

AGREEMENT

THIS AGREEMENT, is made and entered into on March 14, 2014 ("Effective Date") between Innovative Emergency Management, Inc., with offices located at 2801 Slater Road, Suite 110, Morrisville, NC 27560 ("CONTRACTOR"), and the HOUSING TRUST FUND CORPORATION, having its principal office at 38-40 State Street, Albany, New York 12207 ("HTFC"). Each of the foregoing are referred to individually herein as a "Party" and collectively the "Parties."

WITNESSETH:

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 HTFC received major disaster declarations as a result of Hurricane Sandy, Hurricane Irene, and Tropical Storm Lee (the "Storms");

WHEREAS, HTFC has received an allocation of funds from the 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 has the authority to provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources for the purpose of providing assistance to recover from the Storms;

WHEREAS, HTFC sought assistance with with administration of these funds through a Request for Proposal no. 070913 issued on July 9, 2013 ("RFP"), which included a number of services, some of which are the subject of this AGREEMENT (Exhibit A) (also referred to herein as the "Scope of Services");

WHEREAS, the CONTRACTOR submitted a proposal to the RFP, dated August 5, 2013, and is ready, willing and able to provide the types of services set out in the Scope of Services;

WHEREAS, HTFC determined that the CONTRACTOR's proposal, among all those submitted, provided the best value and served the best interest of the State of New York as compared to the other proposals submitted;

WHEREAS, HTFC and CONTRACTOR desire to enter into this AGREEMENT, under which CONTRACTOR shall provide all or some portion of the above-referenced Scope of Services pursuant to this AGREEMENT and a properly executed task order(s) ("Task Order(s)") ("Services");

WHEREAS, all funding for this AGREEMENT is from HUD's CDBG-DR funds, and in no way does funding for this AGREEMENT include State funds; and

NOW THEREFORE, in consideration of the promises, responsibilities and covenants herein, HTFC and the CONTRACTOR agree as follows:

I. Conditions of AGREEMENT

- A. This AGREEMENT sets forth the general terms and conditions governing the entire Scope of Services (Exhibit A) that HTFC may seek and the actual Services obligated by HTFC pursuant to a properly executed Task Order which shall include: 1) a Statement of Work that will set forth the specific Services and quantity of such Services; and 2) the compensation and payment schedule of such Services based upon the fixed fee, unit costs or rates set forth in the Fee Schedule at Exhibit B. The Statement of Work and compensation and payment schedule will be consistent with the work and fees proposed by the CONTRACTOR in the CONTRACTOR's proposal, dated August 5, 2013, and all appendices and supporting documents included therein are hereby incorporated by reference to this AGREEMENT as if set forth herein.
- B. The Parties will mutually agree in writing to a set of key performance indicators and acceptable service levels for each Task Order, which shall be incorporated by reference into this AGREEMENT and treated as part of the terms of the respective Task Order with respect to Order of Precedence.
- C. The CONTRACTOR agrees that in no event will HTFC pay CONTRACTOR more than \$53,980,452.33 ("Total Fee") for the Services under all Task Orders under this AGREEMENT. Of the Total Fee, HTFC will initially authorize up to \$28,676,356.95 ("Authorized Amount") for use by the CONTRACTOR based on Services provided; the balance of the Total Fee will be held in reserve ("Reserved Amount") and will only be made available based on separate Task Orders submitted by the CONTRACTOR. The breakdown of the Total Fee, Authorized Amount and Reserved Amount, by category, are set forth at Exhibit B. The CONTRACTOR under no circumstance shall exceed the Total Fee without a properly and fully executed modification placed against this AGREEMENT. HTFC will not be obligated to remit payment to the CONTRACTOR for any fees or expenses (including termination costs) if to do so would exceed the Total Fee, and the CONTRACTOR shall not be obligated to continue performance if to do so would cause the CONTRACTOR's fees to exceed the Total Fee, unless and until the Parties properly and fully execute a modification against this AGREEMENT.
- D. Should funding become unavailable, this AGREEMENT may be suspended until funding becomes available. In such event, HTFC shall notify the CONTRACTOR immediately of learning of such unavailability of funds, however, any such suspension shall not be deemed to extend the term of this AGREEMENT.
- E. The CONTRACTOR shall thoroughly familiarize itself with the nature and scope of the Scope of Services under this AGREEMENT and with matters which may affect this Scope of Services, including the Law governing the Scope of Services and this AGREEMENT. "Law" means all existing and future federal, state, and local statutes, laws, codes, ordinances, decrees, rules, regulations, requirements, required permits and licenses, and orders, of any governmental authority, entity, 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. Some, but not all, of the requirements are incorporated by references in Appendices I – II. To the extent required in its performance of the Services under a properly executed Task Order, CONTRACTOR shall be responsible for procuring any and all permits, certificates, licenses, or other accreditations or approvals from third-parties to perform the Services.

- F. The CONTRACTOR shall promptly notify HTFC in writing upon discovery of any failure, or any allegation of any failure, of the CONTRACTOR to comply with any applicable Law relevant to the performance of Services or any requirement of this AGREEMENT.
- G. The period of this AGREEMENT shall commence as of the Effective Date and shall terminate fifteen (15) months from the Effective Date, unless extended by mutual agreement of the Parties. Any extension of this AGREEMENT shall be mutually agreed to by the Parties in writing through a modification to the AGREEMENT, as provided for in Appendix II. If the AGREEMENT is not modified, unless otherwise instructed by HTFC, by the end of the period of the AGREEMENT, CONTRACTOR shall deliver any and all Property belonging to HTFC to a location designated by HTFC. In addition, the CONTRACTOR, at no additional cost, shall: (a) cooperate fully at the direction of HTFC in the orderly transition of the Services to its successor; and (b) 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. HTFC property includes both HTFC-furnished and CONTRACTOR-acquired property. HTFC property includes material, equipment, special tooling, special test equipment, and real property. Intellectual property shall be governed by the applicable terms contained in Appendix I.
- H. Modifications shall be governed by the applicable terms contained in Appendix II. Modifications may be subject to the approval of the Office of the State Comptroller, as required by Law.
- I. The CONTRACTOR shall perform the Services to the satisfaction of HTFC, and at all times in a diligent, safe, and workmanlike manner that conforms to generally accepted industry and professional practices, and the care and skill ordinarily exercised, for such Services. The CONTRACTOR will perform work under this AGREEMENT by competent personnel under the management, supervision, and direction or employment of, or subcontract with, the CONTRACTOR.
- J. Any dispute arising under this AGREEMENT which is not disposed of by this AGREEMENT shall be decided by a Director of the Governor's Office of Storm Recovery ("GOSR") in consultation with the GOSR General Counsel who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the CONTRACTOR within thirty (30) days. The decision of a Director shall be final and conclusive unless within thirty (30) days from the date of receipt of such decision, the CONTRACTOR mails or otherwise furnishes to the HTFC a written appeal of the original finding addressed to the HTFC requesting a hearing on the

claim with a Director. Following the hearing, a Director shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the CONTRACTOR within thirty (30) days. The decision of a Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or not supported by substantial evidence.

