SCHEDULE A

CONDITIONS APPLICABLE TO THE CORPORATION'S[1] AGREEMENTS FOR MATERIALS/SERVICES

ARTICLE 1
RELATION OF CONTRACTOR TO THE CORPORATION

1.1 SUPERVISION BY THE CORPORATION. The services to be performed by Contractor 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 Contractor of any of its obligations or responsibilities for its acts or failure to act in regard to this Agreement.

1.2 CONTRACTOR'S PERSONNEL. The Contractor 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 Contractor and who shall be the Corporation's normal point of contact with the Contractor on matters relating to such services. Such individual shall be replaced upon the Corporation's written request.

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

1.4 CONTRACTOR AS INDEPENDENT CONTRACTOR. Notwithstanding any other provisions of this Agreement, the Contractor's status (and that of any Subcontractor) shall be that of independent contractor and not that of an agent or employee of the Corporation. Accordingly, neither the Contractor nor any Subcontractor shall hold itself out as, or claim to be acting in the capacity of, an employee or agent of the Corporation.

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

1.6 APPROVALS OR ACCEPTANCE BY THE CORPORATION. Whenever action is to be taken, or approval or acceptance given, by the Corporation, such action, approval or acceptance shall be deemed to have been taken or given only if so taken or given by the Corporation's Representative, by the official of the Corporation who signed this Agreement on behalf of the Corporation, or by another officer or employee of the Corporation duly designated by such signing officer to represent the Corporation in connection therewith. The Corporation shall notify the Contractor in writing of the giving or withholding of each such approval or acceptance within a reasonable period of time. The Corporation's acceptance or approval of any specifications, drawings, plans, reports or other materials prepared by the Contractor hereunder shall in no way relieve the Contractor of responsibility for such materials.

1 As used in this Schedule A, the "Corporation" shall mean the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") unless the Contract for Materials/Services of which this Schedule A forms a part has been entered into by a subsidiary corporation of ESD, in which case the "Corporation" shall mean such subsidiary corporation.

1.7 **CONFLICT-OF-INTEREST.** The Contractor represents and warrants that:

(a) The Contractor has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Contractor'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, or any of its subsidiaries shall be permitted by the Contractor to share in any benefit to arise from the Contractor's work.

(c) The Contractor shall not permit any officer, employee, agent or director of the Corporation, or any of its subsidiaries 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, or any of its subsidiaries be permitted by the Contractor to have any interest, direct or indirect, in this Agreement or the proceedings thereof.

(d) The Contractor shall cause, for the benefit of the Corporation, every contract or agreement with any Subcontractor to include the representations contained in subsections (a), (b), (c) of this Section 1.7. The Contractor 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.

1.8 **NO BROKER.** The Contractor represents that it has not employed any person, corporation or partnership, to solicit or procure this Agreement, and has not made, and will not make, any payment or agreement for the payment of any commission, percentage, brokerage or contingent fee, or other compensation in connection with the procurement of this Agreement.

1.9 **NOTICE OF OVERRUNS AND DELAYS.** The Contractor shall promptly give written notice to the Corporation's Representative of the occurrence of an event or action, the discovery of a condition or the failure of an event or action to occur or a condition to exist as anticipated, which may result in an increase in (a) the compensation due Contractor; (b) reimbursable expenses and/or (c) the number of hours necessary to perform the work.

The Contractor shall promptly give written notice to the Corporation's Representative of the occurrence of an event or action, or the discovery of a condition, or the failure of an event or action to occur or a condition to exist as anticipated, which may delay completion of the work (or extend the Completion Date).

ARTICLE 2
DOCUMENTS AND RECORDS

2.1 **OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS.** All originals and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Contractor under this Agreement including drafts and reproduction copies thereof, shall be and remain the exclusive property of the Corporation, and the Corporation shall have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specifications and other documents without payment of any additional royalty, charge or other compensation to Contractor. Upon request of the Corporation during any stage of the work, Contractor shall deliver all such materials to the Corporation.

The Contractor agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working papers, without the prior written approval of the Corporation, except that Contractor may retain copies of such reports and other documents for general reference use.

