SCHEDULE A

CONDITIONS APPLICABLE TO THE CORPORATION'S LAW FIRMS AND OTHER SPECIAL CONSULTANTS

ARTICLE I: RELATION OF CONSULTANT TO THE CORPORATION

1.1 DEFINITIONS.

"Corporation" as used herein shall mean the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") unless the retainer agreement of which this Schedule A forms a part has been entered into by a subsidiary corporation of ESD or an affiliate entity, in which case the "Corporation" shall mean such subsidiary corporation or affiliate.

1.2 SUPERVISION BY THE CORPORATION. The services to be performed by Consultant under this Agreement shall be subject to the general supervision and direction of the Corporation provided that neither the Corporation's exercise nor failure to exercise such supervision and direction shall relieve the Consultant of any of its obligations or responsibilities for its acts or failure to act in regard to this Agreement.

1.3 CONSULTANT'S PERSONNEL. The Consultant shall designate in writing to the Corporation one individual, satisfactory to the Corporation, who shall be responsible for coordinating all of the services to be rendered by the Consultant and who shall be the Corporation's normal point of contact with the Consultant on matters relating to such services. Such individual shall be replaced upon the Corporation's written request.

1.4 APPROVAL OF SUBCONSULTANTS. The Consultant shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subconsultant") in connection with the performance of its obligations under this Agreement without the prior written consent of the Corporation. The Consultant shall inform the Corporation in writing of the name, proposed service to be rendered, and compensation of the Subconsultant, and of any interest the Consultant may have in the proposed Subconsultant.

1.5 CONFLICT OF INTEREST. The Consultant represents and warrants that:

(a) The Consultant has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Consultant's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder, any person or entity having any such interest during the term of this Agreement.

(b) No officer, employee, agent or director of the Corporation shall be permitted by the Consultant to share in any benefit to arise from the Consultant's work.

(c) The Consultant shall not permit any officer, employee, agent or director of the Corporation to participate in any decision relating to this Agreement which affects the personal interest of the aforementioned individuals or the interests of any corporation, partnership, or association in which those individuals are directly or indirectly interested; nor shall any officer, agent, director or employee of the Corporation be permitted by the Consultant to have any interest, direct or indirect, in this Agreement.

(d) The Consultant shall cause, for the benefit of the Corporation, every contract or agreement with any Subconsultant to include the representations contained in subsections (a), (b), (c) of this Section 1.5. The Consultant will take such action in enforcing such provisions as the Corporation may direct, or, at its option, assign such rights as it may have to the Corporation for enforcement by the Corporation.

1.6 THE CORPORATION'S REPRESENTATIVE. The Corporation will designate in writing to the Consultant an individual who will serve as the Corporation's Representative and normal point of contact for the Consultant in regard to this Agreement and the Consultant's services and obligations hereunder. The Corporation may from time to time change this designation by written notification to the Consultant.

ARTICLE II: DOCUMENTS AND RECORDS

2.1 MAINTENANCE OF RECORDS. The Consultant shall, and shall require any and all subconsultants to, until seven (7) years after completion of services hereunder or termination of this Agreement by Corporation, maintain (a) the original books, documents, materials and other records created or collected in the course of Consultant's (and Subconsultant's) performance of its (their) obligations under this Agreement (and any subconsulting agreement), and indexes of the same; (b) unless waived or modified in writing by the Corporation, complete and correct records of time spent by Consultant (and Subconsultant) in the performance of its obligations under this Agreement (and any subconsulting agreement); and (c) if Consultant is being reimbursed for out-of-pocket expenses, complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement (and any subcontract), including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Consultant (and Subconsultants) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Consultant (and Subconsultant) in performing its obligations hereunder (or under any subcontract). Consultant (and Sub consultant) shall make such books, records and indexes available to the Corporation, the State of New York, any other governmental entity having an interest in the performance of services under this Agreement (or any subconsulting agreement) and any of their authorized representatives for review and audit at all such reasonable times as the Corporation or any such other entity may from time to time request. Consultant shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Consultant invoices in accordance with this Agreement.

This Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE III: TERMINATION

3.1 OPTIONAL TERMINATION BY THE CORPORATION. The Corporation at any time, in its sole discretion, may terminate this Agreement or postpone, or delay all or any part of the Agreement upon written notice to the Consultant. In the event of such termination, postponement or delay, the Corporation shall pay the Consultant for professional time and out-of-pocket expenses incurred by Consultant to the date notice of such action is received by Consultant. The Consultant agrees to cause any agreement or contract entered into by Consultant with any Subconsultant to provide for an optional termination by Consultant similar to the provisions of this Section 3.1.

ARTICLE IV: REQUIRED PROVISIONS

4.1 CONSULTANT TO COMPLY WITH LEGAL REQUIREMENTS. The Consultant in performing its obligations and in preparing all documents required under this Agreement shall comply with all applicable laws and regulations. All provisions required by such laws and regulations to be included in this Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full.