Pending final decision of the disputes hereunder, the CONTRACTOR shall proceed diligently with the performance of the AGREEMENT.

II. Assignment and Subcontracting.

- A. The CONTRACTOR's rights regarding assignment are subject to terms of Appendices I and II.
- B. HTFC reserves the sole right to direct CONTRACTOR to use certain subconsultants / subcontractors. HTFC reserves the right to directly negotiate the scope of work, and rates and fees with such subconsultants / subcontractors, provided that such rates and fees do not exceed ninety seven and one half percent (97.5%) of the rates and fees set forth at Exhibit B, unless otherwise agreed to by HTFC and CONTRACTOR. CONTRACTOR shall be able to participate in all negotiations over scope of work, and rates and fees. CONTRACTOR shall be solely responsible for entering into an agreement and negotiating all other terms and conditions of such agreement with the subconsultants / subcontractors. CONTRACTOR is entitled to a markup of two and one half percent (2.5%) on such rates and fees, which CONTRACTOR shall justify as capturing administrative and indirect expenses through adequate documentation, as determined by HTFC, upon reasonable request of HTFC. Such markup shall not be applied to travel expenses of subconsultants / subcontractors.
- C. For purposes of this AGREEMENT, HTFC directs CONTRACTOR to enter into a subcontract with GCR, Inc. ("GCR") for the services and rates and fees specified at Exhibit D. CONTRACTOR is entitled to a markup of two and one half percent (2.5%) on such rates and fees, which CONTRACTOR shall justify as capturing administrative and indirect expenses through adequate documentation, as determined by HTFC, upon reasonable request of HTFC. Such markup shall not be applied to travel expenses of subconsultants / subcontractors.
- D. Notwithstanding anything to the contrary in subsections B and C, immediately above, under no circumstances shall the rates, fee and markup (i.e., the subcontractor / subconsultant rates and fees plus the CONTRACTOR markup) exceed the rates of the corresponding labor category at Exhibit B.
- E. HTFC reserves the sole right to approve or reject the use of a subconsultant / subcontractor and/or to review the qualifications and experience of any subconsultants / subcontractors prior to their work on any Services under this AGREEMENT.

- F. As part of any subcontract hereunder, after CONTRACTOR receives written approval, the CONTRACTOR must incorporate the terms of this AGREEMENT in its subcontract, with the exception of the Fee Schedule, subsection I.J, so that the terms apply in the same manner and with the same effect as set forth in this AGREEMENT and Task Orders hereunder.
- G. If the CONTRACTOR subcontracts any portion of the Services, nothing contained in this AGREEMENT or otherwise, shall create any contractual relationship between HTFC and the CONTRACTOR's subcontractors, and no subcontract shall relieve the CONTRACTOR of its responsibilities and obligations hereunder. The CONTRACTOR agrees to be as fully responsible to HTFC for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONTRACTOR. Nothing in any subcontract shall impair the rights of the HTFC under this AGREEMENT.
- H. The CONTRACTOR's obligation to pay its subcontractors is an independent obligation from HTFC's obligation to make payments to the CONTRACTOR. HTFC shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

III. Payment and Reporting

- A. Payment will be made upon receipt of an accurate, complete and properly prepared invoice from the CONTRACTOR for Services rendered, in conformance with the Task Order's payment schedule. HTFC reserves the right to refuse payment on any portion thereof, until such portion is acceptably presented.
- B. The CONTRACTOR's invoice shall describe with reasonable particularity each Service rendered, the date thereof and the percentage of completion of the Services. The CONTRACTOR's invoice shall be accompanied by such detailed documentation, including performance reports based upon deliverables outlined in the applicable Task Order and data in support of expenses, for which payment is sought.
- C. Except as may be specifically provided in the Task Order, the CONTRACTOR is solely responsible for all the CONTRACTOR's costs and any other expenses necessarily and incidentally incurred in order to complete the Services.
- D. All amounts paid by HTFC to the CONTRACTOR are subject to audit by HTFC and federal authorities. HTFC's and such federal authorities' access to records, audit and inspection rights are subject to the provisions set forth in Appendices I and II.
- E. Payment will only be made to CONTRACTOR via ACH (Automated Clearinghouse) transfer, i.e., direct deposit to the CONTRACTOR's account. CONTRACTOR 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).

CONTRACTOR is solely responsible for the information provided on the form and for updating it as necessary.

- F. 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.
- G. Payment received hereunder shall be the full and complete satisfaction of any and every claim resulting from the approved items in such invoice.
- H. HTFC's payment of all or a part of an invoice shall neither relieve the CONTRACTOR of any of its obligations under this AGREEMENT nor constitute a waiver of any claims by HTFC.

IV. Terminations

- A. This AGREEMENT may be terminated at any time upon mutual written consent of the HTFC and the CONTRACTOR.
- B. Either Party may terminate this AGREEMENT without cause by sixty (60) days prior written notice.
- C. HTFC may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendices I and II.
- D. CONTRACTOR shall not be responsible for the failure of any contractor, subcontractor, or vendor not under contract or subcontract to CONTRACTOR, to fulfill contractual responsibilities to HTFC or to comply with federal, state, or local laws, regulations, and codes.
- E. Written notice of termination shall be sent by overnight or certified mail, return receipt requested.
- F. Upon receipt of notice of termination, the CONTRACTOR agrees to mitigate costs to the extent possible and practicable, including but not limited to, canceling, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agreeing not to incur any new obligations after receipt of the notice of termination without the written approval of HTFC.
- G. The HTFC shall be responsible for payment on claims pursuant to Services provided and accepted, and costs incurred pursuant to terms of the AGREEMENT. In no event shall the HTFC be liable for expenses and obligations arising from the Services provided pursuant to this AGREEMENT after the termination date.
- H. In such termination event, the CONTRACTOR, at no additional cost, shall: (a) cooperate fully at the reasonable direction of HTFC in the orderly transition of the Services to its successor; and (b) undertake the orderly cessation of the Services. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the CONTRACTOR under this AGREEMENT shall, at the option of the HTFC, become HTFC'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 HTFC for damages sustained by HTFC by virtue of any breach of the AGREEMENT by the CONTRACTOR, and HTFC may withhold any payments to the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due HTFC from the CONTRACTOR is determined.

