

FIRST AMENDMENT
TO
COMMUNITY DEVELOPMENT BLOCK GRANT
DISASTER RECOVERY
SUBRECIPIENT AGREEMENT

THIS FIRST AMENDMENT TO the Community Development Block Grant Disaster Recovery Subrecipient Agreement dated November 24, 2014 is made and entered into August 20, 2015 and is effective as of April 2, 2015 (the “First Amendment”) by and between the Housing Trust Fund Corporation, operating by and through its division, the Governor’s Office of Storm Recovery (“GOSR”), (collectively referred to herein as the “Grantee”) and the City of Long Beach (“Subrecipient”), a unit of general local government as defined in 24 CFR 570.3. The foregoing Grantee and Subrecipient shall sometimes be referred to herein individually as a “Party” and collectively as the “Parties.”

WHEREAS, Grantee and Subrecipient entered into a Community Development Block Grant Disaster Recovery Subrecipient Agreement on November 24, 2014 (the “Agreement”), the terms of which govern Subrecipient’s receipt of funds from the State of New York’s Community Development Block Grant-Disaster Recovery (“CDBG-DR”) program to provide certain services in support of the State of New York’s recovery efforts following Hurricane Irene, Tropical Storm Lee, and Hurricane Sandy (“Storms”); and

WHEREAS, the City of Long Beach was heavily impacted by Superstorm Sandy and is requesting CDBG-DR funding for the replanting of trees that were destroyed during the storm; and

WHEREAS, the Federal Emergency Management Agency (“FEMA”), has provided disaster funds to assist with Sandy recovery by removing Superstorm Sandy damaged trees from the City of Long Beach; and

WHEREAS, there may still be gaps in recovery between what FEMA can provide and the needs of the City of Long Beach to recover and rebuild from Superstorm Sandy so that the City of Long Beach is more resilient to future storms and low level flooding; and

WHEREAS, HUD allows CDBG-DR funds to be utilized to assist municipalities recover if such municipalities are directly impacted by one of the Storms, meets a national objective, and is otherwise an eligible activity under HUD’s CDBG-DR program; and

WHEREAS, Section I of the Agreement provides that for each project application that is accepted as complete by Grantee, the Agreement will be amended by a Planning Amendment prior to environmental review; and

WHEREAS, the project described in Exhibits A and B to this First Amendment has undergone environmental review pursuant to FEMA procedures, thereby obviating the need for a Planning Amendment; and

WHEREAS, Section I of the Agreement provides for amendment of the Agreement by means of a Project Amendment to incorporate the complete scope, budget, and schedule of an approved project; and

WHEREAS, pursuant to the Agreement, the Parties desire to enter into this First Amendment to assist Subrecipient with the costs associated with the approved project described herein and detailed at Exhibits A and B to this First Amendment; and

WHEREAS, Subrecipient has demonstrated an immediate need for up to \$1,390,385.00 of CDBG-DR funds in order to implement the project described herein and detailed at Exhibits A and B to this First Amendment; and

WHEREAS, Grantee and Subrecipient complied fully with the requirements set forth in the Agreement for obligating CDBG-DR funds under the Agreement; and

WHEREAS, Subrecipient intends to use the funds obligated herein for work that began on April 2, 2015 and is expected to continue until October 30, 2015;

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. The term end date of September 30, 2015 stated in Section II of the Agreement is replaced with the date September 30, 2019.
2. The amount of the Grant Funds, currently set at \$0 under Section IV, of the Agreement, is hereby increased to a total amount not to exceed \$1,390,385.00.
3. The third paragraph of Section IV of the Agreement shall be replaced in its entirety with the following paragraph:

In the event that Subrecipient is awarded, granted or provided additional funds from any other source, which may include, in part or in whole, insurance proceeds, additional Federal agency appropriations from FEMA, or state funds that would fund the project, for activities included in Subrecipient Program Description, Subrecipient shall immediately notify grantee of such funds, the amount, the source, and the conditions for their use. Subrecipient further agrees to provide in an electronic format any additional information that Grantee requests related to this Agreement. Subrecipient may not use such other funds to conduct construction activities or any other action that would have an environmental impact or limit the choice of reasonable alternatives until issuance of the Clearance Letter.

4. The first sentence of Section V(b) of the Agreement is hereby amended by deleting the word “sworn” between the words “a” and “statement.”

5. Section VIII(E) of the Agreement is hereby struck and replaced with the following:

Subrecipient shall carry sufficient insurance coverage and bonding from insurers licensed to conduct business in New York State to protect all contract assets from loss due to any cause, including but not limited to theft, fraud, and/or physical damage. New York State and the New York State Housing Trust Fund Corporation shall be named as additional insureds on all such insurance. Subrecipient shall meet all other insurance requirements as Grantee may impose from time to time. In addition, all insurance carriers and bonding companies shall meet minimum size and financial stability/financial rating requirements as may be imposed by Grantee from time to time. Certificates of insurance shall be provided to Grantee and full and complete copies of the policies and/or bonds shall be provided to Grantee upon its request for same.