2.2 MAINTENANCE OF RECORDS. The Contractor shall, and shall require any and all subcontractors to, until six (6) 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 Contractor's (and Subcontractors') 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 Contractor (and Subcontractor) in the performance of its obligations under this Agreement (and any subconsulting agreement); and (c) if Contractor 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 Contractor (and Subcontractors) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Contractor (and Subcontractor) in performing its obligations hereunder (or under any subcontract). Contractor (and Subcontractor) 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. Contractor shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Contractor invoices in accordance with this Agreement.

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

ARTICLE 3
TERMINATION

3.1 DEFAULT BY CONTRACTOR. If any material representation made by the Contractor in this Agreement shall prove to be false or misleading in any material respect, or if the Contractor shall default in the timely performance of any of its obligations under this Agreement and such default shall continue for a period of ten (10) days after written notice from the Corporation specifying the occurrence, omission or failure giving rise to such default, or if, in the opinion of the Corporation, by reason of the nature of such default, such default cannot be cured within such ten (10) day period, then if the Contractor shall not within such period commence with due diligence the curing of such default and thereafter prosecute and complete the curing of such default as promptly as possible, except that the Corporation shall not be required to give Contractor such written notice and Contractor shall not have such right to cure for Contractor's failure to comply with Section 1.9 hereof, the Corporation, in addition to any other remedies or claims it may have with respect to such representation or such default may terminate this Agreement immediately upon verbal or written notice to the Contractor. In the event of such termination, the Corporation, without waiving any such remedy or claims, (including consequential damages) shall not be required to pay the Contractor any portion of the fee specified in this Agreement remaining to be paid for which valid vouchers have not been submitted pursuant to this Agreement on or before the date of the Corporation's notice of termination.

3.2 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 Contractor. In the event of such termination, postponement or delay, the Corporation shall pay the Contractor for professional time and out-of-pocket expenses incurred by Contractor to the date notice of such action is received by Contractor. The Contractor agrees to cause any agreement or contract entered into by Contractor with any Subcontractor to provide for an optional termination by Contractor similar to the provisions of this Section 3.2.

ARTICLE 4
REQUIRED PROVISIONS

4.1 CONTRACTOR TO COMPLY WITH LEGAL REQUIREMENTS. The Contractor 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 **CONTRACTOR TO OBTAIN PERMITS, ETC.** Except as otherwise instructed in writing by the Corporation, the Contractor 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 Contractor in connection with this Agreement.

4.3 **WORKERS' COMPENSATION INSURANCE.** The Contractor agrees that:

(a) It will secure Workers' compensation and disability insurance and keep insured during the life of this Agreement such employees as are required to be insured by the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Worker's Compensation Law; and

(b) This Agreement shall be voidable at the election of the Corporation and of no effect unless the Contractor complies with this provision.

4.4 **NO ASSIGNMENT WITHOUT CONSENT.** The Contractor agrees that:

(a) It is prohibited from assigning, transferring or otherwise disposing of this Agreement, or of its rights or interests therein, or its power to execute such agreement to any person, company, partnership, or corporation, without the previous written consent of the Corporation;

(b) If the prohibition of Section 4.4(a) be violated, the Corporation may revoke and annul this Agreement and the Corporation shall be relieved from any and all liability and obligations thereunder to the Contractor and to the person, company, partnership or corporation to whom such assignment, transfer or other disposal shall have been made and the Contractor and such assignee or transferee shall forfeit and lose all the money theretofore earned under this Agreement.

4.5 **NON-DISCRIMINATION & AFFIRMATIVE ACTION**

The Contractor shall comply and cause each of its subcontractors to comply with the provisions of Attachment 4.5 attached to and made a part of this Agreement, relating to non-discrimination and affirmative action. Attachment 4.5 is replaced by Schedule C.

4.6 **TAX LAW SECTION 5-a COMPLIANCE**

(a) During the term of this Agreement, the Contractor 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 Contractor's initial Form ST-220-CA is attached hereto as Attachment 4.6. Immediately upon delivery, such updated form shall form a part of this Agreement.

(b) The Contractor'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 Contractor is exempt from compliance with Tax Law Section 5-a (see the provisions of said section to determine if Contractor is exempt), the Contractor 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.