V. Indemnification

- A. CONTRACTOR may be providing Services that were previously performed by another contractor of HTFC, or by HTFC itself. HTFC shall indemnify, defend and hold harmless the CONTRACTOR and its agents and employees from and against any and all claims, actions, suits, charges and judgments arising from or relating to the Services performed prior to CONTRACTOR's assumption of Services under this AGREEMENT.
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the HTFC nor make any claim, demand or application to or for any right based upon any different status.
- C. The indemnification provisions under Appendices I and II in favor of the HTFC will apply.
- D. Nothing in this Section or in this AGREEMENT shall create or give to third parties any claim or right of action against the CONTRACTOR or HTFC, beyond such as may legally exist irrespective of this Section or this AGREEMENT.

VI. Contractor Representations and Warranties.

The CONTRACTOR represents, covenants and warrants that:

- A. The CONTRACTOR is a company in good standing 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 CONTRACTOR under this AGREEMENT;
- B. This AGREEMENT does not in any way conflict with any other agreements of the CONTRACTOR;
- C. The CONTRACTOR possesses the business, professional, and technical expertise, and training required to perform the Services;
- D. The CONTRACTOR 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 CONTRACTOR possesses or will acquire through subcontract or otherwise, the equipment, facilities, and expertise to perform the obligations under this AGREEMENT;
- F. The CONTRACTOR 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 CONTRACTOR to HTFC in connection with the Services are complete and accurate to the best of the knowledge of the CONTRACTOR. The CONTRACTOR represents that HTFC, for whatever purpose, may rely upon all such documents and the data therein as being complete and accurate. The CONTRACTOR agrees to promptly notify HTFC upon discovery of any instances where the CONTRACTOR becomes aware of any discrepancies in relation to documents under this Section.

VII. Property

The ownership of equipment, furniture, supplies or other property purchased by CONTRACTOR whereby the costs of such are charged to this Agreement, shall be subject to applicable Office of Management and Budget Circular(s).

VIII. Safeguards for Services and Confidentiality

- A. Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
- B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.
- C. Information relating to individuals who may receive Services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the AGREEMENT and in conformity with applicable provisions of laws and regulations, or specified in Appendices I and II.

IX. Miscellaneous

- A. Unavoidable Delay. The CONTRACTOR shall not be considered in default by reason of any failure in performance if the CONTRACTOR is without fault or negligence and such failure is the result of an unavoidable delay defined as a natural disaster; strike, lockout or labor dispute; governmental regulation, restriction or control; enemy or hostile government action; civil riot; fire, flood or nuclear accident; or any other cause not reasonably within the control of the

CONTRACTOR, such that, despite the exercise of due diligence, the CONTRACTOR cannot, wholly or partly, prevent or remedy that cause. If failure to perform is caused by the failure of the CONTRACTOR's subcontractor(s) to perform or make progress, and if such failure arises out of causes solely and reasonably beyond the control of the CONTRACTOR and its subcontractor(s) and is without the fault or negligence of either of them, the CONTRACTOR shall not be deemed to be in default.

Upon the CONTRACTOR's written request, HTFC may consider the facts and extent of any failure to perform the Services, and, if the CONTRACTOR's failure to perform was without its fault or negligence and due to circumstances reasonably beyond the control of the CONTRACTOR, as determined in the HTFC's sole discretion, affected provision of this AGREEMENT may be revised accordingly; subject to the HTFC's rights to change, terminate, or stop any or all of the Services at any time.

- B. **Authorization.** Each of the Parties, or the representative(s) signing this AGREEMENT on behalf of each respective Party, represents and warrants that such Party has full power and authority to enter into this AGREEMENT and to bind and perform the Party to the obligations set forth herein. With respect to HTFC, by resolutions adopted September 20, 2013 and October 25, 2013 (the "Resolutions"), HTFC delegated authority for approval, execution and delivery of this AGREEMENT to James Rubin and Seth Diamond. HTFC represents and warrants to the CONTRACTOR that the Resolutions are in full force and effect on the Effective Date and have not been amended or modified.
- C. **Third Party Beneficiary.** Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.
- D. **Survivability.** Notwithstanding any other provisions of this AGREEMENT or a Task Order hereunder, or any general legal principles to the contrary, any provision of this AGREEMENT, including all Appendices, exhibits, Task Orders, modifications and any other related AGREEMENT document that imposes or contemplates continuing obligations on a Party will survive the expiration or termination of this AGREEMENT.
- E. **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 (a) if to the CONTRACTOR, to the attention of the CONTRACTOR's authorized signatory of this AGREEMENT as provided below and at the address provided in the opening paragraph to this AGREEMENT, and (b) if to HTFC, to the attention of and at the following address:

HTFC/GOSR
Attn: Lisa Bova-Hiatt

General Counsel
Governor's Office of Storm Recovery
25 Beaver Street
New York, NY 10004
(212) 480-4694
LBova@stormrecovery.ny.gov

F. Entire Agreement/Order of Precedence. This AGREEMENT and all attachments and exhibits hereto, and all referenced documents, constitute the entire agreement between the Parties with respect to the matters herein, and integrate, merge, and supersede 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 IV – Construction Related Terms and Forms (not applicable to this AGREEMENT)
5. The applicable Task Order
6. This AGREEMENT
7. Exhibit A – Scope of Services
8. Exhibit B – Fee Schedule
9. Proposal Documents
10. Exhibit D – GCR Scope and Rates
11. Exhibit C – Designation of Depository for Direct Deposit of HTFC Funds

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR SIGNATURE

By: 

Printed Name

Title: Chief Operating Officer

Date: March 14, 2014

HTFC SIGNATURE

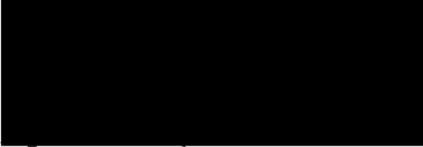
By: 

Printed Name

Title: Dir

Date: 3/14/14

APPROVED AS TO FORM:

By: 

Printed Name
GOSR Counsel

APPROVED AS TO FINANCIAL SUFFICIENCY:

By: 

Printed Name
GOSR Chief Financial Officer

TASK ORDER NO. 1

14 March 2014



This Task Order is made this 14 day of March, ~~20XX~~ by and between Innovative Emergency Management, Inc., with offices located at 2801 Slater Road, Suite 110, Morrisville, NC 27560 ("CONTRACTOR"), and the HOUSING TRUST FUND CORPORATION, having its principal office at 38-40 State Street, Albany, New York 12207 ("HTFC"). Each of the foregoing are referred to individually herein as a "Party" and collectively the "Parties".