Notwithstanding the above, for construction or facility improvement performed by Subrecipient, Subrecipient shall, at a minimum, comply with the bonding requirements at 24 CFR 85.36 or 84.48, as applicable.

6. The first sentence of Section IX(B)(3) of the Agreement is hereby struck and replaced with the following: “Subrecipient shall maintain data for efforts provided as required by Grantee.”
7. Section IX.D.2. of the Agreement shall be replaced in its entirety with the following paragraph:

2. Monitoring

In accordance with Federal, State, and local laws, regulations, HUD Notices, program guidelines, and the policies and procedures to be issued by Grantee, Subrecipient will monitor any and all sub-subrecipient¹ efforts on a regular basis to assure compliance. Monitoring may include, but is not limited to, reviews; evaluations; audits; and/or requests that Subrecipient take part in technical assistance that may be provided by Grantee. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance. Information detailing credible evidence of waste, fraud or abuse, shall be immediately reported to Grantee, followed by a written report within ten (10) calendar days.

8. The first sentence of Section IX(B)(3) of the Agreement is hereby struck and replaced with the following: “Subrecipient shall maintain data for efforts provided as required by Grantee.”
9. The first sentence of Section IX(E)(1) of the Agreement is hereby amended by adding at the beginning of the paragraph the sentence “Subrecipient shall not enter into any contract for goods or services with any entity without the written consent of Grantee prior to the execution of such contract.”

¹ As used herein, a “sub-subrecipient” refers to all subrecipients that are lower-tiered than the Subrecipient that is a signatory to this Agreement.

10. In Section IX(E)(2) of the Agreement, the word “Supplemental” is hereby deleted and replaced with the word “Supplementary” wherever it appears.
11. Section XI(A) of the Agreement is hereby amended by adding a new subsection, Section XI(A)(5), “Certifications,” following Section XI(A)(4). Section XI(A)(5) shall read:

The subrecipient hereby certifies that it has adopted and shall enforce:

- (1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and
- (2) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

12. In Section XI(B)(2)(b) of the Agreement, the words “ten percent (10%)” are hereby deleted and replaced with the words “fifteen percent (15%)” wherever they appear.
13. In the first paragraph of Section XI(B)(2)(b) of the Agreement, the following sentence is hereby added between the third and fourth sentences:

Notwithstanding the foregoing goals, should the State of New York change such goals, Subrecipient and its contractors and their subcontractors (at all tiers) shall continuously make good-faith efforts to achieve the M/WBE goals in effect at any given time during the performance of this Agreement and their contract(s), respectively.

14. Exhibit A1 to this First Amendment is hereby appended to Exhibit A of the Agreement.
15. Exhibit B1 to this First Amendment is hereby appended to Exhibit B of the Agreement.
16. Attachment A to the Introductory Statement entitled “Insurance Requirements” in Exhibit E of the Agreement shall be supplemented with the following:

In addition to the insurance requirements the Subrecipient imposes on contractors and/or subcontractors in the usual course of business, commensurate with the activity at issue herein, Subrecipient shall require the following of contractors and their subcontractors performing work under this Agreement:

Contractor shall ensure that, with respect to any insurance-related obligations imposed upon Contractor and/or its subcontractors, the Housing Trust Fund Corporation (“HTFC”) shall have and enjoy each and all of the same protections, rights and benefits as the Subrecipient. Without limiting the generality of the foregoing, each and all of the insurance-related protections, rights, and benefits of the Subrecipient vis-à-vis the Contractor and/or its subcontractors and shall include HTFC to the same extent as the Subrecipient, including but not limited to HTFC being indemnified, defended, and held harmless by Contractor and its subcontractors, being named as an additional insured on all of Contractor’s or its subcontractor’s policies of insurance, and being provided copies of all such policies and other evidence of insurance.

17. Part 5 in Exhibit E entitled "Standard Clauses for Contracts with HTFC" shall be replaced in its entirety with the clauses in Exhibit C of this First Agreement.

18. Except as specifically modified herein, all terms and conditions in the Agreement will remain the same, continue in full force and effect, and apply to this First Amendment.

IN WITNESS WHEREOF, the parties executed this First Amendment on the day and year first above written.

City of Long Beach

Hou

By: _____

Name: _____ chairman

Title: *City Manager*

By: _____

Name: Lisa Bova-Hiatt

Title: Interim Executive Director,
Governor's Office of Storm Recovery

EXHIBIT A
First Amendment Subrecipient Program Description

Project Background

Superstorm Sandy devastated both the north and south shore of Long Beach with a storm surge that surpassed the shoreline, damaging the majority of homes, businesses and critical facilities inland. Along with these damages, approximately 2,400 trees throughout the city were damaged or destroyed resulting in 48% removal of the City's tree stock. The salt water inundation that occurred as a result of the storm surge from Sandy slowed the availability of mineral nutrients and hindered photosynthesis and growth of the street trees. This inundation of salt damaged the trees posing an immediate threat to the health and safety of the community and the improved public property throughout the City of Long Beach ("City"). The damaged trees were removed as part of the City's recovery efforts. The newly planted trees will revitalize public space through streetscaping, enhance drainage, air quality, and improve the community's aesthetics and livability.