4.7 **STATE FINANCE LAW SECTION 139-J AND 139-K COMPLIANCE**

The Contractor 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 4.7 – (1), and Offerer Disclosure of Prior Non-Responsibility Determinations, attached to this Agreement as Attachment 4.7 – (2), is complete, true and accurate. The Contractor 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 5
OTHER STANDARD PROVISIONS

5.1 **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 Contractor, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the Corporation. 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.

5.2 **INDEMNIFICATION.** Notwithstanding anything to the contrary contained herein, Contractor shall be responsible for all injuries to persons, including death, and all damage sustained while performing or resulting from the work under this Agreement, if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or Subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by Contractor pursuant to this Agreement. Contractor agrees to defend, indemnify and hold the Corporation, the State of New York and, if the Corporation is an ESD subsidiary, ESD and each of their respective officers, directors, commissioners, employees and representatives (collectively, the "Indemnitees") harmless from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for injuries to persons (including death) and damage, if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or its Subcontractors, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the Indemnitees by reason of claims against Contractor or its Subcontractors, or their employees, agents, servants, independent contractors and subcontractors for any matter whatsoever in connection with the services performed under this Agreement, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the Indemnitees for reasonable attorneys' fees incurred in connection with the above. Contractor shall be solely responsible for the safety and protection of all its Subcontractors, or the employees, agents, servants, independent contractors, or subcontractors of Contractor or its Subcontractors, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Contractor, its Subcontractors, or their respective agents, employees, servants, independent contractors or subcontractors.

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

5.3.1 **ASSIGNMENT BY THE CORPORATION.** The Corporation may transfer and assign any and all of its rights and obligations under this Agreement, including transferring and assigning its rights to the Contractor's performance of any portion of the services provided for herein, together with the Corporation's obligations and rights pertaining to such portion of services, to any partnership, firm, corporation, governmental agency or department or other entity which the Corporation determines has undertaken or will undertake any part of the Agreement. The Corporation shall give the Contractor written notice of any such transfer and assignment. Such transfer and assignment shall relieve the Corporation of any further liability or obligation hereunder

5.3.2 **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the Corporation's revious written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an

assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The Corporation retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the Corporation's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

5.4 **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.

5.5 **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.

5.6 **CONFIDENTIALITY.** Contractor hereby agrees that all data, recommendations, reports and other materials developed in the course of performance under this Agreement are strictly confidential between Contractor and the Corporation and Contractor 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. Notwithstanding the preceding sentence, Contractor 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 Contractor in connection with performance under this Agreement.

5.7 **RELEASE AND DISCHARGE.** Simultaneously with request for final payment hereunder, Contractor shall execute and deliver to the Corporation an instrument releasing the Corporation from any and all claims, demands and liabilities whatsoever of every kind of nature both at law and in equity arising from, growing out of, or in any way connected with this Agreement. A copy of such release is annexed hereto as Attachment 5.7 and made a part hereof.

5.8 **NOTICES.** 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:

State of New York [Agency Name]
Name:
Title:

Address:
Telephone Number:
Facsimile Number:
E-Mail Address:

[Contractor Name]
Name:
Title:
Address:

Telephone Number:
Facsimile Number:
E-Mail Address:

2. 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.

3. 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.

5.9 **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.

5.9.1 **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 6
BILLING POLICY

6.1 The Contractor is required to submit detailed documentation in support of Contractor's request for reimbursement. All invoices and their accompanying documentation must be forwarded along with a completed copy of the sample INVOICE SUMMARY attached hereto as Attachment 6.1 and a letter of transmittal to:

Accounts Payable Department
New York State Urban Development Corporation
633 Third Avenue
New York, New York 10017-6754

Invoices should be submitted monthly and include the Corporation's contract and project numbers, if any. Contractor should also include federal identification number with the first invoice.

6.2 Out-of-pocket expenses should be delineated on any invoices by general category. The Contractor must submit supporting documentation for each individual expense category in excess of $250.

6.3 **MEALS.** Business meals will be reimbursed in accordance with the Corporation's Schedule of Reimbursable Allowances, a copy of which is attached as Attachment 6.3, provided that the names of all attendees shall be included in the request for reimbursement.

6.4 **PRINTING.**

(a) Internal print or xeroxing is not reimbursable. It is part of the Contractor's overhead cost, unless ordered by or for specific use of the Corporation,

(b) Outside printing will be reimbursed only to the extent of prints requested by the Corporation, and at cost evidenced by a receipt.

