

## CONTRACT FOR SERVICES

THIS AGREEMENT, is made and entered into on July 1, 2014 (“Effective Date”) between McKissack MBP, Joint Venture with offices located at 1001 Avenue of the Americas, 20<sup>th</sup> Floor, New York, New York 10018 (“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 State of New York (“State”) received major disaster declarations as a result of Hurricane Sandy, Hurricane Irene, and Tropical Storm Lee (the “Storms”);

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

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

WHEREAS, HTFC seeks contractor services in order to assist HTFC in administering these funds (Exhibit A) (also referred to herein as the “Scope of Services”); and

WHEREAS, the Dormitory Authority of the State of New York (“DASNY”) awarded a contract (the “DASNY Contract”) to the Contractor pursuant to a request for proposals issued by DASNY on August 16, 2012 (the “DASNY RFP”) which contemplated a 2 year contract with two 1 year extensions; and

WHEREAS, pursuant to the DASNY Contract, the Contractor is engaged in the business of providing the types of services set out in the Scope of Services of this Agreement; and

WHEREAS, pursuant to New York law, HTFC can rely upon a competition performed by another state agency to procure a contractor, and in fact HTFC, relying upon the competition performed by DASNY, HTFC selected the Contractor; and

WHEREAS, HTFC and the 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 relevant task order(s) (“Task Order(s)”) (“Services”); and

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

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

STIPULATED AND AGREED as follows:

1. General Obligations of the Contractor.

(a) This Agreement incorporates by reference as if set forth herein the Contractor’s proposal dated October 4, 2012 in response to the DASNY RFP and any subsequently submitted documents, communications and representations (“Proposal Documents”) utilized by DASNY in evaluating the Contractor for award of the DASNY Contract.

(b) This Agreement sets forth the general terms and conditions governing the entire Scope of Services (Exhibit A) that HTFC/GOSR may seek and the actual Services obligated by HTFC pursuant to a properly executed Task Order. This Agreement alone does not obligate compensation to be paid by HTFC or Services to be performed the Contractor. Services and compensation for such Services shall only be obliged upon the proper and complete execution of a Task Order.

(c) 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 Appendix I – III. Any failure by the Contractor to thoroughly familiarize itself

with and understand such matters shall not relieve the Contractor of its obligations under this Agreement or any Task Order hereunder.

(d) The Contractor shall perform the Services contained in any Task Order 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 contract by competent personnel under the management, supervision, and direction or employment of, the Contractor.

(e) The Contractor shall commit adequate resources to perform the Services.

2. General Obligations of HTFC/GOSR.

(a) HTFC agrees to compensate the Contractor for its performance of the Services under any proper and fully executed Task Order at the schedule set forth in the cognizant Task Order and at the rates established in Exhibit B (also referred to herein as the "Fee Schedule") and as established by each Task Order. Contractor agrees that in no event will HTFC pay the Contractor more than \$10,000,000 ("Total Fee") for the Services under all Task Orders under this Agreement. The Contractor under no circumstances 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 and travel expenses) 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.

(b) HTFC/GOSR shall, in its sole discretion, determine the extent to which it will use the Services of the Contractor. This Agreement does not guarantee any minimum number of hours or amount of funds to be utilized over its term.

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

3. Task Order Contract. All Services and compensation shall be obligated pursuant to a 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 compensation based upon the fees set forth in the Fee Schedule at Exhibit B, and as established by the Task Order.

4. Period of Agreement. This Agreement shall commence as of the Effective Date and shall terminate one (1) year thereafter, except that the Contractor shall complete any and all Task Order(s) assigned within that period regardless of the Agreement termination date. HTFC, in its sole discretion, may extend the term of this Agreement and issue Task Orders for an extended period of one (1) year at a time, but not more than twice. The Contractor shall continue to render services for each Task Order it is assigned, within the term of this Agreement and any such extension(s), until the completion of said Task Order(s) unless HTFC gives written notice to the contrary. Any further 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/GOSR. In addition, the Contractor, at no additional cost, shall: (a) cooperate fully at the direction of HTFC/GOSR 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/GOSR-furnished and Contractor-acquired property. HTFC property includes material, equipment, special tooling, special test equipment, and real property. Intellectual property shall be governed by Appendix I, Article 8.

5. 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/GOSR.

(e) The Contractor possesses the equipment, facilities, and employees 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) That all documents, including, but not limited to, invoices, billings, back-up information for invoices, and reports submitted by the Contractor to HTFC/GOSR in connection with the Services are complete and accurate to the best of the knowledge of the Contractor. The Contractor represents that HTFC/GOSR, 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/GOSR upon discovery of any instances where the Contractor becomes aware of any discrepancies in relation to documents under this Section.

6. Inspection & Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this Agreement. HTFC/GOSR reserves the right to inspect or test any deliverables or Services that have been tendered for acceptance. HTFC/GOSR may require repair or replacement of nonconforming Services at no increase in compensation. If repair/replacement or reperformance will not correct the defects or is not possible, HTFC/GOSR may seek an equitable price reduction or adequate consideration for acceptance of nonconforming Services. HTFC/GOSR must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

7. Payment Process and Accounting Procedures.

(a) Payment for all Services shall be made in United States currency.

(b) Payment will be made upon receipt of an accurate and complete invoice from the Contractor for Services rendered, in conformance with the Task Order's payment schedule.

(c) HTFC/GOSR reserves the right to refuse payment on any portion thereof, until such portion is acceptably presented.

(d) Except as may be specifically provided in the 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.

(e) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized by HTFC) to

Housing Trust Fund Corporation  
Hampton Plaza  
38-40 State Street  
Albany, NY 12207

An invoice must include—

- i. Name and address of the Contractor;
- ii. Invoice date and number;
- iii. Task Order number;
- iv. Description of Services, quantity of Services, unit or rate of measure of the items delivered;
- v. If applicable, shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- vi. Terms of any discount for prompt payment offered;
- vii. Name and address of official to whom payment is to be sent;
- viii. Name, title, and phone number of person to notify in event of defective invoice; and
- ix. Additional information as reasonably required by HTFC/GOSR.

(f) All amounts paid by HTFC to the Contractor are subject to audit by HTFC/GOSR, as set forth in Section 10 of this Agreement.

(g) 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.

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

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

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

8. Termination of Agreement.

(a) Termination for Cause. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this Agreement, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, HTFC shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) business days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the 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.

(b) Termination for Convenience. HTFC may terminate this Agreement at any time by giving at least ten (10) business days' notice in writing to the Contractor. If this Agreement is

terminated by HTFC as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

(c) Upon termination of this Agreement, 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.

9. Supervision of Services.

(a) HTFC may, upon reasonable prior notification, call meetings which shall be attended by representatives of the Contractor.

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

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

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

11. Indemnity & Insurance.

(a) Indemnity: The Contractor hereby agrees to indemnify and hold harmless the HTFC/GOSR, or its members, officers, employees, or representatives, against all claims arising out of the negligent acts, alleged negligent acts, or failure to act, by the Contractor, and shall pay any judgment or expense, including interest, imposed against any of them for injury, wrongful death or property damage, and to defend and pay the costs and expenses thereof and of any action, proceeding or lawsuit brought against the parties indemnified and held harmless herein. Upon

the conclusion of any such action, proceeding or lawsuit, should a final binding determination of responsibility be made which allocates responsibility to the HTFC/GOSR, or its members, officers, employees, or representatives, the HTFC/GOSR agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any money judgment for which HTFC/GOSR is responsible, and HTFC/GOSR agrees to pay the Contractor the percentage of defense costs which the Contractor incurred based upon an apportionment of the HTFC/GOSR's allocated responsibility.

(b) Insurance: Contractor shall procure and maintain without interruption, at its sole cost and expense, insurance of the type, and with limits and deductibles, meeting or exceeding the as following:

- i. Commercial General Liability Insurance. Providing bodily injury (including death), and property damage and personal and advertising injury coverage with limits not less than Two Million Dollars (\$2,000,000) aggregate and One Million Dollars (\$1,000,000) per occurrence with defense outside the limits. Such insurance is to be written on an occurrence basis. HTFC shall be named as an additional insured. There shall be no exclusions related to collapse, explosion and underground property damage hazards, or any aspect of the work or services of Contractor. This insurance shall include coverage for contractual liability.
- ii. Automobile Liability and Property Damage Insurance. In an amount not less than One Million Dollars (\$1,000,000) combined single limit for both Bodily Injury and Property Damage.
- iii. Worker's Compensation and Employer's Liability. Covering employers' liability and disability benefits as required by the State of New York.
- iv. Professional Liability/Errors and Omissions. Providing coverage for professional liability and errors and omissions with a per claim limit of \$1,000,000 per claim and \$2,000,000 aggregate.