Project Scope

The City of Long Beach ("City") is requesting \$1,390,385.00 in CDBG-DR funding for the replanting of trees along public streetscapes throughout the city, where trees were damaged or destroyed in Superstorm Sandy and not recoverable under the Federal Emergency Management Agency (FEMA) Public Assistance Program. This funding will be utilized to plant approximately 2,700 street trees within existing and expanded tree pits located on City-owned property or within City-street right-of-ways.

The 52 proposed tree species were specifically selected by the Project Engineers due to their salt tolerance and ability to improve diversity and resiliency of the City's landscape, as much of the Superstorm Sandy damage to the trees was caused by saltwater inundation. This greater variety of species will be planted to improve the aesthetic of tree-lined streets within the City. During the design process, the engineers gave special consideration to construction measures that protect the newly installed trees from damage due to future storms, making the trees more tolerant of shore-line beach conditions. Where needed and appropriate, existing tree pits will be widened to allow for more nutrients and water to be absorbed through the soil beds, relieving stress on the trunks and roots allowing for stronger healthier trees.

The proposed project would not include any tree or stump removal, as this work was previously completed by the City. The replanting of trees will only occur in previously disturbed areas. However, disturbance will be limited to removal of the existing sidewalk and compacted gravel sub-base. There are no historic or landmark properties impacted by this project and the trees will be planted in existing tree pits located within local road right of ways or on other City owned property throughout Long Beach. There is no additional land or parcel acquisition anticipated.

Two components have already been initiated in connection with the City's Tree Replanting

project. The City of Long Beach has procured and contracted for A/E services. In addition, the City entered into a construction contract for tree well enhancement and planting of specified trees. The A/E services for design have been completed. Construction and tree planting have begun. At this point, the construction and planting is at approximately 10% complete.

The scope of work for the Project involves the construction activities only, with the assurance from the City to GOSR that all activities will be compliant with the CDBG-DR requirements.

The objective of the Project is to revitalize the damage restore Superstorm Sandy damaged trees by planting trees native to the region that will be more resilient to salt-water inundation, future storms and low level flooding. Additionally, enhancement to existing tree well sites will provide effective mineral transfer opportunities for planting. Moreover, this project will improve local air quality, which will benefit all residents of the City of Long Beach.

This Project will take place entirely within the footprint of the City of Long Beach Street Tree Replanting Site Map, which may be found in the project application. A detailed description of the Project construction activities can be found in the project application.

The funds under this First Amendment shall be attributed to the above described project as set forth in Exhibit B.

EXHIBIT B
First Amendment Budget

| PROJECT FUNDS | AMOUNT | SOURCE AND STATUS | USE |
|----------------------|-----------------------|--------------------------|--------------|
| CDBG-DR | \$ 1,390,385.00 | CDBG-DR - PENDING | CONSTRUCTION |
| LOCAL FUNDS | \$0.00 | | |
| PRIVATE FUNDS | \$0.00 | | |
| OTHER STATE FUNDS | \$0.00 | | |
| FEDERAL FUNDS | \$0.00 | | |
| OTHER FUNDS | \$0.00 | | |
| TOTAL | \$1,390,385.00 | | |

The total cost to replant trees in the City of Long Beach is \$1,517,185.00. Work is expected to be completed by the end of October 30, 2015. The City of Long Beach issued a bid proposal for design, which was awarded to LiRo Engineers for an amount of \$8,800.00. Additional costs to be incurred by the City include construction inspection totaling \$96,000.00 and plan development totaling \$22,000.00. As shown in the table above, GOSR will provide CDBG-DR funds for the remaining trees and construction costs totaling \$1,390,385.00.

EXHIBIT C

PART 5

STANDARD CLAUSES FOR CONTRACTS
WITH THE HOUSING TRUST FUND CORPORATION

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

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

May 2014

STANDARD CLAUSES FOR AGENCY CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "Contract") agree to be bound by the following clauses which are hereby made a part of the Contract (the word "Contractor" herein refers to any party other than the State of New York ("State"), whether a contractor, 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 "Indemnities") harmless from and against all claims, demands, liability, loss, cost, damage or expense, including attorney's fees, which may be incurred by the Indemnities because of negligence or malfeasance on the part of the Contractor arising out of this Contract.

6. RESERVED.

7. RESERVED.

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.nyscher.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 I, the terms of this Appendix I shall control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development

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

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

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

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

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

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

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

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

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

28. IRAN DIVESTMETN 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.

