damage and water damage legal liability;
 - (ix) protective liability insurance in HTFC's name for the operations of Design Professional and all Subconsultants; and
 - (x) deletion of the Contractual Liability Exclusion as applicable to construction or demolition to be performed within 50 feet of railroad track; and
 - (xi) (xi) property of others in the care, custody and control of Design Professional; and
- (c) comprehensive business automobile liability insurance for all owned, non-owned, leased, rented and/or hired vehicles utilized in or related to Design Professional's activity or performance under the Agreement or any Work Order, insuring against liability for bodily injury (including death) and property damage combined ;
- (d) excess or umbrella liability insurance, applying on a primary, non-contributory basis irrespective of any other insurance, whether collectible or not, and applying in excess over all limits and coverages in paragraphs 2(b) and 2 (c) above;
- (e) if Design Professional or any Subconsultant or other Person will perform environmental testing, pollution mitigation and/or abatement, under the applicable Work Order, pollution legal liability insurance coverage for loss and expense arising out of the acts, errors or omissions of the insured and/or those acting under the insured's direction or control and/or for whose acts the insured may be liable, with respect to, among other things, coverage for asbestos, lead paint, and mold, with limits as set forth in the applicable Work Order;
- (f) professional liability insurance, with an endorsement for this Agreement and each Work Order hereunder, covering loss and expense ("loss and expense" means loss, liability, alleged liability, obligation, damage, delay, penalty, judgment, cost, fee, claim, charge, tax or expense of every kind) arising out of the acts, errors or omissions of Design Professional and/or any Subconsultant and/or anyone for whose acts the Design Professional may be liable, with limits as set forth in the applicable Work Order;
- (g) valuable papers insurance insuring all Project Documents and other documents and things produced by Design Professional or any Subconsultant under this Agreement or the applicable Work Order, in an amount specified in the applicable Work Order
3. The commercial general liability, business automobile liability, excess or umbrella liability, pollution legal liability, and valuable papers coverage shall be endorsed to designate HTFC, Homeowner and all other Indemnitees (but excluding any licensed

engineers with respect to liability for professional malpractice or negligence), as additional insureds. The commercial general liability additional insureds coverage shall be issued on ISO Forms CG 20 10 07 04 and 20 37 07 04 or their equivalent. Coverage provided to the additional insureds shall be on a primary and non-contributory basis.

4. Except as specified for completed operations coverage under paragraph 2(b)(iii) above, Design Professional shall maintain all coverages of Required Insurance without interruption during the Period of Performance ("Term") set forth in the Master Design Agreement and thereafter during any period while Design Professional and/or any Subconsultant is performing any Services (including any warranty or corrective services) or furnishing any services pursuant to the Contract Documents.
5. Design Professional shall require that all Subconsultants carry liability and property damage insurance of the same types and coverages as specified in paragraphs 2 and 3 (except for the coverage under 2 (d)) and Design Professional shall require each Subconsultant to furnish the same documentation of such coverage as required of Design Professional hereunder, unless and except as HTFC agrees otherwise in writing.
6. Design Professional is advised that HTFC does not maintain, and will not maintain, insurance which would cover Design Professional's (or any Subconsultant's) equipment or other property.
7. Each policy of Required Insurance shall contain the following (whether or not requiring additional premium):
 - (a) an agreement by the insurer that such policy shall not be cancelled or amended or non-renewed, or any coverages reduced, without at least 30 days prior written notice by registered mail to HTFC at the address specified in this Contract; (b) deductibles of not more than the amounts allowed in Section B below;
 - (b) an endorsement that:
 - (i) no unintentional act or omission of HTFC, Homeowner, Design Professional or any other named or additional insured; and
 - (ii) no violation of warranties, declarations or conditions of the policy or any application therefor by any of the aforementioned,shall affect or limit the insurer's obligation with respect to HTFC and any other named or additional insured;
 - (c) a waiver of subrogation by the insurer with respect to HTFC and any other named insured and additional insured with respect to professional malpractice or negligence; and
 - (d) a waiver by the insurer of any claim for insurance premiums against HTFC.