- v. Excess Liability Insurance. Coverage excess of all of the above policies (that is, (i) through and including (v) above, on a follow form basis) not less than Eight Million Dollars (\$8,000,000) per claim/occurrence and in the aggregate. HTFC shall be named as an additional insured for all coverages where required for the underlying insurance (collectively, all of the above the "Required Insurance")

With respect to all of the Required Insurance:

- i. The Contractor shall provide Certificates of Insurance for all of the Required Insurance to HTFC prior to the commencement of work. Complete copies of all insurance policies and all endorsements thereto shall be provided to HTFC upon its request for the same.
- ii. All limits, deductibles and payments under the Required Insurance and other amounts described herein are in United States Dollars (\$), and all payments under these policies shall be made in United States Dollars (\$). All limits for the Required Insurance are annual limits which shall renew annually.
- iii. Where commercially available, all Required Insurance shall be written on an occurrence basis, except Professional Liability. Where that is not available (e.g., with respect to Professional Liability/Errors and Omissions coverage), Contractor shall inform HTFC in writing (which Contractor has already done with respect to Professional Liability/Errors and Omissions coverage) and HTFC will accept insurance written on a claims-made basis, provided an appropriate extended reporting period is provided in a form and manner approved by HTFC in writing.
- iv. Under all Required Insurance, Contractor shall be solely and fully responsible for all deductibles, self-insured retentions ("SIRs"), co-insurance or similar payments of any nature. No SIR greater than \$100,000 may be utilized without prior approval by HTFC. All Required Insurance policies shall provide that any deductible or SIR may be paid by

- any insured thereunder and shall be deemed to fully satisfy the deductible or SIR for all insureds.
- v. Any insurance or insurance limits specified herein shall not limit the liability of Contractor and are minimum insurance limits only. They do not cap or otherwise impact Contractor's liability to HTFC in any form or manner.
  - vi. All Required Insurance shall be primary and non-contributing with any other insurance.
  - vii. Any excess policies must contain specific "broad as primary" or "follow-form" wording or specifically reference the terms, conditions and exclusions of the primary policy.
  - viii. All Required Insurance must be taken out with insurers properly licensed in New York State and with financial ratings reasonably acceptable to HTFC.
  - ix. If HTFC is an insured, the Required Insurance must contain a separation of insureds clause such that the insurance is applied to HTFC as though it were the only insured and no other insured can void or impair coverage for HTFC.
  - x. All Required Insurance must contain affirmative waivers of subrogation against HTFC.
  - xi. All Required Insurance policies must provide that coverage will not be delayed or denied for allegedly late notice or reporting unless the insurance company proves by clear and convincing evidence that it was actually and materially prejudiced by the late notice, and in such case coverage may only be delayed or denied to the extent of such actual and material prejudice.
  - xii. Each Required Insurance policy shall be endorsed to state that coverage or limits of coverage cannot be canceled, voided, suspended, adversely modified, or reduced except after 30 days' prior written notice (10 days'

notice for non-payment of premium) has been given to HTFC and during which time no cure has been effected by any insured.

12. Assignment and Subcontracting.

(a) The Parties' rights regarding assignment and subcontracting are subject to terms of Appendix II. The right to assign this Agreement or subcontract any of the Services under a Task Order to this Agreement is generally prohibited without prior written approval of HTFC.

(b) Any change of control by the Contractor, shall be deemed an assignment that requires prior written consent. A "change of control" includes any merger, consolidation, sale of all or substantially all of the assets or sale of a substantial block of stock of the Contractor.

(c) As part of any subcontract hereunder, after Contractor receives written approval, the Contractor must incorporate the terms of this Agreement in its subcontract so that the terms apply in the same manner and with the same effect as set forth in this Agreement and Task Orders hereunder. If the Contractor does subcontract out any portion of the Services, after notice and consent are given, 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.

(d) The Contractor's obligation to pay its subcontractors is an independent obligation from HTFC's obligation to make payments to the Contractor. As a result, HTFC shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

13. Compliance with Law.

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

(b) 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.

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

14. Miscellaneous Provisions.

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

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

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

(c) No Third Party Beneficiary. This Agreement is intended solely for the benefit of the Parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction or any party in connection therewith.

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

(e) **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.

(f) **Notices.** Notwithstanding the Notice requirements in Appendix II, all notices and other communications given hereunder shall be in writing and delivered by hand or mailed by United States first class registered or certified mail, return receipt requested. Notice shall be deemed to have been given, if delivered by hand, when actually received by the Party being notified, or, if mailed, when addressed:

(i) if to the CONTRACTOR, as follows:

McKissack MBP, Joint Venture  
Attn: David Kane  
1001 Avenue of the Americas, 20<sup>th</sup> Floor  
New York, NY 10018



and (ii) 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



(g) **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 integrates, merges, and supersedes all prior negotiations, representations, or agreements relating thereto, whether written or oral, except to the extent they are expressly incorporated herein. The provisions of this Agreement and the accompanying document 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:

- i. Appendix I – HUD General Provisions
- ii. Appendix II – Standard Clause for all HTFC Contracts
- iii. Appendix III – Diversity Forms
- iv. Appendix IV – Construction Related Terms and Forms (if applicable)
- v. The applicable Task Order
- vi. This Agreement
- vii. Exhibit A – Scope of Services
- viii. Exhibit B – Fee Schedule
- ix. Proposal Documents
- x. Exhibit C – Designation of Depository for Direct Deposit of HTFC Funds

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

MCKISSACK MBP, JOINT VENTURE

By

Name: David Kane

Title: Chief Operating Officer

HOUSING TRUST FUND CORPORATION

By

Name: James Kwan

Title: Executive Director

APPROVED AS TO FORM

By:

Lisa Bova-Huatt

Printed Name  
GOSR Counsel

APPROVED AS TO FINANCIAL SUFFICIENCY:

By:

Robert P. Millen

Printed Name  
GOSR Chief Financial Officer

**EXHIBIT A**  
**SCOPE OF SERVICES**

**Introduction**

As used herein, the term "OWNER" refers to the Housing Trust Fund Corporation, and the term "CONSTRUCTION MANAGER" refers to McKissack MBP, Joint Venture.

The OWNER may request the CONSTRUCTION MANAGER to provide services on either a full service basis, the scope of which is defined herein under Design Phase and Construction Phase, or on a limited basis using only particular services of the CONSTRUCTION MANAGER, herein referred to as Technical Support Services. Technical Support Services may be provided during the design or construction phase of a particular project and shall be provided by one or more of the CONSTRUCTION MANAGER'S staff under the direction and supervision of the OWNER'S representative. The full range of services required under the Design and/or Construction phases shall not apply to work performed as Technical Support Services.

The following shall serve as a directory for the scope and nature of Design and Construction Support Services to be provided by the CONSTRUCTION MANAGER in order to meet the objectives of the OWNER.

**A. TECHNICAL SUPPORT SERVICES**

Technical Services include, but are not limited to:

1. scheduling;
2. inspection of general construction, electrical, mechanical, and site work supervision;
3. administrative/office support; and
4. other technical support services, as directed by OWNER and enumerated in the Work Authorization.

The specific scope of activities for any of these requested services shall be further described in each Work Authorization issued.

**B. DESIGN PHASE**

Design Phase Services shall include, but are not limited to the following:

1. estimating;
2. value engineering;
3. constructability reviews; and
4. Design Phase Scheduling.

If requested the CONSTRUCTION MANAGER shall provide Design Phase Scheduling Services in accordance with the following requirements:

Evaluate Scheduling Requirements: Evaluate the Construction Phase Schedule for conformance with industry standards, reasonableness of overall proposed schedule duration and methodology. Prepare an expanded schedule for the Construction Phase of the Project using a time-scaled PDM summary level schedule based on the OWNER's scheduling template supporting (via scheduling roll up logic) major milestone activities unique to each proposed Contract. Provide recommendations and possible alternative solutions, which at minimum addresses:

Available labor resources.

1. Construction sequence, logical progression of the work
2. Critical path
3. Division of work

Major milestones to include at a minimum:

1. Notice to proceed
2. Phasing
3. Procurement and delivery of long lead items
4. Substantial completion
5. Occupancy , if applicable
6. Final completion

Note: Only the major milestones are to be included in the bid documents.

## **C. CONSTRUCTION PHASE**

The CONSTRUCTION MANAGER shall perform the following services in relation to:

### **1. General Administration**

- a. Serve as the OWNER's representative in the field during the construction phase of the project managing all aspects of project. The CONSTRUCTION MANAGER shall be responsible for schedule, quality and budget throughout the duration of this phase.
- b. Establish a project team by which the Project will be controlled, coordinated, and expedited. On-site staffing shall be agreed upon by the OWNER and CONSTRUCTION MANAGER and in accordance with Exhibit AA, which is annexed hereto and made a part hereof.
- c. Receive, investigate, and reply to all Contractors' correspondence pertaining to the Work. Take appropriate action as required.

- d. Prepare, develop, maintain, and safeguard all inclusive on-site record keeping systems that meet with the OWNER's approval.
- e. Coordinate with the appropriate parties the delivery and installation of OWNER purchased furnishings and equipment.
- f. Supply the OWNER and the OWNER's Representative (if requested) with a copy of all correspondence, reports, comments, transmittals, requests, and other information relating to the Contract.

## 2. Meetings

- a. Chair all project meetings as required and issue written minutes within four (4) calendar days.
- b. Attend and record miscellaneous meetings with the OWNER, Design Professional, or Contractors.

## 3. Scheduling

The CONSTRUCTION MANAGER shall provide Construction Phase Scheduling Services in accordance with the following requirements:

### a. Preparation and Review of Schedule

#### i. Initial Conferences

Conduct conferences with Prime Contractors and the OWNER's Representatives during the mobilization stage to determine sequential relationships and interdependence for each activity of the Project utilizing the OWNER's schedule template. Additional information to be developed in order to establish a practical work schedule includes:

- (a) An analysis of the various essential components, activities, and events required for a completed Project.
- (b) Activities shall not be limited to actual construction operations but shall include permitting, preparation and submission of shop drawings and samples, procurement of materials and equipment, manufacturing lead time, testing and commissioning, closeout, and Architect and OWNER activities that may affect work progress.
- (c) Such other information as may be required to prepare a complete plan and work schedule under the proposed scheduling method.