WITNESSETH:

WHEREAS, HTFC and CONTRACTOR entered into a Agreement for Services dated _____ ("Agreement") for various services set forth therein ("Services"); and

WHEREAS, HTFC desires to obtain certain of these Services from the CONTRACTOR;

WHEREAS, CONTRACTOR desires to provide such Services at the rates set forth in the Agreement;

NOW, THEREFORE, HTFC and CONTRACTOR, in consideration of the mutual covenants expressed herein, agree as follows:

1. STATEMENT OF WORK

- 1.1 Startup Operations – Initiate activities and provide staff to provide immediate support to all HTFC’s Governor’s Office of Storm Recovery (“GOSR”). Housing programs, with specific tasks including, but not limited to, Section 3 Compliance Assessment, Program Financial Review and Reclassification, Review of M/WBE Compliance, Assess IT Systems and Reporting. All start-up activities will be completed no later than 45 days with recommended options, based on findings, made to GOSR. Selected activities prioritized by GOSR staff will be completed in less than 30 days. The work will be performed at the GOSR site.
- 1.2 Program Management Services – Provide a Program Director, Deputy Director, and program staff to perform the critical functions of quality assurance/quality control, information management, communications and public relations, legal, finance, monitoring and evaluation, reporting, operational improvement, cross-site management and coordination and coordination with and oversight activities associated with construction and construction management activities. Construction management coordination may include, environmental review activities, property management activities, security for properties and other related activities. The timeline for Program Management functions runs for the full term of the AGREEMENT.
- 1.3 Case Management – For up to 3,000 cases, CONTRACTOR shall provide timely intake, processing, eligibility determination, award and closeout processes for housing assistance applications. The timeline for delivery of Case Management units runs for the full term of the AGREEMENT, with the number of units delivered each month dependent on the

intake rate for new program applicants and the closure rate for existing homeowner cases. The majority of work will be performed at GOSR site. The only instances of CONTRACTOR site work will be where the CONTRACTOR can clearly demonstrate production and cost efficiencies gained from doing work at CONTRACTOR location. Examples would be geospatial or other data manipulation, VOB determinations, and production work associated with distribution of policy, procedures and other operational artifacts. Performance standards associated with Program Management activities will be defined by GOSR staff and the CONTRACTOR held accountable via daily and weekly reporting of key production outcome metrics. The CONTRACTOR will track and report open issues, to include clarifications and appeals, with measurement via closure rates. The measurement basis for Case Management will be units of case activity completed. Completion rates for 14 individual unit activities will be tracked and reported. HTFC will only pay for completed units versus simply paying for level of effort.

2. COMPENSATION

- 2.1 Startup Operations – \$943,984.67. Due upon receipt of a properly prepared and submitted invoice following the successful completion of the Startup Operations, as determined by and in the sole discretion of HTFC or GOSR.
- 2.2 Program Management Services – \$7,542,654.28. Following the date (“Commencement”) CONTRACTOR provides a Program Director, Deputy Director and program staff to perform critical functions, as mutually determined by the Parties,, CONTRACTOR may bill HTFC on a monthly basis for the pro rata portion of the total fixed fee (e.g., if Commencement occurs in March, 1/15th of the fixed fee).
- 2.3 Case Management – \$7,785,990.00. CONTRACTOR may bill HTFC on a monthly basis the unit cost of each adequate deliverable, as determined by and in the sole discretion of HTFC or GOSR. The aggregate cost of deliverables shall not exceed \$2595.33 per case.

3. ADDITIONAL TERMS AND CONDITIONS

None

4. ENTIRE AGREEMENT

This Task Order, along with the AGREEMENT, constitutes the entire agreement between HTFC and CONTRACTOR relative to the Service, and this Task Order can be altered, amended or revoked only pursuant to the terms of the AGREEMENT. HTFC and CONTRACTOR agree that any prior or contemporaneous oral and written agreements between and among themselves and their agents and representatives relative to the subject of this Task Order are superseded and replaced by this Task Order. Any provision of this Task Order found to be unenforceable or invalid by a court of competent jurisdiction shall in no way affect the validity or enforceability of any other provision. Each Party represents that it has caused this Task Order to be executed on its behalf by a representative empowered to bind that Party with respect to the undertaking or obligations contained herein. This Task Order shall be governed by and construed under the laws

of the State of New York, USA, without giving effect to its conflict of law principles.

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

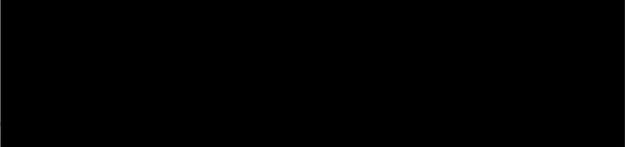
By: 

Name:

Title:

[Handwritten signature]

HOUSING TRUST FUND CORPORATION

By: 

Name:

Title:

Theodore Lemcke
Chief Operating Officer

INNOVATIVE EMERGENCY MANAGEMENT, INC.

EXHIBIT A SCOPE OF SERVICES

Start-up Activities.

Initiate activities and provide staff to provide immediate support to all GOSR (Governor's Office of Storm Recovery) Housing programs, with specific tasks including, but not limited to Section 3 Compliance Assessment, Program Financial Review and Reclassification, Review of M/WBE Compliance, Assess IT Systems and Reporting. All start-up activities will be completed no later than 45 days with recommended options, based on findings, made to GOSR. Selected activities prioritized by GOSR staff will be completed in less than 30 days. The work will be performed at the GOSR site.

Program Management

Provide a Program Director, Deputy Director, and program staff to perform the critical functions of QA/QC, information management, communications and public relations, legal, finance, monitoring and evaluation, reporting, operational improvement, cross-site management and coordination and coordination with and oversight activities associated with construction and construction management activities. Construction management coordination may include, environmental review activities, property management activities, security for properties and other related activities. The timeline for Program Management functions runs for the full term of the AGREEMENT.

Case Management

Provide timely intake, processing, eligibility determination, award and closeout processes for housing assistance applications. The timeline for delivery of Case Management units runs for the full term of the AGREEMENT, with the number of units delivered each month dependent on the intake rate for new program applicants and the closure rate for existing homeowner cases.

The majority of work will be performed at GOSR site. The only instances of CONTRACTOR site work will be where the CONTRACTOR can clearly demonstrate production and cost efficiencies gained from doing work at CONTRACTOR location. Examples would be geospatial or other data manipulation, VOB determinations, and production work associated with distribution of policy, procedures and other operational artifacts.