(c) No postage will be reimbursed for printing requested by the Corporation.

6.5 TELEPHONE.

(a) Only calls to the Corporation and calls relating to telephone surveys are chargeable. All other calls are part of Contractor's overhead costs.

(b) Calls between the Contractor's office and its employees are not reimbursable.

6.6 TRANSPORTATION. Reimbursed in accordance with the the Corporation's Schedule of Reimbursable Allowances (see Attachment 6.3).

6.7 LODGING. Reimbursed in accordance with the Corporation's Schedule of Reimbursable Allowances (see Attachment 6.3).

6.8 NON-REIMBURSABLES.

(a) Flight insurance
(b) Valet Services (except five or more consecutive days of travel)
(c) Personal expenses of any type
(d) Expenses paid for the Corporation's employees.
(e) Travel to any office of the Corporation to "deliver vouchers or pick up check".

6.9 EQUIPMENT AND SUPPLIES. Where the Agreement allows reimbursement for equipment and supplies, insurance or similar items, the Contractor must supply the following detailed documentation:

(a) Receipts of suppliers' invoices for costs of commodities, equipment and supplies, insurance or other reimbursable items. Invoices must show quantity, description and price (less applicable discounts and purchasing agent's commission).

(b) Title to all equipment purchased pursuant to this Agreement is vested in the Corporation. The Corporation has the option of claiming any or all of such equipment.

6.10 GENERAL.

(a) All receipts must be legible. Illegible receipts will not be reimbursed.

(b) Whenever possible original receipts should be presented for reimbursement.

(c) At any time or times until three years after completion of Contractor's services or earlier termination of this Agreement by the Corporation, the Corporation may have the vouchers and statements of cost audited. Each payment theretofore 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.

ARTICLE 7
INSURANCE

7.1 The Contractor shall carry, and shall require each of its Subcontractors to carry, insurance of the following types and minimum amounts. Additional types and amounts of coverage may be required

depending on the nature of the services to be performed under this Agreement or a subconsulting agreement. Any such additional types or amounts of coverage shall be specified on Attachment 7.1 attached hereto.

7.2 Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than Two Million Dollars ($2,000,000) aggregate and One Million Dollars ($1,000,000) per occurrence. Such insurance is to be written on an occurrence basis. The Corporation and, if different, the New York State Urban Development Corporation d/b/a Empire State Development Corporation and each of their directors, officers, employees, agents and representatives shall be named as an additional insureds (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85). Other additional insured as the Corporation may specify in writing on Attachment 7.2 attached hereto.

7.3 Automobile Liability and Property Damage Insurance in an amount not less than $1,000,000 combined single limit for both Bodily Injury and Property Damage.

7.4 Professional Liability Insurance if and as may be specified on Attachment 7.1.

7.5 Workers' Compensation: Employers liability and disability benefits as required by New York State. Proof of compliance shall be in the form specified on Attachment 7.5.

7.6 Excess Liability Insurance if and as may be specified on Attachment 7.1

7.7 Certificates of Insurance for all of the aforementioned coverages shall be of form and substance acceptable to the Corporation and shall be provided to the Corporation prior to the commencement of work under this Agreement.

7.8 Other requirements.

(a) Acceptance and/or approval by the Corporation of any insurance does not and shall not be construed to relieve the Contractor of any obligations, responsibilities or liabilities.

(b) All required insurance shall be obtained at the Contractor's sole cost and expense; shall be primary and non-contributing to any insurance or self-insurance maintained by the Corporation; shall be endorsed to provide written notice be given to the Corporation at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice shall be evidenced by return receipt of United States Certified Mail.

(c) All required insurance shall be maintained with insurance carriers licensed to do business in New York State, acceptable to the Corporation and rated at least "A-" Class"VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the the Corporation and rated at least "A-" Class"VII" in the most recently published Best's Insurance Report.

(d) Contractor shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by the Corporation.

(e) Contractor shall require that any of its subcontractors hired in connection with the services to be performed under this Agreement carry insurance of the same types and with the same limits and provisions provided herein.