#### ii. Ninety Day Schedule

- (a) Using the above information and data acquired from the contractor, develop a preliminary CPM schedule for the Project including activities for deliveries and submittals. This network shall show, in detail, the Project schedule for the first ninety calendar days and shall include summary activities of all contracts.
- (b) This coordinated schedule shall be furnished no later than fifteen working days after the Notice to Proceed. Upon the OWNER's approval, it shall be used to monitor progress until the Detailed Coordinated Working Schedule is developed.

iii. Detailed Coordinated Working Schedule for Construction Completion

- (a) Prepare for submittal and approval the updated ninety day schedule based on the Contractor's, Architect's, and OWNER's schedule information. The durations and manpower information should be analyzed and reviewed with the Contractors in order to develop a complete network. The network presentation shall include time scale logic.
- (b) The Detailed Coordinated Working Schedule for all work shall be submitted to the OWNER for approval and shall be furnished no later than thirty working days after the Notice to Proceed is issued.

iv. Progress Update

- (a) The ninety day schedule shall be updated and controlled thirty and sixty calendar days from the NTP.
- (b) The Detailed Coordinated Working Schedule shall be updated and controlled ninety days from the NTP and subsequently updated monthly or as determined by the Project Manager requires.
- (c) The reports shall be issued after each update.

v. Reports

Concurrent with the Project schedule, submit each of the following reports. Format for each activity in reports shall contain; activity ID number, activity description, activity percent complete, original duration, remaining duration, early start and finish dates, and total float.

- (a) Activity Report: List of all activities sorted by early or actual start date in each phase, area and level following the physical divisions of the Work.

- (b) Ninety Day Look Ahead: Lists all activities occurring from the update data date in a three month forward and one month back window
- (c) Logic Report: List of preceding and succeeding activities for all activities, sorted in ascending order by early or actual start date. Include activity ID number and float path(s).
- (d) Total Float Report: Provide a cumulative list of total float from each update period with comments associated to any and all variances.
- (e) Variance Report: Comparison of current update against the approved detailed coordinated working schedule.
- (f) Procurement Report: List all procurement activities sorted in order of the item being procured.
- (g) Narrative Report: The project scheduler shall provide a narrative with each schedule update which shall include the following information:

Narrative Report: The project scheduler shall provide a narrative with each schedule update which shall include the following information.

- Introduction.
- An executive summary of the schedule narrative.
- A brief description of the project.
- Anticipated award dates, actual award dates, contractors selected and any recommendations for changes to the bid strategy going forward.
- Base Line Acceptance.
- Actual and anticipated acceptance dates of Baseline Schedule for each prime contractor and any associated issues.
- Major Milestone Summary.

A graphical presentation of project milestone progress, columns to include:

Activity ID	Activity Description	Current Update Completion Date	Last Update Completion Date	Original Baseline Completion Date	Variance from Prior Update (Days)	Cumulative Variation from Original Baseline (Days)
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Discussion of Issues as appropriate to include the following:

- Major issues encountered during the current and prior updates.
- Summary of Progress/Current Status of Project.

- Progress since prior update and any issues encountered.
- Changes to Network Logic.
- Explanation of any changes to the network logic.
- Critical Path.
- Description of current critical path to completion, variance from baseline critical path and variance from the critical path associated with the prior update.
- Delay Analysis and Responsibility.
- Discussion of any and all delays that have been experienced since the prior update as well as an assessment of responsibility for each delay. This section should also include a matrix presenting the delay associated with each schedule update and the cumulative project delay.
- Planned Activities.
- Activities and progress planned for the next update period.
- Potential Recovery Measures and Associated Cost Impacts .
- Recommendations for recovery of lost time and or acceleration/re-sequencing strategies. Associated cost impacts estimates presented on an order of magnitude basis.

#### **4. Shop Drawings and Samples**

- a. Manage the shop drawing and submittal phase of the project to insure compliance with timeframes included in the Contract Documents and the Project Schedule.
- b. Review all shop drawings for coordination of field conditions among the Prime Contractors, Subcontractors, trades, etc., prior to submittal to the Architect for his review and approval. Return shop drawings, as necessary, for corrections.
- c. Receive and review all samples and forward to the design professional for approval.
- d. Maintain a shop drawing and submittal log indicating date received from contractor, date of CM review, date submitted to design professional and date of approval by the design professional for each item.

#### **5. Testing/Inspection**

- a. Manage all testing and inspection programs for the project.
- b. Comply with the requirements of the OWNER'S independent safety inspection program. Oversee scheduled and unannounced inspections and provide information to the independent safety inspectors as requested.
- c. Monthly, provide the OWNER with a schedule of inspections to be performed during the coming month, including the scheduled date, type of test or inspection and test/inspection criteria or standards. Issue reports that include date, persons present and test/inspection criteria or standards.

#### **6. Quality Control**

- a. Manage the RFI (Request for Information) process. Maintain an RFI log indicating date received and date resolved for each item.
  - b. Assure that all required clarifications and revisions to Contract Documents are issued to the appropriate Contractor in a timeframe which does not impact the progression of work.
  - c. Inspect all work daily for quality and conformance to the Contract Documents. Advise Contractor(s) in writing on a weekly basis of necessary corrective work.
  - d. Inspect all materials and equipment for conformance with the Contract Documents and approved submittals prior to installation of the work.
  - e. Inspect the Project jointly with the OWNER and Architect prior to the time the OWNER is to use, occupy, or operate any part, or all of the Project, and prepare a list of observed variances and deficiencies in the Work. Distribute the list to the appropriate Contractor(s) for necessary corrective work.
  - f. Prepare jointly with Architect a "Final Punch List" for each Contract. Distribute to the appropriate Contractor(s) for necessary corrective action. Manage the corrective work to insure compliance with the Contract Documents and Project Schedule.
  - g. At the time of substantial completion, prepare a list of any remaining items of work to be completed or corrected. Distribute to the appropriate Contractor(s) for necessary work. Establish a value for each item of work remaining to be completed or corrected. Manage the corrective work to insure compliance with the Contract Documents and Project Schedule.
  - h. Make final inspection of the Project with OWNER/design professional , using Contract Documents as a base to determine if the Contract requirements have been fulfilled. List any variances between Contract requirements and Work installed. Coordinate items which may appear on independent final lists prepared by the OWNER/design professional. Distribute to the appropriate Contractor(s) for necessary corrective action. Manage the corrective work to insure compliance with the Contract Documents and the Project Schedule.
  - i. Prepare periodic "Exception Reports" as required by the work of the Contractors. Distribute to the appropriate Contractor(s) for necessary corrective work. Maintain a log of the noted exception date issued, and date corrected. Maintain a photographic record where life safety issues/systems are involved.
  - j. Follow-up on all notices of corrective work to Contractor(s) to assure satisfactory and timely completion of the work.
7. Assist in the implementation of the OWNER's Affirmative Action Program with regard to Equal Opportunities and Minority Business Enterprise participation.

## **8. Progressing the Work**

- a. Expedite and coordinate the work of all Contractors.
- b. Expedite and coordinate the progress of Architects and other Consultants.
- c. Determine the cause of and responsibility for any delays. Recommend and implement appropriate remedial action.
- d. Be cognizant of potential delays and direct the Contractor(s) to take the necessary measures to eliminate circumstances which may lead to a delay.
- e. Maintain weekly project progress photographs displaying progression of work, quality issues, field conditions, etc.

## **9. Payments to Contractors**

- a. Progress Payments:
  - 1) Review and recommend for the OWNER's approval, the Contractor's detailed payment breakdown.
  - 2) Review each Contractor's monthly invoices to insure compliance with the OWNER's procedure and recommend payment, no payment, or partial payment.
- b. Final Payment:
  - 1) Establish that all close-out procedures have been complied with.
  - 2) Make recommendations on final payment.

## **10. Change in the Work**

- a. Manage and enforce the OWNER's procedure for the processing of Change Orders.
- b. Consult with the Architect concerning proposed design changes and obtain the OWNER's approval for same. The Architect will be responsible to design approved changes.
- c. Make recommendations to the OWNER for such changes in the Work as the CONSTRUCTION MANAGER may consider necessary or desirable.
- d. Perform economic evaluation of all changes in the Work and evaluate the effect on other work and the Project Schedule. Investigate alternatives, coordinate with the Architect, and make recommendations to the OWNER.
- e. Evaluate requests for extensions of time and make written recommendations within 14 calendar days of receipt of request.

- f. Maintain daily cost accounting records with respect to work performed on a time and materials basis.
- g. Prepare, approve and submit to the OWNER all change order packages within fourteen (14) calendar days of the date the need for the work was identified.

## **11. Claims**

Analyze and evaluate all claims for Contract time extension or cost adjustment. Make written recommendations to the OWNER for resolution, approval, or disapproval within 30 days of receipt of claim.

## **12. Reports**

Prepare and issue the following:

- a. daily reports in form acceptable to the OWNER;
- b. all reports required by Federal authorities;
- c. Affirmative Action and EEO reports;
- d. for any job related injury prepare/obtain same day photographs, C-2 Form (employers first report of injury), OSHA Log of Illness and Injury, the CONSTRUCTION MANAGER's daily log, and any other incident/accident reports, and immediately forward to the OWNER's Risk Management Unit;
- e. for any job related property damage prepare/obtain same day photographs, the CONSTRUCTION MANAGER's daily log, and any other incident/accident reports, and immediately forward to the OWNER's Risk Management Unit;
- f. a Monthly Management Report in a format provided by the OWNER; and
- g. other reports which are from time to time required by the OWNER.