Performance standards associated with Program Management activities will be defined by GOSR staff and the CONTRACTOR held accountable via daily and weekly reporting of key production outcome metrics. The CONTRACTOR will track and report open issues, to include clarifications and appeals, with measurement via closure rates. The measurement basis for Case Management will be units of case activity completed. Completion rates for 14 individual unit activities will be tracked and reported. HTFC will only pay for completed units versus simply paying for level of effort.

EXHIBIT B

Fee Schedule

Category	Authorized	Reserved	Total
One-Time Costs for Startup Operations	\$ 943,984.67	\$ -	\$ 943,984.67
Cost for Program Management	\$ 7,542,654.28	\$ 2,514,218.10	\$ 10,056,872.38
Case Management Costs	\$ 20,189,718.00	\$ 22,789,877.28	\$ 42,979,595.28
	<u>\$ 28,676,356.95</u>	<u>\$ 25,304,095.38</u>	<u>\$ 53,980,452.33</u>

Fixed Fee:

Startup Operations	\$ 943,984.67
Program Management Services	\$ 10,056,872.38

Unit Costs:

Case Management Unit Costs	
Case Management Costs (Provide a breakdown of costs for each deliverable)	Per Unit
Application review and DOB preparation	
Call Center	\$ 38.89
Review Oversight	\$ 78.14
Application Review	\$ 423.04
DOB Preparation	\$ 57.61
Verification of eligibility for benefits	
Verification Oversight	\$ 118.88
Eligibility Processing	\$ 622.39
Title Review	\$ 132.52
Title Abstract (Estimated Fee)	\$ 150.00
Coordination with construction management (Inspections and work write ups)	
Construction Management Liaison	\$ 211.19
Benefits review and award finalization	
Benefits review and award finalization	\$ 85.09
Payment processing, closing and file closeout	
Payment Oversight	\$ 102.71
Payment processing	\$ 190.77
Closing (excludes title opinion, title insurance, FMV appraisals, and buyout transaction costs)	\$ 219.11
File Closeout	\$ 164.99
Total	\$ 2,595,333

Title review excludes title curative work.

Closing excludes formal closing fees associated with property transfer or acquisition.

Time and Materials:

Hourly rates for IEM and Original Subcontractors (as defined below)

Managers

Executive Director
Deputy Director
Alliance Executives

Specialists

Quality Assurance/Control
Legal
Finance
Coordination with Construction
Subject Matter Experts
Information Management Specialists/Leads
Monitoring and Evaluation Lead
Operational Evaluation and Improvement Lead
Reporting Lead

Case Management

Case Work Program Director
Case Work Site Manager
Case Work Team Leader
Case Worker
Case Worker Buyout
VOB Award Specialist
Case Work Intake Assistant
Case Work Assistant
Fiscal Staff
Legal Technician

Travel Costs:

Travel costs shall be billed at cost pursuant to the Federal Travel Regulations (41 C.F.R. Chapters 301 and 302). No markup is allowed to travel costs.

Original Subcontractors:

HORNE LLP
Agate Software, Inc.
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
The Dewberry Companies, Inc.
Elite Business Strategies, LLC

Enterprise Community Partners, Inc.
H2O Partners, Inc.
R.W. Block Consulting, Inc.
Star Interpreting and Translating, Inc.
St. Martin Brown & Associates, LLP
VOICES of September 11th
Zimmerman/Edelson

**Exhibit C
Housing Trust Fund Corporation
Technical Assistance Contract**

**DESIGNATION OF DEPOSITORY FOR DIRECT DEPOSIT OF HTFC FUNDS
SECTION I (to be completed by Contractor)**

Contractor	Contract Title
Contractor Address	Contact Person (Name & Phone #)

The _____
(Name of Contractor's Financial Institution)
has been designated as the depository for all funds to be received from the Housing Trust Fund Corporation (HTFC) resulting from an award under the above Contract.

I certify that all HTFC funds shall be deposited in an account at the above-referenced financial institution, which is covered by federal deposit insurance.

_____ Signature of Authorized Representative	_____ Date
_____ Name of Authorized Representative (Typed or Printed Legibly)	_____ Title

SECTION II (to be completed by Financial Institution)

Name of Financial Institution
Address

Routing Number _____

Account Number _____

Account Type Checking Account Savings Account

The account identified above has been established with this bank. All necessary documentation, including a power of attorney where necessary, which will enable this bank to receive funds directly from the Housing Trust Fund Corporation without any endorsement by the payee, has been received and is in this depository's custody. Immediately upon deposit of HTFC funds in the above account, we will notify the Recipient and subsequently provide a copy of the documentation of deposit.

_____ Signature of Authorized Bank Officer	_____ Date
_____ Title of Authorized Bank Officer	_____ Telephone Number

Exhibit D

GCR Support to New York State Governor's Office of Storm Recovery February 26, 2014

Background

GCR will continue to provide a team of subject matter experts and grants management staff to support the State of New York's recovery. These experts have experience in leading and supporting disaster recovery efforts both in Louisiana, Illinois, Texas, North Dakota and other places around the country. GCR supports its subject matter expertise with its technology services backbone to incorporate GIS services, web portals and reporting dashboards for all facets of the State's recovery operations.

GCR also provides leadership and surge capacity for critical projects. For example, most recently, at the direction of the GOSR, GCR's team of analysts and subject matter experts developed the Action Plan Amendment for the second allocation of HUD disaster funding.

GCR provides two main service areas under this scope to the Governor's Office of Storm Recovery (GOSR).

- Technical Assistance
- Reporting and Analytics

Within the Technical Assistance scope, GCR provides the following portfolio of services to the client on an ongoing basis:

- Leadership and organizational support to GOSR senior management team
- Policy and Program development/Implementation support
- Project Management (PMO) across program areas
- Staff augmentation for key programmatic functions
- Training
- Environmental Review Technical Assistance

In addition, GCR staff members are available to function in leadership and program positions as directed by the client.

Within the Reporting and Analytics scope, GCR has developed an external facing reporting dashboard that will provide the public a transparent view into progress of all of the disaster recovery programs. GCR also supports the need for real time analytics and reporting both for internal program development and management purposes, but also for external reporting to showcase progress and transparency of the use of federal funds. Also, GCR is currently developing the business requirements for the Intelligrants system and supporting the small business program in its data and reporting needs.

The GCR Project Manager maintains direct relationship with client to determine tasks and deliverables. The GCR Project Manager provides a bi-weekly progress report and has a weekly meeting with the GOSR Director of Operations.