Design Professional and each Subconsultant shall deliver to HTFC Certificates of Insurance (and copies of the applicable policy if requested by HTFC), including required endorsements, evidencing compliance with all insurance provisions set forth in this Exhibit D BEFORE bringing any Employees, materials, or equipment to a Project Site, or otherwise commencing the Services, whether on a Project Site, or elsewhere, Not later than five days before any renewal premiums become due, Design Professional shall deliver evidence of the renewal of all expiring insurance, including required endorsements. As a condition to Completion, Design Professional shall deliver to HTFC evidence of continuing completed operations coverage as required under paragraph 2(b) above.

8. All Required Insurance shall be on a per location or per project basis and shall be provided through valid and enforceable policies issued by a company or companies which are licensed to issue insurance in the State of New York and having A.M. Best's Ratings of "A-" and "VII" or better (or which are otherwise reasonably acceptable to HTFC). All policies will provide primary coverage for obligations assumed by Design Professional under this Agreement or any Work Order. All liability insurance of every kind required under this Schedule B (except for the insurance required under A.2 (e) and (f) above) shall be written on a per "occurrence" basis. For insurance required under A (2) (e) and (f), in the event coverage is on a claims-made basis or is terminated upon completion of the Project, then Design Professional shall purchase an extended reporting period of not less than 3 years.
9. Any additional insurance policies necessary to obtain required permits or otherwise comply with Laws, including any changed circumstances regarding the performance of the Services, shall be at the risk of the Design Professional.
10. An Accord Certificate of Insurance is an acceptable form to submit evidence of all Required Insurance coverage except Workers Compensation Insurance and Disability Benefits Insurance. For evidence of Workers Compensation Insurance, the Design Professional must supply one of the following forms: Form C-105.2 (Certificate of Workers Compensation Insurance issued by a private carrier), Form U-26.3 (Workers Compensation Insurance issued by the State Insurance Fund), Form SI-12 (Certificate of Workers Compensation Self-Insurance), Form GSI-105.2 (Certificate of Participation in Workers Compensation Group Self-Insurance), or CE-200 (Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage). For evidence of Disability Benefits Insurance, the Design Professional must supply one of the following forms: Form DB-120.1 (Certificate of Disability Benefits Insurance), Form DB-155 (Certificate of Disability Benefits Self-Insurance), or CE-200 (Certificate of Attestation of Exemption from NYS Workers Compensation and/or Disability Benefits Coverage).

B. Insurance Limits

The required insurance coverage limits for each Project are set forth in the applicable Work Order.

APENDICES

GOSR Supplementary Conditions for Contracts

[see attached]

Appendix I – HUD General Provisions

Appendix II – Standard Clause for all HTFC Contracts

Appendix III – Diversity Forms

Appendix A- Standard Clauses for New York State 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

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. EXECUTIVE ORDER 11246

(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. CERTIFICATION OF NONSEGREGATED FACILITIES
(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. CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS
(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. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

(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).

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641 LEXINGTON AVENUE, NEW YORK, NEW YORK 10022, (212) 688-4000**

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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")**

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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, licensor, 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 "Indemnittees") harmless from and against all claims, demands, liability, loss, cost, damage or expense, including attorney's fees, which may be incurred by the Indemnittees 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

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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. 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 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,

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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.

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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

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(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: mwbcertification@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.

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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

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 a 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 percent 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 percent 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 percent 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 percent 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-37-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 7i, 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 7i, 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

Previous editions are obsolete.

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 mortgage 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 mortgage 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.

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.

Submit two (2) copies of this report 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

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 contracts 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 contracts 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

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 Office of Labor Relations	HUD FORM 4710 <small>OMB Approval Number 2501-0219 (Exp. 09/30/2013)</small>
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Agency Name:	Agency Type: <small>(e.g. CDBG, PWS, TDR/OPW)</small>	State:	LR2000 Agency ID #: <small>(HUD Use Only)</small>
Period Covered: Check One and Enter Year(s)			
<input type="checkbox"/> Period 1: October 1, ____ to March 31, ____		<input type="checkbox"/> 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.