## **13. Close Out**

- a. Establish that the following has been received from the Contractor(s) and forwarded expeditiously to the appropriate party:
  - 1) all necessary guarantees;
  - 2) as-built drawings;
  - 3) operating and maintenance manuals;
  - 4) certificates of compliance, etc.;
  - 5) all turnover items required by Contract; and

- 6) other items required by the Contract.
- b. Maintain a log of receipts and turnovers, and transmittals.
- c. Establish and document that all operating instructions have been given to the OWNER's personnel consistent with Contract requirements. Perform all necessary coordination.

#### **14. Project Management System**

- a. For projects with an Approved Construction Budget greater than five million and 00/100 Dollars (\$5,000,000.00), or as directed by the OWNER, the Construction Manager shall provide all project scheduling deliverables from the current versions of Primavera SureTrak™ or P3™. The OWNER will provide the Construction Manager with templates to be used in the generation of the project schedule(s). In addition, the Construction Manager shall use the current version of Primavera Expedition™ (the Project Management System) in accordance with the OWNER's protocol to manage all project related correspondence, transmittals, meeting minutes, requests for information, deliverables, daily logs, project costs, change management and reporting.
- b. The OWNER may direct the Construction Manager to provide all the Project Management System functions of Paragraph A of this Article from available web-based and/or Application Service Provider (ASP) system(s) as selected by the OWNER.

#### **15. Site Security**

The Construction Manager shall maintain a site security system to be specified and procured by the OWNER. The administration of this system shall be by the Construction Manager's own personnel unless otherwise approved by the OWNER. The Construction Manager shall be responsible for the administration of this system, which may include but not be limited to:

- 1) Maintenance of hardware and software.
- 2) Generating photographic or other approved identifications.
- 3) Assigning identification cards to contractor staff and other site personnel.
- 4) Ensuring contractor staff and other site personnel comply with security procedures.
- 5) Maintaining security of the system against unauthorized access.
- 6) Managing other data entry and generation of reports as requested by the OWNER.

**EXHIBIT AA**

**GENERAL CONDITIONS**

**ONLY FOR GENERAL CONDITIONS WORK  
PERFORMED BY CONSTRUCTION MANAGER**

## TABLE OF CONTENTS

### ARTICLE

1. Contract and Contract Documents
2. Definitions
3. Materials, Services, and Facilities
4. Construction Manager's Title to Materials
5. Inspection and Testing of Materials
6. "Or Equal" Clause
7. Patents
8. Surveys, Permits, and Regulations
9. Construction Manager's Obligations
10. Weather Conditions
11. Inspection
12. Reports, Records, and Data
13. Time of Commencement and Completion of the Work
14. Correction of Work
15. Reduction of Wages and Salaries Caused by Governmental  
Action
16. OWNER's Right to Withhold Certain Amounts and Make  
Application Thereof
17. Mutual Responsibility of Contractors
18. Subcontracts
19. Use of Premises and Removal of Debris
20. Estimated Quantities
21. Conflicting Conditions
22. Notice and Service Thereof
23. Withholding of Payments
24. Prohibited Interests
25. Signs
26. Use or Occupancy of Building Prior to Acceptance By  
OWNER
27. Scope of Work
28. Representations of Construction Manager
29. The OWNER's Right To Do Work
30. Certificate of Completion
31. Liens
32. Access to Work
33. Verifying Dimensions
34. Name Plates
35. Overloading
36. Temporary Toilet Facilities
37. Temporary Office
38. Temporary Light and Power
39. Restoration of Roadways and Pavements
40. Anti-Riot Provisions

41. Accessibility
42. Snow Removal
43. Quiet Operation
44. Guards and Railings
45. Temporary Use of Equipment
46. Tax Exemption
47. Temporary Elevator Service for Workmen
48. Temporary Roadways
49. Traffic Control
50. Pollution Control
51. Fire Prevention Control

## GENERAL CONDITIONS

### **1. CONTRACT AND CONTRACT DOCUMENTS**

The plans, specifications, and addenda prepared for the General Conditions Work Phase, shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines, and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit, or cast light on the interpretation of the provisions to which they refer. In case of any conflict or inconsistency between the provisions of the signed portion of this Contract and those of the specifications, the provisions of this signed portion of the Contract shall govern.

### **2. DEFINITIONS**

The following terms as used in this Contract are defined as follows:

a. Work:

The term "Work" as used herein, refers to the General Conditions Work Items enumerated in this Contract and is that normally done at the location of the Project, and includes the performance of all labor and the furnishing of all plant, materials, supplies, equipment, and other facilities and things necessary or proper for or incidental to the carrying out and completion of this Contract. The term "Work Performed" shall be construed to include the delivery of material to and suitably storing it at the site of the Project.

b. Extra Work. The term "Extra Work" as used herein refers to and includes Work required by the OWNER, which in the judgment of the OWNER involves changes in or additions to that required by the plans, specifications, and addenda in their present form.

c. CONSTRUCTION MANAGER. A person, persons, firm, partnership, or corporation with whom this Contract is made by the OWNER.

d. Contract. The term "Contract" as used herein shall be deemed to mean only the portions of this Contract applicable to the General Conditions Work Phase of this Contract.

e. Direct, Require, Approve, Acceptable. Whenever they refer to Work or its performance, "direct," "required," "permitted," "ordered," "designated," "prescribed," and words of like import, shall imply the direction, requirements, permission, order, designation, or prescription of the

OWNER; and "approved," "acceptable," "satisfactory," "in the judgment of," and words of like import, shall mean approved by or acceptable to or satisfactory to or in the judgment of the OWNER.

f. OWNER. The Housing Trust Fund Corporation.

**3. MATERIALS, SERVICES, AND FACILITIES**

It is understood that, except as otherwise specifically stated in the Contract Documents the CONSTRUCTION MANAGER shall provide and pay for all materials, labor, tools, equipment, water, light, power, heat, and transportation, superintendent, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.

**4. CONSTRUCTION MANAGER'S TITLE TO MATERIALS**

No materials or supplies for the Work shall be purchased by the CONSTRUCTION MANAGER or by its Subcontractors subject to any chattel mortgage or under a conditional sale or other Contract by which an interest is retained by any other party. The CONSTRUCTION MANAGER warrants that he has good title to all materials and supplies used by him in the Work, or re-sold to the OWNER pursuant to this Contract, free from all liens, claims, and encumbrances.

**5. INSPECTION AND TESTING OF MATERIALS**

All materials and equipment used in the Work shall be subject to adequate inspection and testing in accordance with the accepted standards. The laboratory or inspection agency shall be selected by the OWNER. The OWNER will pay for all laboratory inspection service direct and not as part of this Contract.

Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

**6. "OR EQUAL" CLAUSE**

Whenever a material, article, or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, tradenames, catalogue numbers, etc., said identification is intended to establish a standard. Any material, article, or equipment of other manufacturers and vendors which will perform satisfactorily the duties imposed by the general design will be considered equally acceptable provided

the material, article, or equipment so proposed, is, in the opinion of the OWNER, of equal quality, substance, and function. It shall not be purchased or installed by the CONSTRUCTION MANAGER without the written approval of the OWNER.

## **7. PATENTS**

The CONSTRUCTION MANAGER shall hold and save the OWNER's members, officers, employees, or representatives, harmless from liability of any nature or kind, including cost and expenses, for, or on account of any patented or unpatented inventions, process, article, or appliance manufactured or used in the performance of this Contract, including its use by the OWNER, unless otherwise specifically stipulated in the Contract Documents.

License or Royalty Fees: License and/or royalty fees for the use of a process which is authorized by the OWNER of the Project must be reasonable, and paid to the holder of the patent, or his authorized licenses, direct by the OWNER and not by or through the CONSTRUCTION MANAGER.

If the CONSTRUCTION MANAGER uses any design, device, or materials covered by letters, patent, or copyright, he shall provide for said use by suitable Contract with the owner of said patented or copyrighted design, device, or material. It is mutually agreed and understood that, without exception, the Contract prices shall include all royalties or costs arising from the use of said design, device, or materials in any way involved in the Work. The CONSTRUCTION MANAGER and/or his sureties shall defend, indemnify, and save harmless the OWNER and the Client from any and all claims for infringement by reason of the use of said patented or copyrighted design, device, or materials or under this Contract, and shall indemnify the OWNER for any cost, expense, or damage which it may be obliged to pay by reason of said infringement at any time during the prosecution of the Work or after completion of the Work.

## **8. SURVEYS, PERMITS, AND REGULATIONS**

Unless otherwise expressly provided for in the specifications, the OWNER will furnish to the CONSTRUCTION MANAGER all surveys necessary for the execution of the Work, but the CONSTRUCTION MANAGER shall lay out the Work.

The CONSTRUCTION MANAGER shall procure and pay for all permits and licenses necessary for the execution of his Work and the use of said Work when completed.

The CONSTRUCTION MANAGER shall comply with all the laws, ordinances, rules, orders, and regulations relating to the performance of the Work, and the protection of adjacent property.

**9. CONSTRUCTION MANAGER'S OBLIGATIONS**

The CONSTRUCTION MANAGER shall and will, in good workmanlike manner, furnish all supplies and materials, machinery, equipment, facilities, and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all Work required by this Contract within the provisions of this Contract and said specifications and in accordance with the plans and drawings of the Work covered by this Contract and any and all supplemental plans and drawings and in accordance with the direction of the OWNER as given from time to time during the progress of the Work.

He shall furnish, erect, maintain, and remove such construction plant and such temporary works as may be required. He alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for damage which may result from their failure or their improper construction, maintenance, or operation. The CONSTRUCTION MANAGER shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of this Contract and specifications, and shall do, carry on, and complete the entire Work to the satisfaction of the OWNER.