(f) The Contractor shall cause all insurance to be in full force and effect as of the commencement of this Agreement and to remain in full force and effect throughout its term until conclusion of the services to be perfomed hereunder or earlier termination of this Agreement. Contractor shall not take

any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

(g) Not less than thirty (30) days prior to the expiration or renewal date, the Contractor shall supply the Corporation with updated replacement Certificates of Insurance, and amendatory endorsements.

(h) The Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the Corporation or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against the Corporation or (ii) any other form of permission for the release of the Corporation.

SCHEDULE B

SCOPE OF WORK

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1. Project Area and Purpose

2. Scope of Project

(Indicate technical scope and identify specific work tasks and product deliverables for each phase of the work aggregating the total fee.)

3. Project Schedule

Dated: _____

Attachment 4.5

Non-Discrimination and Affirmative Action Provisions

SEE SCHEDULE C

ATTACHMENT 4.6

Tax Law Section 5-a

Form ST-220-CA

New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

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

ST-220-CA

(6/06)

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. This publication is available on our Web site, by fax, or by mail. (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.

If you have questions, please call our information center at 1 800 698-2931.

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 Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

Internet access: *www.nystax.gov* (for information, forms, and publications)

Fax-on-demand forms:	1 800 748-3676
Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.	1 800 698-2931
To order forms and publications:	1 800 462-8100
From areas outside the U.S. and outside Canada:	(518) 485-6800
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only):	1 800 634-2110

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, please call 1 800 972-1233.

ATTACHMENT 4.7 –(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 4.7 – (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.

Governmental Entity:

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)
No Yes

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:

ATTACHMENT 5.7

RELEASE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned hereby acknowledges that pursuant to an agreement dated the day of , 20 (the "Agreement"), pursuant to which the undersigned agreed to furnish to the Urban Development Corporation d/b/a Empire State Development Corporation or one of its subsidiaries (as the case may be, the "Corporation") all of the work necessary to complete the Agreement, and that the Corporation has paid or will pay the undersigned, or a person, firm or corporation claiming by or through the undersigned, the sum of:
($ _____) Dollars and up to _____
($) Dollars in reimbursable expenses, in each case subject to the terms, covenants and conditions of the Agreement, said amounts being the full and entire sum due from the Corporation to the undersigned pursuant to the Agreement by reason of work, labor or materials furnished or performed by the undersigned, in connection with the Agreement. In consideration of such payment, the undersigned hereby releases and discharges the Corporation, its officers, agents, and employees, of and from all claims of liability for any payment, fee or expenses payable to the undersigned pursuant to the Agreement.

The undersigned further acknowledges that neither the aforesaid payment nor acceptance by the Corporation of the work covered by the Agreement, shall in any way or manner operate as or constitute a release or waiver of the undersigned's obligations, undertakings or liabilities under the Agreement or in any way affect or limit the same.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunto subscribed and its seal to be hereunto affixed this_____ day of _____, 20 .

_____
Name of Firm

(Corporate Seal) By: _____

ATTACHMENT 6.1

INVOICE SUMMARY
(Submit with Letter of Transmittal)

Accounts Payable Department
New York State Urban Development Corporation
633 Third Avenue, New York, NY 10017-6754

Date:_____
Invoice No: _____
Amount $ _____

Contractor

Address

_____

Project _____

Contract No._____ Project No.

	Original Contract Amount	Amendments Total	Revised Contract Amount	Previously Billed	This Invoice**	Invoiced To Date	Contract Balance
1. Fee							
2. Reimbursables							
3. Extra Services* 4.Total $		$	$	$	$	$	$

Latest Contract Amount $_____

Billed to Date $_____

Paid to Date $_____

Balance Due $_____

*Attach letters of Authorization
**Attach back-up

SAMPLE

ATTACHMENT 6.3

SCHEDULE OF REIMBURSABLE ALLOWANCES

	BREAKFAST	LUNCH	DINNER
I.	Without Receipt	Without Receipt	Without Receipt
MEALS ALLOWANCES			
A. OVERTIME			
NORMAL WORKDAY - 8:00 PM (10 or more hours worked)			$15.00
SAT., SUN & HOLIDAYS			
OVER 4 HOURS		$10.00	
OVER 10 HOURS			$15.00
B. BUSINESS GUESTS (PER PERSON)			
METRO N.Y. & OUT OF STATE	$10.00	$25.00	$45.00
UPSTATE N.Y.	$ 8.00	$20.00	$35.00
C. NON-OVERNIGHT TRAVEL DAY TRIPS	$8.00[a]		$15.00[b]
D. OVERNIGHT TRAVEL 1st & Last day (partial)	$7 - $9[a]		$27-$37[b]
Interim full days	(REIMBURSEMENT RATES ARE BASED ON LOCALITY-See Attached)		