- 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
- Total dollar amount of prime contracts reported in item 1 above \$
- List for each contract awarded this period:

Project Name/Number	Contract Amount	Wage Decision Number	Wage Decision Lock-In Date
EXAMPLE: "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.

Agency Name:	Agency Type: <small>(e.g. CDBG, PHA, TDHE/HA)</small>	State:	LR2000 Agency ID #: <small>(HUD Use Only)</small>
Period Covered: Check One and Enter Year(s)			
<input type="checkbox"/> Period 1: October 1, ____ to March 31, ____	<input type="checkbox"/> 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)
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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
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6. (a) **Number of workers for whom wage restitution was collected/dispursed:**
Report only once; if you previously reported workers for whom restitution was collected, do not report the same workers when funds are dispursed. Include workers to whom restitution was paid directly by the employer.

(b) **Total amount of straight time wage restitution collected/dispursed 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/dispursed 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

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 Item 1.

Semi-Annual Labor Standards Enforcement Report - Local Contracting Agencies (HUD Programs)	U.S. Department of Housing and Urban Development Office of Labor Relations	HUD FORM 4710i <small>DWR Approval Number 2501-0019 (Exp. 09/30/2013)</small>
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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 30% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% 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 (60th) 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: GOSR (COBG-DR)		Report Includes: <input type="checkbox"/> Workforce to be utilized on this contract <input checked="" type="checkbox"/> Contractor/Subcontractor's total work force
Offeror's Name: PHILIPPE KAMPF		Reporting Entity: <input checked="" type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor Subcontractor's name _____
Offeror's Address: [REDACTED]		

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								Disabled		Veteran			
		Total Male (M)	Total Female (F)	White		Black		Hispanic		Asian		Native American		(M)	(F)	(M)	(F)
				(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)				
Officials/Administrators	1										1						
Professionals	1	1															
Technicians	1			1													
Service Maintenance Workers																	
Office/Clerical	1									1							
Skilled Craft Workers																	
Paraprofessionals	1	1															
Protective Service Workers																	
Totals																	

PREPARED BY (Signature): [REDACTED]	TELEPHONE NO.: [REDACTED]	DATE: 2/11/16
NAME AND TITLE OF PREPARER (Print or Type): PHILIPPE KAMPF	EMAIL ADDRESS: [REDACTED]	
SUBMIT COMPLETED WITH BID OR PROPOSAL		

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: PHILIPP E. KAMPF
 Address: [REDACTED]
 City, State, Zip Code: [REDACTED]
 Region/Location of Work: [REDACTED]

Federal Identification Number: [REDACTED]
 Solicitation Number: [REDACTED]
 Telephone Number: [REDACTED]
 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 <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> 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: [REDACTED] Authorized Signature DATE: 2/1/16 TELEPHONE NO: [REDACTED] EMAIL ADDRESS: [REDACTED] 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 16-A, 6 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: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ Contract No: _____ Contract Award Date: _____ Estimated Date of Completion: _____ Amount Obligated Under the Contract: _____ NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ NOTICE OF ACCEPTANCE ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____	

REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.	
Offeror/Contractor Name: PHILIPP E. KAMPF	Federal Identification No.: [REDACTED]
Address: [REDACTED]	Solicitation/Contract No.: RFQ# 201512 42
City, State, Zip Code: [REDACTED]	M/WBE Goals: MBE 0 % WBE 0 %
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. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial 2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial 3. <input checked="" type="checkbox"/> 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: <u>TBD</u>	
PREPARED BY (Signature): [REDACTED]	Date: 2/1/16
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.	
Name and Title of Preparer (Printed or Typed): PHILIPP E. KAMPF	Telephone Number: [REDACTED] Email Address: [REDACTED]
Submit with the bid or proposal or if submitting after award, submit to the M/WBE Program Unit:	***** FOR AGENCY USE ONLY *****
New York State Governor's Office of Storm Recovery 25 Beaver Street, 5 th Floor New York, NY 10004	REVIEWED BY: _____ DATE: _____
Email to: MWBE_EEOCreports@stormrecovery.ny.gov	Waiver Granted: <input type="checkbox"/> YES <input type="checkbox"/> NO MBE: <input type="checkbox"/> WBE: <input type="checkbox"/> <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency issued _____ *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, PHILIPP E. KAMPF, the (awardee/contractor) CONTRACTOR agree to adopt the following policies with respect to the project being developed or services rendered for (name agency/ies or project location) GOSR RFC# 201512_42

MWBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the MWBE 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 MWBE contractor associations.
- (2) Request a list of State-certified MWBEs 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 MWBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by MWBEs and encourage the formation of joint venture and other partnerships among MWBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to MWBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting MWBE contract participation goals.
- (6) Ensure that progress payments to MWBEs 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 MWBE 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 1 day of FEBRUARY, 2016

By [Redacted Signature]

Print: PHILIPP E. KAMPF

Title: OWNER/PRINCIPAL

PHILIPP E. KAMPF

_____ 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

30% Minority and Women's Business Enterprise Participation

15% Minority Business Enterprise Participation

15% Women's Business Enterprise Participation

EEO Contract Goals

30 % Minority Labor Force Participation

30 % Female Labor Force Participation

WORKFORCE EMPLOYMENT UTILIZATION

Contract No.:	Reporting Entity: <input checked="" type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Reporting Period: <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
Contractor's Name: PHILIPP E. KAMPF ARCHITECT		Report includes: <input type="checkbox"/> Work force to be utilized on this contract <input checked="" type="checkbox"/> Contractor/Subcontractor's total work force
Contractor's Address: [REDACTED]		

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								Disabled		Veteran	
		Male (M)	Female (F)	White (M) (F)	Black (M) (F)	Hispanic (M) (F)	Asian (M) (F)	Native American (M) (F)	(M) (F)	(M) (F)					
Officials/Administrators	1								1						
Professionals	1	1													
Technicians	1	1													
Sales Workers															
Office/Clerical	1								1						
Craft Workers															
Laborers															
Service Workers															
Temporary /Apprentices	1	1													
Totals															

PREPARED BY (Signature): [REDACTED]	TELEPHONE NO.: [REDACTED]	DATE: 2/1/16
NAME AND TITLE OF PREPARER (Print or Type): PHILIPP E. KAMPF OWNER/PRINCIPAL	EMAIL ADDRESS: Submit completed form to: NYS Governor's Office of Storm Recovery, 25 Beaver Street, 6 th Floor, New York, NY 10004, or MWBE_EEOreports@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 PHILIPP E. KAMPF ARCHITECT 107 CENTER STREET BAY SHORE, NY 11709		Federal ID# 055-62-2939	Goals/Dollar Amount MBE ³⁰ % = \$ _____ WBE ³⁰ % = \$ _____		Contract Type: Paid to Contractor this Quarter: Total Paid to Contractor to Date:					
		Project Completion Date	Work Location		Reporting Period: <input type="checkbox"/> 1 st Quarter (4/1-6/30) <input type="checkbox"/> 3 rd Quarter (10/1-12/31) <input type="checkbox"/> 2 nd Quarter (7/1-9/30) <input type="checkbox"/> 4 th 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: Fed ID#:		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
Name: Fed ID#:		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
Name: Fed ID#:		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
Name: Fed ID#:		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
Total:										

*See Next Page for Product Codes

Date: 2/1/16 Name: PHILIPP E. KAMPF Title: OWNER/PRINCIPAL Signature: 

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.

NO Respond YES or NO.

If YES, provide explanation:



Respondent's Signature

2/1/16

Date of Respondent's Signature

PHILIPP E. KAMPF

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.nvshcr.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 <i>(List All Firms)</i>	Type of Service Provided <i>(Select only one)</i>	NYS Certified MBE	WBE	Payment This period	Contract Amount
Federal ID#	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/>	<input type="checkbox"/>	No Payment <input type="checkbox"/>	
Federal ID#	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/>	<input type="checkbox"/>	No Payment <input type="checkbox"/>	
Federal ID#	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/>	<input type="checkbox"/>	No Payment <input type="checkbox"/>	
Federal ID#	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/>	<input type="checkbox"/>	No Payment <input type="checkbox"/>	

 Signature of Company Official

 Print Name of Company Official

 Date

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 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												
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

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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, licensor, 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. CONFLICTING TERMS. 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. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. 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. 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.