**10. WEATHER CONDITIONS**

In the event of temporary suspension of work or during inclement weather or whenever the OWNER shall direct, the CONSTRUCTION MANAGER will, and will cause its Subcontractors to protect carefully its and their work and material against damage or injury from the weather. If, in the opinion of the OWNER, any Work or material shall have been damaged or injured by reason of failure on the part of the CONSTRUCTION MANAGER or any of its Subcontractors so to protect his work, said materials shall be removed and replaced at the expense of the CONSTRUCTION MANAGER.

**11. INSPECTION**

The authorized representatives and agents of the OWNER shall be permitted to inspect all Work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

**12. REPORTS, RECORDS, AND DATA**

The CONSTRUCTION MANAGER shall submit to the OWNER, and the CONSTRUCTION MANAGER shall require each of its Subcontractors to submit to the CONSTRUCTION MANAGER for submission to the OWNER, such schedules of quantities and costs, progress schedules, payroll, reports, estimates, records, and other data as the OWNER may request concerning work performed or to be performed under this Contract.

**13. TIME OF COMMENCEMENT AND COMPLETION OF THE WORK**

The Work shall be commenced at the time stated in the written order of the OWNER as the date of said commencement and shall be completed on the date specified in this Contract for completion.

It is hereby understood and mutually agreed, by and between the CONSTRUCTION MANAGER and the OWNER, that the date of beginning and the Time of Completion as specified in this Contract of the work to be done hereunder are essential conditions of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the work order.

The CONSTRUCTION MANAGER agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed by and between the CONSTRUCTION MANAGER and the OWNER, that the Time of Completion of the Work described herein is a reasonable time for the completion of same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

**14. CORRECTION OF WORK**

All Work, all materials, whether incorporated in the Work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the OWNER who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet his approval, they shall be forthwith reconstructed, made good, replaced, and/or corrected as the case may be, by the CONSTRUCTION MANAGER at his own expense. Rejected material shall immediately be removed from the site. Acceptance of material and workmanship by the OWNER's inspectors shall not relieve the CONSTRUCTION MANAGER from his obligation to supply other material and workmanship when so ordered by the OWNER.

**15. REDUCTION OF WAGES AND SALARIES CAUSED BY GOVERNMENTAL ACTION**

A. The CONSTRUCTION MANAGER shall submit to the OWNER upon its request all wages and salary rates for the various classes of construction employees used in computing his bid or offer submitted to the OWNER in connection with the Work and any other data and certifications that the OWNER deems necessary to comply with the requirements and objectives of any Federal or State of New York Economic Stabilization or similar program.

B. The Work shall not be deemed completed for purposes of making final payment pursuant to the Contract Documents until (1) all said information, data, and certifications have been provided by the CONSTRUCTION MANAGER to the OWNER; and (2) the final contract price has been established in accord with said Federal and/or State Economic Stabilization program.

C. The CONSTRUCTION MANAGER shall include these provisions in all subcontracts and shall require their inclusion in all subcontracts of any tier and all data required by the OWNER pursuant to those provisions shall be provided to the OWNER by the CONSTRUCTION MANAGER.

**16. OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF**

The CONSTRUCTION MANAGER agrees that he will indemnify and save harmless the OWNER from all claims growing out of the lawful demands of the CONSTRUCTION MANAGER's Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. The CONSTRUCTION MANAGER shall furnish satisfactory evidence that all obligations, of the nature herein above designated, have been paid, discharged, or waived. If the CONSTRUCTION MANAGER fails to do so, then the OWNER may, after having served written notice on the said CONSTRUCTION MANAGER, either pay unpaid bills, of which the OWNER has written notice, direct or withhold from the CONSTRUCTION MANAGER's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the CONSTRUCTION MANAGER shall be resumed in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONSTRUCTION MANAGER or its Surety. In paying any unpaid bills of the CONSTRUCTION MANAGER, the OWNER shall be deemed the Agent of the CONSTRUCTION MANAGER, and any payment so made by the OWNER shall be considered as a payment made under this Contract by the OWNER to the CONSTRUCTION MANAGER and the OWNER shall not be liable to the CONSTRUCTION MANAGER for any such payment made in good faith.

**17. MUTUAL RESPONSIBILITY OF CONTRACTORS**

If through acts of neglect on the part of the CONSTRUCTION MANAGER, any Contractor or Subcontractor suffers loss or damage, the CONSTRUCTION MANAGER agrees to settle with said Contractor or Subcontractor by Contract or arbitration, if such Contractor or Subcontractor will so settle. If any such Contractor or Subcontractor shall assert any claim against the OWNER on account of any damage alleged to have been sustained, the OWNER shall notify the CONSTRUCTION MANAGER, who shall indemnify and save harmless the OWNER against any such claim. The foregoing is limited to those obligations assumed by the CONSTRUCTION MANAGER under the General Conditions Work Phase of this Contract but shall not limit any liability under any other Phase of this Contract.

## **18. SUBCONTRACTS**

The CONSTRUCTION MANAGER may utilize the services of specialty Subcontractors on those parts of the Work which, under normal contracting practices, are performed by specialty Subcontractors.

The CONSTRUCTION MANAGER shall not award any work to any Subcontractor without prior written approval of the OWNER, which approval will not be given until the CONSTRUCTION MANAGER submits to the OWNER a written statement concerning the proposed award to the Subcontractor, which statement shall contain such information as the OWNER may require.

Where feasible, the CONSTRUCTION MANAGER shall solicit at least three competitive bids for any general conditions work item that exceeds \$50,000 in total cost. However, in carrying out the provisions of this paragraph, the CONSTRUCTION MANAGER may solicit competitive bids for certain work items only from certified minority or women owned businesses in order to comply with its approved Utilization Plan.

The CONSTRUCTION MANAGER shall be as fully responsible to the OWNER for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

The CONSTRUCTION MANAGER shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the CONSTRUCTION MANAGER by the terms of this General Conditions Contract and other Contract Documents insofar as applicable to the work of Subcontractors and to give the CONSTRUCTION MANAGER the same power as regards terminating any subcontract that the OWNER may exercise over the CONSTRUCTION MANAGER under any provisions of the Contract Documents.

The CONSTRUCTION MANAGER shall pay its Subcontractors the full amount due them from their proportionate share of each requisition for payment submitted by the CONSTRUCTION MANAGER and paid by the OWNER. The

CONSTRUCTION MANAGER shall make said payment no later than seven (7) calendar days from receipt of payment from the OWNER.

Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the OWNER.

The CONSTRUCTION MANAGER will insert in any subcontracts this Article, Article 24., entitled PROHIBITED INTERESTS, and Article 26, entitled, USE OR OCCUPANCY OF BUILDING PRIOR TO ACCEPTANCE BY OWNER, contained herein and such other clauses as the OWNER may, by instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

**19. USE OF PREMISES AND REMOVAL OF DEBRIS**

A. The CONSTRUCTION MANAGER on this Work expressly agrees to undertake the following:

1. every precaution against injuries to persons or damage to property;
2. storage of his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the Work as will not unduly interfere with the progress of his work or the work of any other Contractor working on the site;
3. to place upon the Work or any part thereof only such loads as are consistent with the safety of the portion of the Work;
4. that before final payment he will remove all surplus materials, false work, temporary structures, including foundations thereof, plant of any description, and debris of every nature resulting from his operations, and to leave the Work in a neat, orderly condition suitable for use and occupancy;
5. at all times during the progress of the Work keep the building and the site free from accumulation of debris resulting from the Work. If the accumulation of waste matter and rubbish interfere with the Work of others or present a fire hazard, it shall be removed immediately; and
6. to confine his apparatus, materials, and operations of his workmen to limits prescribed by law or by contract limit lines except as the latter may be extended with the approval of the OWNER.

B. Burning of rubbish or waste material will not be permitted.

- C. Removal of all waste and rubbish resulting from the Work shall be through chutes or lowered by hoists in receptacles.

**20. ESTIMATED QUANTITIES**

The estimated quantities of work to be completed and the materials to be furnished, under this Contract, as shown in any of the documents, are given only for the OWNER's use in comparing proposals and to indicate the approximate total amount of this Contract; and the right is especially reserved, except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the OWNER to complete the Work contemplated by this Contract, and said increase or diminution shall in no way vitiate this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

**21. CONFLICTING CONDITIONS**

Any provision in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of said conflict or inconsistency.

**22. NOTICE AND SERVICE THEREOF**

Any notice to the CONSTRUCTION MANAGER from the OWNER relative to any part of the Contract shall be in writing and service considered complete when said notice is mailed to the CONSTRUCTION MANAGER at the last address given by the CONSTRUCTION MANAGER, or when delivered in person to said CONSTRUCTION MANAGER or the CONSTRUCTION MANAGER's authorized representative.

**23. WITHHOLDING OF PAYMENTS**

The OWNER in its sole discretion may withhold from the CONSTRUCTION MANAGER so much of any approved payments due him as may in the judgment of the OWNER be necessary:

- A. to assure the payment of just claims due and unpaid of any persons supplying labor or materials for the Work specified in this Contract;
- B. to protect the OWNER from loss due to defective work specified in this Contract not remedied, or
- C. to protect the OWNER from loss due to injury to persons or damage to the work specified in this Contract or property of other Contractors, Subcontractors, or others caused by the act or neglect of the

CONSTRUCTION MANAGER or any of his Subcontractors. The OWNER shall have the right to apply any such amounts so withheld in such a manner as the OWNER may deem proper to satisfy said claims or to secure such protection. Said application of said money shall be deemed payments for the account of the CONSTRUCTION MANAGER.