Break down of Meals Based on Location

Location	Daily	Breakfast	Dinner
Albany	$61	$10	$51
Buffalo	$56	$09	$47
Kingston	$66	$11	$55
Rochester	$51	$08	$43
Syracuse	$56	$09	$47
NYC	$71	$12	$59

II. LODGING (See attached)

III. TRANSPORTATION ALLOWANCES

PERSONAL CAR MILEAGE	56.0 cents per mile.
A. PERSONAL CAR OVERTIME	Actual $50 limit on overtime
B. CAR RENTAL	Actual Note: Be sure that sales tax is not charged and that collision damage waiver insurance is accepted when renting in NYS.
C. AIRLINE & OTHER PUBLIC TRANSPORTATION	Actual - evidenced by receipt (limited to government/corporate coach rate).
D. TAXI FARES	Actual - evidenced by receipt $50 limit on overtime

(a) When travel status begins prior to 7:00 AM
(b) When travel status ends after 8:00 PM

DESTINATION	COUNTY	SEASON BEGIN	SEASON END	FY14 Lodging Rate	FY14 M&IE	MAXIMUM PER DIEM
Albany	Albany			$ 111	$ 61	$ 172
Binghamton / Owego	Broome and Tioga			$ 97	$ 46	$ 143
Buffalo	Erie			$ 107	$ 56	$ 163
Floral Park / Garden City / Great Neck	Nassau			$ 150	$ 66	$ 216
Glens Falls	Warren	October 1	June 30	$ 99	$ 66	$ 165
Glens Falls	Warren	July 1	August 31	$ 154	$ 66	$ 220
Glens Falls	Warren	September 1	September 30	$ 99	$ 66	$ 165
Ithaca / Waterloo / Romulus	Tompkins and Seneca			$ 113	$ 46	$ 159
Kingston	Ulster			$ 111	$ 66	$ 177
Lake Placid	Essex	October 1	November 30	$ 113	$ 61	$ 174
Lake Placid	Essex	December 1	February 28	$ 133	$ 61	$ 194
Lake Placid	Essex	March 1	June 30	$ 107	$ 61	$ 168
Lake Placid	Essex	July 1	August 31	$ 169	$ 61	$ 230
Lake Placid	Essex	September 1	September 30	$ 113	$ 61	$ 174
Manhattan (includes the boroughs of Manhattan, Brooklyn, the Bronx, Queens and Staten Island)	Bronx, Kings, New York, Queens, Richmond	October 1	December 31	$ 303	$ 71	$ 374
Manhattan (includes the boroughs of Manhattan, Brooklyn, the Bronx, Queens and Staten Island)	Bronx, Kings, New York, Queens, Richmond	January 1	February 28	$ 191	$ 71	$ 262