17. SERVICE OF PROCESS. 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. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. 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.



New York State
Housing Trust Fund Corporation

ACH/DIRECT DEPOSIT AUTHORIZATION

NOTE: Please type or clearly print all requested information

PART 1: Payee Identification

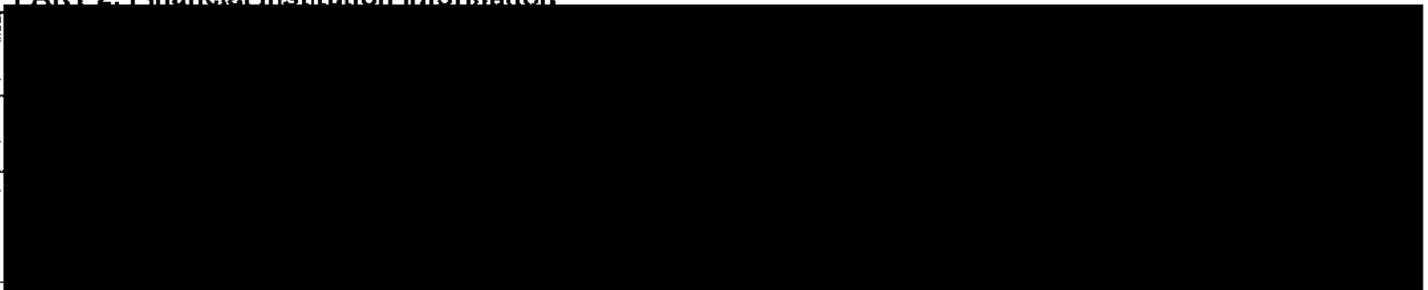
Payee Name PHILIPP KAMPF		Payee Type <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Property Manager/Agent	
Payee Email Address [REDACTED]		Payee Phone Number (with area code) Type [REDACTED] <input checked="" type="checkbox"/> Work <input type="checkbox"/> Home	
Street Address [REDACTED]		City [REDACTED]	State [REDACTED]
		Zip Code [REDACTED]	

WARNING: Federal law prohibits HTFC from processing international ACH transactions (IAT). If any payment to you from HTFC will result in an IAT under the National Automated Clearing House Association's operating rules or if you are unsure if the rules apply to you, **DO NOT COMPLETE THIS FORM.**

Please initial in the box to the right to indicate you have read the above warning. If you fail to initial here, direct deposit will not be approved.

PEK

PART 2: Financial Institution Information



PART 3: Authorization

I authorize HTFC to deposit payments by electronic funds transfer (ACH) into the above referenced account. I acknowledge that if I fail to provide complete and accurate information on this authorization form, processing of this form and payments may be delayed.

This authorization will remain in effect until written notice to terminate is received.

Authorized Signatory [REDACTED]	Title PRINIPAL-RA OWNER	Date 831/16
------------------------------------	-------------------------------	----------------

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. PHILIPP E. KAMPF	
	2 Business name/disregarded entity name, if different from above _____	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input checked="" type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.) _____	Requester's name and address (optional) _____ _____ _____
	6 City, state, and ZIP code _____	
	7 List account number(s) here (optional) _____	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
[REDACTED]
OR
Employer identification number
[REDACTED]

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Part II Certification

- Under penalties of perjury, I certify that:
- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
 - I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
 - I am a U.S. citizen or other U.S. person (defined below); and
 - The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶ [REDACTED]	Date ▶ 8/31/16
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General Instruction

Section references are to the Internal Revenue Code unless otherwise noted.
Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

- An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:
- Form 1099-INT (interest earned or paid)
 - Form 1099-DIV (dividends, including those from stocks or mutual funds)
 - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
 - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
 - Form 1099-S (proceeds from real estate transactions)
 - Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)
 Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.
 If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.
 By signing the filled-out form, you:
 - Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
 - Certify that you are not subject to backup withholding, or
 - Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
 - Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.