- D. to assure payment of fines, liquidated damages and penalties which may be imposed on the CONSTRUCTION MANAGER pursuant to the provisions of this Contract; or
- E. to assure payment of fines and penalties which may be imposed on the CONSTRUCTION MANAGER for failure to comply with its M/WBE obligations. The estimated amount of said fines and penalties shall be the difference between the planned dollar amount of MBE/WBE sub-contract awards and the actual dollar amount of such awards.

The provisions of this Article are solely for the benefit of the OWNER, and any action or non-action hereunder by the OWNER shall not give rise to any liability on the part of the OWNER.

**24. PROHIBITED INTERESTS**

Officers and employees of the OWNER are bound by Sections 73, 73-a, and 74 of the Public Officers Law. In addition, no officer, employee, architect, attorney, engineer, inspector, or consultant of or for the OWNER authorized on behalf of the OWNER to exercise any legislative, executive, administrative, supervisory, or other similar functions in connection with the Contract or the Work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.

**25. SIGNS**

There shall be erected, adjacent to the access road to the Project site, and/or at the Project, a sign or signs identifying the Project. The sign shall comply with the following sample drawing and shall contain the name of the Project, the Dormitory Authority - State of New York, the name of the Architect, the name of the CONSTRUCTION MANAGER, the name of the General Contractor, and other information as required by the OWNER.

**26. USE OR OCCUPANCY OF BUILDING PRIOR TO ACCEPTANCE BY OWNER**

If before the final completion of all work contemplated herein it shall be deemed necessary by the OWNER to take over, use, occupy, or operate any part of the completed or partly completed Work, the OWNER shall have the right to do so, and the Contractors shall not in any way interfere with or object to the use, occupation, or

operation of said Work by the OWNER after receipt of notice in writing from the OWNER that said Work or part thereof will be used by the OWNER on and after the date specified in said notice.

**27. SCOPE OF WORK**

The CONSTRUCTION MANAGER will furnish all plant, labor, materials, supplies, equipment, and other facilities and things necessary or proper to or incidental to the work contemplated by this Contract, as required by and in strict accordance with the applicable plans, specifications, and addenda (hereinafter enumerated), prepared and in strict accordance with such changes as are ordered and approved pursuant to this Contract and will perform all other obligations imposed on him by this Contract.

**28. REPRESENTATIONS OF CONSTRUCTION MANAGER**

The CONSTRUCTION MANAGER represents and warrants:

- a. that he is financially solvent and that he is experienced in and competent to perform the type of work and to furnish the plant and materials, supplies, or equipment, to be so performed or furnished by him; and
- b. that he is familiar with all Federal, State, Municipal, and Department Laws, ordinances, orders, and regulations, which may in any way affect the Work of those employed therein, including, but not limited to, any special acts relating to the Work or the Project of which it is a part; and
- c. that the Work required by this Contract can be satisfactorily constructed and used for the purpose for which it is intended, and that said construction will not injure any person or damage any property; and
- d. that he has carefully examined the applicable plans and specifications, and addenda, if any, and site of the Work and that, from his own investigations he has satisfied himself as to the nature and location of the Work, the character, quality, and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, all other materials which may in any way affect the Work or its performance.

**29. THE OWNER'S RIGHT TO DO WORK**

If the CONSTRUCTION MANAGER should neglect to prosecute the Work properly or fail to perform any provisions of this Contract, the OWNER, after three (3) days written notice to the CONSTRUCTION MANAGER may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then and thereafter due the CONSTRUCTION MANAGER.

**30. CERTIFICATE OF COMPLETION**

Upon completion of all work whatsoever required, the CONSTRUCTION MANAGER shall file a written certificate with the OWNER as to the entire amount of work performed and compensation earned by the CONSTRUCTION MANAGER including Extra Work and compensation thereof.

**31. LIENS**

Upon the OWNER's receipt of a Lien, a sum which shall be one and one-half (1-1/2) times the amount stated to be due in the Notice of Lien shall be deducted from the current payment due the CONTRACTOR. This sum shall be withheld until the Lien has been discharged.

**32. ACCESS TO WORK**

The OWNER and his representative shall at all times have access to the Work wherever it is in preparation or progress and the CONSTRUCTION MANAGER shall provide proper facilities for said access and so that the OWNER may perform his functions under the Contract Documents.

If the specifications, the OWNER's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the CONSTRUCTION MANAGER shall give the OWNER timely notice of its readiness for observation by the OWNER or inspection by another authority, and if the inspection is by another authority than the OWNER, of the date fixed for said inspection, required certificates of inspection being secured by the CONSTRUCTION MANAGER. If any work should be covered up without approval or consent of the OWNER it must, if required by the OWNER, be uncovered for examination at the CONSTRUCTION MANAGER's expense.

Re-examination of questioned work may be ordered by the OWNER and if so ordered that work must be uncovered by the CONSTRUCTION MANAGER. If said work be found in accordance with the Contract Documents, the OWNER shall pay the cost of re-examination and replacement. If said work be found not in accordance with the Contract Documents, the CONSTRUCTION MANAGER shall pay said cost.

**33. VERIFYING DIMENSIONS**

The CONSTRUCTION MANAGER will be held responsible for the proper coordination of the fitting of the Work.

**34. NAME PLATES**

The CONSTRUCTION MANAGER shall not place name plates on the outside of any portion of his work, and he shall not permit Subcontractors or material men to stamp trademarks or names on the outside of any equipment. Name plates and trademarks normally placed on equipment by the manufacturers shall be allowed to remain, if approved by the OWNER.

**35. OVERLOADING**

Materials, etc. shall not be stacked on or be carried over floor and roof construction that would stress any of its members beyond the designed live loads.

**36. TEMPORARY TOILET FACILITIES**

The CONSTRUCTION MANAGER shall provide temporary exterior toilet accommodations, if not specifically provided for in the Contract Documents, for all persons employed or engaged on the Project.

Said temporary sanitary facilities shall be installed, maintained by this CONSTRUCTION MANAGER and shall meet all requirements of authorities having jurisdictions. At the completion of all work or at such earlier time as the OWNER may approve, he shall remove the temporary sanitary facilities.

The facilities shall be of the chemical type, at locations approved by the OWNER, screened from the public, and maintained in a sanitary and approved condition at all times. If, upon approval or direction of the OWNER, a toilet room in the building is to be used as a temporary toilet by persons employed or engaged in the Project, it shall be used and maintained in a sanitary condition and the outside temporary toilet facilities and all evidence of its existence shall be removed. The CONSTRUCTION MANAGER shall provide installation and maintenance of said facility. If a toilet room within the building is used by employees, all plumbing fixtures and room finish shall, upon completion of the Work, be free from any damage, defacement, or other defects. Should it not be possible to satisfactorily repair any damages, defacement of fixtures, or interior finish, the CONSTRUCTION MANAGER shall replace said Work with new Work as required under this Contract.

The amount of sanitary facilities required shall be based on the total number of persons employed on the Project and be in accordance with the provision of the health and sanitary requirements of the authorities having jurisdictions.

**37. TEMPORARY OFFICE**

The CONSTRUCTION MANAGER, until all work covered by this Contract is accepted by the OWNER, shall provide a temporary office structure, or space, as determined by the OWNER, on the site at a location approved by the OWNER.

This structure/space shall be for the exclusive use of the CONSTRUCTION MANAGER, the Architect, and the OWNER. The CONSTRUCTION MANAGER shall bear the cost of constructing or furnishing said structure/space and maintain, keep clean, and at the completion of all work, remove said structure/space, repairing and refinishing the area as directed.

The structure/space shall be of such size and furnished and equipped with such facilities as hereinafter listed:

- a. (# of) plan table (3'- 0" x 10'-0");  
(# of) plan racks;  
(# of) office type desks with drawers and chairs which shall be suitable for use at the office desks;  
(# of) of metal, four drawer, letter size filing cabinets with lock.

- b. Conference table and chairs for job meetings. Size of table shall be 3' x 15'. Furnish (# of) folding chairs.

(Number and sizes of a. and b. shall be determined by the CONSTRUCTION MANAGER).

- c. Interior sanitary facilities, including a lavatory supplied with hot and cold water and a flush toilet. Toilet and sink shall be connected to an approved sewerage disposal system.
- d. A heating and air conditioning system with adequate fuel to maintain heating and cooling temperatures conforming to all applicable Federal regulations.
- e. An electrical lighting system.
- f. Install a telephone for the use of the Architects and pay all monthly local charges only.
- g. The filing cabinet shall be new. Desks and chairs shall be in good repair and functional.

When adequate space is available in the building(s), the CONSTRUCTION MANAGER may transfer all the field office facilities to this space at his option and with the permission of the OWNER.

### **38. TEMPORARY LIGHT AND POWER**

The CONSTRUCTION MANAGER shall, if not specifically provided for in the Contract Documents, process the necessary application to the lighting company.

**39. RESTORATION OF ROADWAYS AND PAVEMENTS**

Roadways and pavements and curbs that are broken, damaged, settled, or otherwise defective, as a result of receiving, handling, or storage of materials or the performance of any work under this Contract shall be fully restored to the satisfaction of the Authorities having jurisdiction, at the full cost and expense of the CONSTRUCTION MANAGER, if not specifically provided for in the Contract Documents. The extent of the repairs and replacements shall be as determined by said Authorities.