DESTINATION	COUNTY	SEASON BEGIN	SEASON END	FY14 Lodging Rate	FY14 M&IE	MAXIMUM PER DIEM
Manhattan (includes the boroughs of Manhattan, Brooklyn, the Bronx, Queens and Staten Island)	Bronx, Kings, New York, Queens, Richmond	March 1	June 30	$ 267	$ 71	$ 338
Manhattan (includes the boroughs of Manhattan, Brooklyn, the Bronx, Queens and Staten Island)	Bronx, Kings, New York, Queens, Richmond	July 1	August 31	$ 229	$ 71	$ 300
Manhattan (includes the boroughs of Manhattan, Brooklyn, the Bronx, Queens and Staten Island)	Bronx, Kings, New York, Queens, Richmond	September 1	September 30	$ 303	$ 71	$ 374
Niagara Falls	Niagara	October 1	May 31	$ 83	$ 51	$ 134
Niagara Falls	Niagara	June 1	September 30	$ 99	$ 51	$ 150
Nyack / Palisades	Rockland			$ 112	$ 61	$ 173
Poughkeepsie	Dutchess			$ 102	$ 66	$ 168
Riverhead / Ronkonkoma / Melville	Suffolk			$ 119	$ 71	$ 190
Rochester	Monroe			$ 101	$ 51	$ 152
Saratoga Springs / Schenectady	Saratoga and Schenectady	October 1	June 30	$ 114	$ 56	$ 170
Saratoga Springs / Schenectady	Saratoga and Schenectady	July 1	August 31	$ 164	$ 56	$ 220
Saratoga Springs / Schenectady	Saratoga and Schenectady	September 1	September 30	$ 114	$ 56	$ 170
Syracuse / Oswego	Onondaga and Oswego			$ 96	$ 56	$ 152
Tarrytown / White Plains / New Rochelle	Westchester			$ 139	$ 71	$ 210
Troy	Rensselaer			$ 100	$ 51	$ 151
Watertown	Jefferson			$ 96	$ 56	$ 152
West Point	Orange			$ 106	$ 51	$ 157

Attachment 7.1

Additional Insurance

Attachment 7.2

Additional Insureds

Attachment 7.5

Proof of Workers' Compensation and Disability Benefits Insurance

To comply, you must submit one of the following proofs:

Private Insurer	-	Form C-1 05.2
State Insurance Fund	-	Form U.26.3
Status as Self-Insured	-	Form SI-12
Status as Member of Group Self Insurance	-	Form GSI-1 05.2

(Please obtain the above forms from your insurance carrier, licensed insurance agent or self-insurance administrator.)

Statement that Applicant Is Not Required to Carry New York State Worker's Compensation Insurance	-	Form WC/DB-100 **OR** Form WC/DB-101

Form WC/DB-100 and Form WC/DB-101 may be found on the Board's website at **www.web.state.ny.us.**

If you have questions regarding workers' compensation insurance coverage requirements, please contact the Bureau of Compliance at: **1-800-298-7830.**

DISABILITY BENEFITS INSURANCE

Section 220 of the New York State Workers' Compensation Law requires that before any permit, license or contract is issued by any municipal, county or state government entity, the applicant must submit proof of compliance with NYS disability benefits coverage requirements.

To comply, you must submit one of the following proofs:

All Insurance Carriers	-	Form DB-1 20.1 or DB-820/829
Status as Self-Insured	-	Form DB-155

(Please obtain the above forms from your insurance carrier or self-insurance administrator.)

Statement that Applicant Is Not Required to Carry New York State Disability Insurance	-	Form WC/DB-100 **OR** Form WC/DB-101

Form WC/DB-100 and Form WC/DB-101 may be found on the Board's website at www.wcb.state.ny.us.

If you have questions regarding disability benefits insurance coverage requirements, please contact the Disability Benefits Office at: **1-800-353-3092.**

SCHEDULE C

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

_____20% 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: _____

ATTACHMENT 8

ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

Vendor Name and Date: _____

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State ("NYS"), bidders/proposers for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider NYS businesses in the fulfillment of the requirements of the contract. Such partnering may be as sub-contractors, suppliers, protégés or other supporting roles (herein collectively called "Subcontractors").

Bidders/proposers need to be aware that, if selected through this ESD solicitation, they will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive NYS Subcontractors in performing the contract, including without limitation: (i) purchasing commodities; and (ii) utilizing services and technology. Further, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its NYS business partners. NYS businesses will promote the contractor's optimal performance under the contract, thereby benefiting public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore encourages bidders/proposers to provide maximum assistance to NYS businesses in their use of the contract. The potential participation by all kinds of NYS businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of NYS businesses by responding to the questions below (negative responses will not adversely affect contract selection):

(A) Do you anticipate the need for Subcontractors fulfilling the requirements of this ESD contract? Yes ☐ No ☐

(B) Do you anticipate that NYS businesses will be used in the performance of this ESD contract as Subcontractors? Yes ☐ No ☐

NOTE: If the answer to question (B) is Yes, please identify NYS businesses that will be used and attach identifying information such as name, address, contact information, nature of business. Please also be prepared to provide ESD on a regular basis (at least quarterly) with the amounts paid to NY businesses.