4.2 CONSULTANT TO OBTAIN PERMITS, ETC. Except as otherwise instructed in writing by the Corporation, the Consultant shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by the Corporation or the Consultant in connection with this Agreement.

4.3 NON-DISCRIMINATION & AFFIRMATIVE ACTION. The Consultant shall comply and cause each of its Subconsultants to comply with the provisions of Attachment 7 attached to and made part of this Agreement, relating to non-discrimination and affirmative action.

4.4 TAX LAW SECTION 5-a COMPLIANCE

(a) During the term of this Agreement, the Consultant shall, at the times specified in paragraph (b) of this subsection, properly complete and deliver to the Corporation for inclusion in this Agreement, an updated NYS Tax Form 220-CA: Contractor Certification Pursuant to Section 5-a of the Tax Law. A copy of the Consultant's initial Form ST-220-CA is attached hereto as Attachment 4.4(a). Immediately upon delivery, such updated form shall form a part of this Agreement.

(b) The Consultant's updated certification shall be made if this Agreement authorizes renewal thereof at the conclusion of an initial or subsequent term, by

the day prior to the commencement date of the applicable renewal term.

(c) If the Consultant is exempt from compliance with Tax Law Section 5-a (see the provisions of said section to determine if Consultant is exempt), the Consultant shall so certify to the Corporation, including in such certification the reason(s) for exemption, in a notarized statement submitted in lieu of Form ST-220-CA. A sample affidavit is attached hereto as Attachment 4.4(b).

4.5 STATE FINANCE LAW SECTION 139-J AND 139-K COMPLIANCE

The Consultant hereby certifies that all information provided to the Corporation with respect to State Finance Law Section 139-j, including, without limitation, the information contained in Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law Section 139-j, attached to this Agreement as Attachment 4.5 – (1), and Offerer Disclosure of Prior Non-Responsibility Determinations, attached to this Agreement as Attachment 4.5 – (2), is complete, true and accurate. The Consultant acknowledges that the preceding sentence is a material representation upon which the Corporation is relying in entering into this Agreement. Should any such information be found to be intentionally false or intentionally incomplete, this Agreement shall be subject to termination pursuant to Section 3.1 hereof.

ARTICLE V: OTHER STANDARD PROVISIONS

5.1 GOVERNING LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of New York except where the Federal supremacy clause requires otherwise.

5.2 ENTIRE AGREEMENT/AMENDMENT. This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

5.3 CONFIDENTIALITY. Consultant hereby agrees that all data, recommendations, reports and other materials developed in the course of this study are strictly confidential between Consultant and the Corporation and Consultant may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from the Corporation, other than as required by law. Notwithstanding the preceding sentence, Consultant shall cooperate fully with such third parties as the Corporation may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Consultant in connection with this study.

5.4 **NO WAIVER.** No failure by the Corporation to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach, shall constitute a waiver of any such breach or such term or condition. No term or condition of this Agreement to be performed or complied with by Consultant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the Consultant. No waiver of any breach shall affect or alter this Agreement, but each and every term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

5.5 **NOTICES.**

(a) All notices permitted or required hereunder shall be in writing and shall be transmitted either:
(a) via certified or registered United States mail, return receipt requested;
(b) by facsimile transmission;
(c) by personal delivery;
(d) by expedited delivery service; or
(e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

New York State Urban Development Corporation
d/b/a Empire State Development
Attn: General Counsel
Address: 633 Third Avenue, New York, NY 10017
Telephone Number: (212) 803-3100
Facsimile Number: (212) 803-3775
E-Mail Address: [TBD]@esd.ny.gov

[Consultant Name]
Name:
Title:
Address:
Telephone Number:
Facsimile Number:
E-Mail Address:

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

5.5 **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.

5.6 **MISCELLANEOUS.** The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any other part of this Agreement.

ARTICLE VI: BILLING POLICY

6.1 **INVOICES.** The Consultant is required to submit detailed documentation in support of Consultant's request for reimbursement. All invoices and their accompanying documentation must be forwarded to:

General Counsel
New York State Urban Development Corporation
d/b/a Empire State Development
633 Third Avenue
New York, New York 10017.

Invoices shall be made on the Consultant's own invoice forms or letterhead and must include the Corporation's contract and project numbers, if any. Consultant shall also include their federal identification number with their first invoice, and a list of each individual who is expected regularly to bill time to this matter, his/her title and hourly billing rate. See Attachment 6 for maximum hourly rates. Time shall be billed on a 1/10th of an hour basis.