Scope of Services

GCR's will bring to the State of New York core competencies in disaster recovery including:

1. Policy and Program Development Technical Assistance

GCR will provide technical assistance to the senior leadership and program staff of the GOSR including but not limited to: operational development, program development and implementation processes, HUD CDBG-DR regulations, compliance procedures and processes, analytics and reporting needs, and assistance with environmental review. Additional services will be added as needed following discussion and approval by the client.

The following scope of services will be provided for this engagement by GCR's team:

Leadership and organizational support to GOSR Senior Management Team

- GCR's Project Manager will serve as the GOSR's Interim Policy Director, which is part of the senior leadership team. In this role, the PM will participate in twice weekly senior staff meetings as well as interact with the senior leadership team as a decision maker. The PM will also oversee a small staff of State employees on the policy team.
- GCR's Assistant Project Manager will assist GCR's Project Manager in this function.
- GCR's PM and Assistant PM will develop and lead protocol for interaction with HUD CDBG-DR staff including leading weekly calls with HUD.

Staff augmentation for key programmatic functions

- GCR will act as interim program directors and managers at the direction of the client.
- GCR, at the direction of GOSR, will embed staff in program operations to perform needed operational work.

Policy and Program development/Implementation support

- GCR's team will provide daily policy and program support to programs throughout the agency from housing and small business to infrastructure and the community-based planning program.
- GCR will oversee the development of Action Plan Amendments and other clarifying documents required by HUD to manage the CDBG-DR grant.
- GCR will provide support, as requested, in preparation for HUD and HUD IG monitoring visits.
- GCR will provide guidance on budget allocations, projections and rules of HUD expenditures.

Project Management (PMO) across program areas

- GCR is in the process of supporting project management and setting up a PMO across the agencies programs.

Training

- GCR will continue to conduct a series of staff training on CDBG-DR, environmental review and other regulatory and programmatic subjects.

Environmental Review Technical Assistance

- GCR will advise program staff and environmental staff on the Environmental Review process to ensure efficiencies and implementation.

2. Reporting and Analytics

GCR will support the need for real time analytics and reporting both for internal program development and management purposes but also for external reporting to showcase progress and transparency of the use of federal funds. Under this scope, the reporting and analytics team will provide:

Updated Impact and Needs Assessments

GCR will coordinate with HCR staff and contractors to assess data needs for:

- Unmet Needs Assessments and CDBG-DR Action Plans;
- HUD quarterly reports and annual status report; and
- Support for CDBG-DR-DR program development.

This will include meeting with staff and contractors to determine what data is being collected and in what format. As part of this process, GCR will identify additional data that may be needed for HUD reports and action plan amendments, which may include but not limited to U.S. Census, FEMA Individual Assistance and Public Assistance records, U.S. Small Business Administration (SBA) loans, and private insurance data.

Data Needs Assessment for Internal Reporting

GCR will coordinate with GOSR staff and contractors to assess data needs for internal program oversight and summary reports. As part of this effort, GCR will work with GOSR managers as directed to develop templates for regular reports that can provide a snapshot understanding of status of program implementation. These templates will include tables, charts, graphs and data determined necessary by GOSR staff for ongoing monitoring and assessment of program operations. The template reports will provide the framework for future reporting, illustrating the layout, types of information that will be collected, and indicators that will be collected for the initial reports and automatic reporting.

Draft Reports

Using the guidelines established in the reporting templates created in the above task, GCR will collect and summarize data for the initial reports, which may include an automated HUD Quarterly Report, weekly and monthly status reports by program, and/or summary reports by municipality, county or congressional district. Simultaneously, GCR staff will develop a Technical Specification Document, which will include detailed screenshots of the automated dashboard reporting tool, software requirements, staffing, timeline and budget.

Dashboard Reporting Tool

GCR will cull information from the current data management systems and augment with additional data (e.g. U.S. Census data, HUD data) as needed to automate status reports using the existing infrastructure provided through the rebuild.louisiana.gov reporting dashboard. GCR will provide a user-focused reporting portal to provide real-time information on recovery programs, including applicant summary data, grants awarded and administered, and project status. The dashboard reporting tool will track rebuilding projects and expenditures related to disaster recovery by, at a minimum, a) program b) project and c) jurisdiction.

Technical Support for Reporting, Mapping and Graphic Support

GCR will provide additional technical support for reporting, data management, GIS and analytic support as requested by GOSR.

STAFFING

GCR provides a core staff complement in both areas of support. Surge staff are brought on as necessary to support critical deliverables.

1. Policy and Program Development Technical Assistance Team

Name	Role/Assignment	Education
[REDACTED]	Policy, Program Development, CDBG-DR	Program Manager

[REDACTED]	Policy and Program Development	Sr. Consultant
[REDACTED]	Housing, Program Development & Management	Technical Advisor
[REDACTED]	Economic Development, Infrastructure, Compliance and Monitoring	Technical Advisor
[REDACTED]	Environmental Review	Technical Advisor
[REDACTED]	Housing, Policy and Program Operations	Technical Advisor
[REDACTED]	Policy and Program Development	Technical Advisor
[REDACTED]	Economic Development, Policy and Program Development	Subject Matter Expert
[REDACTED]	Housing and Analytics	Subject Matter Expert
[REDACTED]	GIS and Reporting, Program Support	Sr. Consultant

2. Reporting and Analytics

Name	Role/Allocation	Experience
Analytics		
[REDACTED]	Housing and Analytics	Subject Matter Expert
[REDACTED]	Demographics and Analytics	Subject Matter Expert
[REDACTED]	Demographics and Analytics	Sr. Analyst
Reporting and Dashboard Development		
[REDACTED]	PM, Reporting Portal Development	Project Manager
[REDACTED]		Project Manager
[REDACTED]		Sr. Analyst
[REDACTED]		Analyst
[REDACTED]		Analyst
[REDACTED]		Analyst
[REDACTED]		Sr. Analyst
[REDACTED]		Sr. Analyst
[REDACTED]		Sr. Analyst
[REDACTED]		Sr. Analyst
[REDACTED]		Sr. Analyst
[REDACTED]		Subject Matter Expert
[REDACTED]		Sr. Consultant
[REDACTED]		Analyst
[REDACTED]		Sr. Consultant

NOTE: The majority of the reporting and analytics staff are based out of GCR's New Orleans office and are work on a deliverable basis. Currently this team is completing the Reporting Dashboard requested by

the client. Joe Rexford and Rebecca Rothenberg manage the client interface on reporting and analytics needs in coordination with Project Manager.

BUDGET

The budget is based on a time and materials basis. The budget assumes FTEs at the rates outlined below.

Deliverables will be developed and tracked on a monthly basis in consultation with the GOSR Chief Operating Officer and the GCR Program Manager.