**40. ANTI-RIOT PROVISIONS**

The CONSTRUCTION MANAGER agrees that no part of the funds derived from this Contract shall be used to provide payments, assistance, or services, in any form, with respect to any individual convicted in any Federal, State, or local court of competent jurisdiction, of inciting, promoting, or carrying on a riot, or any group activity resulting in material damage to property or injury to persons, found to be in violation of Federal, State, or local laws designed to protect persons or property in the community concerned.

**41. ACCESSIBILITY**

The CONSTRUCTION MANAGER shall install Work so as to be readily accessible for operation, maintenance, and repair.

**42. SNOW REMOVAL**

The CONSTRUCTION MANAGER will promptly remove snow from all walkways on the Project.

**43. QUIET OPERATION**

All the work of the CONSTRUCTION MANAGER shall operate under all conditions of load without any sound or vibration which is objectionable, in the opinion of the OWNER. In the case of moving machinery, any sound or vibration noticeable outside of the room, in which it is installed, or any annoyingly noticeable sound or vibration inside its own room, will be considered objectionable. Sound or vibration conditions considered objectionable shall be corrected in an approved manner by the CONSTRUCTION MANAGER at his expense.

**44. GUARDS AND RAILINGS**

Provide belt drives and rotating machinery with readily removable guards or railings. Guards: Heavy angle iron frames, hinged and latched, with heavy galvanized iron wire crimped mesh securely fastened to frames. Railing: 1-1/4" pipe and rail fittings.

**45. TEMPORARY USE OF EQUIPMENT**

No equipment intended for permanent installation shall be operated for temporary purposes without the written permission of the OWNER.

**46. TAX EXEMPTION**

- a. The OWNER is exempt from payment of Federal, State, local taxes, and sales and compensating use taxes of the State of New York and of cities and counties on all materials and supplies incorporated into the completed Work. These taxes are not to be included in bids. This exemption does not apply to tools, machinery, equipment, or other property leased by or to the CONSTRUCTION MANAGER or its Subcontractor, or to supplies and materials which, even though they are consumed, are not incorporated into the completed Work, even though CONSTRUCTION MANAGER and its Subcontractors shall be responsible for and pay any and all applicable sales and compensating use taxes, on said leased tools, machinery, equipment, or other property and upon all such unincorporated supplies and materials.
- b. The CONSTRUCTION MANAGER and its Subcontractors shall obtain any and all necessary certificates or other documentation from the appropriate governmental agency or agencies, and use said certificates or other documentation as required by law, rule, or regulation.

**47. TEMPORARY ELEVATOR SERVICE FOR WORKMEN**

Where it is required by law the CONSTRUCTION MANAGER shall provide, if not specifically specified in the Contract Documents, temporary elevator service for workmen and all other persons engaged on the Project until the permanent elevators are placed in operation.

**48. TEMPORARY ROADWAYS**

The CONSTRUCTION MANAGER shall maintain, if not specifically specified in the Contract Documents, all temporary roads used for the Work of the Project keeping the surfaces of these roadways free from mounds, depressions, and obstructions of any kind including snow. He shall apply calcium chloride or other material as required to control dust.

The CONSTRUCTION MANAGER shall allow all persons engaged in the Project, including Architects, Engineers, OWNER, and materialmen and all Contractors employed on the Project free use of all temporary roads provided under this Contract.

**49. TRAFFIC CONTROL**

Access: Routes of ingress and egress on the grounds and within the Facility to the location of the Work shall be over routes as indicated on the drawings and as directed by the CONSTRUCTION MANAGER. Such access roadways shall remain open at all times unless closing is approved beforehand by the OWNER.

**50. POLLUTION CONTROL**

- a. The CONSTRUCTION MANAGER on the Project shall comply with the regulations of the Department of Environmental Conservation, with respect to its work, including but not limited to the following:
  1. Take all necessary precautions including, but not limited to, the digging and maintaining settling basins, dams, diverting streams, and all other actions that may be necessary to prevent silt and waste of any kind from being deposited, silting and reduction of quality of streams below the construction area, and downstream properties as a result of construction operations;
  2. Will not dispose of volatile fluid wastes (such as mineral spirits, oil, or paint thinner) or any other wastes which are prohibited by local ordinances, into storm or sanitary sewer systems or into streams or waterways; and
  3. Will not burn trash or waste matter on the site.

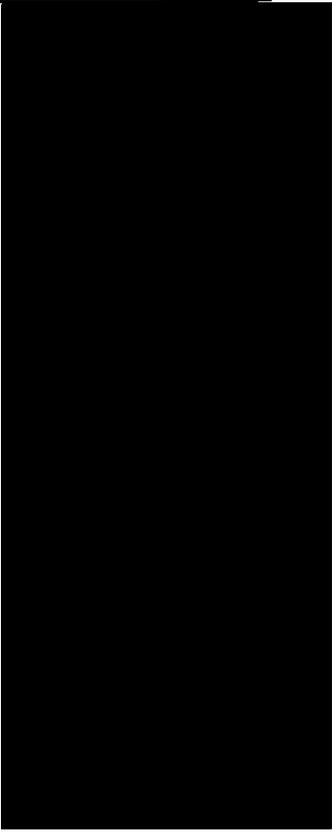
**51. FIRE PREVENTION CONTROL**

- a. The CONSTRUCTION MANAGER shall provide at the site of the Project, at a location approved by the OWNER, a private unlisted telephone reserved for fire calls only, in the event that a municipal fire alarm box is not located within 300' from the site of the Project. The phone must be in addition to regular business phones and a rule prohibiting its use for purposes other than alarm for fire or other emergencies must be strictly enforced. The phone itself should be colored red and be located at a point quickly available to all employees, including watchmen. Clear instructions for the sending of a fire alarm should be conspicuously posted by the phone and all personnel customarily at work ear near the phone shall be acquainted with the procedure. If such a phone is required, the CONSTRUCTION MANAGER must provide same from the time the OWNER notifies him to proceed until the time the OWNER accepts all the work covered by this Contract.

**EXHIBIT B**

**FEE SCHEDULE**

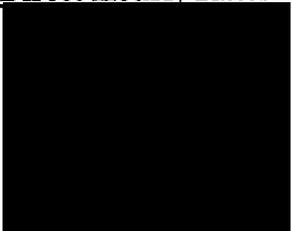
**McKissack MBP, Joint Venture**

<b><u>Classifications</u></b>	<b><u>Maximum Direct Hourly Rates</u></b>
Principal/Project Executive	
Assistant Project Manager	
Assistant Superintendent-Inspector	
Commissioning Agent	
Construction Supervisor	
Estimator/VE Specialist	
General Superintendent, Construction/MEP	
LEED Administrator	
MEP Engineer	
Office Assistant	
Office Engineer	
Office Manager	
Project Engineer	
Project Manager	
QA Inspector	
Scheduler	
Secretary	
Sr. Scheduler	
Sr. Estimator	
Sr. Project Engineer	
Sr. Project Manager	
Sr. Structural Reviewer	

**Design Phase Multiplier:**   
**Construction Phase Multiplier:**   
**Technical Phase Multiplier:** 

**SUBCONSULTANTS**

**DACK Consulting Solutions, Inc.**

<b><u>Classifications</u></b>	<b><u>Maximum Direct Hourly Rates</u></b>
Principal	
Constructability Review/Risk Assessment	
MEP Estimator	
Scheduler	
Sr. Estimator	

Value Engineer/Risk Assessment



The Multiplier for all direct hourly rates excluding that of the Principal(s) is

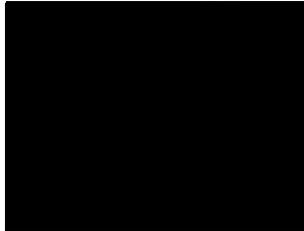


**Hirani Engineering & Land Surveying, P.C.**

**Classifications**

**Maximum  
Direct Hourly Rates**

- Principal
- Construction Engineer
- Construction Manager
- Inspector
- MEP Inspector
- Superintendent



The Multiplier for all direct hourly rates excluding that of the Principal(s) is



**Environmental Planning & Management, Inc.**

**Classifications**

**Maximum  
Direct Hourly Rates**

- Environmental Scientist
- Hazardous Material Project Monitor
- Sr. Environmental Scientist
- Sr. Project Manager



The Multiplier for all direct hourly rates excluding that of the Principal(s) is

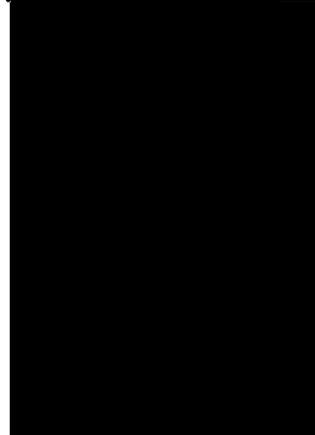


**Global Business Solutions, Inc.**

**Classifications**

**Maximum  
Direct Hourly Rates**

- Principal
- ADA Access Consultant
- Construction Inspector
- Cost Controls Engineer
- Field Office Engineer
- Project Manager
- Program/Project Director
- Project Controls Manager
- Resident Engineer/CM
- Safety Engineer
- Scheduler



The Multiplier for all direct hourly rates excluding that of the Principal(s) is 

Assignment and time durations of all Construction Management personnel assigned to the Project by the CONSTRUCTION MANAGER shall be subject to the approval of the OWNER. The OWNER may request the CONSTRUCTION MANAGER to remove from the Project any employee the OWNER deems incompetent, careless, or otherwise objectionable and replace said employee with more suitable personnel. The OWNER may also approve additional personnel classifications if deemed necessary.