6.2 **REIMBURSABLE EXPENSES.**

Consultant's monthly invoices should present out-of-pocket expenses on a daily, itemized basis, grouped by general category. The Consultant must submit supporting documentation for each individual expense item over $250. Out-of-pocket expenses will be reimbursed only in accordance with the Schedule of Maximum Allowances for the Corporation's Legal Retainer Agreements in Attachment 6. Reimbursable expenses must be billed currently and in any event within 60 days of being incurred:

6.3 **NON-REIMBURSABLES.**

The following will not be reimbursed:

a) Flight insurance
b) Personal expenses of any type
c) Expenses paid for employees of the Corporation
d) Travel to/from any office of the Corporation, except with prior written approval of the Corporation.

6.4 **GENERAL.**

All receipts must be legible. Illegible receipts will not be reimbursed.

Whenever possible, original receipts should be presented for reimbursement.

At any time or times until three years after completion of Consultant's services or earlier termination of this Agreement by the Corporation, the Corporation may have the vouchers and statements of cost audited. Each payment made shall be subject to reduction for amounts included in the related voucher which are found by the Corporation on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments or increased for underpayment, as the case may be.

ATTACHMENT 4.4(a)

Tax Law Section 5-a

Form ST-220-CA

New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

ST-220-CA

(12/11)

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name				*For covered agency use only* *Contract number or description*
Contractor's principal place of business	City	State	ZIP code	
Contractor's mailing address *(if different than above)*				*Estimated contract value over the full term of contract (but not including renewals)*
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)			$
Contractor's telephone number	Covered agency name			
Covered agency address				*Covered agency telephone number*

I, _____ *(name)*, hereby affirm, under penalty of perjury, that I am _____ *(title)*

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an **X** *in only one box)*

☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____ *(insert contract number or description)*

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 ____

_____ *(sign before a notary public)*

_____ *(title)*

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);

ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and

iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of $100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20___, before me personally appeared_____,

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

[Mark an ***X*** in the appropriate box and complete the accompanying statement.]

☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): _he is the _____

of_____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ (If a partnership): _he is a _____

of_____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ (If a limited liability company): _he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

_____
Notary Public

Registration No. _____

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?

Visit our Web site at ***www.tax.ny.gov***
- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center:	(518) 485-2889
To order forms and publications:	(518) 457-5431
Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY):	(518) 485-5082

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

ATTACHMENT 4.4(B)

AFFIDAVIT OF NON-APPLICABILITY OF STATE TAX LAW § 5-A

State of New York }
} ss.:
County of }

_____ being duly sworn, do depose and state under penalty of perjury that I am the _____ [state title] of the contractor _____ [state name of contractor] responding to the procurement solicitation by the New York State Urban Development Corporation d/b/a Empire State Development or its subsidiary (collectively, "ESD") herein. I have read and am aware of the requirements of State Tax Law § 5-a with respect to registration with the New York State Department of Taxation and Finance ("NYSDTF") in connection with collection of sales and compensating use taxes imposed by Articles 28 and 29 of the State Tax Law. Neither the contractor nor any affiliate or sub-contractor as defined in the State Tax Law is registered or is required to be registered with NYSDTF for this purpose pursuant to any provision of the State Tax Law. I make this affidavit intending that ESD will rely thereon in considering the contractor's response to the solicitation, and with knowledge that any false information contained herein shall render the contractor's response to the solicitation non-responsive, and may result in other action by ESD including, without limitation, reporting the statement to relevant authorities.

_____[LS]

Print Name: _____

Sworn to before me, a Notary Public, this _____ day of _____, 20__

_____

STAMP My commission expires on _____

ATTACHMENT 4.5 – (1)
STATE FINANCE LAW SECTION 139-j

OFFERER'S AFFIRMATION OF UNDERSTANDING AND AGREEMENT

Model Language to Obtain Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)

Background:

State Finance Law § 139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Instructions:

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law § § 139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law § 139-j (3) and § 139-j (6) (b).

By: _____ Date:_____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

_____

_____

ATTACHMENT 4.5 – (2)

STATE FINANCE LAW SECTION 139-j

OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Model Language to Obtain the Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

Under New York State Finance Law § 139-k(2), covered governmental entities are obligated to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law § 163(9). In accordance with State Finance Law § 139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by an Governmental Entity due to: (a) a violation of State Finance Law § 139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law § 139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law § 139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, a covered governmental entity must consider whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract.