1. Policy and Program Development Technical Assistance Team

Labor Category	
Program Manager	\$ [REDACTED]
Technical Advisor	\$ [REDACTED]
Subject Matter Expert	\$ [REDACTED]
Sr. Consultant	\$ [REDACTED]

2. Reporting and Analytics

Labor Category	
Subject Matter Expert	\$ [REDACTED]
Project Manager	\$ [REDACTED]
Sr. Analyst	\$ [REDACTED]
Analyst	\$ [REDACTED]

TRAVEL COSTS

Travel costs shall be billed at cost pursuant to the Federal Travel Regulations (41 C.F.R. Chapters 301 and 302). No markup is allowed to travel costs.



GOVERNOR'S OFFICE OF STORM RECOVERY

Andrew M. Cuomo
Governor

Seth Diamond
Director

James Rubin
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").

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 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 three (3) 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). 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 compliance with the procurement requirements of 2 C.F.R. Part 215, 24 C.F.R. § 570.502, and 24 C.F.R. § 85.36, including but not limited to compliance with all competition requirements, avoiding and/or mitigating conflicts of interest, and imposing all federally-mandated contract terms.

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 the provisions of this section in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors and will require its subcontractors to do likewise.

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
(Applicable to construction contracts exceeding \$100,000)

- 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).

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

**NEW YORK STATE 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**

April, 2013

APPENDIX II

STANDARD CLAUSES FOR CONTRACTS WITH THE HOUSING TRUST FUND CORPORATION

**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
(individually or collectively, "Agency" or "Agencies")**

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

NEW YORK STATE 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

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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 "Indemnities") harmless from and against all claims, demands, liability, loss, cost, damage or expense, including attorney's fees, which may be incurred by the Indemnities because of negligence or malfeasance on the part of the Contractor arising out of this Contract.

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

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

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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, goods or services unrelated to this Contract; or (ii) employment outside New York State. The Agency or Agencies shall consider

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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. In addition, the Contractor shall execute the Certificate of Interest attached hereto as Exhibit A and incorporated herein.

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/Agencies/HTFC/Publications/PromptPaymentsReport2012.pdf> or <http://www.nyshcr.org/AboutUs/Procurement/Contractinformation.htm>.

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.

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

NEW YORK STATE 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

April, 2013

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

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April, 2013

Agencies may exercise their termination right by providing written notification to the Contractor.

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, New York 10017
Telephone: 212-803-2424
Email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

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.

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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.

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 administered community development programs covered under Section 3.

A Section 3 contractor/subcontractor is a business concern that provides opportunities to low- and very low-income residents of the metro/nonmetropolitan county), including a business concern that is 51 percent owned by low- or very low-income residents; employs a substantial number of very low-income residents; or provides subcontracting or business development opportunities to businesses owned by low- or very low-income residents. Very low-income residents include participants in Youthbuild programs 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 1968. Low-income persons mean families (including single persons) whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except the

Community Development Programs

1. **Grantee:** Enter the name of the unit of government submitting this report.
3. **Contact Person:** Enter name and phone of person responsible for maintaining and submitting contract/subcontract data.
- 7a. **Grant Number:** Enter the HUD Community Development Block Grant Identification Number (with dashes). For example: B-32-MC-25-0034. For Entitlement Programs and Small City multi-year comprehensive programs, enter the latest approved grant number.
- 7b. **Amount of Contract/Subcontract:** Enter the dollar amount rounded to the nearest dollar. If subcontractor ID number is provided in 7f, the dollar figure would be for the subcontract only and not for the prime contract.
- 7c. **Type of Trade:** Enter the numeric codes which best indicates the contractor's/subcontractor's service. If subcontractor ID number is provided in 7f., the type of trade code would be for the subcontractor only and not for the prime contractor. The "other" category includes supply, professional services and all other activities except construction and education/training activities.
- 7d. **Business Racial/Ethnic/Gender Code:** Enter the numeric code which indicates the racial/ethnic/gender character of the owner(s) and controller(s) of 51% of the business. When 51% or more is not owned and controlled by any single racial/ethnic/gender category, enter the code which seems most appropriate. If the subcontractor ID number is provided, the code would apply to the subcontractor and not to the prime contractor.
- 7e. **Woman Owned Business:** Enter Yes or No.
- 7f. **Contractor Identification (ID) Number:** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of HUD funds. Note that the Employer (IRS) Number must be provided for each contract/subcontract awarded.
- 7g. **Section 3 Contractor:** Enter Yes or No.
- 7h. **Subcontractor Identification (ID) Number:** Enter the Employer (IRS) Number of the subcontractor as the unique identifier for each subcontract awarded from HUD funds. When the subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.
- 7i. **Section 3 Contractor:** Enter Yes or No.
- 7j. **Contractor/Subcontractor Name and Address:** Enter this information for each subcontract. Previous editions are obsolete.

firm receiving contract/subcontract activity only one time on each report.

Multifamily Housing Programs

1. **Grantee/Project Owner:** Enter the name of the unit of government or mortgagor entity submitting this report.
3. **Contact Person:** Same as item 3 under CPD Programs.
4. **Reporting Period:** Check only one period.
5. **Program Code:** Enter the appropriate program code.
- 7a. **Grant/Project Number:** Enter the HUD Project Number or Home Investment 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 contacts awarded on the project/program.

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

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

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

Block 2: Non-Construction Contracts

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

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

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

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

Part III: Summary of Efforts - Self-explanatory

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.

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 II or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, the Corporation hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on this Contract and achieving the Contract Goals established in section III-A, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:
<http://www.empire.state.ny.us/MWBE/directorySearch.html> .

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

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

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement (Form PROC-8) to the Corporation within seventy two (72) hours after the date of the notice by Corporation to award the Contract to the Contractor.
 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the Corporation may provide the Contractor or Subcontractor a model statement (see Form PROC-4 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
 4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national

- origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- d. The Contractor will include the provisions of sections (a) through (c) of this subsection and paragraph "E" of this section, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Contract.