All payment requisitions must account for the time of all personnel by name, title, and approved hourly rate.

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  
REPRESENTATIVE TASK ORDER

This Task Order is made this X day of Month, 20XX by and between McKissack MBP, Joint Venture, with offices located at 1001 Avenue of the Americas, 20<sup>th</sup> Floor, New York, New York 10018 (“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 Contract for Services dated            (“Contract”) for various services set forth therein (“Services”);

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 Contract and in accordance with the terms of the Contract for Services and this Task Order; and

WHEREAS, HTFC is the signatory to this Task Order, and the Governor’s Office of Storm Recovery (“GOSR”) and its representatives shall administer the day-to-day activities and operations set forth herein;

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

**1. STATEMENT OF WORK**

[INSERT]

**2. TASK ORDER SCHEDULE**

Contractor shall complete the assignment(s) under this Task Order no later than [INSERT DATE] (“Completion Date”).

**3. CALCULATION OF COMPENSATION**

**A. Design and Construction Phases - Including Supervision and Administration of General Conditions Work**

For satisfactory performance of all Design and Construction Phase Services pursuant to the Contract, HTFC shall pay, and the Contractor agrees to accept as full compensation, the following payment:

1. Actual Direct Salary of all employees of the Contractor, other than Principals, assigned to the Project. Actual direct salary, as used herein, shall not include

allowances for insurances, payroll taxes, or other benefits listed under Fringe Benefits in item A(2).

The Contractor's leave payment policy is subject to pre-approval by HTFC. Pay rates for employees and their appropriate titles are listed in Exhibit B to the Contract.

Certified payroll records for all employees for which reimbursement is sought shall be supplied to HTFC upon request and made available to HTFC for inspection or audit at HTFC's option at any time during the life of this Contract, and for a period of at least six (6) years after final payment.

Reimbursement to the Contractor for actual direct salary costs for Design and Construction Phase Services shall be established in a "Not to Exceed" amount for this Task Order based on the hourly rates paid by the Contractor to the employees on the project.

2. Fringe Benefits are the actual costs to the Contractor of fringe benefits applicable to actual direct salary costs. Allowable fringe benefit items as provided for herein, shall be limited to the following specific items:
  - a. F.I.C.A.;
  - b. Federal Unemployment Insurance;
  - c. State Unemployment Insurance;
  - d. New York State Workers Compensation;
  - e. Life Insurance;
  - f. Accidental Death and Dismemberment;
  - g. New York State Disability Insurance;
  - h. Group Hospitalization;
  - i. Pension Plan;
  - j. Group Travel Accident Insurance; and
  - k. Leave time pursuant to the Contractor's approved leave policy.\*

\*Shall be negotiated with each work assignment.

Reimbursement to the Contractor of fringe benefit costs for Design and Construction Phase Services shall be paid at [REDACTED] of the actual direct salary costs and shall not exceed the amount for this Task Order.

If the Contractor, at any time, estimates that the total of actual direct salary and fringe benefit costs may exceed the above total, it shall promptly notify HTFC in writing giving full explanation for such increase. If HTFC agrees that said increase is necessary and justified, the Task Order shall be amended to reflect the increased amount. No liability shall accrue to HTFC until such time as written approval and authorization for said increase has been given by HTFC to the Contractor.

3. Consultant's Costs, if required, shall be approved by HTFC. Monthly bills for said consultant's costs shall be submitted to HTFC together with sufficient supporting documentation in form and content satisfactory to HTFC. The Contractor shall not be reimbursed any markup on consultant's costs.
4. Fees will be paid in the amount established by each Work Authorization, which includes all home office overhead, Principal and/or Executive level involvement, and profit.
  - a. The Design Phase Fee, pursuant to Article V(A)(4), [REDACTED] and is payable as a percentage of the total monthly cost for actual direct salaries. The Design Phase Fee will be paid at [REDACTED] of the actual direct salaries.
  - b. The Construction Phase Fee, pursuant to Article V(A)(4), for Construction Phase Services, including supervision and administration of General Conditions Work, [REDACTED] and shall be reimbursed in proportion to the percentage of completed, and OWNER-approved, construction work. The construction phase fee for construction phase services will be based on 57% of the actual direct salaries. If construction is not completed at the time of the planned completion date, as stated in each Work Authorization, the OWNER shall continue to pay salaries and fringes, to the completion of the work, and no additional fee will be paid. However, if the OWNER agrees that it is through no fault of the CONSTRUCTION MANAGER that the completion date is not met, and the OWNER must provide for additional salaries, the fee will become renegotiable upon the additional direct salary, only.
  - c. The Technical Services Fee, pursuant to Article V(A)(4), [REDACTED] and is payable as a percentage of the total monthly cost for actual direct salaries. The technical services fee will be paid at [REDACTED] of the actual direct salaries.

**Payment of General Conditions Work**

5. For satisfactory performance of all the work, HTFC shall reimburse the Contractor the actual cost of performing or providing the General Conditions work in accordance with the following:
  - a. For performance of all the work, the Contractor shall be paid the actual cost of all labor, materials, and supplies necessary, proper for, or incidental to the performance of said work. If the Contractor, at any time, estimates that the total cost of the work may exceed this amount, it shall promptly notify HTFC in writing providing a full explanation for said increase. If HTFC agrees that said increases are necessary and justified, this Task Order may be amended to increase said amount. No liability shall accrue to HTFC until such time as written approval and authorization for said increases has been given by HTFC to the Contractor. This sum shall be deemed to be full compensation for the

performance by the Contractor of all duties and obligations of the Contractor for the work of this Task Order.

- b. The Contractor shall submit monthly payment requisitions and a compliance report in a form and content satisfactory to HTFC. Said requisitions shall clearly describe the nature and extent of the Contractor's actual expenditures for labor, materials, and supplies during the period covered by the requisition. The requisition shall also include any bills received from Subcontractors, which shall be in the same form as those submitted by the Contractor to HTFC.

#### **4. AMOUNT OF COMPENSATION**

Notwithstanding the various costs and fees, HTFC and the Contractor agree that the Contractor's total compensation under this Task Order shall not exceed \$                    . Unless otherwise agreed, compensation shall be paid in accordance with properly submitted invoices pursuant to paragraph 7 of the Contract.

#### **5. ADDITIONAL TERMS AND CONDITIONS**

[INSERT AS APPROPRIATE]

#### **6. ENTIRE AGREEMENT**

This Task Order, along with the Contract, 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 Contract. 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.

MCKISSACK MBP, JOINT VENTURE

By: \_\_\_\_\_  
Name:  
Title:

HOUSING TRUST FUND CORPORATION

By: \_\_\_\_\_  
Name:  
Title:



## 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](http://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 (or 84.50-52, if applicable) and 570.507.

#### **5. ACCESS TO RECORDS**

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

6. MAINTENANCE/RETENTION OF RECORDS

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

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

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

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

8. RIGHTS IN DATA

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Allocation of rights.*

(1) Except as provided in paragraph (c) of this clause, HTFC shall have unlimited rights in:  
(i) Data first produced in the performance of this contract; (ii) Form, fit, and function data delivered under this contract; (iii) Data delivered under this contract (except for restricted  
GOSR-1 (revised 6/2014)

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

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

(c) *Copyright.*

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

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

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

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

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

*(e) Unauthorized marking of data.*

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

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

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

*(f) Omitted or incorrect markings.*

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

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

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

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

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

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

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

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

9. ENERGY EFFICIENCY

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

10. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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

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

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

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

12. SECTION 504 OF THE REHABILITATION ACT OF 1973

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

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

13. AGE DISCRIMINATION ACT OF 1975

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

14. DEBARMENT, SUSPENSION, AND INELIGIBILITY

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

15. CONFLICTS OF INTEREST

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

16. SUBCONTRACTING

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

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a *brand name* product instead of allowing an *equal* product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

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

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

17. ASSIGNABILITY

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

18. INDEMNIFICATION

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

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

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

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

20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$2,500 that involve the employment of mechanics or laborers)

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

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

21. DAVIS-BACON ACT

(Applicable to construction contracts exceeding \$2,000 when required by Federal program legislation)

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

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

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

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

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

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

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

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

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

**Equal Opportunity for Workers With Disabilities**

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

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the contractor including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
3. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Contractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
5. The Contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.
6. The Contractor will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

25. EXECUTIVE ORDER 11246

(Applicable to construction contracts and subcontracts exceeding \$10,000)

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

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

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- G. In the event of the Contractor's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- H. Contractor shall incorporate the provisions of A through G above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such subcontractor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

26. CERTIFICATION OF NONSEGREGATED FACILITIES  
(Applicable to construction contracts exceeding \$10,000)

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

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

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

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

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

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

- A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. 32 or on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 C.F.R. Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of

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

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

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

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

29. **BONDING REQUIREMENTS**

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

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

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

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

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

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

30. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968  
(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).

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BOND BANK AGENCY, AND TOBACCO SETTLEMENT FINANCING CORPORATION  
641 LEXINGTON AVENUE, NEW YORK, NEW YORK 10022, (212) 688-4000**

**April, 2013**

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## **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")**

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**NEW YORK STATE AFFORDABLE HOUSING CORPORATION, STATE OF NEW YORK MUNICIPAL BOND**  
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April, 2013

**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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April, 2013

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.

**HOUSING TRUST FUND CORPORATION**  
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**April, 2013**

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

**HOUSING TRUST FUND CORPORATION**  
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April, 2013

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/PromptPaymentReport2012.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.

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**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](mailto: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](mailto: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.