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract: _____

Address: _____

_____

_____

_____

_____

Name and Title of Person Submitting this Form:

_____

Contract Procurement Number:
Date:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?
(Please circle): No Yes
If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law § 139-j?
(Please circle) No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?
(Please circle) No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Date of Finding of Non-Responsibility:

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle)
Yes No

6. If yes, please provide details below. Governmental Entity:
Date of Termination or Withholding of Contract:
Basis of Termination or Withholding:
(Add additional pages as necessary) Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law § 139-k is complete, true and accurate By. Date:
Signature Name.
Title:

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

http://www.osc.state.ny.us/vendrep/documents/questionnaire/forprofit.pdf

ATTACHMENT 6

SCHEDULE OF MAXIMUM BILLING RATES AND REIMBURSEMENT ALLOWANCES

MAXIMUM HOURLY RATE AND EXPENSE SCHEDULE

Partner/Of Counsel	$400/hr
Senior Associate (5th year and up)	$375/hr
Mid-level Associate (3rd through 4th year)	$350/hr
Junior Associate (first year, after bar exam is passed through 2nd year)	$300/hr
Law Clerk (law student interns and first year associates until bar exam is passed)	$220/hr
Legal Assistants	$90/hr

TYPE OF EXPENSE	RATE OF REIMBURSEMENT
Secretarial	None (unless overtime)
Word Processing	None (unless overtime and then up to $50/hr)
Local Telephone Expenses	None
Taxis or Private Cars	Actual cost up to $50; amounts over $50 must be submitted for approval on a case-by-case basis.
Meal Charges	Actual cost of evening or overtime meals in the office up to $30 and reasonable cost of outside catering service for meetings.
Time Spent Preparing Bills	None
Long Distance Telephone	Actual cost
Photocopying	Firm's standard rate, up to $.25/page; Actual cost if outsourced.
Fax Transmission	None for incoming faxes; Firm's standard rate, up to $1.00/page for outgoing faxes
Computer Research	Actual cost (No overhead)
Out-of-Town Travel	Reasonable expenses, to be submitted for approval on a case-by-case basis.
Postage and Overnight Mail	None for individual letters; FedEx and other special delivery services will be reimbursed at actual cost
Messenger Service	Actual cost up to $15.

ATTACHMENT 7

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

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

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

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

II. Contract Goals

A. For purposes of this procurement, ESD hereby establishes an overall goal of 20% for New York State Certified Minority and Women-Owned Business Enterprises ("MWBE") participation: 12% for Minority-Owned Business Enterprises ("MBE") participation and 8% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).

B. For purposes of providing meaningful participation by MWBEs on the subject contract ("Contract") and achieving the Contract Goals established in section II-A hereof, Consultant should reference the directory of New York State Certified MBWEs found at the following internet address:

http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp.

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

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

III. <u>Equal Employment Opportunity (EEO)</u>

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

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

1. Consultant and Subconsultants shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Consultant shall submit an EEO policy statement to ESD within seventy two (72) hours after the date of the notice by ESD to award the Contract to the Consultant.
3. If Consultant or Subconsultant does not have an existing EEO policy statement, ESD may provide the Consultant or Subconsultant a model statement (see Form – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
4. The Consultant's EEO policy statement shall include the following language:

    a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
    b. The Consultant shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal

employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

c. The Consultant 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 Consultant 's obligations herein.

d. The Consultant will include the provisions of sections (a) through (c) of this subsection 4 and paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant as to work in connection with the Contract.

C. Staffing Plan

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

D. Workforce Employment Utilization Report ("Workforce Report")

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

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

IV. MWBE Utilization Plan

A. The Consultant represents and warrants that Consultant has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.

B. Consultant agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in section II-A hereof.

C. Consultant further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein.

V. Waivers

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

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

VI. Quarterly MWBE Consultant Compliance Report

Consultant is required to submit a Quarterly MWBE Consultant Compliance Report to ESD by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. ESD Remedies, Including Liquidated Damages or Other Appropriate Remedies for Willful and Intentional Failure to Comply with MWBE Participation Requirements

A. Where ESD in its sole discretion determines that Consultant is not in compliance with the requirements of the Contract and Consultant refuses to comply in good faith with such requirements, or if Consultant is determined by ESD in its sole discretion to have willfully and intentionally failed to comply in good faith with the MWBE participation goals, ESD has elected to apply liquidated damages or other appropriate remedies as follows: ESD may determine that it will not award Consultant any further contracts for a period of up to two (2) years, and in addition ESD may require Contractor to pay to ESD an amount equal to 5% of the shortfall in MWBE participation, which amount ESD shall contribute to an internal fund to promote MWBE participation in ESD contracts.

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

M/WBE AND EEO POLICY STATEMENT

I, _____, the (Contractor)_____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE

The Contractor will take, and will cause its contractors and subcontractors to take, good faith actions to achieve the M/WBE contract participations goals set by ESD in this Contract, by taking the following steps:

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

EEO

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

Agreed to this _____ day of _____, 20_____

By _____

Print: _____ Title: _____

_____is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)

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

M/WBE Contract Goals

_____% Minority and Women's Business Enterprise Participation

_____% Minority Business Enterprise Participation

_____% Women's Business Enterprise Participation

EEO Contract Goals

_____% Minority Labor Force Participation

_____% Female Labor Force Participation

_____
(Authorized Representative)

Title: _____

Date: _____