C. Form PROC-1- Staffing Plan

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

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

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

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

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form PROC-2) either prior to, or at the time of, the execution of this Contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on this Contract pursuant to the prescribed MWBE goals set forth in section III-A of this Appendix II.
- 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: _____

Report includes:
 Workforce to be utilized on this contract
 Contractor/Subcontractor's total work force

Offeror's Name: _____

Reporting Entity:
 Contractor
 Subcontractor

Offeror's Address: _____

Subcontractor's name: _____

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

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

PREPARED BY (Signature): _____

TELEPHONE NO.: _____

DATE: _____

EMAIL ADDRESS: _____

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

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:

Address:

City, State, Zip Code:

Region/Location of Work:

Federal Identification Number:

Solicitation Number:

Telephone Number:

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

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts / Supplies/Services and intended performance dates of each component of the contract.
A.	NYS ESD CERTIFIED <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: _____ DATE: _____
 NAME AND TITLE OF PREPARER (Print or Type): _____

Signature: _____ AUTHORIZED Signature
 DATE: _____ TELEPHONE NO: _____
 EMAIL ADDRESS: _____

UTILIZATION PLAN APPROVED: YES NO Date: _____
 Contract No: _____ Contract Award Date: _____
 Estimated Date of Completion: _____
 Amount Obligated Under the Contract: _____
 NOTICE OF DEFICIENCY ISSUED: YES NO
 Date: _____
 NOTICE OF ACCEPTANCE ISSUED: YES NO
 Date: _____

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

REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.

<p>Offeror/Contractor Name: _____</p> <p>Address: _____</p> <p>City, State, Zip Code: _____</p> <p>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.</p> <p>Contractor is requesting a:</p> <p>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</p> <p>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</p> <p>3. <input 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: _____</p>	<p>Federal Identification No.: _____</p> <p>Solicitation/Contract No.: _____</p> <p>M/WBE Goals: MBE % WBE %</p> <p align="center">***** FOR AGENCY USE ONLY *****</p> <p>REVIEWED BY: _____ DATE: _____</p> <p>Waiver Granted: <input type="checkbox"/> YES <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/></p> <p><input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver</p> <p><input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional</p> <p><input type="checkbox"/> Notice of Deficiency Issued _____</p> <p>*Comments: _____</p>
<p>PREPARED BY (Signature):</p> <p>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.</p> <p>Name and Title of Preparer (Printed or Typed):</p> <p>New York State Governor's Office of Storm Recovery 25 Beaver Street, 5th Floor New York, NY 10004</p> <p>Email to: MWBE_EEOCreports@stormrecovery.ny.gov</p>	<p>Date: _____</p> <p>Telephone Number: _____</p> <p>Email Address: _____</p>

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 MWBE-oriented publications in which you solicited certified MWBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified MWBE participation were published in any of the above publications.
4. A list of all certified MWBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified MWBE 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 MWBEs.
6. Provide copies of responses made by certified MWBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified MWBEs 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 MWBEs undertaken for purposes of complying with the certified MWBE 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 MWBE compliance.

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

M/WBE AND EEO POLICY STATEMENT

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

MWBE

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

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

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.

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

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative for a statement that it will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

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

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison

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

M/WBE Contract Goals

20% Minority and Women's Business Enterprise Participation

10% Minority Business Enterprise Participation

10% Women's Business Enterprise Participation

EEO Contract Goals

___% Minority Labor Force Participation

___% Female Labor Force Participation

WORKFORCE EMPLOYMENT UTILIZATION

Contract No.:

Reporting Entity:
 Contractor
 Subcontractor

Reporting Period:
 January 1, 20__ - March 31, 20__
 April 1, 20__ - June 30, 20__
 July 1, 20__ - September 30, 20__
 October 1, 20__ - December 31, 20__

Contractor's Name:

Contractor's Address:

Report includes:
 Work force to be utilized on this contract
 Contractor/Subcontractor's total work force

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

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

PREPARED BY (Signature):

TELEPHONE NO.:

EMAIL ADDRESS:

DATE:

NAME AND TITLE OF PREPARER (Print or Type):
 Submit completed form to:
 NYS Governor's Office of Storm Recovery,
 25 Beaver Street, 5th 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.

a veteran who served at any time between and including January 1, 1963 and May 7, 1975.

- **VIETNAM ERA VETERAN**
- **GENDER**

Male or Female

Failure to submit this form will result in non-compliance

Is this a final report? Check one.
 Yes No

M/WBE Quarterly Report
 of

NYS AGENCY/AGENCIES Contract No. _____ Project No. _____

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

Contractor's Name and Address		Federal ID#	Goals/Dollar Amount		Contract Type:								
			MBE ___% = \$ _____	Paid to Contractor this Quarter:		Paid to Contractor this Quarter:							
			WBE ___% = \$ _____	Total Paid to Contractor to Date:		Total Paid to Contractor to Date:							
		Project Completion Date	Work Location	Reporting Period:		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"/> 4 th Quarter (1/1-3/31)							
				<input type="checkbox"/> 2 nd Quarter (7/1-9/30)									
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: _____ Name: _____ Title: _____ 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.

_____ Respond YES or NO.

If YES, provide explanation:

Respondent's Signature

Date of Respondent's Signature

Print Name of Respondent

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

APPENDIX IV

**CONSTRUCTION REQUIREMENTS
AND PROCEDURES FOR
CONTRACTS WITH**

HOUSING TRUST FUND CORPORATION



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

CUMULATIVE PAYMENT STATEMENT
 (Instructions on Reverse Side)

Contractors Name and Address: <i>(List All Firms)</i>	Federal ID #	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 Federal ID #:** Indicate the name, address, city, state and zip code.
If Federal ID # not assigned, provide Social Security # of the owner.
- Description of Work:** Check the box that best describes the work performed. (CHECK ONE BOX ONLY)
- NYS Certified:** Indicate if MBE or WBE. (CHECK ONE BOX ONLY) Only firms certified by NYS will be counted towards goals
- Payments This Period:** Indicate amount paid to each subcontractors or suppliers this reporting period.

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

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



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

Affirmation of Income Payments to MBE/WBE

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

CONTRACTOR

1. Name and Address of Contractor	2. SHARS/Project #				
Federal ID #	3. Reporting Period				
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="width: 50px;">Quarter</td> <td style="width: 50px;">Year</td> </tr> <tr> <td style="border: none;">_____</td> <td style="border: none;">_____</td> </tr> </table>	Quarter	Year	_____	_____
Quarter	Year				
_____	_____				

M/WBE FIRM

1. Name and Address	2. Date contract started:	
Federal ID #	3. New York State Certified (Check One)	
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	
4. Type of Service Provider (Check one box only)		
<input type="checkbox"/> Construction <input type="checkbox"/> Supplier <input type="checkbox"/> Consultant Service <input type="checkbox"/> Service/Commodity		
5. Summary of Payments		
a. Total MBE/WBE contract amount	\$ _____	
b. MBE/WBE payment received for this reporting period	\$ _____	
c. Total MBE/WBE payments received as of this reporting period	\$ _____	
Signature of MBE/WBE	Print Name of MBE/WBE	Date
Signature of Contractor	Print Name of Contractor	Date

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



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.